



**Supplement to the Fifth Report to Court of
KSV Restructuring Inc.
as Receiver and Manager of
Mahal Venture Capital Inc. and
Golden Miles Food Corporation**

August 22, 2023

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

SKYMARK FINANCE CORPORATION

APPLICANT

- AND -

MAHAL VENTURE CAPITAL INC. AND
GOLDEN MILES FOOD CORPORATION

RESPONDENTS

SUPPLEMENT TO THE FIFTH REPORT OF
KSV RESTRUCTURING INC.
AS RECEIVER AND MANAGER

AUGUST 23, 2023

1.0 Introduction

1. This report (the “Supplemental Report”) supplements the Receiver’s Fifth Report to Court dated August 15, 2023 (the “Fifth Report”).
2. Unless otherwise stated, capitalized terms used in this report have the meanings provided to them in the Fifth Report.

1.1 Purpose

1. The purpose of this Supplemental Report is to provide the Court and the Companies’ stakeholders with an update on the proposed distributions to Vicano and KLN based on correspondence received following service of the Fifth Report and the Receiver’s motion record.

1.2 Restrictions

1. This Supplemental Report is subject to the restrictions in the Fifth Report.

2.0 Quantum of Vicano’s Claim

1. Section 6.4 of the Fifth Report includes a discussion of Vicano’s lien claim and Section 6.4.2 provides the Receiver’s views on the quantum of such claim, based on analyses drawn in the Project Report and Class D Report prepared by Altus.

2. The Receiver has recommended a deduction from the Vicano claim in the amounts of a) \$620,405 on account of duplicate or incorrect invoices, overbilled amounts, invoices related to deficiency rectification and invoices in connection with improvements performed on real property that is not the Flour Mill, and b) \$90,554 on account of certain missing third-party invoices.
3. Based on these recommended deductions, the Receiver determined the quantum of Vicano's total claim to be \$16,595,413, which corresponds to a recommended distribution to Vicano of \$1,659,541 (being 10% of the total amount invoiced).
4. On August 15, 2023, the Receiver served its Fifth Report, which included the two Altus reports. While the Receiver has been in contact with Vicano's counsel throughout these proceedings, Vicano did not have an opportunity to review the Altus reports in full until receiving them on August 15, 2023 as part of the Fifth Report.
5. On August 17, 2023, Vicano's counsel contacted the Receiver to advise that it objects to certain of the deductions proposed by the Receiver. Vicano's objections are based on both legal interpretations of the *Construction Act* and on factual conclusions drawn by the Receiver about the quantum of its claim.
6. Vicano's objections will take some time to resolve, but if accepted by the Receiver in full would amount to an increase in Vicano's recommended distribution of approximately \$50,000.
7. The Receiver will work with Vicano to resolve its objections, and seek additional assistance from the Court if necessary. However, in the interim, the Receiver proposes to make a distribution to Vicano of the undisputed amount recommended in the Fifth Report, being \$1,659,541. As a result, the Receiver will not be seeking as part of the relief requested a declaration that the distribution to Vicano is in full satisfaction of its priority claim under the *Construction Act*.
8. Given that the size of Vicano's disputed distribution is only \$50,000, the Receiver does not propose to take any additional holdback from distributions proposed to Skymark or KLN.

3.0 KLN Distribution

1. The Receiver reported in Section 6.2(13) of the Fifth Report that Skymark transferred 21.86% of its interest in the 2017 Skymark Charge to KLN, pursuant to registered transfers dated August 9, 2017 (in the amount of \$500,000), December 1, 2017 (in the amount of \$200,000), April 3, 2018 (in the amount of \$500,000) and May 7, 2019 (in the amount of \$900,000).
2. The May 7, 2019 transfer in the amount of \$900,000 is referred to herein as the "May KLN Transfer".
3. On August 21, 2023, the Receiver was notified by the Skymark Receiver that it had been advised by representatives of Skymark that the \$900,000 represented by the May KLN Transfer had been repaid by Skymark to KLN, and that the May KLN Transfer should have been discharged from the Parcel Register. On August 22, 2023, the Skymark Receiver provided supporting documentation for its position, which it had just obtained from Skymark.

4. Also on August 22, 2023, counsel for Skymark, KLN and the Receiver convened a call to discuss Skymark's position. On this call, KLN's counsel objected to the position that any amount related to the May KLN Transfer was repaid and that the May KLN Transfer ought to have been discharged. Documentation was provided by KLN's counsel to support this objection.
5. The Receiver has not yet reviewed the documentation provided by counsel to the Skymark Receiver and KLN, but in any event considers this issue to be an intercreditor dispute.
6. As the May KLN Transfer issue was just raised, neither the Skymark Receiver nor KLN have had an opportunity to locate or exchange all necessary supporting documentation. As of the date of this Supplemental Report, the Receiver understands that counsel to KLN and the Skymark Receiver are working to resolve the dispute over the May KLN Transfer; however, the Receiver does not know if such a resolution will be achievable before the return of the Motion at 11 am on August 23, 2023.
7. The Skymark Receiver, KLN and the Receiver have agreed to a path forward that will minimize costs and delays, while giving the parties an opportunity to resolve the outstanding intercreditor issue without prejudice to their respective interests.
8. The \$900,000 principal amount of the May KLN Transfer represents approximately 9.36% of KLN's interest in the 2017 Skymark Charge. The remaining 12.5% (or \$1,200,000) of KLN's interest in the 2017 Skymark Charge is undisputed and not subject to the issues raised by the Skymark Receiver.
9. In consultation with counsel to the Skymark Receiver and KLN, the Receiver has agreed to amend the order sought in its Motion to authorize the Receiver to make a distribution to KLN in the amount of:
 - a. \$1,399,340, representing the undisputed 12.5% interest of KLN in the 2017 Skymark Charge (less the Vicano distribution, holdbacks and reserves), and
 - b. up to \$1,047,826, representing the disputed 9.36% interest of KLN in the 2017 Skymark Charge (less the Vicano distribution, holdbacks and reserves), subject to Skymark giving the Receiver written consent to the amount of this further KLN distribution.
10. This proposed resolution will avoid the need to adjourn the Receiver's distribution motion, which will create unnecessary costs and delays, and will avoid the need for the Receiver to return to Court for a subsequent distribution order in the event that KLN and the Skymark Receiver consensually resolve their dispute over the May KLN Transfer.
11. The aggregate authorized maximum amount of the KLN distribution sought by the Receiver is unchanged from the amount proposed in the Fifth Report, being \$2,447,166.

12. In the event that the dispute over the May KLN Transfer cannot be resolved consensually, the assistance of the Court may be required at a future date.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
MAHAL VENTURE CAPITAL INC. AND GOLDEN MILES FOOD CORPORATION
AND AS LICENSED INSOLVENCY TRUSTEE OF
GOLDEN MILES FOOD CORPORATION
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**