

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Bankruptcy of MF Global Canada Co.

BEFORE: G.R. Strathy J.

COUNSEL: *Craig J. Hill* for the Trustee in Bankruptcy of MF Global Canada Co.

B. Empey, for Canadian Investor Protection Fund

Linc Rogers, for *Securities Investor Protection Act* Trustee

Harry Underwood, for Friedberg Mercantile Group Ltd.

DATE HEARD: August 24, 2012

ENDORSEMENT

[1] KPMG Inc. (the Trustee), the trustee in bankruptcy of MF Global Canada Co. (MF Global Canada), moves for the approval of a settlement it has negotiated with the trustee of an affiliated party, MF Global Inc., with respect to claims between the two estates. The settlement has been approved by the Inspectors and is recommended by the Trustee.

[2] The circumstances giving rise to the settlement, and the terms of the settlement, are described in the Fifth Report of the Trustee, dated January 31, 2012 and the Supplement to the Fifth Report, dated July 5, 2012 (collectively, the Report).

[3] Briefly, MF Global Canada is an indirect subsidiary of MF Global Holdings, Ltd., which filed for protection under Chapter 11 of the U.S. *Bankruptcy Code* on October 31, 2011. On that same date, a trustee was appointed over MF Global Inc., under the *Securities Investor Protection Act* of the U.S.

[4] This set in motion a chain of events, described in the Report, whereby the Canadian Investor Protection Fund (CIPF) brought an Application for a Bankruptcy Order against MF Global Canada and a Bankruptcy Order was made on November 4, 2011.

[5] There were agreements in place between MF Global Canada and MF Global Inc. for the transaction of business on behalf of their respective clients. These agreements have resulted in each party holding substantial sums for the account of customers of the other party. These funds are the subject of this motion.

[6] MF Global Inc. provided MF Global Canada with clearing services for trades conducted in the United States, in commodities, futures and options, on behalf of the customers of MF Global Canada. This resulted in MF Global Inc. holding large balances of cash and securities for MF Global Canada and its customers. As of the date of bankruptcy of MF Global Canada, MF Global Inc. held cash and securities in the amount of US\$53,527,428.59 on behalf of MF Global Canada and its customers.

[7] A similar arrangement existed between MF Global Inc. and MF Global Canada for Canadian trades on behalf of the customers of MF Global Inc. This resulted in MF Global Canada holding substantial balances for the account of MF Global Inc. and its customers. As of the date of its bankruptcy, MF Global Canada held US\$100,635,946.66 in cash and securities for the account of MF Global Inc.

[8] Claims have been filed by the trustees in each bankruptcy with respect to these balances as well as certain other claims. There have been extensive negotiations and discussions between the trustees concerning the valuation of these claims and the potential resolution of all claims between the estates. They engaged in an extensive due diligence process in order to ascertain and reconcile the value of the claims. This process is described at length in the Report. The reconciled amounts are US\$103,610,885.00 for the claim of MF Global Inc. and US\$42,978,087.00 for the claim of MF Global Canada.

[9] Under the terms of the proposed settlement, the net of these amounts, namely US\$60,632,798.00 will be paid by the Trustee to the trustee of MF Global Inc. No further claims will be filed by either trustee in the estate of the other. The trustees will deliver releases of all claims against the other. It was a condition precedent to the agreement that the Inspectors appointed in the bankruptcy proceedings of MF Global Canada approve the settlement, as they have.

[10] It is also a condition precedent to the payment of the net amount that the Trustee has sufficient funds in the "customer pool fund" in the estate of MF Global Canada to pay the net amount in full. The Trustee anticipates that there will be sufficient funds in that fund to pay all net equity claims (including the claims of all customers of MF Global Canada) in full. The Trustee has confirmed that the condition precedent will not be satisfied if there are not sufficient funds to pay all net equity claims as fully determined by agreement or by an order of the court. The Trustee has also confirmed that this condition precedent will not be waived in the event there are not sufficient funds.

[11] The settlement agreement contemplates that a declaration will be made in these proceedings that the Trustee and the CIPF have released any and all rights and are prohibited from commencing a proceeding for a declaration that MF Global Inc. and its trustee are a "deferred customer" under s. 258 of the *BIA*. In essence, a deferred customer is a customer

whose misconduct caused or materially contributed to the insolvency of a securities firm. The Trustee, having consulted with counsel, the Inspectors, and CIPF in connection with the proposed settlement, is satisfied that the risks and costs of such a proceeding would not be warranted and that the proposed declaration is appropriate.

GRS ✓ ✓
[12] On July 11, 2012, the U.S. Bankruptcy Court approved the proposed settlement.

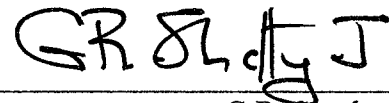
GRS ✓
[13] The Trustee is of the view that the proposed settlement is in the best interests of the bankruptcy estate. It eliminates the costs, delay and litigation risk associated with pursuing a contested motion. It is, in the Trustee's submission, a good faith negotiated result, achieved with the benefit of extensive disclosure and the exchange of information between the trustees of the two estates concerning the appropriate values of the claims between the two estates.

GRS ✓ of the B.I.A.
[14] Under s. 30(1)(h), the trustee has authority, with the permission of the Inspectors, to compromise and settle any debts owing to the bankrupt and, under s. 30(1)(i), to compromise any claim made by or against the estate. Court approval is not required, but it is not unusual to request court approval where a challenge to the settlement is possible or contemplated.

[15] My responsibility on a motion such as this is simply to consider whether the settlement has been made in the proper exercise of the trustee's decision and is reasonable in the circumstances: *Re Benyon* (2004), 6 C.B.R. (5th) 4 (Ont. C.A.); *MLA Northern Contracting Ltd. v. LeBrun* (2007), 39 C.B.R. (5th) 95 (Ont. S.C.J.). Assuming it has been properly exercised, the court will not interfere with the business judgment of the trustee, particularly where it has the approval of the inspectors.

[16] I am satisfied that the trustee has acted reasonably in the exercise of its discretion. It has considered the interests of all affected parties, has obtained the approval of the Inspectors, and has consulted with the CIPF, which supports the proposed order.

[17] For these reasons, the motion is granted and an order will issue in the form signed by me this day.

GRS ✓


G.R. Strathy J.

DATE: August 24, 2012