

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

and

SKYLINK EXPRESS INC. and MOMENTUM DECISIVE
SOLUTIONS CANADA INC.

Respondents

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. b-3, as amended and section 101 of the *Courts of Justice Act*, R.S.O. 1990, C.C.43

AIDE MEMOIRE OF MOMENTUM DECISIVE SOLUTIONS CANADA INC.

1. SkyLink Express Inc. ("**SkyLink**") commenced an application to obtain an order under the *Companies' Creditors Arrangement Act* (the "**CCAA**") at a hearing scheduled for March 11, 2024.
2. On March 6, 2024, SkyLink advised TD of its intention to obtain protection under the CCAA (the "**SkyLink CCAA Proceeding**").
3. The SkyLink CCAA Proceeding and the order sought under the CCAA (the "**Initial Order**"), if approved, will not prejudice TD given that, among other things:
 - (a) TD will continue to receive all scheduled payments of principal and interest;

- (b) Momentum Decisive Solutions Canada Inc. (“**Momentum**”), the guarantor of SkyLink’s obligations to TD, is providing a DIP facility of \$2.5 million to fund the proposed CCAA proceedings and SkyLink’s operating expenses during the CCAA proceeding. Notably, the funds that Momentum is using to provide the DIP facility are from a fresh injection of capital into Momentum and not from existing working capital;
- (c) The proposed DIP Lender’s Charge (as defined in the Initial Order) will rank subordinate to the TD’s security;
- (d) The operating line facility that TD provides to Skylink is to be repaid in full shortly following the commencement of the SkyLink CCAA Proceeding and not redrawn; and
- (e) The proposed Directors’ Charge (as defined in the Initial Order) will rank subordinate to the TD’s security.

4. Notwithstanding that TD will not be prejudiced by the SkyLink CCAA Proceeding, on March 8, 2024, TD suddenly made demand (the “**TD Demand**”) on SkyLink and on Momentum under its guarantee (the “**Guarantee**”).

5. Immediately thereafter (and without waiting the requisite amount of time), TD commenced this application (the “**TD Application**”) seeking, among other things:

- (a) the appointment of a receiver over SkyLink; and
- (b) judgment against Momentum on the Guarantee.

6. Even though TD just made demand on Friday, March 8, 2024 (and there is no immediate jeopardy to TD's security), TD appears intent on proceeding with the TD Application on the next business day, March 11, 2024. TD has no right or basis to proceed on this incredibly abbreviated timeline.

7. Momentum supports SkyLink's position that the TD Application be dismissed without prejudice..

8. Momentum was not given any notice of the TD Demand nor the TD Application prior to their delivery.

9. Moreover, Momentum is entitled to, and has thus far been denied, a reasonable opportunity to properly consider the TD Demand and the TD Application and its response thereto.

10. Momentum must also be provided with an opportunity, as it sees fit, to:

- (a) defend TD Bank's claim on the Guarantee on the basis that TD Bank, by its precipitous and unreasonable action against SkyLink, has undermined the value of the collateral intended to secure payment of the TD Debt; and
- (b) move to convert this application against it into an action, with appropriate pleadings and discovery.

11. Finally, Momentum, as guarantor and as the sole shareholder of SkyLink, is concerned that the TD Bank Application is ill-founded and the evidence tendered in support of it:

- (a) mischaracterize the confidential discussions between representatives of the SkyLink and TD Bank (in which Kyle Dennhardt, Momentum's Chief Operating Officer, participated);
- (b) risks souring relations between SkyLink and its main customer, UPS, by creating the impression that SkyLink is acting opportunistically in commencing the SkyLink CCAA Proceedings with a view to leveraging a better deal out of UPS; and,
- (c) risks undermining the value of the collateral (i.e., SkyLink's undertaking) by suggesting that the contract with UPS cannot be renegotiated.

12. In all, there is no basis whatsoever for TD to obtain judgment on the next business day after commencing an application.

13. Accordingly, the Initial Order under the SkyLink CCAA Proceeding should be granted and the TD Application should be dismissed without prejudice.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

March 10, 2024



Jeffrey Larry/Massimo (Max) Starnino
Counsel for Momentum Decisive Solutions
Canada Inc.

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v.

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**AIDE MEMOIRE OF MOMENTUM DECISIVE
SOLUTIONS CANADA INC.**

Attendance March 11, 2024

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