

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SKYLINK EXPRESS INC. (the "**Applicant**")

**SUPPLEMENTAL AFFIDAVIT OF KYLE DENNHARDT
(sworn March 9, 2024)**

I, Kyle Dennhardt, of the City of Toronto, in the Province of Ontario, MAKE OATH AND
SAY:

1. I am the Chief Financial Officer of the Applicant, Skylink Express Inc. ("**Skylink**" or the "**Applicant**"). I am also the Chief Operating Officer of Momentum Decisive Solutions Canada Inc. ("**Momentum**"), the sole shareholder of the Applicant and have been with Momentum since 2016. As such, I have knowledge of the following matters, except where otherwise stated.

2. I swear this affidavit:

- (a) in further support of an application (the "**CCAA Application**") by the Applicant for an Order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"); and
- (b) in response to an application brought by The Toronto-Dominion Bank ("**TD**") dated March 8, 2024 seeking, among other things, (a) the appointment of msi Spergel Inc. ("**Spergel**") as receiver and manager over the assets of Skylink; (b) in the alternative, an order appointing Spergel as interim receiver of Skylink; (c)

judgment in favour of TD against Momentum in the amount of \$15 million; and (d) costs (the “**Receivership Application**”).

3. This affidavit is supplemental to and should be read in conjunction with my affidavit sworn March 7, 2024 (the “**March 7 Affidavit**”). Capitalized terms used herein and not otherwise defined have the meaning given to them in the March 7 Affidavit.

I. INTRODUCTION

4. The background and circumstances leading up to Skylink’s CCAA are set out in my March 7 Affidavit and therefore not repeated herein.

5. I am deeply concerned that if the Receivership Application is granted, that this would cause immediate, irreversible and completely unnecessary harm to the Business and would, likely destroy the Business and almost all of its value. This would result in the loss of approximately 100 jobs and immediately cause disruption and loss for UPS, as Skylink **exclusively** services various remote areas in Canada for UPS pursuant to the UPS Contract. Additionally, the CCAA Application is fair and beneficial to all stakeholders, including TD.

Treatment of TD under the CCAA Application

6. As is set out in my March 7 Affidavit, the entire purpose of the CCAA application is to provide for a stabilized period during which Skylink can negotiate with UPS (which represents most of Skylink’s revenue) to renegotiate the UPS Contract to determine whether a restructuring of that contract was feasible, or to consider an orderly sale process for the sale of its assets and business if negotiations with UPS are unsuccessful.

7. As was explained to TD prior to these proceedings, Skylink needs to address the price escalation provisions in the UPS contract, as the existing provisions are not sufficient to cover Skylink’s increasing operating and other costs. As a result, Skylink is incurring losses and does

not have the liquidity to continue to operate. The contemplated CCAA proceedings provide a framework for Momentum to fund the business (subordinate to TD) while Skylink negotiates with UPS. Momentum has advised that it will only fund on a secured, subordinated basis and it will not fund indefinitely and for unlimited amounts. That was the framework for the urgency discussed with TD.

8. The proposed restructuring process, as outlined in the CCAA Application, is structured in a way that does not impact or prejudice TD in any way. In particular:

- (a) No payments on the TD Loan Facility have ever been missed and TD will continue to receive all scheduled payments of principal and interest (which is shown in the Applicant's Cash Flow Statement, at Exhibit "G" of my March 7 Affidavit);
- (b) Momentum is providing a DIP Facility of \$2.5 million to fund the proposed CCAA proceedings and Skylink's operating expenses during the CCAA proceedings. The Cash Flow Statement includes over \$450,000 of capital expenditures on Skylink's aircraft, which is TD's primary collateral. The capital expenditures enhance the value of the aircraft for the benefit of TD;
- (c) The proposed DIP Lender's Charge to secure the DIP Facility is to rank subordinate to the TD Loan Security – for clarity, the funding for the DIP Facility are being provided by way of a fresh injection of capital into Momentum, which funds are not otherwise part of Momentum's working capital;
- (d) The TD secured line of credit, which is projected to be \$300,000 as of the date of the CCAA application, will be paid down pursuant to the usual sweep and not re-drawn during the CCAA proceedings; and

- (e) The proposed Directors' Charge is proposed to be subordinate to the TD Loan Security.

9. I do note that the proposed Administration Charge of a maximum of \$350,000 is proposed to rank in priority to the TD Loan Security, however, the cost of the restructuring is intended to create value either through, (a) the successful restructuring of the UPS Contract; or (b) an orderly sale process for the sale of the aircraft, in a manner that ensures they do not become stranded, cease to be air worthy or otherwise diminishes or destroys value. I am advised by Ms. Stam that if a receiver is appointed, it would have a first charge on our assets.

10. The Applicant has gone into this process understanding that it has a window of time in which to pursue its restructuring. As set out above, there is no risk to TD's collateral (and in fact, the value of the collateral will be enhanced) as a result of the CCAA proceedings. Conversely, there is great risk to the collateral during a receivership, as discussed below.

11. In addition to providing for funding for capital expenditures, the Cash Flow Forecast also includes payment of all overhead costs related to the aircraft. If a receiver is appointed, TD will be required to fund all costs of maintaining, storing, securing and safeguarding the aircraft without any of the revenue generated from operations. The aircraft require routine maintenance to remain airworthy. TD will need to retain certain of the Company's maintenance staff and comply with all regulations, which is likely to be significantly challenging in this labour market.

Risk to Employees

12. As set out in my March 7 Affidavit, the Applicant employs close to 100 full, part time and contract employees. Payroll must be funded by Tuesday March 12, 2024 in order for it to be processed and paid to employees by Friday, March 15, 2024. One of the key drivers of the timing for the CCAA Application was the fact that Skylink required (and still requires) funding for payroll, which funding was to be provided by the DIP Facility. If the Receivership Application is

granted, there is no indication that any funding would be made available for payroll and this puts all of the Applicant's employees at unnecessary risk.

Risk to Operations

13. All airlines, and Skylink included, are heavily regulated. Skylink holds domestic and international licenses issued by the Canadian Transportation Agency, Air Operator Certificate and Approved Maintenance Organization Certificates issued by Transport Canada. Transport Canada requires key personnel (post holders) to be in management and control of the operating airline. There is significant risk in a receivership that all key personnel would leave including those who are required to maintain the permits and licenses.

14. I am also advised by Ms. Stam that the appointment of a receiver and manager would mean that management is displaced and that the receiver takes possession and control of the assets which might, on its own, invalidate the permits and licenses. I am advised by Ms. Stam that it is unusual to have a receiver appointed over aviation businesses, and even then, that it would only make sense in a shutdown and liquidation scenario.

15. It is highly likely that Skylink would have to immediately cease operations, which could mean:

- (a) aircraft and crew could be stranded in remote areas of Canada;
- (b) packages and shipments would not be delivered for UPS, resulting in liability to Skylink from UPS;
- (c) UPS would be unable to deliver to the remote locations exclusively serviced by Skylink – Skylink is UPS's sole provider of these services and there are no other service providers in Canada that could re-service UPS' requirements; and/or

- (d) aircraft would risk ceasing to be air worthy if, (i) not maintained in accordance with Transport Canada and manufacturer requirements; and/or (ii) required maintenance costs and capex were not provided for aircraft to meet regulatory standards.

16. Any one of these risks, let alone all of them will result in significant destruction of value.

The Furfaro Affidavit

17. The affidavit evidence submitted by Kathryn Furfaro pursuant to the Receivership Application (the “**Furfaro Affidavit**”) does not address how a receiver would address the many regulatory issues, operational costs, collateral preservation requirements, insurance needs or other issues that would need to be addressed in a receivership. It contains no specified plan for the orderly sale or maximization for the assets or the business and provides no evidence that the proposed CCAA proceedings prejudice TD. In my opinion, it is unlikely that a receiver will be able to operate the business, meaning that TD will be responsible for funding all of Skylink’s operating costs during the receivership without generating any revenue to offset these costs. Accordingly, it is my view that a receivership will be more costly for TD than a CCAA proceeding, that it will destroy value, and as noted, result in a significant loss of employment.

18. The Furfaro Affidavit also paints an incomplete and de-contextualized summary of conversations that took place among TD, KSV and representatives of Skylink in the past few days. In the discussions we had with TD, which were intended to be on a confidential basis and to keep our lending partner informed,

- (a) we outlined the current situation;
- (b) the proposed restructuring plan and the length to which we had to avoid prejudicing TD in any way; and

(c) we confirmed that, ultimately, Momentum continued to stand behind its guarantee.

19. We further communicated clearly that TD would continue to get paid its principal and interest, there was no intention to prime TD with DIP Lender's Charge and we and KSV wanted to provide a clear line of communication and any additional reporting they may require during the process.

20. We did not intend or expect that the specific contents of our meeting would be listed in a de-contextualized and inaccurate bullet point summary in a publicly filed affidavit. I am concerned that some of the ways in which this was characterized in the Receivership Application will be misinterpreted. Skylink has a longstanding relationship with UPS and provides services that are critical to UPS' business in Canada. Skylink intends to engage in good faith negotiations with UPS and is not trying to hide the fact that it intends to engage in a negotiation to try and restructure the UPS Contract.

21. Fundamentally the final decision to apply for CCAA protection, which was only made earlier this week, and the timing of our application has been driven by Skylink's liquidity needs which could not be postponed to allow protracted negotiations with UPS. This decision was made after considering all of our options to restructure our business and our desire to preserve the business as a going-concern, in consultation with our financial and legal advisors, who had been retained to assist Skylink with assessing our options prior to such final decision being made.

22. Lastly, the Receivership Application purports to seek a judgment against Momentum. I believe any such judgment is completely premature and unwarranted given the situation. The purported action against Momentum also may cause unnecessary disruption and confusion to Momentum's business. I was particularly surprised by this action given that TD confirmed

during our meeting that our accounts, line of credit and F/X credit facilities with TD would continue to be made available.

II. CONCLUSION

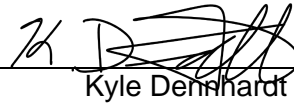
23. Ultimately, I have significant concerns that any proposed receivership with respect to Skylink would immediately and unnecessarily destroy material value in the assets of the business, resulting in the loss of approximately 100 jobs and disruption for UPS. The CCAA proceedings provide a material benefit for stakeholders (including TD) in the CCAA proceeding, with no prejudice to TD. For the reasons set out above, the Applicant requests the relief set out in the Proposed Initial Order and an order dismissing the Receivership Application.

SWORN by Kyle Dennhardt at the City of Toronto, in the Province of Ontario, before me on March 9, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)

Katie Marie Parent, a Commissioner, etc.,
Province of Ontario,
for Norton Rose Fulbright Canada LLP /
S.E.N.C.R.L., s.r.l., Barristers and Solicitors.
Expires July 9, 2024



Kyle Dennhardt

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Proceeding commenced at TORONTO

SUPPLEMENTAL AFFIDAVIT OF KYLE DENNHARDT

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