



Court File No. CV-21-00664778-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) WEDNESDAY, THE 23RD
JUSTICE CAVANAGH) DAY OF AUGUST, 2023

B E T W E E N:

SKYMARK FINANCE CORPORATION

Applicant

- and -

MAHAL VENTURE CAPITAL INC. and GOLDEN MILES FOOD
CORPORATION

Respondents

**ORDER
(Distribution and Fee & Activity Approval)**

THIS MOTION, made by KSV Restructuring Inc. (“**KSV**”) in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of the assets, undertakings and properties of Mahal Venture Capital Inc. (“**Mahal VC**”) and Golden Miles Food Corporation (“**Golden Miles**” and, together with Mahal VC, the “**Companies**”) owned or used in connection with the flour mill located on the property municipally known as 155 Adams Blvd., Brantford, Ontario for an order, (i) authorizing and directing the Receiver to make certain distributions to Vicano Construction Limited (“**Vicano**”), Skymark Finance Corporation, acting by its receiver Alvarez & Marsal Canada Inc. (“**Skymark**”), KLN Holdings Inc. (“**KLN**”) and Santokh Mahal (“**Mr. Mahal**”), (ii) approving the fees and disbursements of

the Receiver and its counsel, Blake, Cassels & Graydon LLP (“**Blakes**”) for the period March 1, 2022 through July 31, 2023, and (iii) approving the Receiver’s Fourth Report to Court dated November 1, 2022 (the “**Fourth Report**”), the Receiver’s supplement to the Fourth Report dated December 8, 2022 (the “**Fourth Report Supplement**”) and the Receiver’s Fifth Report to Court dated August 15, 2023 (the “**Fifth Report**”, together with the Fourth Report and the Fourth Report Supplement, the “**Reports**”) and the Receiver’s activities described therein, was heard this day by judicial videoconference.

ON READING the Reports, and on hearing the submissions of counsel for the Receiver, and such other parties listed on the Participant Information Form, no one else appearing although properly served as appears from the Affidavit of Service of Nancy Thompson sworn August 15, 2023, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Receiver’s Notice of Motion dated August 15, 2023 (the “**NOM**”), the Fifth Report, be and hereby is abridged, such that service of the NOM and the Fifth Report is hereby validated, and that further service thereof is hereby dispensed with.

DISTRIBUTIONS AND INTERIM DISTRIBUTIONS

Distribution of Personal Property Proceeds

2. **THIS COURT ORDERS** that the Receiver is hereby authorized to make the following distributions, in the following amounts, from the proceeds of the sale of the personal property of Golden Miles, subject to minor modifications to account for accruals of interest and expenses as reasonably determined by the Receiver:

- (a) \$314,755 to Mr. Mahal, subject to Paragraph 3 below; and
- (b) \$247,000 to Skymark.

3. **THIS COURT ORDERS** that the Receiver is hereby authorized to set-off the amount of \$95,000 from the distribution to Mr. Mahal authorized by Paragraph 2 hereof, resulting in a net distribution to Mr. Mahal of \$219,755, and from this \$95,000: (a) apply \$75,000 against the costs of the Receiver and Blakes incurred in these proceedings, and (b) distribute \$20,000 to Skymark, in each case in full satisfaction of Mr. Mahal's obligations in respect of the cost award made by Mr. Justice McEwen in these proceedings in an endorsement dated May 10, 2023.

Distribution & Holdbacks of Real Property Proceeds

4. **THIS COURT ORDERS** that the Receiver is hereby authorized to make the following distributions in the following amounts, from the proceeds of the sale of the real property of Mahal VC, subject to minor modifications to account for accruals of interest and expenses as reasonably determined by the Receiver:

- (a) \$1,659,413 to Vicano;
- (b) \$5,097,556 to Skymark;
- (c) \$1,399,340 to KLN;
- (d) in addition to the distribution set out in subparagraph 4(c), up to \$1,047,826 to KLN.

5. **THIS COURT ORDERS** that the amount and payment of the distribution to KLN set out in sub-paragraph 4(d) shall be subject to the prior written approval of Skymark and KLN, or further order of this Court.

6. **THIS COURT ORDERS** that the Receiver is hereby authorized to maintain the following holdbacks from the proceeds of the sale of the real property of Mahal VC:

- (a) \$600,000, defined in the Fifth Report as the "Mahal VC Cost Reserve";

- (b) \$3,650,000, defined in the Fifth Report as the “Orr Holdback”; and
- (c) \$1,500,000, defined in the Fifth Report as the “Omit Tax Reserve”,

in each case pending further order of this Court.

7. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings; and
- (b) the bankruptcy proceedings commenced in respect of the Companies on or about November 15, 2021,

the distributions authorized by Paragraphs 2 and 4 hereof (the “**Distributions**”) shall be binding on KSV, in its capacity as trustee in bankruptcy of the Companies, and any successor trustee in bankruptcy that may be appointed in respect of the Companies, and shall not be void or voidable by creditors of the Companies, nor shall the Distributions constitute nor be deemed to be fraudulent preferences, assignments, fraudulent conveyances, transfers at undervalue, or other reviewable transactions under the *Bankruptcy and Insolvency Act* (Canada), or any other applicable federal or provincial legislation, nor shall the Distributions constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation and shall, upon the receipt thereof by the recipients, be free of all claims, liens, security interests, charges or encumbrances.

REPORT & STATEMENT OF RECEIPTS AND DISBURSEMENTS APPROVAL

8. **THIS COURT ORDERS** that the Reports, and the activities of the Receiver described therein, be and are hereby approved, provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

9. **THIS COURT ORDERS** that the statement of receipts and disbursements for the period October 1, 2021 through July 31, 2023, attached to the Fifth Report be and is hereby accepted and approved.


FEE APPROVALS

10. **THIS COURT ORDERS** that the fees of the Receiver in the amount of \$195,469.75, plus HST and disbursements, for the period March 1, 2022 through July 31, 2023 (the “**Fee Approval Period**”) be and hereby are approved.

11. **THIS COURT ORDERS** that the fees of the Receiver’s counsel, Blakes, in the amount of \$336,326, plus HST and disbursements, for the Fee Approval Period be and hereby are approved.

MISCELLANEOUS

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

A digital signature in blue ink, appearing to read 'Peter Cavanagh', is enclosed in a light grey rectangular box. The signature is written in a cursive style.

Digitally signed by
Peter Cavanagh

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(COMMERCIAL LIST)

Proceeding Commenced at Toronto

ORDER
(Distribution and Fee & Activity Approval)

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