

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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:

ATTORNEY GENERAL OF CANADA

Applicant

and

MAPLE BANK GmbH

Respondent

EIGHTH REPORT OF KPMG INC. IN ITS CAPACITY AS

COURT APPOINTED LIQUIDATOR OF THE BUSINESS IN CANADA OF MAPLE BANK
GMBH AND ITS ASSETS AS DEFINED IN SECTION 618 OF THE *BANK ACT*

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- Appendix G Sale Agreement dated October 31, 2016 between BMO and the Liquidator for the sale of Maple MBS (redacted)

1. INTRODUCTION AND PURPOSE OF THE EIGHTH REPORT

BACKGROUND

1. Maple Bank GmbH (“**Maple Bank**”) is a Canadian-owned German bank, and an authorized foreign bank in Canada under section 2 and Part XII.1 of the *Bank Act* (an “**Authorized Foreign Bank**”). In Germany, Maple Bank is subject to regulation by the Federal Financial Supervisory Authority (“**BaFin**”). As an Authorized Foreign Bank, Maple Bank was regulated with respect to its business in Canada (the “**Toronto Branch**”) by the Office of the Superintendent of Financial Institutions (“**OSFI**”).
2. As more fully described in the Liquidator’s first report to this Court dated March 2, 2016 (the “**First Report**”), in the period leading up to the commencement of the *Winding Up and Restructuring Act* (“**WURA**”) proceeding, the Toronto Branch had three major lines of business: (i) the origination and securitization of real property mortgages in Canada; (ii) structured secured lending; and (iii) security financing transactions (collectively, the “**Business**”).
3. The emergence of significant German tax claims against Maple Bank and the resulting indebtedness of Maple Bank led to:
 - i. BaFin imposing a moratorium on Maple Bank’s business activities, which caused Maple Bank to cease business and institute insolvency proceedings in Germany (the “**Moratorium**”);
 - ii. The appointment of a German insolvency administrator (the “**GIA**”) over Maple Bank GmbH (the “**German Estate**”);
 - iii. The issuance of default notices and the termination of agreements by financial institutions that were counterparties to financial contracts (primarily swaps and hedging instruments) with the Toronto Branch in respect of their dealings with Maple Bank’s business in Canada;

- iv. Canada Mortgage and Housing Corporation (“**CMHC**”), after the issuance of a default notice to Maple Bank, taking control of the Mortgage Backed Securities (“**MBS**”) business of the Toronto Branch and the corresponding mortgage pools (totaling approximately \$3.5 billion); and
 - v. OSFI issuing orders under section 619 of the *Bank Act* for the taking of control of the assets of Maple Bank in respect of the Business.
4. The events described above prompted OSFI to request that the Attorney General of Canada seek a winding-up order pursuant to section 10.1 of the WURA in respect of the Business in Canada of Maple Bank. On February 16, 2016 (the “**Liquidation Date**”), this Court granted an order (the “**Winding-Up Order**”) to, among other things, (i) wind-up the Business; and (ii) appoint KPMG Inc. (“**KPMG**”) as liquidator (the “**Liquidator**”) of the Business and of the assets of Maple Bank as defined in section 618 of the *Bank Act* (the “**Assets**”). Attached as **Appendix A** is a copy of the Winding-Up Order.
5. On March 2, 2016, the Liquidator filed its First Report to the Court which, among other things, outlined the protocol that was agreed to between the Liquidator and the GIA regarding the existing Chapter 15 filing under the *United States Bankruptcy Code* made by the GIA with regard to Maple Bank’s non-Toronto Branch assets in the U.S. and the Assets of the Toronto Branch which reside in the U.S.
6. On March 30, 2016, the Liquidator filed its Second Report to the Court which provided: (i) an update on the actions of the Liquidator since the granting of the Winding-Up Order; (ii) an update on the Assets and liabilities of the Toronto Branch; and (iii) details of a proposed marketing process to identify a successor issuer to the Toronto Branch’s MBS program and for the sale of all or a portion of certain other Assets (the “**Marketing Process**”).
7. On June 2, 2016, the Liquidator filed its Third Report to the Court which provided information in respect of: (i) an update on the actions of the Liquidator since the issuance of the Second Report; (ii) an update on the status of the Marketing Process; (iii) a proposed claims procedure (the “**Claims Procedure**”) for use in

these proceedings, including the appointment of a Claims Officer (as defined in the Claims Procedure Order); (iv) the proposed appointment of Independent Cost Counsel (as defined in the Third Report) to review and report to the Court on the fees and disbursements of the Liquidator and its counsel; and (v) the statement of receipts and disbursements of the Toronto Branch for the period February 16 to May 13, 2016.

8. On June 17, 2016, the Liquidator filed its Fourth Report to the Court which provided information regarding the sale by the Liquidator of certain un-pooled insured residential mortgages to the originators of those mortgages; myNext Mortgage Premier Trust and Xceed Mortgage Corporation.
9. On July 25, 2016, the Liquidator filed its Fifth Report to the Court which provided information regarding three sales transactions by the Liquidator involving certain structured loans associated with the Immigrant Investor Program (“IIP”), which included receivable backed notes (the “**Receivable Backed Notes**”) issued by PWM Financial Trust, CTI Capital Securities Inc. and KEB Hana Bank Canada (“**KEB**”) respectively and secured by, *inter alia*, notes issued by either Citizenship and Immigration Canada (“**CIC**”) or IQ Immigrants Investisseurs Inc. (“**IQII**”). Following the closing of these sales transactions certain unsold Receivable Backed Notes remained in the possession of the Toronto Branch (the “**Residual Receivable Backed Notes**”).
10. On September 19, 2016, the Liquidator filed its Sixth Report to the Court which provided information regarding the selection by CMHC of Equitable Bank (“**Equitable**”) as the Successor Issuer for the Toronto Branch’s *National Housing Act* (“**NHA**”) MBS Program and the resulting acquisition and assumption by Equitable of all of the Toronto Branch’s rights and obligations under the CMHC NHA MBS Guide and NHA MBS Program with respect to the NHA MBS originally issued by the Toronto Branch thereunder as well as the proposed sale of MBS still owned by the Toronto Branch and certain other Toronto Branch assets to Equitable (the “**Equitable Transaction**”).

11. On October 6, 2016, the Liquidator filed its Seventh Report to the Court which provided information regarding the sale to KEB of the Residual Receivable Backed Notes issued by KEB and secured by, *inter alia*, notes issued by CIC.

TERMS OF REFERENCE AND DISCLAIMER

12. In preparing this report, the Liquidator has been provided with, and has relied upon, unaudited and other financial information, books and records (collectively, the “**Information**”) prepared by the Toronto Branch and/or its representatives, and discussions with its former management and/or its former representatives. The Liquidator has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided and in consideration of the nature of evidence provided to the Court. However, the Liquidator has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CAS**”) pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Liquidator expresses no opinion or other form of assurance contemplated under CAS in respect of the Information.
13. The information contained in this report is not intended to be relied upon by any prospective purchaser or investor in any transaction with the Liquidator.
14. Capitalized terms not defined in this eighth report to the Court (the “**Eighth Report**”) are as defined in either the Winding-Up Order and/or the First Report through Seventh Report. Unless otherwise indicated, all references to monetary amounts herein are denominated in Canadian dollars (“**CAD**”).
15. Copies of the Liquidator’s Court reports and all motion records and Orders in these proceedings are available on the Liquidator’s website at <http://www.kpmg.com/ca/maplebank>.

PURPOSE OF THE EIGHTH REPORT

16. The purpose of the Eighth Report is to provide information to the Court in respect of:

- i. The proposed settlement between the Liquidator and Bank of Montreal (“**BMO**”) of the liabilities and obligations of each of BMO and Maple Bank arising from the Repo Transaction (as defined below) and the early termination of the ISDA Transactions (as defined below);
 - ii. The proposed sale by the Liquidator to BMO of the Maple MBS (as defined below);
17. The Liquidator is seeking certain relief from the Court, as follows:

An order: (i) approving the settlement agreement between BMO and Maple bank; (ii) declaring that Maple Bank does not have any interest in the BMO Held Securities (as defined below); (iii) approving the sale of the Maple MBS to BMO; (iv) vesting all of Maple Bank’s right, title and interest in the Maple MBS in BMO; and, (v) sealing the Confidential Supplement to the Eighth Report (collectively the “**Approval and Vesting Order**”).

2. SETTLEMENT OF FINANCIAL DERIVATIVE AND REPURCHASE TRANSACTIONS BETWEEN BMO AND THE TORONTO BRANCH

18. In the course of conducting its business, Maple Bank entered into various financial derivative transactions with BMO pursuant to the 1992 ISDA Master Agreement (Multicurrency – Cross Border) including the accompanying credit support annexes and English Law Transfer Annex between BMO and Maple Bank dated as of May 11, 2000, as amended from time to time (the “**Master Agreement**”).
19. By notice dated February 9, 2016, BMO notified Maple Bank that an Event of Default had occurred under Section 5(a) (vii) of the Master Agreement and designated February 10, 2016, as the Early Termination Date (as defined in the Master Agreement) in respect of the following transactions that were outstanding under the Master Agreement:
- i. 7 foreign exchange (“**FX**”) transactions (the “**FX Transactions**”);
 - ii. 15 CMB seller swaps;
 - iii. 7 Canadian dollar denominated bond lock transactions;
 - iv. 1 United States dollar denominated swap transaction; and
 - v. 188 Canadian dollar interest rate swap transactions.

In addition, two FX Transactions as well as a Canadian dollar interest rate swap transaction had matured on February 8 and 9, 2016, but did not settle prior to the Early Termination Date (all of the above outlined transactions being collectively defined as the “**ISDA Transactions**”).

20. Each party also held certain securities provided by the other as credit support for the performance of all or certain of their respective obligations under the Master Agreement, the securities BMO provided to Maple Bank being listed in **Appendix B** of this report (the “**Toronto Branch Held Securities**”), while the securities the

Toronto Branch provided to BMO being listed in **Appendix C** of this report (the “**BMO Held Securities**”).

21. In addition to the ISDA Transactions, BMO (as seller) and Maple Bank (as purchaser) had entered into a repurchase transaction with respect to approximately \$128.15 million original principal amount of NHA MBS, as summarized in **Appendix D** to this report (the “**Repo MBS**”) with a repurchase date of February 16, 2016 (the “**Repo Transaction**”). The Repo Transaction did not settle and the Liquidator subsequently determined that BMO owned the Repo MBS.
22. The valuation of (i) the ISDA Transactions, including the Toronto Branch Held Securities and the BMO Held Securities, as at the Early Termination Date, and (ii) the Repo Transactions as at February 16, 2016, and the resulting obligations of each of BMO and Maple Bank arising in connection therewith, has been recently agreed between BMO and the Liquidator, being outlined in a settlement agreement dated October 31, 2016 (the “**Settlement Agreement**”). A redacted copy of the Settlement Agreement is attached as **Appendix E** to this report.
23. The major terms of the Settlement Agreement are as follows:
 - i. BMO will pay to the Liquidator the Final Payment (as defined in the Settlement Agreement) within 15 days of the date on which the conditions precedent to the settlement are satisfied or waived by the parties;
 - ii. BMO will retain the BMO Held Securities;
 - iii. Maple Bank will retain the Toronto Branch Held Securities;
 - iv. The provision of mutual releases by BMO and Maple Bank in connection with the Repo Transactions, the early termination of the ISDA Transactions and the Master Agreement;
 - v. The conditions precedent to closing include the following:

- i. The GIA having consented to and approved the settlement;
and
 - ii. The Court granting an approval order in substantially the form attached as Exhibit C to the Settlement Agreement;
 - vi. There is an outside date by which the conditions precedent are to be satisfied or waived by the parties failing which the Settlement Agreement automatically terminates;
 - vii. The Liquidator agrees not to disclose any Confidential Information (as defined in the agreement) subject to certain exclusions including:
 - i. If the Liquidator believes that such disclosure is necessary in order to discharge its duties, or as otherwise directed by the Court; or
 - ii. If required to be disclosed by applicable law to any governmental or regulatory authority.
- 24. Certain confidential information has been redacted from the Settlement Agreement attached to this report. An un-redacted version of the Settlement Agreement is attached to the Confidential Supplement to the Eighth Report (the “**Confidential Report**”). The specific information redacted from the Settlement Agreement attached to this report is as follows:
 - i. The Final Payment amount;
 - ii. The Outside Date; and
 - iii. Schedules A, A-1 and B, which provide a detailed build-up of the Final Payment amount.

25. The GIA has consented to the Settlement Agreement and the Approval and Vesting Order as it relates to the Settlement Agreement.
26. The Liquidator understands that withholding taxes do not need to be deducted from the Final Payment amount and remitted to Canada Revenue Agency (“CRA”) based on advice received from Gowling WLG (Canada) LLP (“**Gowling WLG**”), as counsel to the Liquidator.
27. The Liquidator, based on advice received from Gowling WLG, also understands that HST is not applicable to the transaction.
28. The Liquidator believes that the Settlement Agreement represents a reasonable commercial transaction in the circumstances and recommends that the Court approve the Settlement Agreement and grant the ancillary declaratory relief. The Liquidator has analyzed the valuations associated with the ISDA Transactions, the Toronto Branch Held Securities, the BMO Held Securities, and the Repo Transaction, and considered the legal position of Maple Bank under the Master Agreement.
29. The Liquidator recommends that, given the commercially sensitive information contained in the Confidential Report, the Court grant an order sealing the Confidential Report until the earlier of:
 - i. all remaining amounts owing by Maple Bank to any counterparty in connection with the early termination of any of Maple Bank’s derivative transactions in Canada have been settled and paid; and
 - ii. further order of this Court on notice to the Liquidator.

3. SALE OF THE REPO MBS

30. As previously discussed in the Liquidator's Third Report, the Repo Transaction did not settle and the Liquidator subsequently determined that BMO owned the Repo MBS. At the time of the Repo Transaction, the Repo MBS were held in "delayed certificate inventory" ("DCI") form. For administrative efficiency, DCI are non-certificated NHA MBS held in the name of Computershare Trust Company of Canada ("**Computershare**") as trustee/custodian. On April 25, 2016 BMO and the Liquidator directed Computershare to amend the registry for DCI to show the Repo MBS as held by Computershare as custodian for BMO (rather than Maple Bank) with an effective date of February 16, 2016. Thereafter BMO requested that the Repo MBS be transferred into the name of BMO and in connection with such request, as a result of administrative necessity, Computershare also transferred certain NHA MBS owned by the Toronto Branch into the name of BMO (the "**Maple MBS**" or "**Purchased Assets**"). The Maple MBS have been held by BMO since February 16, 2016, but BMO has at all times acknowledged that the Maple MBS are not the property of BMO and are owned by the Toronto Branch. A list of the Maple MBS is attached as **Appendix F** to this report.
31. The Maple MBS were included, along with certain other NHA MBS that the Toronto Branch owned, in the Marketing Process. The Liquidator ultimately agreed to sell the Toronto Branch owned NHA MBS, which included the Maple MBS, to Equitable Bank pursuant to an agreement of purchase and sale dated September 12, 2016 (the "**Maple Assets APS**"). The Maple Assets APS was subsequently approved by order of Regional Senior Justice Morawetz dated September 27, 2016. The Maple Assets APS included a provision which authorized the Liquidator to withdraw the Maple MBS from the sale (the "**Withdrawn NHA MBS**"), which the Liquidator exercised. The Maple Assets APS closed on October 18, 2016, with Equitable Bank purchasing all of the Toronto Branch owned MBS other than the Maple MBS.

32. The Liquidator subsequently entered into an agreement, dated October 31, 2016, to sell the Maple MBS to BMO, a redacted copy of the agreement being attached as **Appendix G** to this report (the “**Sale Agreement**”). The major terms of the Sale Agreement are as follows:
- i. The effective date of the purchase is October 7, 2016;
 - ii. The purchase price includes reimbursement of principal and interest payments received by BMO under the Maple MBS since February 16, 2016;
 - iii. The purchase price is payable within fifteen days from the date upon which all of the conditions precedent have been satisfied or waived by the parties;
 - iv. The sale is on an “as is, where is” basis, with no representations and warranties other than the Liquidator confirming that all of the Maple MBS constituted withdrawn NHA MBS pursuant to the Maple Assets APS;
 - v. The conditions precedent to closing include the Court granting an order approving the transaction and vesting in BMO all of the right, title and interest of Maple Bank, if any, in the Maple MBS free and clear of all encumbrances substantially in the form of order attached to the Sale Agreement as Exhibit A; and
 - vi. There is an outside date by which the conditions precedent must have been satisfied or waived by the parties failing which the transaction is automatically terminated.
33. The following information has been redacted from the Sale Agreement attached to this report:
- i. The purchase price;
 - ii. The outside date; and
 - iii. Schedule A, which provides details of the purchase price.

These details are disclosed in the un-redacted version of the Sale Agreement which is attached to the Confidential Report.

34. The GIA has consented to the Sale Agreement and the Approval and Vesting Order as it related to the Sale Agreement.
35. The Liquidator understands that withholding taxes do not need to be deducted from the Maple MBS sales proceeds and remitted to CRA given that the Toronto Branch is a non-resident for tax purposes. This understanding was based on the fact that the Liquidator obtained a letter from CRA confirming that withholding taxes were not applicable on the Liquidator's sale of NHA MBS to Equitable Bank.
36. The Liquidator, based on advice received from its tax advisor, EY Law LLP ("EY"), also understands that HST is not applicable to the transaction.
37. The Liquidator is of the view, based on the realizations it generated on the NHA MBS sold to Equitable Bank, that the Sale Agreement represents a commercially reasonable transaction. The Liquidator recommends that the Court approve the Sale Agreement and grant a vesting order to effect the transaction contemplated under the Sale Agreement.

4. LIQUIDATOR'S RECOMMENDATIONS

38. The Liquidator submits this Eighth Report to the Court in support of the Liquidator's Motion for the relief as set out in the Notice of Motion dated November 15, 2016 and recommends that the Court grant:

An order:

- i. Approving the Settlement Agreement and declaring that Maple Bank does not have any interest in the BMO Held Securities;
- ii. Approving the Sale Agreement and vesting all right, title and interest of Maple Bank in the Maple MBS in BMO; and
- iii. Sealing the Confidential Report until the earlier of (i) all remaining amounts owing by Maple Bank to any counterparty in connection with the early termination of any of Maple Bank's derivative transactions in Canada have been settled and paid; and (ii) further order of this Court upon notice to the Liquidator.

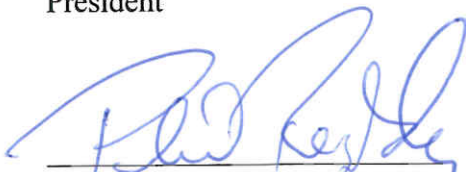
All of which is respectfully submitted at Toronto, Ontario this 15th day of November, 2016.

KPMG Inc., in its capacity as Court Appointed Liquidator of the Business in Canada of Maple Bank GmbH and its Assets as defined in Section 618 of the *Bank Act*

Per:



Nicholas Brearton
President



Philip J. Reynolds
Senior Vice President