

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JOSEPH S. MANCINELLI, CARMEN)
PRINCIPATO, DOUGLAS SERROUL,)
LUIGI CARROZZI, MANUEL BASTOS and)
JACK OLIVEIRA in their capacity as THE)
TRUSTEES OF THE LABOURERS')
PENSION FUND OF CENTRAL AND)
EASTERN CANADA, and CHRISTOPHER)
STAINES)

Plaintiffs)

Kirk Baert for the Plaintiffs)

- and -)

ROYAL BANK OF CANADA, RBC)
CAPITAL MARKETS LLC, BANK OF)
AMERICA CORPORATION, BANK OF)
AMERICA, N.A., BANK OF AMERICA)
CANADA, BANK OF AMERICA)
NATIONAL ASSOCIATION, THE BANK)
OF TOKYO MITSUBISHI UFJ LTD.,)
BANK OF TOKYO-MITSUBISHI UFJ)
(CANADA), BARCLAYS BANK PLC,)
BARCLAYS CAPITAL INC., BARCLAYS)
CAPITAL CANADA INC., BNP PARIBAS)
GROUP, BNP PARIBAS NORTH)
AMERICA INC., BNP PARIBAS)
(CANADA), BNP PARIBAS, CITIGROUP,)
INC., CITIBANK, N.A., CITIBANK)
CANADA, CITIGROUP GLOBAL)
MARKETS CANADA INC., CREDIT)
SUISSE GROUP AG, CREDIT SUISSE)
SECURITIES (USA) LLC, CREDIT SUISSE)
AG, CREDIT SUISSE SECURITIES)
(CANADA), INC., DEUTSCHE BANK AG,)
THE GOLDMAN SACHS GROUP, INC.,)
GOLDMAN, SACHS & CO., GOLDMAN)
SACHS CANADA INC., HSBC HOLDINGS)
PLC, HSBC BANK PLC, HSBC NORTH)
AMERICA HOLDINGS INC., HSBC BANK)

USA, N.A., HSBC BANK CANADA,)
 JPMORGAN CHASE & CO., J.P.MORGAN)
 BANK CANADA, J.P.MORGAN CANADA,)
 JPMORGAN CHASE BANK NATIONAL)
 ASSOCIATION, MORGAN STANLEY,)
 MORGAN STANLEY CANADA LIMITED,)
 ROYAL BANK OF SCOTLAND GROUP)
 PLC, RBS SECURITIES, INC., ROYAL)
 BANK OF SCOTLAND N.V., ROYAL)
 BANK OF SCOTLAND PLC, SOCIÉTÉ)
 GÉNÉRALE S.A., SOCIÉTÉ GÉNÉRALE)
 (CANADA), SOCIÉTÉ GÉNÉRALE,)
 STANDARD CHARTERED PLC, UBS AG,)
 UBS SECURITIES LLC and UBS BANK)
 (CANADA))

Defendants)

Proceeding under the *Class Proceedings Act, 1992*) **HEARD (In Writing): July 7, 2017**

PERELL, J.

REASONS FOR DECISION

[1] The Plaintiffs, Joseph S. Mancinelli, Carmen Principato, Douglas Serroul, Luigi Carrozzi, Manuel Bastos and Jack Oliveira, in their capacity as The Trustees of the Labourers' Pension Fund of Central and Eastern Canada, and Christopher Staines, sue 16 groups of financial institutions.

[2] The Plaintiffs sue: Royal Bank of Canada, RBC Capital Markets LLC, Bank of America Corporation, Bank of America, N.A., Bank of America Canada, Bank of America National Association, The Bank of Tokyo Mitsubishi UFJ Ltd., Bank of Tokyo-Mitsubishi UFJ (Canada), Barclays Bank PLC, Barclays Capital Inc., Barclays Capital Canada Inc., BNP Paribas, BNP Paribas (Canada), BNP Paribas Group, BNP Paribas North America Inc., Citibank, N.A., Citibank Canada, Citigroup Global Markets Canada Inc., Citigroup, Inc., Credit Suisse Group AG, Credit Suisse Securities (USA) LLC, Credit Suisse AG, Credit Suisse Securities (Canada), Inc., Deutsche Bank AG, The Goldman Sachs Group, Inc., Goldman, Sachs & Co., Goldman Sachs Canada Inc., HSBC Holdings PLC, HSBC Bank PLC, HSBC North America Holdings Inc., HSBC Bank USA, N.A., HSBC Bank Canada, J.P.Morgan Canada, JPMorgan Chase Bank National Association, JPMorgan Chase & Co., J.P.Morgan Bank Canada, Morgan Stanley, Morgan Stanley Canada Limited, Royal Bank of Scotland Group PLC, RBS Securities, Inc., Royal Bank of Scotland N.V., Royal Bank of Scotland PLC, Société Générale S.A., Société Générale (Canada), Société Générale, Standard Chartered PLC, UBS AG, UBS Securities LLC and UBS Bank (Canada).

[3] In a proposed class action under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, the Plaintiffs allege that the Defendants conspired with each other to fix prices in the futures exchange market (“FX Market”). It is alleged that through the use of multiple chat rooms with names such as “The Cartel,” “The Bandits’ Club,” and “The Mafia,” the Defendants communicated directly with each other to coordinate their: (i) fixing of spot prices; (ii) control and manipulation of FX benchmark rates; and (iii) exchange of key confidential customer information to trigger client stop loss orders and limit orders.

[4] The Plaintiffs allege that the Defendants’ conspiracy impacted all manner of FX instruments, including those trading both over-the-counter and on exchanges.

[5] The Plaintiffs, through Mr. Staines, commenced an action by way of Statement of Claim, which was issued on September 11, 2015. The Statement of Claim pleads several causes of action against the Defendants including a statutory right of action for contraventions of Part VI of the *Competition Act*, R.S.C. 1985, c. C-34; namely: civil conspiracy, and unjust enrichment.

[6] The Class Counsel team is made up of lawyers from Sotos LLP, Siskinds LLP, Koskie Minsky LLP and Camp Fiorante Matthews Mogerman.

[7] Similar litigation has been commenced in Québec. Class Counsel in the Ontario action is working cooperatively with the law firm of Siskinds Desmeules s.e.n.c.r.l (“Siskinds Québec”), counsel to the plaintiff in the Québec action (Court File No. 200-06-000189-152), to prosecute the Québec action.

[8] Class Counsel and Siskinds Québec are working together and have agreed to pursue the litigation on a national basis with carriage in Ontario.

[9] The Plaintiffs have already reached court approved settlements with six groups of Defendants: (1) UBS AG, UBS Securities LLC and UBS Bank (Canada); (2) BNP Paribas Group, BNP Paribas North America Inc., BNP Paribas (Canada), and BNP Paribas; (3) Bank of America Corporation, Bank of America, N.A., Bank of America Canada and Bank of America National Association; (4) The Goldman Sachs Group, Inc., Goldman, Sachs & Co., and Goldman Sachs Canada Inc.; (5) JPMorgan Chase & Co., J.P. Morgan Bank Canada, J.P. Morgan Canada, and JPMorgan Chase Bank National Association; and (6) Citigroup, Inc., Citibank, N.A., Citibank Canada, and Citigroup Global Markets Canada Inc. See: *Staines v. Royal Bank of Canada*, 2016 ONSC 5270 (Consent Certification No. 1), *Mancinelli v. Royal Bank of Canada*, 2016 ONSC 6953 (Settlement Approval No. 1), *Mancinelli v. Royal Bank of Canada*, 2016 ONSC 7857 (Consent Certification No. 2); and *Mancinelli v. Royal Bank of Canada*, 2017 ONSC 2324 (Settlement Approval No. 2).

[10] The Plaintiffs have also reached settlements with four more groups of Defendants and by Order dated June 26, 2017, I certified the action for settlement purposes, approved notices of certification and of the settlement approval hearing and I granted related relief. The settlement approval hearing is scheduled for September 18, 2017. The settlements are with: (1) Barclays Bank PLC, Barclays Capital Inc., and Barclays Capital Canada Inc. (“Barclays”); (2) HSBC Holdings PLC, HSBC Bank PLC, HSBC North America Holdings Inc., HSBC Bank USA, N.A., and HSBC Bank Canada (“HSBC”); (3) Royal Bank of Scotland Group PLC, RBS Securities, Inc., Royal Bank of Scotland N.V., and Royal Bank of Scotland PLC (“RBS”); and (4) Standard Chartered PLC. See *Mancinelli v. Royal Bank of Canada*, 2017 ONSC 3910.

[11] At the time of the June 26, 2017 certification motion, the Plaintiffs advised that they anticipated reaching settlements with two more groups of defendants; i.e., (1) The Bank of Tokyo Mitsubishi UFJ Ltd. and Bank of Tokyo-Mitsubishi UFJ (Canada); and (2) Société Générale S.A., Société Générale (Canada), and Société Générale.

[12] The settlements were reached and the Plaintiffs now bring a motion in writing for consent certifications for settlement purposes.

[13] Under their Settlement Agreement, The Bank of Tokyo Mitsubishi UFJ Ltd. and Bank of Tokyo-Mitsubishi UFJ (Canada), has agreed to pay \$450,000.

[14] Under their Settlement Agreement, Société Générale S.A., Société Générale (Canada), and Société Générale, has agreed to pay \$1.8 million.

[15] All the Settlement Agreements provide, among other things, that: (1) the settlement amounts shall be held in an interest-bearing account; (2) the costs of disseminating the Notices of Certification and Settlement Approval Hearings are to be paid from the settlement amounts; (3) the opt-out deadline has been set as part of the earlier settlements and no further opt-out rights will be provided; and (4) the Settling Defendants agree to provide reasonable co-operation to the Class Members in order to assist in the continued prosecution of this action against the Non-Settling Defendants.

[16] The Plaintiffs move for an order, among other things:

- Certifying this action as a class proceeding for settlement purposes only as against: The Bank of Tokyo Mitsubishi UFJ Ltd., Bank of Tokyo-Mitsubishi UFJ (Canada), Société Générale S.A., Société Générale (Canada), and Société Générale;

- Defining the Class as:

All Persons in Canada who, between January 1, 2003 and December 31, 2013, entered into an FX Instrument either directly or indirectly through an intermediary, and/or purchased or otherwise participated in an investment or equity fund, mutual fund, hedge fund, pension fund or any other investment vehicle that entered into an FX Instrument. Excluded from the class are the defendants, their parent companies, subsidiaries, and affiliates; provided, however, that Investment Vehicles shall not be excluded from the Settlement Class.

“FX Instruments” includes FX spot transactions, outright forwards, FX swaps, FX options, FX futures contracts, options on FX futures contracts, and other instruments traded in the FX Market;

- Defining the common issue as:

Did the Settling Defendants conspire to fix, raise, maintain, stabilize, control, or enhance unreasonably the prices of currency purchased in the foreign exchange or foreign currency market (the “FX Market”)?

- Appointing the Plaintiffs as the representative plaintiffs for the Ontario Settlement Class;

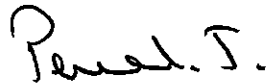
- Providing that the Order and any reasons given by the court in connection with it and the certification of the Ontario action as against the Settling Defendants for settlement purposes pursuant to the Order, including, without limitation, the definition of the Ontario Settlement Class and the Common Issue, are without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Ontario action and, without restricting the generality of the foregoing, may not be relied on by any person to establish jurisdiction, the criteria for certification (including class definition) or the existence or elements of the causes of action asserted in the Ontario action, as against the Non-Settling Defendants; and,
- Approving the Notice Plan.

[17] The court is required to certify the action as a class proceeding where the following five-part test in s. 5 of the *Class Proceedings Act, 1992* is met: (1) the pleadings disclose a cause of action; (2) there is an identifiable class of two or more persons that would be represented by the representative plaintiff; (3) the claims of the class members raise common issues; (4) a class proceeding would be the preferable procedure for the resolution of the common issues; and (5) there is a representative plaintiff who: (a) would fairly and adequately represent the interests of the class; (b) has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members of the proceeding, and (c) does not have, on the common issues for the class, an interest in conflict with the interests of other class members.

[18] The fact that an action is certified on consent for settlement purposes does not dispense with the need to meet the certification criteria but they may be less rigorously applied in a settlement context: *Osmun v. Cadbury Adams Canada Inc.*, [2009] O.J. No. 5566 (S.C.J.) at para. 21.

[19] Pursuant to s. 5 (1) of the *Class Proceedings Act, 1992*, having reviewed the motion record, I am satisfied that all of the criteria for certification have been satisfied.

[20] Order to go as asked.



Perell, J.

CITATION: Mancinelli v. Royal Bank of Canada, 2017 ONSC 4219
COURT FILE NO.: CV-15-536174
DATE: 20170707

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

JOSEPH S. MANCINELLI, CARMEN PRINCIPATO,
DOUGLAS SERROUL, LUIGI CARROZZI, MANUEL BASTOS
and JACK OLIVEIRA in their capacity as THE TRUSTEES OF
THE LABOURERS' PENSION FUND OF CENTRAL AND
EASTERN CANADA, and CHRISTOPHER STAINES

Plaintiffs

– and –

ROYAL BANK OF CANADA, RBC CAPITAL MARKETS LLC,
BANK OF AMERICA CORPORATION, BANK OF AMERICA,
N.A., BANK OF AMERICA CANADA, BANK OF AMERICA
NATIONAL ASSOCIATION, THE BANK OF TOKYO
MITSUBISHI UFJ LTD., BANK OF TOKYO-MITSUBISHI UFJ
(CANADA), BARCLAYS BANK PLC, BARCLAYS CAPITAL
INC., BARCLAYS CAPITAL CANADA INC., BNP PARIBAS
GROUP, BNP PARIBAS NORTH AMERICA INC., BNP
PARIBAS (CANADA), BNP PARIBAS, CITIGROUP, INC.,
CITIBANK, N.A., CITIBANK CANADA, CITIGROUP GLOBAL
MARKETS CANADA INC., CREDIT SUISSE GROUP AG,
CREDIT SUISSE SECURITIES (USA) LLC, CREDIT SUISSE
AG, CREDIT SUISSE SECURITIES (CANADA), INC.,
DEUTSCHE BANK AG, THE GOLDMAN SACHS GROUP,
INC., GOLDMAN, SACHS & CO., GOLDMAN SACHS
CANADA INC., HSBC HOLDINGS PLC, HSBC BANK PLC,
HSBC NORTH AMERICA HOLDINGS INC., HSBC BANK
USA, N.A., HSBC BANK CANADA, JPMORGAN CHASE &
CO., J.P.MORGAN BANK CANADA, J.P.MORGAN CANADA,
JPMORGAN CHASE BANK NATIONAL ASSOCIATION,
MORGAN STANLEY, MORGAN STANLEY CANADA
LIMITED, ROYAL BANK OF SCOTLAND GROUP PLC, RBS
SECURITIES, INC., ROYAL BANK OF SCOTLAND N.V.,
ROYAL BANK OF SCOTLAND PLC, SOCIÉTÉ GÉNÉRALE
S.A., SOCIÉTÉ GÉNÉRALE (CANADA), SOCIÉTÉ
GÉNÉRALE, STANDARD CHARTERED PLC, UBS AG, UBS
SECURITIES LLC and UBS BANK (CANADA)

Defendants

REASONS FOR DECISION

PERELL J.