

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)
)
JUSTICE MCEWEN) MONDAY, THE 22nd
) DAY OF NOVEMBER, 2021

B E T W E E N:



SKYMARK FINANCE CORPORATION

Applicant

- and -

MAHAL VENTURE CAPITAL INC. and GOLDEN MILES FOOD
CORPORATION

Respondents

**ORDER
(Approval of Sale Process and Ancillary Matters)**

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. and Golden Miles Food Corporation (collectively, the “**Companies**”) owned or used in connection with the flour mill located on the property municipally known as 155 Adams Blvd., Brantford, Ontario (the “**Property**”), for an Order, among other things:

- (i) approving the proposed sale process as described in Paragraph 4.0(5) of the Second Report of the Receiver, dated November 15, 2021 (the “**Sale Process**”);
- (ii) amending the Order of the Honourable Mr. Justice McEwen of the Ontario Superior Court of Justice (Commercial List) on October 1, 2021 (the “**Appointment Order**”) to (a) increase the Receiver’s borrowing limit from \$500,000 to \$2,000,000, (b) permit the Receiver to incur fees or charges for borrowing, and (c)

elevate the priority of the Receiver's Charge and Receiver's Borrowings Charge (both as defined in the Appointment Order) above the charges of the Companies' three secured creditors in respect of which the Receiver's Charge and Receiver's Borrowings Charge are currently subordinate;

- (iii) sealing Confidential Appendix "1" (the "**Confidential Appendix**") to the Second Report of the Receiver dated November 15, 2021 (the "**Second Report**");
- (iv) approving the activities of the Receiver as described in the First Report of the Receiver dated October 20, 2021 (the "**First Report**") and the Second Report,

was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the Notice of Motion, the First Report, the Second Report, the Supplement to the Second Report to Court of the Receiver, dated November 19, 2021, the Responding and Cross-Motion Record of Santokh Mahal, dated November 21, 2021, and on hearing the submissions of the lawyers for the Receiver and such other counsel as listed on the Participant Information Form, no one else appearing, although properly served as appears from the Affidavits of Service of Nancy Thompson sworn November 17 and November 19, 2021:

SERVICE

1. **THIS COURT ORDERS AND DECLARES** that the time for service of notice of the motion and the Motion Record is hereby abridged such that the motion is properly returnable today and hereby dispenses with further service thereof.

SALE PROCESS

2. **THIS COURT ORDERS** that the Sale Process be and is hereby approved.
3. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to perform its obligations under the Sale Process and to do all such things as are necessary or desirable to implement and carry out the Sale Process.

4. **THIS COURT ORDERS** that the Receiver and its respective representatives and advisors shall have no corporate or personal liability in connection with conducting the Sale Process, save and except for any gross negligence or wilful misconduct on their part, as determined by this Court. Nothing in this Order shall derogate from the protections afforded to the Receiver by section 14.06 of the *Bankruptcy and Insolvency Act* (Canada) or the Appointment Order.

5. **THIS COURT ORDERS** that, in connection with the Sale Process and pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose personal information of identifiable individuals to prospective purchasers or bidders and to their advisors, but only to the extent desirable or required (in the sole discretion of the Receiver) to negotiate and attempt to complete one or more sale transactions (each, a “**Transaction**”). Each prospective purchaser or bidder to whom such information is disclosed shall maintain and protect the privacy of such information and shall limit the use of such information to its evaluation of the Transaction, and if it does not complete a Transaction, shall: (i) return all such information to the Receiver (as applicable); or (ii) destroy all such information that is not electronically stored and, in the case of such information that is electronically stored, destroy all such information to the extent it is reasonably practical to do so. The purchaser in any Transaction shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors or the Receiver and shall return all other personal information to the Receiver (as applicable) or ensure that all other personal information is destroyed.

AMENDMENT OF APPOINTMENT ORDER

6. **THIS COURT ORDERS** that the Appointment Order is amended, *nunc pro tunc*, as follows:

- (a) The following clause is deleted from Paragraph 18 of the Appointment Order: “(not including Bodkin, a Division of Bennington Financial Corp., the Bank of Nova Scotia and Caterpillar Financial Services Limited, subject to further order of the Court)”

- (b) Paragraph 21 of the Appointment Order is deleted in its entirety and replaced with:

THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$2,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest and for such fees or charges as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest, fees and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

SEALING ORDER

7. **THIS COURT ORDERS** that the Confidential Appendix is hereby sealed and shall not form part of the public record, subject to further order of this Court brought on not fewer than seven (7) calendar days notice to the Service List.

APPROVAL OF ACTIVITIES

8. **THIS COURT ORDERS** that the activities of the Receiver occurring prior to the date hereof in relation to these proceedings, as are further particularized in the First Report and the Second Report, are hereby ratified and 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.

GENERAL

9. **THIS COURT ORDERS** that the Receiver is at liberty to apply to the Court for advice and directions with respect to this Order and/or the Sale Process.

10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or outside of Canada to give effect to this Order and to assist the Receiver 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 may be necessary or desirable to give effect to this Order and to assist the Receiver in carrying out the terms of this Order.

A handwritten signature in black ink, appearing to be 'McL...', is written above a horizontal line.

SKYMARK FINANCE CORPORATION
Applicant

- and - MAHAL VENTURE CAPITAL INC., *et al.*
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding Commenced at Toronto

ORDER

(Approval of Sale Process and Ancillary Matters)

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