

JUDGMENT/ORDER



COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Corporations List
Registry	Supreme Court Sydney
Case number	2011/00411117

TITLE OF PROCEEDINGS

First Plaintiff	Christopher Robert Campbell, Vaughan Neil Strawbridge and David John Frank Lombe in their capacity as liquidators of MF Global Australia Limited (in liquidation)
Second Plaintiff	MF Global Australia Limited (In Liquidation)
First Defendant	RMF Management Services Pty Limited
Second Defendant	Graincorp Operations Limited
Number of Defendants	8
Corporation subject of the proceeding	MF Global Australia Limited (In Liquidation)

Refer to Party Details at rear for full list of parties

DATE OF JUDGMENT/ORDER

Date made or given	19 September 2012
Date entered	19 September 2012

TERMS OF JUDGMENT/ORDER

Black J makes orders in accordance with the Short Minutes of Order initialled by him and placed in the file.

The Court:

Pooling

1. Directs that the Liquidators would be justified in dealing with the funds in the Client Segregated Accounts on the basis of four pools relating to the four Product Lines, by pooling:

- the balance of the 21 CFD Client Segregated Accounts as a single pool for CFD Clients;
- the balance of the 12 Futures Client Segregated Accounts as a single pool for Futures Clients;
- the balance of the 11 Margin FX Client Segregated Accounts as a single pool for Margin FX Clients; and
- the balance of the 7 Online FX Client Segregated Accounts as a single pool for Online FX Clients,

for distribution in accordance with paragraph 21 below.

2. Declares that the funds in the Standard Chartered Bank CSAs together with the funds in the other Client Segregated Accounts associated with CFD Accounts (which collectively comprise the 21 CFD Client Segregated Accounts) are held on trust for all CFD Clients.

3. Directs that the Liquidators would be justified in dealing with the funds in the Standard Chartered Bank CSAs by pooling those funds with the other Client Segregated Accounts associated with CFD Accounts being the accounts identified under the heading "CFD Client Segregated Accounts" in Annexure "A" to these Orders.

Foreign currency

4. Declares that foreign currency is "money" for the purposes of Part 7.8, Division 2 of the Corporations Act and regulation 7.8.03(6) of the Corporations Regulations.

5. Directs that the Liquidators would be justified in acting on the basis that foreign currency is "money" for the purposes of Part 7.8, Division 2 of the Corporations Act and regulation 7.8.03(6) of the Corporations Regulations.

6. Directs that the Liquidators would be justified in converting into Australian Dollars the funds held in foreign currencies in the Client Segregated Accounts (including in the Standard Chartered Bank



CSAs) and Recoveries.

Entitlement

7. Directs that the Liquidators would be justified in determining the entitlements of MFGA Clients for the purpose of regulation 7.8.03(6) of the Corporations Regulations on a contractual basis by reference to the Gross Liquidation Value calculated on the basis of 31 October 2011 mark-to-market prices in Australian dollars using Exchange Rates as at 31 October 2011 and (as applicable) calculated in accordance with the Client Agreements.

8. Directs that for the purpose of calculating entitlements under paragraph 7 above, the Liquidators would be justified in setting off any positive nett Client Account balances against any negative net Client Account balances in all Client Accounts owned by the same MFGA Client and belonging to the same Family Account.

9. Grant leave to the Plaintiffs to apply for such further directions as they may be advised in relation to the calculation of entitlements in respect of options positions held by Futures Clients as at 31 October 2011 which were not subsequently closed out, but were transferred to another broker on behalf of the relevant Futures Clients after that date.

Small account balances

10. Directs that the Liquidators would be justified in acting on the basis that the MFGA Clients with an entitlement of \$1.00 or less in respect of any Client Account (determined in accordance with paragraph 7 above) are to be treated as having no entitlement to participate in the Client Segregated Accounts or Recoveries.

Amounts paid in error

11. Declares that all client deposits which were paid by MFGA Clients into the Client Segregated Accounts on or after the Appointment Date, were paid into such accounts in error within the meaning of regulation 7.8.03(6)(a) of the Corporations Regulations.

12. Directs that the Liquidators would be justified in returning all Post-Appointment Deposits to the respective MFGA Clients who paid such client deposits.

Interest

13. Declares that:

- (a) CFD Clients are entitled to the interest earned on the CFDPool (as defined below); and
- (b) Margin FX Clients are entitled to the interest earned on the Margin FX Pool (as defined below), but only to the extent that such interest does not exceed the agreed rate referred to in the applicable Client Agreements for CFD Clients and Margin FX Clients respectively.

14. Declares that MFGA:

- (a) is entitled to the interest earned on the CFD Pool and the Margin FX Pool only to the extent that such interest exceeds the agreed rate referred to in the applicable Client Agreements for CFD Clients and Margin FX Clients respectively; but
- (b) is only entitled to recover the interest earned on those Client Pools to the extent that monies remain in those accounts for distribution to MFGA (under regulation 7.8.03(6)(e) of the Corporations Regulations), after making all prior-ranking payments under regulation 7.8.03(6) of the Corporations Regulations.

15. Declares that:

- (a) Futures Clients are not entitled to the interest earned on the Futures Pool (as defined below); and
- (b) Online FX Clients are not entitled to the interest earned on the Online FX Pool (as defined below).

16. Declares that MFGA:

- (a) is entitled to the interest earned on the Futures Pool and Online FX Pool; but
- (b) is only entitled to recover the interest earned on those Client Pools to the extent that monies remain in those accounts for distribution to MFGA (under regulation 7.8.03(6)(e) of the Corporations Regulations), after making all prior-ranking payments under regulation 7.8.03(6) of the Corporations Regulations.

Recoveries

17. Directs that the Liquidators would be justified in acting on the basis that Futures Recoveries and OTC Recoveries, upon receipt by MFGA, are money to which Part 7.8, Division 2, Subdivision A of the Corporations Act applies, and are not money beneficially owned by MFGA.

18. Directs that the Liquidators would be justified in acting on the basis that:

- (a) Futures Recoveries are held by MFGA on behalf of all Futures Clients;
- (b) OTC Recoveries relating to CFD Accounts are, upon receipt by MFGA, held by MFGA on behalf

of all CFD Clients; and

(c) OTC Recoveries relating to Margin FX Accounts are, upon receipt by MFGA, held by MFGA on behalf of all Margin FX Clients; and

(d) OTC Recoveries relating to Online FX Accounts are, upon receipt by MFGA, held by MFGA on behalf of all Online FX Clients.

19. Directs that the Liquidators would be justified in dealing with the funds the subject of OTC Recoveries and Futures Recoveries, by pooling:

(a) OTC Recoveries relating to CFD Accounts with the 21 CFD Client Segregated Accounts (CFD Pool);

(b) Futures Recoveries with the 12 Futures Client Segregated Accounts (Futures Pool);

(c) OTC Recoveries relating to 11 Margin FX Accounts with the Margin FX Client Segregated Accounts (Margin FX Pool);

(d) OTC Recoveries relating to 7 Online FX Accounts with the Online FX Client Segregated Accounts (Online FX Pool).

20. Directs that the Liquidators would be justified in depositing the Recoveries in any Client Segregated Account corresponding to the relevant Product Line to which the Recoveries relate. Distribution

21. Directs that the Liquidators would be justified in separately distributing each of:

(a) the CFD Pool;

(b) the Futures Pool;

(c) the Margin FX Pool; and

(d) the Online FX Pool,

in accordance with regulation 7.8.03(6) of the Corporations Regulations.

Proving Process

22. Directs that for the purpose of determining the amount of each MFGA Client's entitlement in accordance with these orders, the Liquidators would be justified in adopting the following adjudication process:

(a) the Liquidators will send a notice to each MFGA Client (other than clients with an entitlement of \$1.00 or less in respect of any Client Account (determined in accordance with paragraph 7 above):

(i) notifying the MFGA Client of its entitlement as calculated by the Liquidators in accordance with these orders (Entitlement Amount); and

(ii) inviting any MFGA Client who does not agree with the Entitlement Amount to provide, within 21 days, notice of their disagreement together with additional information and particulars about the adjustments that the MFGA Client contends ought to be made to the Entitlement Amount;

(b) within 28 days of receipt of any information provided pursuant to paragraph (a)(ii) above, the Liquidators will notify the MFGA Client whether or not the Liquidators propose to vary or alter the Entitlement Amount, and that determination by the Liquidators shall be binding unless and until the Liquidators and the MFGA Client each agree to a different Entitlement Amount, or a court determines an appeal by the client under section 1321 of the Corporations Act and directs or orders a different Entitlement Amount to be adopted;

(c) any notice or communication to be given to a MFGA Client by the Liquidators may be given by sending the notice or communication:

(i) by email to the email address of the MFGA Client for whom the Liquidators have an email address, with an electronic link to an Online Claim Tool; or

(ii) by post or facsimile transmission to the postal address or fax number for the MFGA Client last known to the Liquidators.

23. Directs that the Liquidators would be justified in causing MFGA to give notice under section 60 of the Trustee Act 1925 (NSW) in the form annexed to these orders and marked "B".

24. Directs that the Liquidators would be justified in withholding from distribution from the Client Pools, such amounts as may be considered reasonably necessary to ensure that the Liquidators retain sufficient funds to pay the claims of any MFGA Client which may be the subject of dispute or an appeal to the Court under section 1321 of the Corporations Act, together with such amounts as may be necessary to pay the Liquidators Costs, Remuneration and Expenses (as referred to in paragraph 27 below), insofar as any such entitlements have not been determined or otherwise quantified as at the date of distribution by the Liquidators.

25. Directs that the Liquidators would be justified in treating the shortfall between each MFGA Client's Entitlement Amount and the amount distributed to each MFGA Client in accordance with order 21, as an unsecured debt or claim against MFGA, and subject to any rights of set-off, would



be justified in admitting the MFGA Client as an unsecured creditor in the liquidation of MFGA for such amount without requiring a formal proof of debt or claim in the liquidation.

Costs

26. Reserve all questions of costs of the proceeding, including the costs of the Eighth Defendant.

27. Directs that the Plaintiffs to serve any evidence as to the quantum of MFGA's costs and the Liquidators' and Administrators' remuneration and expenses relating to the administration of the Client Segregated Accounts, the collection of Recoveries, and these proceedings and the representative defendants' costs of these proceedings (together, Liquidators Costs, Remuneration and Expenses) by 24 September 2012.

28. Directs that the Plaintiffs serve written submissions as to the appropriate source of payment of the Liquidators Costs, Remuneration and Expenses by 26 September 2012.

29. Directs that the Fifth Defendant and the representative Defendant appointed pursuant to paragraph 32 below, serve written submissions as to the appropriate source of payment of the Liquidators Costs, Remuneration and Expenses by 3 October 2012.

30. Directs that the Eighth Defendant serve written submissions in relation to any claim for its costs and the appropriate source of payment thereof by 3 October 2012.

31. Orders that the hearing in relation to the appropriate source of payment of the Liquidators Costs, Remuneration and Expenses and the Eighth Defendant's claim for costs be listed for 10 October 2012 at 9:30am.

32. Orders that RMF Management Services Pty Limited be appointed to represent all clients of MFGA at the hearing in relation to the appropriate source of payment of the Liquidators Costs, Remuneration and Expenses.

33. Orders that, until further order, the legal expenses reasonably incurred by RMF Management Services Pty Limited in acting as appointed in accordance with paragraph 32 above:

(a) be paid out of, or recouped from, the Client Segregated Accounts (including, for the avoidance of doubt, the Standard Chartered Bank CSAs) and Recoveries (to the extent they have been received) on a pro-rata basis having regard to the balance of the Client Segregated Accounts and the quantum of the Recoveries (to the extent they have been received) on the date of the payment or the date of recoupment (as appropriate);

(b) on an indemnity basis as agreed or assessed.

34. Orders that the confidential exhibit to the affidavit of Christopher Robert Campbell sworn 14 September 2012 be placed on the court file in a sealed envelope and marked "Not to be opened without leave of the Court and 2 days prior notice to the plaintiffs, care of their solicitors, Ashurst Australia".

35. Grants liberty to apply on two days notice indicating the nature of the application made.

36. Reserve liberty to the Plaintiffs to apply to vary order 32.

Definitions

Appointment Date means 1 November 2011

CFD Account means a CFD Account with MFGA established under a CFD Client Agreement or similar agreement with MFGA.

CFD Agreement means an agreement between MFGA and a person relating to the CFD Product Line.

CFD Client means a client of MFGA with a CFD Account.

CFD Client Segregated Accounts means the Client Segregated Accounts set out in Part A of Annexure A to these orders.

Client Accounts mean:

- (a) CFD Accounts;
- (b) Futures Accounts;
- (c) Margin FX Accounts;
- (d) Online FX Accounts,

as appropriate.

Client Agreements means:

- (a) a CFD Agreement, or similar agreement with MFGA;
- (b) a Futures Agreement, or similar agreement with MFGA;
- (c) a Margin FX Agreement, or similar agreement with MFGA; and
- (d) an Online FX Agreement, or similar agreement with MFGA.

Client Pools mean:

- (a) the CFD Pool;



- (b) the Futures Pool;
 - (c) the Margin FX Pool;
 - (d) the Online FX Pool,
- as appropriate.

Client Segregated Accounts means the bank accounts maintained by MFGA pursuant to Part 7.8 of the Corporations Act 2001(Cth), being each of the 51 bank accounts of MFGA identified in Annexure "A" to these Orders.

Corporations Act means the Corporations Act 2001 (Cth).

Corporations Regulations means the Corporations Regulations 2001 (Cth).

Exchange Rates means the exchange rates as at 31 October 2011 provided by MFG Inc to MFGA as set out in section 11.1 (p 60) of the Deloitte Distribution Analysis Report, being Exhibit L3 in these proceedings.

Family Account means those Client Accounts held in the name of the same MFGA Client in respect of which MFGA applied a common account code and were operated by MFGA on a consolidated basis.

Futures Account means an account with MFGA established in connection with a Futures Agreement or similar agreement with MFGA.

Futures Agreement means an agreement between MFGA and a person relating to the Futures Product Line, including dealings in or clearing of futures and options contracts.

Futures Client means a client of MFGA with a Futures Account.

Futures Client Segregated Accounts means the Client Segregated Accounts set out in Part B of Annexure A to these orders.

Futures Recoveries means the payments received, or to be received, by the Liquidators pursuant to arrangements with clearing houses and other MF Global group companies in respect of futures and options contracts executed or cleared on behalf of Futures Clients.

Gross Liquidation Value means the balance of each Client Account as if the MFGA Client were to close out all open positions at the current market price (less any proper transaction charges or adjustments), calculated by MFGA in Australian dollars on an aggregate basis across all of the MFGA Client's open positions in each Client Account.

Margin FX Account means a Margin FX Account with MFGA established under a Margin FX Agreement or similar agreement with MFGA.

Margin FX Agreement means an agreement between MFGA and a person relating to the Margin FX Product Line.

Margin FX Client means a client of MFGA with a Margin FX Account.

Margin FX Client Segregated Accounts means the Client Segregated Accounts set out in Part C of Annexure A to these orders.

MFGA Clients means all CFD Clients, Futures Clients, Margin FX Clients and Online FX Clients.

Standard Chartered Bank CSAs means the 11 Client Segregated Accounts set out in Part A(ii) of Annexure A to these orders.

Online Claim Tool means the online portal developed and managed by Deloitte Digital for MFGA Clients for the purpose of the distribution process set out in orders 22 to 25 above.

Online FX Account means an Online FX Account with MFGA established under an Online FX Client Agreement or similar agreement with MFGA.

Online FX Agreement means an agreement between MFGA and a person relating to the Online FX Product Line.

Online FX Client means a client of MFGA with an Online FX Account.

Online FX Client Segregated Accounts means the Client Segregated Accounts set out in Part D of Annexure A to these orders.

OTC Recoveries means the payments received, or (subject to any available set off) to be received, by the Liquidators pursuant to agreements between MFGA and its hedge counterparties for the purpose of hedging MFGA's exposure to its CFD Clients, Margin FX Clients and Online FX Clients.

Post-Appointment Deposits means the eleven client deposits paid into the Client Segregated Accounts after the Appointment Date, with a total value of AUD\$129,706

Product Lines means the following financial products into which the Second Plaintiff organised its business: CFDs, Futures, Margin FX and Online FX.

Recoveries means the Futures Recoveries and the OTC Recoveries.

Representative Costs Orders means orders 3, 4 and 5 made on 19 March 2012, orders 2, 3 and 4 made on 2 April 2012, orders 2, 3 and 4 made on 23 April 2012, order 3 made on 5 June 2012,

orders 5 and 6 made on 20 June 2012 and order 3 made on 26 June 2012.

SEAL AND SIGNATURE



Signature D Ray Choudhury

Capacity Chief Clerk
Date 20 September 2012

PARTY DETAILS

PARTIES TO THE PROCEEDINGS

First Application under Corporation Law

Plaintiff(s)

First Plaintiff Christopher Robert Campbell, Vaughan Neil Strawbridge and David John Frank Lombe in their capacity as liquidators of MF Global Australia Limited (in liquidation)
Second Plaintiff MF Global Australia Limited (In Liquidation)

Defendant(s)

First Defendant RMF Management Services Pty Limited
Second Defendant Graincorp Operations Limited
Third Defendant The GFL Group Pty Limited
Fourth Defendant Underdog Clothing Pty Ltd
Fifth Defendant Practical Human Resource Solutions Pty Ltd
Sixth Defendant Kimbalex Investments Pty Ltd
Seventh Defendant George Weston Foods Limited
ABN 45008429632
ACN 008429632
Eighth Defendant Deutsche Bank AG