



**ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

COUNSEL/ENDORSEMENT SLIP

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

DATE: March 05, 2026

NO. ON LIST: 3

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

BEFORE: JUSTICE JANA STEELE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Harvey Chaiton <i>(Did Not Appear)</i>	Lawyer for Skymark Finance Corporation	harvey@chaitons.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Jake Harris as Agent for Dennis Touesnard <i>(Did Not Appear)</i>	Lawyer for Vicano Construction Limited	dtouesnard@waterousholden.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Jake Harris	Lawyers for Receiver, Noah Goldstein, Mitch Vininsky and Murtaza Tallat (KSV Restructuring Inc.)	jake.harris@blakes.com
Chris Burr		chris.burr@blakes.com

Mitch Stephenson	Lawyer for Alvarez & Marsal Canada Inc. in its capacity as court-appointed Receiver of Skymark Finance Corporation and Merk Investments Ltd.	<u>mstephenson@fasken.com</u>
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ENDORSEMENT OF JUSTICE STEELE:

- [1] The Receiver seeks an order, among other things, authorizing the Receiver to make certain distributions, approving the Receiver’s activities as set out in the Seventh Report, approving the Receiver’s and its counsel’s fees and a fee accrual, and discharging the Receiver upon filing of the Completion Certificate.
- [2] Capitalized terms that are used in this endorsement but are not defined herein have the meaning set out in the Receiver’s factum.
- [3] No other person filed materials.
- [4] No one opposed, other than Paul Kowalczyk, the principal of Seagrave, (who did not file any materials).
- [5] The Receiver indicated that despite having been served with the motion materials on February 26, 2026, and having been previously served with the Receiver’s Fifth Report, Supplement to Fifth Report, and Sixth Report, Mr. Kowalczyk reached out to the Receiver last night. Among other things, Mr. Kowalczyk takes issue with a sale transaction that was approved by the Receiver. As noted by the Receiver, the Court granted an AVO in respect of the sale on or about April 11, 2022. Gilmore J. noted in her endorsement that “[t]he offer chosen by the Receiver was the best one in all of the circumstances.” The Receiver provided the Court with Confidential Exhibit “1” to the Third Report of the Receiver, dated April 4, 2022, which includes a summary of the offers received, illustrating that the offer from 12175622 Canada Ltd. (the Purchaser) was superior to the other offers received.
- [6] Mr. Kowalczyk is understandably upset that his investment (through Seagrave) will not be repaid from the Mahal VC Proceeds. The Receiver’s Fifth Report sets out the priority analysis in Section 7. The Receiver advised the Court that the second ranking charges (Skymark and KLN) would not be repaid in full. Accordingly, the third ranking charges, which include Seagrave, would not recover anything.
- [7] The Fifth Report, which sets out the priority analysis, was previously approved by the Court on or about August 23, 2023.
- [8] I am satisfied that the relief sought by the Receiver should be granted.
- [9] With regard to the proposed distribution to Vicano, the Receiver confirmed that Vicano’s counsel had reached out and provided its consent. Any remaining proceeds are to be distributed to the Skymark Receiver (78.14%) and KLN (21.86%).

- [10] The Court has the jurisdiction to review and approve the activities of a court-appointed receiver as set out in the receiver's reports: *Bank of America Canada v. Willann Investments Ltd.*, 1996 CanLII 2782 (ONCA).
- [11] The Court in *Re Target Canada Co.*, 2015 ONSC 7574, at paras. 22-23, identified several good policy and practical reasons for monitors in CCAA proceedings to routinely seek court approval of their reports and activities. These policy and practical reasons also apply in receivership proceedings where the receiver seeks approval of its report and activities: *Re Hangfen Evergreen Inc.*, 2017 ONSC 7161, at para. 15.
- [12] The Receiver's Seventh Report and the activities set out therein are approved, as are the Receiver's and its counsel's fees (as supported by fee affidavits). The fee accrual of \$50,000 for the Remaining Activities is also approved. As noted in the Seventh Report, at para. 8.0(1), the Remaining Activities include making the final distributions, undertaking certain administrative matters, preparing the Receiver's final report pursuant to the BIA, and filing the completion certificate.
- [13] Once the Remaining Activities are completed, the Receiver will have completed its mandate and should be discharged. The requested release contains the typical carve out for any gross negligence or willful misconduct. A release is contemplated in the Commercial List Model Discharge Order and should be granted, unless there is evidence of improper or negligent conduct by the Receiver, which there is not: *Pinnacle v. Kraus*, 2012 ONSC 6376, at para. 47.
- [14] Order to go as signed by me today. This order is effective from today's date and is enforceable without the need for entry and filing.

Date: Mar 05, 2026


