



Court File No. CV-16-11290-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE CHIEF) **THURSDAY, THE 23rd**
)
JUSTICE MORAWETZ) **DAY OF JULY, 2020**

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

Applicant

-and-

MAPLE BANK GmbH

Respondent

DATA CUSTODIAN ORDER

THIS MOTION, made by KPMG Inc. (“**KPMG**”), in its capacity as court-appointed liquidator (the “**Liquidator**”) in respect of the winding-up of the business in Canada of Maple Bank GmbH (“**MBTOR**”) for an Order authorizing and appointing the Liquidator as custodian of certain data and records of Maple Bank (the “**Data Custodian**”) was heard this day via videoconference pursuant to the Court’s Practice Direction pertaining to the COVID-19 crisis.

ON READING the materials filed, namely the Motion Record filed by the Liquidator (the “**Motion Record**”), the Fourteenth Report of the Liquidator, and on hearing the submissions of counsel to the Liquidator, counsel to the German Insolvency Administrator (“**GIA**”), counsel to Deloitte Restructuring Inc., (“**Deloitte**”) in its capacity as trustee in bankruptcy (the “**Trustee**”) of Maple Financial Group Inc. (“**MFGI**”), counsel to Ontario Teachers’ Pension Plan (“**OTPP**”) and National Bank of Canada (“**NB**”), as former shareholders of MFGI, Osler, Hoskin & Harcourt (“**Osler**”), as counsel to Maple Securities Canada Limited (together with its predecessors “**MSCL**”) and as former counsel to MFGI, no other parties appearing although duly served with the Motion Record as evidenced by the affidavit of service of Adriana Gasparini sworn, and filed.

1. **THIS COURT ORDERS** that all defined terms used herein, not otherwise defined shall have the meaning attributed to them in the Fourteenth Report.

2. **THIS COURT ORDERS** that the Liquidator is hereby appointed as Data Custodian with respect to the Custodial Data, as defined below, and with the duties and obligations as contained in this Order.

3. **THIS COURT ORDERS** that pursuant to the Winding-Up Order dated February 16, 2016 (the “**Winding-Up Order**”) and section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act, (Canada)* (“**PIPEDA**”) the Data Custodian is hereby authorized and directed to take into its power, possession and control the following:

(i) certain data and records in the possession or control of MSCL, namely

(a) all electronic data currently stored in the storage facility located in the Greater Toronto Area and known as the “SunGard Facility” (the “**SunGard Facility**”);

(b) 195 boxes of physical commingled records currently stored at RecordsXpress;
and

(c) back-up tapes of historical data previously stored at the SunGard Facility, and currently stored at RecordsXpress;

(collectively the “**MSCL Data**”)

(ii) all data and records in the possession or control of the Liquidator pursuant to the Data Transfer Order (the “**Remaining DTO Data**”); and,

(iii) certain back-up tapes taken by the Liquidator of the data stored on the SunGard Facility after the Winding-Up Date (the “**Liquidator Back-up Tapes**”),

(the MSCL Data along with the Remaining DTO Data and the Liquidator Back-up Tapes collectively, the “**Custodial Data**”)

4. **THIS COURT ORDERS** that the Liquidator, in its capacity as Data Custodian, shall take into its possession, or control the Custodial Data described at paragraph 3 (i) above on the same terms that MSCL is currently holding the data and records.

5. **THIS COURT ORDERS** that, in conjunction with the appointment of the Data Custodian, the existing SunGard Services Agreement dated September 1, 2016 shall be assigned by MSCL to the Liquidator, in its capacity as Data Custodian. The Data Custodian shall also enter into an agreement with RecordsXpress to supersede the RecordsXpress Services Agreement dated October 1, 2016, and on substantially the same terms.

6. **THIS COURT ORDERS** that the Data Custodian’s appointment shall conclude and be terminated on the earlier of (i) August 31, 2021 and (ii) the date upon which KPMG is discharged as Liquidator for MBTOR. Upon the termination of the Liquidator’s appointment as Data Custodian, the GIA may bring a motion before this Court to seek the appointment of a replacement custodian, or otherwise seek an order for alternate arrangements.

7. **THIS COURT ORDERS** that the transfer of custody of the Custodial Data shall be without prejudice to any of the rights or access of the GIA or MSCL thereto, excluding any rights to transfer any portion of such data or documents the nature of which would be segregated by the terms of the Data Transfer Order, without further order of this Court, however, any such rights or access of the GIA or MSCL to the Segregated Data (as defined in the Data Transfer Order) shall be in accordance with and subject to the Data Transfer Order.

8. **THIS COURT ORDERS** that with the prior consent of the Data Custodian and upon MSCL providing the Data Custodian with three (3) business days written notice, MSCL shall have the right to access, use and copy any MSCL Data that is solely related to MSCL and its subsidiaries (and their respective predecessors) in order to complete the winding-up and dissolution of MSCL, copies of such data may be provided to the GIA and its counsel.

9. **THIS COURT ORDERS** that the transfer of the Custodial Data pursuant to this Order, which may be subject to a claim of privilege by any of MBTOR, Maple Bank, the GIA, MSCL, MFGI, OTPP or NB, shall not constitute or be deemed to constitute a waiver of any claims for privilege that the aforementioned parties may have in respect of the Custodial Data.

10. **THIS COURT ORDERS** and declares that the Liquidator has duly and properly satisfied, discharged, and performed all of its obligations, liabilities, responsibilities and duties in respect of the Data Transfer Order.

11. **THIS COURT ORDERS** that, effective as of the date upon which the Custodial Data is fully taken into the possession, or control of the Data Custodian (the "**Custody Date**"), the Liquidator shall be discharged and shall have no further duties, obligations, liabilities, or responsibilities under the Data Transfer Order, including without limitation with regard to the Remaining DTO Data.

12. **THIS COURT ORDERS** that the Liquidator and its counsel and each of their respective affiliates, officers, directors, partners, employees and agents (collectively, the "**Released Persons**") shall be and are hereby released and discharged from any and all claims that any person may have or be entitled to assert against the Released Persons, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the date of this Order is any way related to, arising out of or in respect of the Data Transfer Order, the Remaining Data and the Liquidator Back-up Tapes (the "**Released Claims**"), and any such Released Claims are hereby released, stayed, extinguished and forever barred, and the Released Persons shall have no liability in respect thereof, provided that the Released Claims

shall not include any claim or liability arising out of any gross negligence or wilful misconduct on the part of the Released Persons.

13. **THIS COURT ORDERS** that, upon the Custody Date, MSCL and its counsel and each of their respective affiliates, officers, directors, partners, employees and agents shall be and are hereby released and discharged from and shall possess no further obligation or responsibility with respect to possession and control of the MSCL Data.

14. **THIS COURT ORDERS** that the estate of MBTOR shall be responsible to pay the reasonable costs incurred by the Data Custodian and its counsel to assemble, transfer and maintain in its custody, or control the Custodial Data, and take all necessary attendant steps and measures.

15. **THIS COURT ORDERS** that the Data Custodian and its counsel, Borden Ladner Gervais LLP, shall be the beneficiaries of a reserve of \$750,000, as established by the Liquidator in order to satisfy their reasonable costs, as provided for at paragraph 6 of the Fourth Interim Distribution Order, including their respective fees and disbursements, until the Liquidator's appointment as Data Custodian has been terminated by Order of this Court.

16. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Data Custodian under the *WURA* and as an officer of this Court, the Data Custodian shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Data Custodian by the *WURA* or any applicable legislation.

17. **THIS COURT HEREBY REQUESTS** the aid, assistance and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, United Kingdom, the Republic of Germany, including the assistance of the Amtsgericht Frankfurt am Main [Insolvency Court] to give effect to this Order and to assist the Data Custodian and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide

such assistance to the Data Custodian, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Data Custodian and its agents in carrying out the terms of this Order.



Chief Justice Geoffrey B. Morawetz

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JUL 27 2020

PER / PAR:

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PROCEEDINGS COMMENCED AT TORONTO

DATA CUSTODIAN ORDER

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the business in Canada of Maple Bank GmbH