

CITATION: Pozgaj v. Mackenzie Financial Corporation, 2024 ONSC 558
COURT FILE NO.: CV-18-00610311-00CP
DATE: 20240125

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Stephen Pozgaj

AND:

Mackenzie Financial Corporation and Mackenzie Financial Capital Corporation

BEFORE: J.T. Akbarali J.

COUNSEL: *Michael Robb, Anthony O'Brien, Garret M. Hunter, and Gigi Pao*, for the plaintiff

David Di Paolo, Caitlin R. Sainsbury, Graham Splawski, Monica Kosczyk and Laura Thistle, for the defendants

HEARD: In writing

Proceeding under the *Class Proceedings Act, 1992*

ENDORSEMENT

Overview

[1] On this motion, the plaintiff seeks to certify this proceeding as a class proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (“CPA”). The defendants do not oppose the order.

Brief Background

[2] In this action, the representative plaintiff advances claims relating to the payment of trailing commissions to discount brokers out of the assets of Mackenzie mutual funds. The plaintiff alleges that the trailing commissions are improper, unreasonable, and unjustified, and were paid by the defendants in breach of their duties to the class members who held those mutual funds, including the plaintiff.

[3] This case is one of a number of cases commenced by class counsel against different defendants in respect of alleged wrongful payments of trailing commissions to discount brokers. Two of those actions have been certified after contested certification motions. The order the parties place before me tracks in large measure the certification orders already issued in those other matters.

Certification

[4] Pursuant to s. 5(1) of the CPA, the court shall certify a class proceeding if: (a) the pleadings or the notice of application disclose a cause of action; (b) there is an identifiable class of two or

more persons that would be represented by the representative plaintiff; (c) the claims or defences of the class members raise common issues; (d) a class proceeding would be the preferable procedure for the resolution of the common issues; and (e) there is a representative plaintiff who would fairly and adequately represent the interests of the class, has produced a workable plan for the proceeding, and does not have an interest in conflict with the interests of other class members.

[5] It is plain that the first four of these criteria are met. The analysis was undertaken by Belobaba J. in the contested certification motion in *Stenzler v. TD Asset Management Inc.* 2020 ONSC 111, and again by Glustein J. in the contested certification motion in *Gilani v. BMO Investments Inc.*, 2021 ONSC 3589. There is no reason to repeat their analysis here. The statements of claim in these actions are all taken from the same template. I adopt the conclusions of Glustein J. and Belobaba J. in these reasons, and conclude that (i) the pleadings disclose a cause of action; (ii) there is an identifiable class of two or more persons that would be represented by the representative plaintiff; (iii) the class members' claim raise common issues, which are identified in the draft order placed before me; and (iv) a class proceeding is the preferable procedure for the resolution of the common issues.

[6] There remains only the last criterion, which requires that there be a representative plaintiff who would fairly and adequately represent the interests of the class, has produced a workable plan for the proceeding, and does not have an interest in conflict with the interests of other class members.

[7] A representative plaintiff must be prepared and able to vigorously represent the interests of the class: *Rosen v. BMO Nesbit Burns Inc.*, 2013 ONSC 2144, at para. 73.

[8] The representative plaintiff has sworn an affidavit on this motion, from which I conclude that he understands the class actions process, and the obligations of a representative plaintiff, and that he is prepared to meet those obligations. Moreover, he has considered whether he has any conflict with any other members of the class, and deposes that he has been unable to identify any.

[9] The proposed litigation plan is appropriate.

[10] The proposed notices and the notice plan are also appropriate. I am satisfied that the notice plan will succeed in bringing the class proceeding and the opt-out process to the attention of most class members.

[11] I am also satisfied with the opt-out form.

[12] The plaintiff also seeks approval for the appointment of RicePoint as the notice and opt-out administrator, which I grant.

[13] Order to go in accordance with the draft I have signed.

J.T. Akbarali J.

Date: January 25, 2024