



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-21-00664778-00CL

DATE: **05-APR-2024**

NO. ON LIST: 3

TITLE OF PROCEEDING: SKYMARK FINANCE CORPORATION v. MAHAL VENTURE CAPITAL INC. et al.

BEFORE: JUSTICE STEELE

PARTICIPANT INFORMATION

For Moving Party:

Name of Person Appearing (and how they wish to be addressed, e.g. pronouns and/or prefix; also, if they wish, the phonetic pronunciation of their name)	Name of Party	Phone Number¹	Email Address
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For Plaintiff, Applicant, Crown:

Name of Person Appearing (and how they wish to be addressed, e.g. pronouns and/or prefix; also, if they wish, the phonetic pronunciation of their name)	Name of Party	Phone Number²	Email Address

¹ Please provide a phone number where you can be reached during the hearing, if necessary.

² Please provide a phone number where you can be reached during the hearing, if necessary.

For Defendant, Responding Party, Defence:

Name of Person Appearing (and how they wish to be addressed, e.g. pronouns and/or prefix; also, if they wish, the phonetic pronunciation of their name)	Name of Party	Phone Number	Email Address

For Other:

Name of Person Appearing (and how they wish to be addressed, e.g. pronouns and/or prefix; also, if they wish, the phonetic pronunciation of their name)	Name of Party/ Organization	Phone Number	Email Address
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ENDORSEMENT OF JUSTICE STEELE:

- [1] KSV Restructuring Inc. (the “Receiver”), the Court-appointed receiver of the assets of Mahal Venture Capital Inc. (“Mahal VC”) and Golden Miles Food Corporation brings a motion seeking approval of certain distributions, approval of the 6th Report of the Receiver and the activities set out therein, and approval of fees and disbursements of the Receiver and its counsel, among other things.
- [2] The Receiver’s motion in respect of Omit Tax Claims is adjourned on consent to May 21, 2024 at 10 am (2 hours).
- [3] The Receiver’s motion was heard at the same time as the motion by Alvarez & Marsal Canada Inc. (the “Skymark Receiver”), in its capacity as court-appointed receiver of the assets of 2305145 Ontario Inc. (formerly Skymark Finance Corporation) and Merk Investments, for, an order, among other things, approving the KLN Settlement.
- [4] No person opposes the relief sought on the motion.
- Should the Court authorize the proposed distributions?*
- [5] The Court has jurisdiction to authorize a receiver to make a distribution to stakeholders pursuant to s. 243(1)(c) of the *Bankruptcy and Insolvency Act*. Orders authorizing the receiver to make an interim distribution to stakeholders are often granted in insolvency proceedings: *Re AbitibiBowater Inc.*, 2009 QCCS 6461, at para. 75.
- [6] In *AbitibiBowater* the Quebec Superior Court considered the validity and enforceability of the relevant security, interest savings, and liquidity of the debtor (after the distribution) in exercising its discretion to grant an interim distribution.
- [7] The Receiver’s Sixth Report indicates that the Receiver holds approximately \$6.97 million, all of which is allocated to Mahal VC.

[8] The details of the proposed distributions are as follows:

- a. The Receiver holds \$1,047,826 in connection with a dispute between KLN and Skymark regarding the validity of a transfer of a mortgage interest. Pursuant to the KLN Settlement, the Skymark Receiver, and KLN have agreed that each of them will receive half of the \$1,047,826. Accordingly, the Receiver seeks authorization from the Court to distribute \$523,913 to each of Skymark and KLN.
- b. The Skymark Receiver and the Orr Plaintiffs settled a dispute between them, which was approved by Court order dated Feb. 22, 2024. The terms of the settlement agreement are confidential and subject to a sealing order. The Receiver now seeks an order of the court authorizing the distributions to the Skymark Receiver and/or 198 Ontario, in such amounts as the Skymark Receiver and the Orr Plaintiffs may direct, up to the full amount of the Orr Holdback.
- c. There is a disputed amount of \$71,096, which is payable to Vicano or Skymark and KLN. This dispute is still not settled. Given the size of the disputed amount, the Receiver seeks Court authorization to make a distribution to Vicano, Skymark and KLN of up to \$71,096 in the in aggregate, with the prior written consent of the Skymark Receiver, KLN and Vicano.

[9] The Receiver has analyzed the claims of Mahal VC's creditors (s. 7 and 10 of the 5th report) and their respective priorities and sets out its recommendation regarding the distribution of the Mahal VC proceeds at section 6 of the Sixth Report.

[10] I am satisfied that it the Court should approve the proposed distributions.

Approval of Fees, Activities and R&D

[11] As set out in *Re Target Canada Co.*, 2015 ONSC 7574, at paras. 2, 22-23, there are good policy and practical reasons to grant the approval of a monitor's reports and activities. These considerations also apply to receivership proceedings where a receiver seeks approval of its report and activities: *Re Hanfeng Evergreen Inc.*, 2017 ONSC 7161, at para. 15.

[12] If the receiver has met the objective test of demonstrating that it has acted reasonably, prudently and not arbitrarily, the court may approve the receiver's activities: *Lang Michener v. American Bullion Minerals Ltd.*, 2005 BCSC 684 at para. 21.

[13] I am satisfied that the Receiver has met the objective test and the Court should approve the fees, activities and R&D.

[14] Order attached.

