

SUPERIOR COURT

(Class Action Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

No : 500-06-001120-217

DATE : November 11, 2021

BY THE HONOURABLE DONALD BISSON, J.S.C.

(JB4640)

PATRICK BENOIT

Applicant

v.

**JPMORGAN CHASE & CO.
JPMORGAN CHASE BANK, N.A.
J.P. MORGAN BANK CANADA
J.P. MORGAN CANADA
MORGAN STANLEY CAPITAL GROUP INC.
BANK OF AMERICA CORPORATION
MERRILL LYNCH COMMODITIES INC.**

Defendants

JUDGMENT

(On an Application to Temporarily Stay a Class Action)

[1] **CONSIDERING** the *Application to Temporarily Stay a Class Action* and the Exhibits in support thereof (the "**Application**");

[2] **CONSIDERING** that on or about January 8, 2021, the Applicant filed an Application for Authorization to Institute a Class Action and to Appoint the Status of Representative, in Québec against the Defendants (the "**Application for Authorization**") on behalf of the class more fully described as:

« Toute personne du Québec qui, entre le 1er janvier 2004 et le 31 décembre 2016 (la « Période visée par l'action »), a effectué une transaction dans un

instrument du marché des métaux précieux¹ (« Instruments du marché des métaux précieux »), soit directement ou indirectement par un intermédiaire, et/ou acheté ou autrement participé dans un investissement ou fonds d'action, fonds mutuel, fonds de couverture, fonds de pension ou tout autre véhicule d'investissement qui a souscrit à un Instrument du marché des métaux précieux.*

Sont exclus du groupe les Défenderesses, leurs sociétés mères, filiales et sociétés affiliées (ci-après le « Groupe »).

[3] **CONSIDERING** the existence of a parallel national class action commenced on or about December 18, 2015, before the Ontario Superior Court of Justice in Ontario in *Julius Di Filippo and David Caron vs. the Bank of Nova Scotia et al.*, in court docket number CV-15-543005-00CP (the "**Ontario Gold Action**");

[4] **CONSIDERING** the existence of a parallel national class action commenced on or about April 15, 2016, before the Ontario Superior Court of Justice in Ontario in *Julius Di Filippo and David Caron vs. the Bank of Nova Scotia et al.*, in court docket number CV-16-551067-00CP (the "**Ontario Silver Action**") and collectively, (the "**Ontario Actions**");

[5] **CONSIDERING** that on October 30, 2020, Plaintiffs in each of the Ontario actions filed a *Motion to add parties and amend pleadings*;

[6] **CONSIDERING** these motions seek to add as defendants in the Ontario Actions, JP Morgan Chase & Co., JP Morgan Bank Canada, JP Morgan Canada, JP Morgan Chase Bank National Association, Morgan Stanley Capital Group Inc., Bank of America Corporation and Merrill Lynch Commodities Inc. (collectively, the "**Proposed New Defendants**");

[7] **CONSIDERING** that the grounds for these motions are, notably, based on the allegations that the named defendants and the Proposed New Defendants conspired to manipulate precious metals markets and prices;

[8] **CONSIDERING** that the proposed modified classes in the Ontario Gold and Silver Actions are as follows:

All persons or entities in Canada who, between January 1, 2004 and, December 31, 2016 ("Class Period") transacted in a Gold Market Instrument¹ 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 transacted in a Gold Market Instrument. Excluded from the class are the Defendants, their parent companies, subsidiaries, and affiliates. [...]

and

¹ Les métaux précieux comprennent notamment le platine, l'or, l'argent et le palladium.

All persons or entities in Canada who, between January 1, 2004 and, December 31, 2016 ("**Class Period**") transacted in a Silver Market Instrument¹ 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 transacted in a Silver Market Instrument. Excluded from the class are the Defendants, their parent companies, subsidiaries, and affiliates. [...]

[9] **CONSIDERING** that the hearing on the *Motions to add parties and amend pleadings* has been set for April 22, 2022;

[10] **CONSIDERING** that by its Application, the Applicant asks that the Application for Authorization be stayed for a period ending sixty (60) days after the final decision to be rendered on the *Motions to add parties and amend pleadings* in the Ontario Actions;

[11] **CONSIDERING** the Ontario Actions propose a national class that would include persons from Québec who are the subject of the Application for Authorization and that the definition of the putative class proposed in the Ontario Action is essentially identical to the definition of the class proposed in the Application for Authorization;

[12] **CONSIDERING** the Ontario Actions assert similar causes of action as the Application for Authorization and seek the same types of remedies;

[13] **CONSIDERING** the representations of counsel that counsel for the Applicant have been collaborating with counsel for the Plaintiffs in the Ontario Actions and that the Ontario Actions are proceeding diligently;

[14] **CONSIDERING** that if the aforementioned motions are granted in the Ontario Actions, then the Application for Authorization would, in all relevant respects, be similar to, intertwined and generally duplicative of the allegations set forth in the Ontario Actions, Québec class members would be included in the proposed classes in the Ontario Actions and the Defendants named in the Ontario Actions and in the Application for Authorization would be the same;

[15] **CONSIDERING** it is within this Court's discretion to stay the Application for Authorization in order to allow the *Motions to add parties and amend pleadings* to be decided in Ontario so as to determine whether the Proposed New Defendants will be involved in the Ontario Actions;

[16] **CONSIDERING** the Court has discretion to stay the Application for authorization until the outcome of these *Motions* is known given the impact this will have on the litigation in Québec;

[17] **CONSIDERING** granting a temporary stay of the proceedings is consistent with the principle of proportionality given that Plaintiffs are entitled to know which defendants will be involved in the Ontario Actions to avoid a multiplicity of proceedings with the potential for contradictory decisions;

[18] **CONSIDERING** that depending on the outcome of the Motions to add parties and amend pleadings, in accordance with the principle of judicial economy, the parties are entitled to seek an order from the Court allowing them to prosecute a single proceeding in order to avoid the duplication of litigation in two jurisdictions;

[19] **CONSIDERING** that the object of the Application for Authorization and the Ontario Actions is the same: both seek the recovery of damages allegedly suffered as a result of the Defendants' impugned conduct;

[20] **CONSIDERING** that the Court is satisfied that the Ontario Superior Court of Justice will uphold the fundamental principles of procedure and public order;

[21] **CONSIDERING** the cooperation between counsel for the Applicant and the Defendants, both in the Ontario Actions and the Québec related proceedings;

[22] **CONSIDERING** that any notices, important communications, or documents, will be made available to Class members and published, both in English and French;

[23] **CONSIDERING** that a stay of the Application for Authorization in favor of a national class action proceeding in Ontario serves and protects the rights and interests of Quebec residents;

[24] **CONSIDERING** that Québec residents will not suffer any prejudice because the Application for Authorization is not dismissed but is only stayed for a period ending sixty (60) days after the final decision to be rendered on the *Motions to add parties and amend pleadings* in the Ontario Actions, and in the event that the Ontario Superior Court of Justice makes a decision which causes prejudice to the Québec, the Applicant will be able to promote the rights and interests of Québec residents by seeking a lift of the stay of the proceedings in the Application for Authorization;

[25] **CONSIDERING** articles 18, 49, 158 and 577 C.C.P. and the relevant case law;²

[26] **CONSIDERING** that counsel for the parties have undertaken to provide this Court with an update on the status of the Ontario Actions on a semiannual basis, and to advise this Court within 30 days of any significant development in the Ontario Actions that may affect the course of the Québec Action;

[27] **CONSIDERING** that granting a temporary stay of the Québec Action is consistent with the principle of proportionality;

[28] **CONSIDERING** a temporary stay will likewise avoid contradictory judgments and multiple proceedings;

² *FCA Canada inc. c. Garage Poirier & Poirier inc.*, 2019 QCCA 2213; *Blackette c. Blackberry Limited*, 2020 QCCS 2447, *Hazan c. Micron Technology* 2020 QCCA.

[29] **CONSIDERING** the Defendants consent to the present Application, but reserve all rights to contest the Court's jurisdiction at a later stage;

FOR THESE REASONS, THE COURT:


[30] **GRANTS** the temporary stay sought by the Applicant;

[31] **STAYS** the Application for Authorization to Institute a Class Action and to Appoint the Status of Representative filed by Applicant Patrick Benoit, for a period ending sixty (60) days after the final decision to be rendered on the *Motions to add parties and amend pleadings* in the Ontario Actions, in *Julius Di Filippo and David Caron vs. the Bank of Nova Scotia et al.*, in court docket number CV-15-543005-00CP and in *Julius Di Filippo and David Caron vs. the Bank of Nova Scotia et al.*, in court docket number CV-16-551067-00CP;

[32] **RESERVES** the rights of the parties to seek a further temporary stay or a permanent stay in the present file and **RESERVES** the Defendants' right to contest jurisdiction;

[33] **ACKNOWLEDGES** the undertakings made by the parties to continue to provide the Court with periodic reports on important developments in the Ontario Actions;

[34] **WITHOUT COSTS.**


DONALD BISSON, J.S.C.

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Date of hearing: November 10, 2021 (On file)