

CITATION: Maple bank GmbH (Re), 2016 ONSC 8109
COURT FILE NO.: C V-16-11290-00CL
DATE: 2016-12-22

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: IN THE MATTER OF MAPLE BANK GmbH

AND IN THE MATTER OF THE *WINDING-UP AND RESTRUCTURING ACT*,
R.S.C. 1985, C.W-11, AS AMENDED AND IN THE MATTER OF THE *BANK*
ACT, S.C. 1991, C.46, AS AMENDED

BETWEEN:

THE ATTORNEY GENERAL OF CANADA v. MAPLE BANK GmbH

BEFORE: Regional Senior Justice Geoffrey B. Morawetz

COUNSEL: *Alex MacFarlane* and *Rebecca Belanger*, for KPMG Inc., in its capacity as
Liquidator of the Business in Canada of Maple bank GmbH and its Assets as
defined under s. 618 of the *Bank Act*

Kyla Mahar, for Paul Lishman

Maria Konyukhova, for the German Insolvency Administrator

Maurice Fleming, for Radius Financial

HEARD: December 22, 2016

ENDORSEMENT

[1] KPMG Inc. (the “Liquidator”) has made certain distributions from the Estate of Maple Bank GmbH (the “Estate”). It has paid the claim of the German Deposit Insurer and other small creditors.

[2] The Liquidator has substantial assets on hand - approximately \$800 million (Cdn.). The known liquidated claims against the Estate are significantly less than \$800 million. However, the situation has been complicated by the unknown claim, if any, that could potentially be made against Mr. Paul Lishman, General Manager of Maple Bank (Toronto Branch). It is possible that a claim could be made against Mr. Lishman by federal authorities in Germany, who are investigating the affairs of Maple Bank GmbH. There are other parties who, in theory, could also make a claim against Mr. Lishman.

[3] In turn, Mr. Lishman could attempt to claim over against the Estate. In theory, this would be a debt claim against the Estate, and a claim that could potentially have to be satisfied before any surplus could be declared by the Estate for the benefit of the German Insolvency Administrator (“GIA”).

[4] The timing for the finalization of any claim against Mr. Lishman is unknown – and could take years to resolve. This timeline is what complicates matters in this Estate.

[5] The Liquidator wants to move forward with its administration of the Estate and has brought a motion for a “Principal Officers Claims Bar Date”. This relief is being opposed by the GIA. In addition, counsel to Mr. Lishman has posed certain questions to Dr. Charlotte Schildt arising from the affidavit of Dr. Schildt, sworn December 19, 2016 in support of the position of the GIA.

[6] Finally, counsel to Radius challenges the process being put forth by the Liquidator on the grounds that it is partially *ultra vires*.

[7] The parties are approaching a stalemate.

[8] The Liquidator takes the position that its proposal is intended to advance the administration of the Estate to the point where the claims can be identified.

[9] The GIA is of the view that the Liquidator should declare a surplus.

[10] Radius takes the position that all claims against the Estate have to be finalized before any surplus is declared.

[11] Mr. Lishman wants to ensure that he is adequately protected for all proper contribution and indemnity claims.

[12] Absent from these proceedings is the unknown – specifically the position of German authorities *vis-à-vis* Mr. Lishman.

[13] The court is left with a dilemma.

[14] The process and procedures set out in the *Winding-up and Restructuring Act* have to be followed. All claims against the Estate have to be provided for prior to any return of surplus to the shareholders. The Liquidator’s motion has to be determined – but on a fulsome record.

[15] The questions addressed to Dr. Schildt are to be answered. If there are disputes, a proper cross-examination is to be scheduled.

[16] If any additional evidence is anticipated, the delivery of same should be coordinated by the Liquidator.

[17] The parties are directed to file written argument to support their positions. To the extent possible, the Liquidator should prepare an issues list for the parties.

[18] Motion, and any cross-motion, to be heard on Thursday, March 7, 2017 at 8:30 a.m. (1 day to be booked).

[19] Written arguments to be filed by Wednesday, March 1, 2017.



Regional Senior Justice G.B. Morawetz

Date: December 22, 2016