



**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

ENDORSEMENT

**COURT FILE
NO.:**

CV-24-00716267-00CL

DATE: April 25, 2024

NO. ON LIST: 1

**TITLE OF
PROCEEDING:**

In the Matter of Skylink Express Inc.

BEFORE:

JUSTICE OSBORNE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Jennifer Stam	Skylink Express Inc	Jennifer.stam@nortonrosefulbright.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Jeffrey Larry	Momentum	jeff.larry@paliareroland.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Monique Sassi	Counsel to the Monitor	msassi@cassels.com
Bobby Kofman	KSV, the Monitor	bkofman@ksvadvisory.com

ENDORSEMENT of JUSTICE OSBORNE

1. Skylink Express Inc., the Applicant, seeks an order:
 - a. extending the stay to and including May 31, 2024;
 - b. approving a forbearance agreement dated as of April 19, 2024. Among the Toronto Dominion Bank, Skylink, and Momentum Decisive Solutions Canada Inc.; and
 - c. approving an escort agreement dated as of April 19, 2024, among Momentum, TD, the Court-appointed Monitor and Norton Rose Fulbright Canada LLP.
2. Defined terms in this Endorsement have the meaning given to them in the motion materials and/or the Second Report of the Monitor dated April 22, 2024, unless otherwise stated. The Applicant relies upon the Affidavits of Kyle Dennhardt sworn March 8 and March 21, respectively, as well as the Second Report.
3. Skylink obtained protection under the CCAA pursuant to an Initial Order dated March 11, 2024.
4. On the same date, TD brought a Receivership Application which was adjourned to the return date in the CCAA proceeding on the basis that TD was not stayed pending the comeback hearing, but agreed that it's receivership application was adjourned TD further agreed that Skylink and Momentum could continue to use their bank accounts, and that Momentum would continue to have access to its line of credit and FX facility, as the parties worked on a forbearance agreement.
5. The Administration Charge was subordinated to the TD Loan Security, and Momentum agreed to post \$2 million of cash collateral in escrow to be held in trust with Norton subject to the parties coming to agreement on the terms of that escrow.
6. The parties agreed to work on the terms of an escrow agreement prior to the comeback hearing for the deposit of the cash collateral which was intended to provide, among other things, that as long as Skylink was continuing its restructuring, if it missed a payment, TD could immediately access the full amount of the cash collateral to pay down its loan and the cash collateral would be held until the loan was repaid in full.
7. The funding of the cash collateral by Momentum would be sourced through an injection of new capital and not from existing working capital. Finally, TD's operating line of credit was repaid in full. Immediately following the issuance of the Initial Order and his since been closed by TD.
8. Skylink, Momentum and TD have now agreed on the terms of the Forbearance Agreement and the Escrow Agreement which permit the Applicants to continue it CCAA proceedings, and therefore approval of those agreements is sought today together with an extension of the stay.
9. I am satisfied that both agreements are appropriate. They are obviously consented to by the parties to those agreements, and the relief is otherwise unopposed.
10. I am also satisfied that the proposed stay extension is appropriate. UPS is the only meaningful customer of Skylink and one of the material objectives of the restructuring was to negotiate amended terms of the UPS Contract. Extensive discussions between the Applicants and UPS have today been unsuccessful with the result that the Applicant is continuing to review and consider whether there is a business model that would allow those two parties to maintain their long-standing relationship, failing which the Applicants is beginning to consider a transition plan with UPS as well as the development of a sale process for the business and assets of Skylink.

11. In the circumstances, I am satisfied that an extension to and including May 31, 2024 is appropriate as authorized under section 11.02(2) of the CCAA, to permit sufficient time for Skylink to work on next steps. The Applicant has proceeded and is proceeding in good faith and no creditor will be materially prejudiced if the extension is granted. The cash flow forecast, appended to the Second Report, reflects that Skylink should have sufficient funds during the proposed extension period. The Monitor supports that requested relief. No party opposes the stay extension.
12. By Endorsement of today's date in the companion receivership application, that application is adjourned on consent to the next return date in the CCAA application. I have asked all parties to consider whether there is any reason that application cannot be dismissed without prejudice to the right of any party to seek relief in the CCAA proceeding if, as and when appropriate.

Olson, J.