



Court File No. CV-22-00692309-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c. C.43, as amended,  
and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as  
amended*

THE HONOURABLE

)

THURSDAY, THE 22<sup>ND</sup> DAY

)

JUSTICE STEELE

)

OF FEBRUARY 2024

B E T W E E N:

PRICEWATERHOUSECOOPERS INC.

(solely in its capacity as court-appointed receiver and manager of Bridging Finance Inc. and  
certain related entities and investment funds)

Applicant

- and -

2305145 ONTARIO INC. and MERK INVESTMENTS LTD.

Respondents

**ORDER**

THIS MOTION, made by 7539088 Canada Inc. and 1989474 Ontario Inc. (together, the  
“Orr Plaintiffs”), on consent of Alvarez & Marsal Canada Inc., solely in its capacity as court-  
appointed receiver and manager (in such capacity, the “Receiver”), without security, of all of the  
assets, undertakings, and properties of each of 2305145 Ontario Inc. (formerly known as Skymark  
Finance Corporation and defined herein as “Skymark”) and Merk Investments Ltd. (“Merk”), for  
an order lifting the stay of proceedings provided for in paragraphs 9 and 10 of the order Justice  
Penny dated March 6, 2023 made in this proceeding (the “Appointment Order”) as it applies to the  
Orr Plaintiffs, for the limited purpose set out below and subject to the terms and conditions set


forth herein, was heard this day at 330 University Avenue, Toronto, Ontario by judicial videoconference.

ON READING the Consent of the Receiver and the materials filed by the Orr Plaintiffs, including the order of Justice Osborne dated December 2, 2022 (the “Production Order”) in the Ontario Superior Court of Justice (Commercial List) action bearing court file number CV-22-00686234-00CL (the “Orr Action”) attached as Appendix “A”, and on hearing the submissions of counsel for the Receiver and the Orr Plaintiffs and counsel for the other parties listed on the counsel slip, no one appearing for any other person on the service list although duly served as appears from the affidavit of service of Sarah Nath sworn February 16, 2024, filed:

1. THIS COURT ORDERS that the stay of proceedings provided for in paragraphs 9 and 10 of the Appointment Order is hereby lifted for the limited purpose of permitting the relief provided in this order, including the terms and conditions set forth herein.
2. THIS COURT ORDERS that the Receiver, on a best-efforts basis, will provide to the Orr Plaintiffs copies of all Merk and Skymark bank statements available to the Receiver for the period beginning December 1, 2014 and ending August 31, 2022 which are responsive to subparagraph 1(c) or 1(d) of the Production Order.
3. THIS COURT ORDERS that this Order is without prejudice to the Receiver’s or the Orr Plaintiffs’ right or ability to seek further directions in respect of the provision of additional Skymark or Merk records to the Orr Plaintiffs, including, but not limited to, those records detailed in the Production Order, or to take any other steps to obtain records relevant to the Orr Action or any other proceeding.

4. THIS COURT ORDERS that the Receiver will use best efforts to comply with paragraph 2 of this Order by April 30, 2024 and, if unable to do so, will so advise the Orr Plaintiffs and, in that case, will comply with paragraph 2 as soon as possible thereafter, taking into account the Receiver's obligations to the other stakeholders in this proceeding.
5. THIS COURT ORDERS that the Orr Plaintiffs' use or reliance on any records produced by the Receiver in connection with this Order shall be in strict compliance with the deemed undertaking rule set forth in Rule 30.1 of the Rules of Civil Procedure, and, without limiting the generality of the foregoing, shall be limited to use or reliance in this proceeding, the Orr Action and the Commercial List action related to the Orr Action bearing Court File No. CV-23-00702641-00CL (the "Related Action").
6. THIS COURT ORDERS that nothing in this Order will result in the Receiver being deemed a party in the Orr Action or the Related Action, or becoming subject to any obligation that ordinarily applies to a party to litigation, including, without limitation, oral or documentary discovery obligations. For clarity, the Receiver will have no obligation arising from this Order except as expressly set forth herein.
7. THIS COURT ORDERS that the Receiver and its affiliates, partners, directors, employees, advisors, agents, counsel, and controlling persons (collectively, the "Assistants") shall have no liability with respect to any and all losses, claims, damages, or liabilities of any nature or kind to any person in connection with or as a result of performing their obligations under this Order, except to the extent that such losses, claims, damages, or liabilities are a direct result of the gross negligence or willful misconduct of the Receiver as determined by this Court, and nothing in this Order shall modify or derogate from the protections provided to the Receiver in the Appointment Order or any other order made in this proceeding.

8. THIS COURT ORDERS that the Receiver's fees and expenses (including, without limitation, the fees and expenses of its legal counsel Fasken Martineau DuMoulin LLP ("Fasken")) reasonably incurred in connection with compliance with this Order shall be paid by the Orr Plaintiffs who shall be jointly and severally liable for all such fees and expenses. The Receiver and Fasken may, in connection with this paragraph, render their respective accounts on a monthly basis or from time to time as they deem appropriate, and the Orr Plaintiffs shall, upon receipt of such accounts, remit payment in full to the Receiver or Fasken (as applicable) within five (5) business days of such receipt.
9. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Receiver and its Assistants are hereby authorized and permitted to disclose and transfer to the Orr Plaintiffs and their advisors personal information of identifiable individuals that may be contained in the records produced to comply with paragraph 2 of this Order, but only to the extent desirable or required to comply with this Order. The Orr Plaintiffs shall maintain and protect the privacy of such information and limit the use of such information as set out above in paragraph 5 of this Order.
10. THIS COURT ORDERS that the Receiver may from time to time apply to this Court to amend, vary, or supplement this Order or to seek advice or directions regarding the discharge of its powers and duties under this Order.

 Digitally signed  
by Jana Steele  
Date: 2024.02.28  
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Court File No. CV-22-00686234-00CL

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE	)	FRIDAY, THE 2 <sup>nd</sup>
	)	
JUSTICE OSBORNE	)	DAY OF DECEMBER, 2022

B E T W E E N:

7539088 CANADA INC. and 1989474 ONTARIO INC.

Plaintiffs

and

MICHAEL SLATTERY, MERK INVESTMENTS LTD.  
and SKYMARK FINANCE CORPORATION

Defendants

**ORDER**

**THIS MOTION** for an Order requiring the defendants to disclose records and information, and for certain other relief, was heard this day at 330 University Avenue, Toronto, Ontario, M5G 1R7.

**ON READING** the plaintiffs' notice of motion, the affidavits of Michael Orr sworn September 9, 2022 and November 15, 2022, the affidavit of Andrew Sahai sworn November 28, 2022, the affidavits of Michael Slattery sworn November 11 and 22, 2022, and the affidavit of Betty Lau sworn November 30, 2022, and on reading and hearing the submissions of counsel for the plaintiffs and the defendants,

1. **THIS COURT ORDERS** that Merk Investments Ltd. ("Merk") and Skymark Finance Corporation ("Skymark"), in accordance with their obligations as trustees and as required by this Order, shall by no later than January 6, 2023 provide to the plaintiffs all of the following documents, records, communications and information relating to mortgages in respect of the particular properties listed at Schedule "A" to this Order (the "Mortgages"):

- (a) the timing of, circumstances giving rise to, reason for, fact of and all details relating to any discharge of any of the Mortgages or any deregistration of any of the Mortgages from title to the properties listed at Schedule “A” to this Order, and any communication, notice or agreement regarding any such discharge or deregistration that was provided to or made with the plaintiffs or Michael Orr;
- (b) without limiting the foregoing, the timing of, circumstances giving rise to, reasons for, fact of and all details relating to any discharge of any of the Mortgages or any deregistration of any of the Mortgages from title to the properties listed at Schedule “A” to this Order arising or resulting from any power of sale, insolvency, receivership or similar process, and any communication, notice or agreement regarding any such discharge or deregistration that was provided to or made with the plaintiffs or Michael Orr;
- (c) all payments of principal amounts made to Merk or Skymark by borrowers, whether voluntarily or otherwise, in connection with the Mortgages including, without limitation, all bank statements, cheque copies, wire confirmations and/or other financial documents or records evidencing or recording any such payments, and any communication, notice or agreement regarding any such payments that was provided to or made with the plaintiffs or Michael Orr;
- (d) all repayments or applications of principal amounts made by Merk or Skymark to or for the benefit of the plaintiffs or Michael Orr in connection with the Mortgages, all bank statements, cheque copies, wire confirmations and/or other financial documents or records evidencing or recording any such repayments or applications, and any communication, notice or agreement regarding any such payments or applications that was provided to or made with the plaintiffs or Michael Orr;
- (e) the timing of, circumstances giving rise to, reason for, fact of and all details relating to any subordination, modification or change of any kind in respect of the interest or priority of any of the Mortgages, and any communication, notice or agreement regarding any such subordination, modification or change that was provided to or made with the plaintiffs or Michael Orr; and
- (f) in the event of any subordination, modification or change of any kind in respect of the interest or priority of the Mortgages, any agreement, contract, commitment or loan document detailing the parties to and details, including the term, amount and applicable interest rate, of any mortgage that came to rank higher than or stood in priority to the Mortgages as a result of such subordination, modification or change.

2. **THIS COURT ORDERS** that, although all documents, records, communications and information to be produced to the plaintiffs in accordance with paragraph 1 herein shall be produced by the defendants by no later than January 6, 2023, the defendants are to make such productions earlier if they can and, where appropriate, on a piecemeal basis.

3. **THIS COURT ORDERS** that the documents, records, communications and information to be produced to the plaintiffs in accordance with paragraph 1 herein shall be produced by the defendants in a manner that is organized and readily-usable in an accessible and usable format such that they can be, if produced electronically, readily identified and located.

4. **THIS COURT ORDERS** that, to the extent that any document, record, communication or information to be produced to the plaintiffs in accordance with paragraph 1 herein does not exist or cannot be located, the defendants shall provide clear and unequivocal confirmation of that fact to the plaintiffs and provide to the plaintiffs the particulars of the information the defendants have as to whether the document, record, communication or information ever existed and, if so, what became of it, by no later than January 6, 2023.

5. **THIS COURT ORDERS** that, as beneficiaries of the trust relationships in respect of the Mortgages and as otherwise entitled by this Order, the plaintiffs shall be permitted to make reasonable inquiries of the defendants concerning the plaintiffs' investments in the Mortgages, and the defendants shall respond to such inquiries within 21 days of thereof.

6. **THIS COURT ORDERS** that, to the extent that Merk or Skymark (or anyone acting on their behalf) are currently holding or receive outstanding or future interest or principal payments from borrowers in connection with the Mortgages, Merk and Skymark shall forthwith remit such amounts to the plaintiffs' new trustee in respect of those investments, The Equity Shoppe Inc.

7. **THIS COURT ORDERS** that the entitlement to and quantum of costs of this motion are deferred to the trial judge.

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## **SCHEDULE “A”**

1. 28 Stowe Terrace, Brantford, Ontario
2. 160 Burnet Street, Oakville, Ontario
3. 1455 Dufferin Street, Toronto, Ontario
4. 81 River Street, Parry Sound, Ontario
5. 1705 Pegg's Mountain Road, Parry Sound, Ontario
6. 1393 Graham's Lane, Burlington, Ontario
7. 155 Adams Boulevard, Brantford, Ontario
8. 6820 Crystal Hill Road, North Little Rock, Arkansas
9. 190 Harding Boulevard West, Unit 158, Richmond Hill, Ontario
10. 855 Centre Road, Hamilton, Ontario
11. 310 Towanda Boulevard, Blenheim, Ontario
12. 1534 Dranoel Road, Bethany, Ontario
13. 30 Roser Crescent, Clarington, Ontario
14. 155208 7th Line, R.R. #2, Markdale, Ontario
15. 150 George Street, Brantford, Ontario
16. 151 Prospect Street, Port Dover, Ontario
17. 27 Farm Lane, Britt, Ontario
18. 77 Still River Road, Britt, Ontario
19. 65 George Street, Toronto, Ontario



7539088 CANADA INC. AND 1989474 ONTARIO INC.  
Plaintiffs

- and -

Court File No./N° du dossier du greffe : CV-22-00692309-00CL

MICHAEL SLATTERY ET AL.  
Defendants

Court File No. CV-22-00686234-00CL

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SUPERIOR COURT OF JUSTICE  
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PROCEEDING COMMENCED AT TORONTO

**ORDER**

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Lawyers for the Plaintiffs

PRICEWATERHOUSECOOPERS INC.  
(solely in its capacity as court-appointed receiver and manager of  
Bridging Finance Inc. and certain related entities and investment funds)

-and-

SKYMARK FINANCE CORPORATION and MERK  
INVESTMENTS LTD.

Applicant

Respondents

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