

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

B E T W E E N:

**SKYMARK FINANCE CORPORATION**

**Applicant**

**- and -**

**MAHAL VENTURE CAPITAL INC. and GOLDEN MILES FOOD  
CORPORATION**

**Respondents**

**FACTUM OF THE RECEIVER  
(Approval and Vesting Order, Fee and Activity Approval)  
Returnable April 11, 2022**

April 6, 2022

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Lawyers for the Receiver

**ONTARIO  
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**PART I - OVERVIEW**

1. This Factum is filed by KSV Restructuring Inc., (“**KSV**”) in its capacity as 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 (the “**Flour Mill**”) located on the property municipally known as 155 Adams Blvd., Brantford, Ontario (the “**Property**”), in support of the Receiver’s motion for orders, among other things:

- (i) approving the proposed transaction (the “**Transaction**”) between the Receiver, KSV in its capacity as trustee in bankruptcy of the Companies, and 12175622

Ontario Inc. (the “**Purchaser**”), a corporation controlled by Santokh Mahal (“**Santokh**”), which contemplates the sale to the Purchaser of substantially all of the Property, pursuant to an asset purchase agreement dated March 18, 2022 (the “**APA**”);

- (ii) vesting in the Purchaser, on closing, the Companies’ and the Receiver’s right, title and interest in and to the Purchased Assets (as defined in the APA), free and clear of all liens, charges, security interests and encumbrances, other than the Permitted Encumbrances;
- (iii) authorizing a payment to Colliers Macaully Nicholls Inc. (the “**Realtor**”) upon closing of the Transaction;
- (iv) sealing Confidential Appendices "1", "2", and "3" (the "**Confidential Appendices**") to the Third Report of the Receiver dated April 4, 2022 (the “**Third Report**”);
- (v) approving the fees and disbursements of the Receiver and its counsel, Blake, Cassels & Graydon LLP (“**Blakes**”); and
- (vi) approving the Third Report and the Receiver’s activities described therein.

2. In the Receiver’s view, this motion should be granted for the following reasons:

- (a) The Transaction is the culmination of a comprehensive sale process that canvassed interested parties, provides for the greatest recovery available in the circumstances,

is the best available option for the Companies' stakeholders and has the support of the Companies' key creditors.

- (b) The requested approval and vesting order is in substantially the form of the model order, is appropriate in the circumstances, and is necessary to consummate the Transaction;
- (c) The commission payable to the Realtor is fair and reasonable, and the Realtor provided value to the Sale Process;
- (d) The Confidential Appendices contain commercially sensitive information, including with respect to market values of the Property, the disclosure of which could undermine the integrity of the Sale Process if the Transaction does not close and the salutary effects of sealing the Confidential Appendices outweigh any deleterious effects;
- (e) The Receiver has undertaken a variety of activities in connection with its mandate that have been necessary and consistent with the Receiver's duties and powers, and that have been undertaken with efficiency and reasonableness in the interests of the Companies' stakeholders generally; and
- (f) The fees incurred by the Receiver and its counsel are reasonable and appropriate in the circumstances.

3. Capitalized terms used but not otherwise defined in this Factum shall have the meanings given to them in the Third Report.

## **PART II - FACTS**

### **Background**

4. KSV was appointed Receiver of the Companies pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on October 1, 2021 (the “**Receivership Order**”).<sup>1</sup>

5. The principal purpose of the receivership proceedings is to allow the Receiver to take possession, preserve, market and sell the Property to maximize value for the Companies’ creditors.<sup>2</sup>

6. On November 22, 2021, the Court made an Order (the “**Sale Process Order**”) approving the sale process (the “**Sale Process**”). Following issuance of the Sale Process Order, the Receiver took a number of steps to advance the Sale Process, including distributing an interest solicitation letter to 92 potential purchasers and setting up and providing access to a virtual data room to potential purchasers that executed a confidentiality agreement.<sup>3</sup>

7. The initial bid deadline under the Sale Process was January 31, 2022.<sup>4</sup> However, during the Sale Process the Receiver learned that there was specific interest in the real property owned by the Companies (the “**Real Property**”), separate and apart from its operations as a flour mill. To ensure that this interest was properly canvassed, the Receiver extended the bid deadline to March 7, 2022 (the “**Bid Deadline**”) and invited two national real estate brokerages with specific

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<sup>1</sup> Third Report at para 1.0(2).

<sup>2</sup> Third Report at para 1.0(4).

<sup>3</sup> Third Report at para 3.0(1).

<sup>4</sup> Third Report at para 3.0(2).

expertise in industrial land in Southwestern Ontario to submit proposals to list the Real Property for sale.<sup>5</sup>

8. Following a competitive process, the Receiver selected the Realtor to market the Real Property based on its knowledge of the Real Property, its familiarity with the applicable market, its proposed marketing process, its commission structure and the experience of its team in the relevant market.<sup>6</sup>

9. The Receiver entered into a listing agreement with the Realtor on February 3, 2022 (the “**Listing Agreement**”). Pursuant to the Listing Agreement, the Realtor is entitled to a commission of 1.25% of the Purchase Price allocated to the Real Property when the Transaction closes, subject to the Court approving such payment.<sup>7</sup>

### **The Sale Process Results and the Transaction**

10. As a result of the Sale Process, 32 parties executed a confidentiality agreement and 12 offers were submitted prior to the Bid Deadline.<sup>8</sup> After careful consideration of the bids received, and in consultation with the key financial stakeholders of the Companies, the Purchaser was selected as the successful bidder.

11. The terms and conditions of the APA are set out in the Receiver’s Third Report.<sup>9</sup> In short, the APA provides for the purchase of substantially all the Property (certain tax refunds and

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<sup>5</sup> Third Report, at para 3.0(5).

<sup>6</sup> Third Report, at para 3.0(7).

<sup>7</sup> Third Report, 3.0(9)-(10).

<sup>8</sup> Third Report at para 3.1(1).

<sup>9</sup> Third Report at para 4.0(1).

litigation claims are excluded) of both Companies on an as-is, where-is basis, and includes the assumption of certain of the Companies' obligations. A material deposit has been paid by the Purchaser, which is refundable under only certain limited circumstances, and the Transaction has an outside closing date of April 29, 2022.

12. In the Receiver's view, the Transaction represents the highest and best recoveries for the Companies' creditors, having regard to the other bids received, the nature of the property, the carrying costs of not closing a transaction in the short term, and the ability of the Purchaser to close.

### **Activity and Fee Approval**

13. The activities of the Receiver are set out in the Third Report, and include (a) conducting and facilitating the Court-approved Sale Process, (b) negotiating and executing the APA, (c) corresponding with Santokh and Jesse Mahal and their counsel regarding the Companies' affairs and these proceedings; (d) corresponding with creditors, including Skymark Finance Corporation, (e) arranging insurance for the Property to the Closing Date in the APA, (f) dealing with matters relating to the security and maintenance of the Flour Mill, and (g) preparing the Third Report.<sup>10</sup>

14. In connection with the exercise of their mandates between the date that the Receiver was appointed on October 1, 2021 and February 28, 2022, the Receiver has incurred fees in the amount of \$319,085 and Blakes has incurred fees in the amount of \$184,229. In the Receiver's view, these fees are reasonable and appropriate, and consistent with the costs that would have been incurred by firms of comparable experience and knowledge.

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<sup>10</sup> Third Report at para 5.0(1).

### **PART III - ISSUES**

15. This Factum addresses the following issues:

- (a) Should the Transaction be approved?
- (b) Should the Receiver be authorized to pay the Realtor the commission?
- (c) Should a Sealing Order be granted in respect of the Confidential Appendices?
- (d) Should this Court approve the Receiver's activities as described in the Third Report?
- (e) Should this Court approve the fees of the Receiver and its counsel?

16. For the reasons that follow, the Receiver submits that these questions should be answered in the affirmative.

### **PART IV - THE LAW AND DISCUSSION**

#### **A. The Transaction should be approved**

17. It is settled law that when asked to approve a transaction in a receivership context, a court must consider the factors set out in *Royal Bank of Canada v Soundair Corp.*<sup>11</sup>:

- (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;

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<sup>11</sup> [\(1991\), 4 OR \(3d\) 1 \(ONCA\)](#) [*Soundair*].



- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which offers are obtained; and
- (d) whether there has been unfairness in the working out of the process.

18. Deference is to be afforded to a receiver respecting its proposed sale process. Absent a violation of the *Soundair* principles or other exceptional circumstances, the court should uphold the business judgment of the Receiver, as its court officer.<sup>12</sup>

19. As set out in *Bank of Montreal v Dedicated National Pharmacies Inc.*:

Where a receiver or manager has acted reasonably, prudently and not arbitrarily, as is the case here, a court ought not to sit in appeal from a receiver or manager's decision or review in every detail every element of the procedure by which the receiver or manager made its decision. To do so would be futile, duplicative and would neutralize the role of the receiver or manager.<sup>13</sup>

20. As set out in the Third Report, it is the Receiver's position that the Court should approve the Transaction for the following reasons: (a) the sale process undertaken by the Receiver was commercially reasonable and conducted in accordance with the court-approved Sale Process; (b) the market was widely canvassed by the Receiver; (c) the Receiver does not believe further time spent marketing the Property will result in a superior transaction; (d) the Transaction provides for the greatest recovery available in the circumstances; (e) the Purchaser is intimately familiar with the Property, and has completed its due diligence; (f) the Purchaser has made a substantial non-refundable deposit and provided evidence to the Receiver that it has secured sufficient financing

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<sup>12</sup> [Crown Trust Co v Rosenberg \(1986\), 60 OR \(2d\) 87 \(HC\)](#) at para 83.

<sup>13</sup> [Bank of Montreal v Dedicated National Pharmacies Inc., 2011 ONSC 4634](#) at para 43.

to satisfy the Purchase Price on Closing; (g) the Transaction will provide for the Receiver to sell all the Companies' tangible property, which will eliminate the carrying costs associated with the Flour Mill; (h) the terms of the Transaction are reasonable in the circumstances; (i) the Companies' stakeholders are supportive of the Transaction; and (j) the Purchase Price allocation is reasonable based on the offers received.<sup>14</sup>

21. Based on the foregoing, the *Soundair* test is readily met on the facts of this case:

- (a) Efforts to Get the Best Price: The Sale Process was comprehensive, and the bid deadline was extended to ensure that all potentially interested parties were made aware of the opportunity. The Sale Process resulted in numerous competitive offers, of which the Purchaser's offer is the highest and best.
  
- (b) Interests of the Parties: The Court-approved Sale Process was designed to ensure that the process would be run with integrity, transparency and fairness, and notice of the Sale Process was given to the service list prior to its approval. Key economic stakeholders were consulted by the Receiver throughout the Sale Process (with due regard to the confidentiality of commercially sensitive information), and the key financial stakeholders support the Transaction. No alternative to the Transaction has been presented that would provide for comparable recoveries to stakeholders.
  
- (c) Efficacy and Integrity of the Process: The Sale Process was run in accordance with the Court-approved terms, and the Receiver has ensured that all procedural and process issues have been conducted with integrity. All interested parties have had

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<sup>14</sup> Third Report, at para 4.2(1).

an opportunity to participate, and no objections or concerns have been received by the Receiver.

- (d) No Unfairness: In the Receiver's view, there has been no unfairness in the conduct of the Sale Process, no party has been prejudiced or excluded, and the range of competitive offers received informs the Receiver's conclusion that the Transaction is the highest and best offer. The Companies' key stakeholders support the Transaction.

22. For the foregoing reasons, the Receiver respectfully recommends that this Court approve the Transaction.

**B. The Realtor's Commission Should be Authorized**

23. The Receiver entered into the Listing Agreement pursuant to its authority under the Receivership Order, and such Listing Agreement includes a customary provision for the payment of a commission to the Realtor, which commission is reduced to the extent that a sale is consummated with a party that was known to the Receiver already. The Purchaser constitutes such a known party, and thus the commission payable is reduced to 1.25% of the Purchase Price allocated to the Real Property.

24. The Realtor provided valuable services to the Receiver and assisted with the Sale Process. The Realtor has spent time and resources on the Sale Process, and in the Receiver's view has earned its contractual commission as set out in the Listing Agreement.

25. The Listing Agreement requires Court approval for the payment of the 1.25% commission, and the Receiver respectfully recommends that the Court grant such approval.

**C. The Sealing Order should be granted in respect of the Confidential Appendices**

26. In *Sierra Club of Canada v Canada (Minister of Finance)*,<sup>15</sup> the Supreme Court of Canada (“SCC”) held that courts should exercise their discretion to grant sealing orders where:

- (i) the order is necessary to prevent a serious risk to an important interest, including a commercial interest, because reasonable alternative measures will not prevent the risk; and
- (ii) the salutary effects of the order outweigh its deleterious effects, including the effects on the right to free expression, which includes public interest in open and accessible court proceedings.<sup>16</sup>

27. In *Sherman Estate v Donovan*,<sup>17</sup> the SCC applied the test from *Sierra Club* differently, without altering its essence. According to *Sherman Estate*, a person asking a court to exercise discretion in a way that limits the open court presumption must establish that:

- (i) court openness poses a serious risk to an important public interest;
- (ii) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- (iii) as a matter of proportionality, the benefits of the order outweigh its negative effects.<sup>18</sup>

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<sup>15</sup> [2002 SCC 41](#) [*Sierra Club*].

<sup>16</sup> *Sierra Club*, at para 53.

<sup>17</sup> [2021 SCC 25](#) [*Sherman Estate*].

<sup>18</sup> *Sherman Estate*, at para 38.

28. Although the SCC was considering issues of personal privacy in *Sherman Estate*, it noted in citing *Sierra Club* that the term “important interest” can capture a broad array of public objectives including commercial interests.<sup>19</sup>

29. In the insolvency context, courts have commonly applied the *Sierra Club* test and authorized sealing orders over confidential or commercially sensitive documents to protect the interests of debtors and other stakeholders.<sup>20</sup>

30. The test for a sealing order as recast in *Sherman Estate* has similarly been recently employed in the insolvency context to authorize sealing orders over confidential or commercially sensitive documents.<sup>21</sup>

31. The Confidential Appendices contain confidential information, including with respect to value. The Confidential Appendices are comprised of: (i) a summary of offers received by the Receiver in the Sale Process, (ii) the Purchase Price allocation, and (iii) the unredacted APA. If such documents were not sealed, the information contained therein may negatively impact realizations on the Purchased Assets if the Transaction does not close. The Receiver is not aware of any party that will be prejudiced if the information is sealed.<sup>22</sup>

32. In the circumstances, the sealing order sought is the least restrictive means to maintain the confidentiality of this commercially sensitive, competitive and confidential information.

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<sup>19</sup> *Sherman Estate*, at para 41.

<sup>20</sup> [\*Elleway Acquisitions Ltd v 4358376 Canada Inc.\*, 2013 ONSC 7009](#) at paras 47 and 48; [\*GE Canada Real Estate Financing Business Property Company v 1262354 Ontario Inc.\*, 2014 ONSC 1173](#) at para 32; [\*Stelco Inc. \(Re\)\*, 2006 CarswellOnt 394](#) at paras 2-5, [2006] OJ No. 275 (Ont SCJ); [\*Re Canwest Publishing Inc.\*, 2010 ONSC 222](#) at paras 63-65.

<sup>21</sup> [\*Ontario Securities Commission v Bridging Finance Inc.\*, 2021 ONSC 4347](#) at paras 23-27; [\*Laurentian University of Sudbury\*, 2021 ONSC 4769](#) at paras 12-14.

<sup>22</sup> Third Report at para 4.3(1).

Accordingly, the Receiver submits that the salutary effects of the sealing order outweigh the deleterious effects of restricting access to the Confidential Appendices, and that the sealing order is therefore appropriate.

**D. The Receiver's activities described in the Third Report should be approved**

33. In *Target Canada*<sup>23</sup>, the Court noted that a practice has developed in CCAA proceedings where Monitors will routinely seek approval for their reports and the activities described in them.<sup>24</sup> The Court added that there are good policy and practical reasons to grant such approval, including (a) allowing the Monitor to bring its activities before the Court; (b) allowing an opportunity for stakeholders' concerns to be addressed; (c) enabling the Court to satisfy itself that the Monitor's activities have been conducted in prudent and diligent manners; (d) providing protection for the Monitor not otherwise provided by the *Companies' Creditors Arrangement Act*; and (e) protecting creditors from delay that may be caused by re-litigation of steps or potential indemnity claims by the Monitor.<sup>25</sup>

34. These comments, and the policy considerations identified by the Court, apply with equal force to receivership proceedings and motions seeking approval for a receiver's report and activities.<sup>26</sup>

35. This Court has jurisdiction to review and approve the activities of a court-appointed receiver. If the Receiver has met the objective test of demonstrating that it has acted reasonably,

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<sup>23</sup> [Re Target Canada Co., 2015 ONSC 7574](#) [*Target Canada*].

<sup>24</sup> *Target Canada*, at para 2.

<sup>25</sup> *Target Canada*, at paras 22-23.

<sup>26</sup> [Re Hangfen Evergreen Inc., 2017 ONSC 7161](#) at para 15.

prudently and not arbitrarily, the court may approve the activities set out in its report and the court.<sup>27</sup>

36. The activities of the Receiver, as set out in the Third Report, were necessary and undertaken in good faith pursuant to the Receiver's duties and powers set out in the Receivership Order and were in each case in the best interests of the Companies' stakeholders generally.<sup>28</sup> The Receiver therefore respectfully submits that the Third Report and the Receiver's activities described therein should be approved.

**E. The Court should approve the fees and disbursements of the Receiver and its counsel during the Period**

37. Pursuant to the Receivership Order, the fees and disbursements of the Receiver and its legal counsel are authorized to be paid on a periodic basis subject to any final approval as ordered by the Court.<sup>29</sup>

38. The accounts of the Receiver and its counsel, Blakes, meet the technical requirements established by case law:

- (a) the accounts disclose in detail the name of each person who rendered services, the rate charged, the time expended and descriptions of the services rendered;
- (b) the accounts are in a form that can be easily understood by those affected by the receivership or by the judicial officer required to assess the accounts; and

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<sup>27</sup> [Bank of America Canada v Willann Investments Ltd., \[1993\] OJ No. 1647 \(Gen Div\)](#) at paras 2-5, [aff'd \[1996\] OJ No. 2806 \(CA\)](#); [Lang Michener v American Bullion Minerals Ltd., 2005 BCSC 684](#) at para 21.

<sup>28</sup> Third Report at para 5.0(1).

<sup>29</sup> Receivership Order at section 19.

- (c) the accounts are verified by affidavits.<sup>30</sup>

39. The general standard of review for a Court in reviewing the accounts of a court-appointed receiver is “whether the amount claimed for remuneration and disbursements incurred in carrying out the receivership are fair and reasonable.”<sup>31</sup>

40. It is not necessary for the Court to examine “dockets, hours, explanations or disbursements line by line. Rather, a court can consider all the relevant factors and...award costs (or fees) in a more holistic manner.” This approach has been affirmed by the Ontario Court of Appeal which has stated that “the focus of the fair and reasonable assessment should be on what was accomplished, and not on how much time it took.”<sup>32</sup>

41. In *Beyea v Federal Business Development Bank*, Stratton JA set out a non-exhaustive list of factors to be considered in determining whether a receiver’s fees are fair and reasonable. These factors have been endorsed by the Ontario Court of Appeal:

- (a) the nature and extent of the value of the assets handled;
- (b) the complications and difficulties encountered;
- (c) the degree of assistance provided by the company, its officers or employees;
- (d) the time spent;
- (e) the receiver’s knowledge, experience and skill;

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<sup>30</sup> [Confectionately Yours Inc., Re, 36 C.B.R. \(4<sup>th</sup>\) 200 \(C.A.\)](#) [*Confectionately Yours*] at paras 37-38.

<sup>31</sup> *Confectionately Yours* at para 42.

<sup>32</sup> [Bank of Nova Scotia v Diemer, 2014 ONSC 365](#) at para 19; [Bank of Nova Scotia v Diemer, 2014 ONCA 851](#) [*Diemer ONCA*] at para 45.



- (f) the diligence and thoroughness displayed by the receiver;
- (g) the responsibilities assumed;
- (h) results of the receiver's efforts; and
- (i) the cost of comparable services.<sup>33</sup>

42. The receivership proceedings have been complex and, as summarized in past Receiver's Reports, the Receiver has had to undertake its duties without the support of the Companies' management (and indeed, in several cases, in spite of the Companies' management). The value represented by the Transaction is high relative to the aggregate costs of the Receiver and its counsel, and the result of the Sale Process has been satisfactory to the Receiver both in terms of offers received and value offered.

43. KSV is a specialized licenced insolvency trustee, and has staffed this matter with insolvency specialists at various levels of seniority. Likewise, Blakes is a sophisticated full service law firm, which has staffed this matter with subject matter experts, including insolvency experts, at various levels of seniority. Comparable services in the Toronto market could only be obtained at a comparable cost.

44. Blakes' hourly rates are consistent with the rates charged by other law firms practicing in the area of insolvency in the Toronto market and the Receiver is of the view that its fees are reasonable and appropriate in the circumstances.<sup>34</sup>

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<sup>33</sup> [\*Belyea v Federal Business Development Bank\*, 55 N.B.R. \(2d\) 248](#) (C.A.) at para 9; *Diemer ONCA* at para 33; *Confectionately Yours* at para 42.

<sup>34</sup> Third Report at para 6.0(3).

45. Accordingly, the Receiver respectfully requests approval of its fees and the fees of its legal counsel, Blakes, during the Period.

**PART V - CONCLUSION**

46. For the reasons set out above, the Receiver respectfully requests that this Court:
- i. approve the Transaction;
  - ii. authorize a payment to the Realtor upon closing of the Transaction;
  - iii. seal the Confidential Appendices;
  - iv. approve the Receiver's activities; and
  - v. approve the fees and disbursements of the Receiver.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 6th day of April, 2022.



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Chris Burr/Caitlin McIntyre  
Lawyers for the Receiver

## SCHEDULE "A"

### LIST OF AUTHORITIES

| <u>Case</u> |   |
|-------------|---|
| 1.          | <a href="#"><i>Royal Bank of Canada v Soundair Corp.</i>, 1991 CarswellOnt 205, 91 CBR (5th) 285 (Ont CA)</a>   |
| 2.          | <a href="#"><i>Crown Trust Co v Rosenberg</i> (1986), 60 OR (2d) 87 (HC)</a>  |
| 3.          | <a href="#"><i>Bank of Montreal v Dedicated National Pharmacies Inc.</i>, 20111 ONSC 4634</a>   |
| 4.          | <a href="#"><i>Sierra Club of Canada v Canada (Minister of Finance)</i>, 2002 SCC 41</a>  |
| 5.          | <a href="#"><i>Sherman Estate v Donovan</i>, 2021 SCC 25</a>  |
| 6.          | <a href="#"><i>Elleway Acquisitions Ltd v 4358376 Canada Inc.</i>, 2013 ONSC 7009</a>   |
| 7.          | <a href="#"><i>GE Canada Real Estate Financing Business Property Company v 1262354 Ontario Inc.</i>, 2014 ONSC 1173</a>                                   |
| 8.          | <a href="#"><i>Stelco Inc. (Re)</i>, 2006 CarswellOnt 394 at paras 2-5, [2006] OJ No. 275 (Ont SCJ)</a>   |
| 9.          | <a href="#"><i>Re Canwest Publishing Inc.</i>, 2010 ONSC 222</a>  |
| 10.         | <a href="#"><i>Ontario Securities Commission v Bridging Finance Inc.</i>, 2021 ONSC 4347</a>  |
| 11.         | <a href="#"><i>Laurentian University of Sudbury</i>, 2021 ONSC 4769</a>   |
| 12.         | <a href="#"><i>Re Target Canada Co</i>, 2015 ONSC 7574</a>  |
| 13.         | <a href="#"><i>Re Hangfen Evergreen Inc.</i>, 2017 ONSC 7161</a>  |
| 14.         | <a href="#"><i>Bank of America Canada v Willann Investments Ltd.</i>, [1993] OJ No. 1647 (Gen Div) at paras 2-5, <i>aff'd</i> [1996] OJ No. 2806 (CA)</a> |
| 15.         | <a href="#"><i>Lang Michener v American Bullion Minerals Ltd.</i>, 2005 BCSC 684</a>  |

|     |   |
|-----|---|
| 16. | <a href="#"><u><i>Confectionately Yours Inc., Re</i>, 36 C.B.R. (4<sup>th</sup>) 200 (C.A.)</u></a> |
| 17. | <a href="#"><u><i>Bank of Nova Scotia v Diemer</i>, 2014 ONSC 365</u></a>                           |
| 18. | <a href="#"><u><i>Bank of Nova Scotia v Diemer</i>, 2014 ONCA 851</u></a>                           |
| 19. | <a href="#"><u><i>Belyea v Federal Business Development Bank</i>, 55 N.B.R. (2d) 248 (CA)</u></a>   |

## SCHEDULE "B"

### RELEVANT STATUTES

#### Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3: Section 243

*Court may appoint receiver*

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

(b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or

(c) take any other action that the court considers advisable.

SKYMARK FINANCE CORPORATION  
Applicant

- and -

MAHAL VENTURE CAPITAL INC., et al.  
Respondents

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(COMMERCIAL LIST)**

Proceeding Commenced at Toronto

**FACTUM OF THE RECEIVER  
( Approval and Vesting Order, Fee and Activity  
Approval )**

**Returnable April 11, 2021**

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