



SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**ENDORSEMENT**

COURT FILE NO.: CV-24-00716267-00CL

DATE: July 29, 2024

NO. ON LIST: 2

TITLE OF PROCEEDING: SKYLINK EXPRESS INC. v. UNIFOR AND ITS LOCAL 2002

BEFORE: JUSTICE STEELE

**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
Monique Sassi	Counsel to Monitor	msassi@cassels.com
Jeffrey Larry	Momentum Decisive Solutions Canada	Jeff.larry@paliareroland.com

**For Defendant, Respondent, Responding Party:**

Name of Person Appearing	Name of Party	Contact Info
Rachel Moses	Toronto-Dominion Bank	rmoses@folgers.com

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info
Jordan Wong	Monitor, KSV RESTRUCTURING INC.	jwong@ksvadvisory.com

## **ENDORSEMENT OF JUSTICE STEELE :**

[1] Skylink Express Inc. seeks court approval of the sale of three more aircraft. Skylink was before me on July 5, 2024 regarding the sale of another aircraft, which was approved. The 3 aircraft sales before me today came out of the same Sale Process as the sale of the one aircraft that was approved on July 5, 2024.

[2] Under the proposed transactions one aircraft is to be purchased by Gingras Equipment Inc., further to an agreement of purchase and sale dated July 10, 2024. The other two aircraft are to be purchased by Randigo LLC further to agreements of purchase and sale dated July 12, 2024.

[3] Skylink also seeks, among other things, an extension of the stay, an authorization for increased DIP financing, and a sealing order of the confidential information.

[4] No party opposes the relief sought.

[5] The Monitor and Momentum Decisive Solutions Canada, the DIP lender, support the relief sought.

### *Approval of Sales and AVOs*

[6] Under section 36 of the CCAA, the Court has the jurisdiction to approve a sale proceeding in the context of CCAA proceedings. The factors for the Court to consider are set out at section 36(3) of the CCAA:

- a. Whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- b. Whether the monitor approved the process leading to the proposed sale or disposition;
- c. Whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- d. The extent to which the creditors were consulted;
- e. The effects of the proposed sale or disposition on the creditors and other interested parties; and
- f. Whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

[7] These factors are not intended to be a checklist or exhaustive: *Target Canada Co. (Re)*, 2015 ONSC 1487 at para. 16. The courts also continue to consider the well-known principles set out in *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ONCA) at para. 16, as relevant to whether a sale ought to be approved.

[8] I am satisfied that the proposed sales of the aircrafts should be approved for the reasons set out at para. 19 of Skylink's factum. Among other things, the marketing agent undertook a process that was commercially reasonable and consistent with the terms of the Sale Process, the agent is of the view that the purchase price for the aircrafts is acceptable and appropriate, the only condition on closing the transactions is court approval, and there is no opposition.

### *Distribution to TD*

[9] Similar to the prior transaction approved by this Court, the applicant seeks court approval to distribute the net proceeds of sale of the aircrafts to TD, the applicant's senior secured creditor. I refer to para. 11 of my July 5, 2024 endorsement, setting out the factors for the Court to consider.

[10] TD's security in respect of the aircrafts is not primed by any of the charges under the Initial Order. The Monitor has received an opinion from its legal counsel with respect to the validity and enforceability of TD's security in respect of the aircraft.

### *Sealing Order*

[11] Skylink requests that the confidential appendices to the Fifth Report, the redacted agreements of purchase and sale, be sealed pending further court order or completion of the Sale Process. The only information that has been redacted in each agreement is the purchase price and the amount of the deposit.

[12] Subsection 137(2) of the *Courts of Justice Act* provides that the Court may order that any document filed in a civil proceeding be treated as confidential, sealed, and not form part of the public record. In addition to the jurisdiction under the *Courts of Justice Act*, the Court has the inherent jurisdiction to issue sealing orders: *Fairview Donut Inc. v. The TDL Group Corp.*, 2010 ONSC 789, at para. 34.

[13] It is common to temporarily seal commercially sensitive material when assets are to be sold under a court process.

[14] The requested sealing order is limited in scope and in time. The proposed sealing order balances the open court principle and legitimate commercial requirements for confidentiality in the circumstances. In my view, the benefits of the requested sealing order outweigh the negative impact on the "open court" principle. If this information were released, it may impact the applicant's ability to maximize value on the sale of the remaining aircraft. No stakeholder will be materially prejudiced by the time limited sealing order, which applies to only a limited amount of information.

[15] I am satisfied that the limited nature and scope of the proposed sealing order is appropriate and satisfies the *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, at para. 53, requirements, as modified in *Sherman Estate v. Donovan*, 2021 SCC 25, at para. 38.

[16] The applicant is directed to provide the sealed confidential appendices to the Court clerk at the filing office in an envelope with a copy of this endorsement and the signed order (with the relevant provisions highlighted) so that the confidential appendices can be physically sealed.

### *Approval of Stay Extension*

[17] The applicant requests an extension of the stay period to provide it with sufficient time to close the transactions, continue to advance the Sale Process, and assist in the wind down of the UPS services.

[18] Under section 11.02(2) of the CCAA the Court has the power to extend the stay period provided that circumstances exist that make the extension appropriate; and the court is satisfied that the applicant has acted and continues to act in good faith and with due diligence.

[19] I am satisfied that the stay extension should be approved. The applicant requires additional time to complete the Sales Process and assist in the wind down of the UPS services. The applicant has acted and continues to act in good faith and with due diligence.

*Approval of activities and fees*

[20] The applicant also seeks Court approval of the activities of the Monitor as set out in the Fourth and Fifth Reports.

[21] The principles set out by the Court regarding the approval of the activities of a receiver or monitor, and their reports, are well established: *Target Canada Co. Re*, 2015 ONSC 7574 at paras. 2 and 12; *Triple-I Capital Partners Limited v. 12411300 Canada Inc.*, 2023 ONSC 3400 at para. 66.

[22] The activities undertaken by the Monitor as set out in these reports are consistent with its mandate pursuant to the CCAA and the Initial Order.

[23] I am also satisfied that the fees and disbursements of the Monitor and its counsel are fair, reasonable and justified in the circumstances. I note that fee affidavits have been filed.

[24] Orders attached.



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Justice STEELE

Date: