

Court File No. CV-22-00692309-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

PRICEWATERHOUSECOOPERS INC.
(solely in its capacity as court-appointed receiver and manager of Bridging Finance Inc. and
certain related entities and investment funds)

Applicant

- and -

**2305145 ONTARIO INC. (formerly SKYMARK FINANCE CORPORATION)
and MERK INVESTMENTS LTD.**

Respondents

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

**FOURTH REPORT OF THE RECEIVER
MARCH 28, 2024**

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Confidential

Appendix A – KLN Settlement Agreement and KLN Release dated as of March 28, 2024

1.0 INTRODUCTION

- 1.1 This fourth report (“**Fourth Report**”) is filed by Alvarez & Marsal Canada Inc. (“**A&M**”) in its capacity as Court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings and properties (the “**Property**”, or the “**Assets**”) of each of 2305145 Ontario Inc. (formerly Skymark Finance Corporation) (“**Skymark**”) and Merk Investments Ltd. (“**Merk**”, and together with Skymark, the “**Companies**”).
- 1.2 Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 6, 2023 (the “**Appointment Order**”), A&M was appointed Receiver of the Property.
- 1.3 The first report of the Receiver dated May 17, 2023 (the “**First Report**”) was filed in support of the Receiver’s motion seeking an order, among other things, approving a sale and investment solicitation process (the “**SISP**”) to market for sale all or a portion of the Assets of Skymark, which Assets included its portfolio of loans and leases to consumer borrowers for home renovations, water systems, HVAC systems and smart home improvements (the “**Consumer Portfolio**”).
- 1.4 On May 25, 2023, the Court issued an order (the “**SISP Approval Order**”), among other things, approving and authorizing the SISP and authorizing and directing the Receiver to perform its obligations thereunder, both as detailed in the sale process attached as Schedule “A” to the SISP Approval Order filed previously with this Court.

- 1.5 The second report of the Receiver dated September 15, 2023 (the “**Second Report**”) was filed in support of the Receiver’s motion seeking, among other things: (i) an order (the “**Approval and Vesting Order**”) approving a sale transaction (the “**Sale Transaction**”) for the Consumer Portfolio and certain related assets (collectively, the “**Purchased Assets**”), (ii) authorizing and approving the execution of an asset purchase agreement dated as of August 23, 2023 (the “**APA**”) by the Receiver and 5051802 Ontario Inc. (the “**Purchaser**”) and (iii) authorizing and directing the Receiver, to complete, execute and file articles of amendment on behalf of Skymark to change the name of Skymark to 2305145 Ontario Inc;
- 1.6 On September 26, 2023, the Court issued the Approval and Vesting Order.
- 1.7 The third report of the Receiver dated February 15, 2024 (the “**Third Report**”) was filed in support of the Receiver’s motion (the “**First Settlement Approval Motion**”) seeking an order (the “**First Settlement Approval Order**”), among other things:
- a) approving the Orr Settlement (as defined therein) as agreed to in minutes of settlement dated as of January 24, 2024 (the “**Orr Settlement Agreement**”), and the accompanying mutual full and final release (the “**Orr Release**”);
 - b) approving the Industrial Road Loan Settlement (as defined therein) as agreed to in minutes of settlement dated as of February 14, 2024 (the “**FIJ Settlement Agreement**”), and the accompanying mutual full and final release (the “**FIJ Release**”);
 - c) approving the Bridging Assignment (as defined therein) as agreed to in an assignment and assumption agreement dated as of February 15, 2024 (the

“Bridging Assignment Agreement”) pursuant to which the Receiver agreed to assign its interest in a loan made by Skymark to 2581150 Ontario Inc. (**“258”**) to the Bridging Receiver (as defined therein), in consideration of a release from the Bridging Receiver of claims it had against Skymark in respect of a substantially similar loan that Bridging advanced to Skymark; and

- d) sealing, subject to further order of the Court, copies of the Orr Settlement Agreement, the Orr Release, the FIJ Settlement Agreement, and the FIJ Release, which were filed as Confidential Appendices “B” and “C” to the Third Report, respectively.

1.8 On February 22, 2024, the Court issued the First Settlement Approval Order.

1.9 This Fourth Report is filed in support of the Receiver’s motion (the **“Second Settlement Approval Motion”**) seeking an order (the **“Second Settlement Approval Order”**), among other things:

- a) approving the KLN Settlement (as defined herein) as agreed to in minutes of settlement dated as of March 28, 2024 (the **“KLN Settlement Agreement”**) and the accompanying mutual full and final release (the **“KLN Release”**);
- b) sealing, subject to further order of the Court, copies of the KLN Settlement Agreement and the KLN Release, which will be filed as **Confidential Appendix “A”** to this Fourth Report;
- c) approving this Fourth Report and the conduct and activities of the Receiver described herein; and

- d) approving the Receiver's statement of receipts and disbursements for the period
March 6, 2023 to March 27, 2024, as set out in this Fourth Report.

2.0 TERMS OF REFERENCE AND DISCLAIMER

- 2.1 In preparing this Fourth Report, the Receiver has relied upon unaudited financial information, books and records and other documents provided by the Companies and discussion with management (collectively, the “**Information**”).
- 2.2 The Receiver has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CASs**”) pursuant to the *Chartered Professional Accountants Canada Handbook*, and accordingly, the Receiver expresses no opinion or other form of assurance contemplated under CASs in respect of the Information.
- 2.3 Future-oriented financial information referred to in this Fourth Report was prepared based on estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections. Even if the assumptions materialize, the variations in such future-oriented financial information could be significant.
- 2.4 This Fourth Report has been prepared to provide the Court with general information and an update regarding these receivership proceedings (the “**Proceedings**”) and to assist the Court in deciding whether to grant the Second Settlement Approval Order. This Fourth Report should not be relied upon for any other purpose or by any other person. The Receiver shall not be held responsible for any losses or liability incurred as a result of the circulation,

publication, reproduction or use of this Fourth Report contrary to the provisions of this paragraph.

- 2.5 Unless otherwise stated, all monetary amounts contained in this Fourth Report are expressed in Canadian dollars.

3.0 BACKGROUND

- 3.1 The background in respect of the Companies, as well as a description of the activities and circumstances leading to the appointment of the Receiver are contained in the application record filed by PricewaterhouseCoopers Inc. (“**PWC**”) as receiver and manager (in such capacity, the “**Bridging Receiver**”) of Bridging Finance Inc. and certain related entities and investment funds (collectively “**Bridging**”), in particular, the affidavit of Christine Sinclair (the “**Sinclair Affidavit**”) which was filed by PWC in support of its application to appoint the Receiver (collectively, the “**PWC Application Record**”).
- 3.2 The primary business of Skymark was providing financing and leasing to consumer borrowers for home renovations, water systems, HVAC systems and smart home improvements (described above as the Consumer Portfolio). In addition, Skymark’s assets include a series of “non-core” loans (the “**Non-Core Loans**”) made to third-parties outside of Skymark’s primary business.
- 3.3 Additional background information regarding the Companies, the Assets, including the Non-Core Loans and the Companies’ obligations to Bridging and other creditors is provided in the First Report, the Second Report, and the Third Report (collectively, the “**Receiver Reports**”).
- 3.4 The PWC Application Record, the Receiver Reports and other Court-filed documents, notices and orders in these Proceedings have been posted to the Receiver’s case website at www.alvarezandmarsal.com/skymark (the “**Case Website**”).

4.0 THE MAHAL AND GOLDEN MILES LOANS & THE KLN SETTLEMENT

Background

- 4.1 As discussed in the previous Receiver Reports, on application by Skymark and pursuant to an order issued on October 1, 2021, the Court appointed KSV Restructuring Inc. (“**KSV**”) as receiver and manager (the “**Mahal Receiver**”) of the assets, undertakings and properties of MVCI and Golden Miles owned or used in connection with a flour mill located on the Mahal Property (the “**MVCI/Golden Miles Receivership Proceedings**”).
- 4.2 On November 15, 2021, the Mahal Receiver filed an assignment in bankruptcy on behalf of MVCI and Golden Miles under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, pursuant to which KSV was appointed as the trustee in bankruptcy of MVCI and Golden Miles (the “**Bankruptcy**”).
- 4.3 On April 11, 2022, the Court granted an order approving the sale of all or substantially all of the assets of MVCI and Golden Miles to 12175622 Canada Inc. That sale (the “**Mahal Transaction**”) closed on May 18, 2022, for aggregate net proceeds of \$18.47 million.
- 4.4 As outlined in the Fifth Report to Court of the Mahal Receiver dated August 15, 2023, after accounting for accrued costs, the Mahal Receiver was holding \$16.7 million of proceeds from the Mahal Transaction. Approximately \$15 million of this was allocated to the Mahal Property (the “**Mahal Net Proceeds**”) and approximately \$1.7 million was allocated to the personal property owned by Golden Miles (the “**Personal Property Net Proceeds**”).
- 4.5 On August 23, 2023, the Mahal Receiver obtained an order (the “**Mahal Distribution Order**”) authorizing certain distributions to creditors from the Mahal Net Proceeds and the

Personal Property Net Proceeds, including the following distribution to the Receiver (on behalf of Skymark) totaling \$5,364,556 comprised of: (a) \$5,097,556 from the Mahal Net Proceeds; (b) \$247,000 from the Personal Property Net Proceeds; and (c) \$20,000 in respect of Skymark's costs in connection with a priority dispute in respect of the Personal Property Net Proceeds that was decided in favour of the Mahal Receiver and Skymark. The distribution was remitted to the Receiver on August 24, 2023.

4.6 The Mahal Distribution Order also contemplated various holdback amounts which, until recently, were the subject of priority disputes involving Skymark, including: (a) \$3,650,000 (the “**198Co Holdback**”), in respect of which 1989474 Ontario Inc. (“**198Co**”) had asserted a claim in priority to Skymark's as a result of an alleged trust declaration made by Merk and/or Skymark in favour of 198Co (the “**Orr Priority Claim**”); and (b) \$1,047,826 (the “**KLN Holdback**”), in respect of which KLN Holdings Inc. (“**KLN**”) had asserted a claim in priority to Skymark's as a result of an alleged transfer to KLN of a portion of a mortgage that Skymark held against the Mahal Property (the “**KLN Priority Claim**”).

4.7 The Orr Priority Claim was resolved as part of the Orr Settlement, which was approved by the Court in the First Settlement Approval Order. The KLN Priority Claim has now also been resolved pursuant to the KLN Settlement (defined below), which is the subject of this Fourth Report and the Second Settlement Approval Motion.

The KLN Holdback and Proposed KLN Settlement

4.8 On a number of occasions, Skymark transferred to KLN portions of mortgages it had registered on title to the Mahal Property as security for loans that KLN made to Skymark. In

the days prior to the Mahal Receiver seeking the Mahal Distribution Order, the former principals of Skymark provided the Receiver with certain documents and records which suggested, on the face of the documents, that funds allegedly advanced by KLN to Skymark in respect of one of the mortgage transfers had been repaid by Skymark.

4.9 The former principals of Skymark asserted that the transfer of a portion of the mortgage to KLN should not have been registered on title to the Mahal Property as the underlying debt obligation had been repaid. KLN denies that this payment was connected to the transfer of the mortgage at issue, and asserts that the mortgage transfer is validly registered on title such that any and all amounts owing in respect of the mortgage transfer are properly payable to KLN. As a result of these developments, the Mahal Receiver agreed to hold back the funds at issue from its distribution, which is defined herein as the KLN Holdback.

4.10 The Receiver's legal counsel has held a number of discussions with legal counsel for KLN. Those discussions have culminated in a settlement agreement (the "**KLN Settlement**") in respect of the KLN Holdback, whereby the Receiver (on behalf of Skymark and Merk) and KLN have agreed, subject to the terms and conditions contained in the KLN Settlement Agreement, to settle their dispute with respect to the mortgage transfer which will allow the Mahal Receiver to distribute the amounts that are subject to the KLN Holdback.

4.11 The terms of the KLN Settlement Agreement are confidential. A copy of each of the KLN Settlement Agreement and the KLN Release are provided in **Confidential Appendix "A"**. The Receiver is seeking an order sealing the Confidential Appendix in the Court file.

- 4.12 The effectiveness of the KLN Settlement is subject to Court approval in these Proceedings, as well all as the issuance of a Court order in the MVCI/Golden Miles Receivership Proceedings approving the respective distributions from the KLN Holdback to KLN and the Receiver in the amounts specified in the KLN Settlement Agreement.
- 4.13 The Receiver has advised the Mahal Receiver of the KLN Settlement, and the Mahal Receiver has agreed that the Second Settlement Approval Motion should be heard at the same time as the Mahal Receiver's motion for an order (the "**Second Mahal Distribution Order**") in MVCI/Golden Mile Receivership Proceedings approving the distribution of the 198Co Holdback and, subject to this Court's approval of the KLN Settlement, the KLN Holdback as well.
- 4.14 In the Receiver's view, the KLN Settlement represents a reasonable compromise between KLN and the Receiver, which will result in funds flowing to the estate and a resolution of the Receiver's (on behalf of Skymark and Merk) and KLN's claims in respect the KLN Holdback.

5.0 RECEIVER'S ACTIVITIES SINCE THE DATE OF THE THIRD REPORT

5.1 In addition to those activities described throughout this Fourth Report, the Receiver's activities since the date of the Third Report have included the following:

- attending the Court hearing held on February 22, 2024, regarding the motion seeking the First Settlement Approval Order;
- continuing to carry out the Receiver's duties and responsibilities in accordance with the Appointment Order, including controlling the receipts and disbursements;
- engaging with the Purchaser of the Purchased Assets with respect to matters related to the consumer loan portfolio and performance under the vendor take back note arrangement ("VTBN");
- engaging with the Receiver's legal counsel on various receivership matters, including, without limitation, the UK Property Loan (as defined in the Third Report) and the KLN Holdback;
- reviewing and retrieving records in compliance with the production order issued by this Court on February 22, 2024;
- communicating with the Applicant to provide status updates in respect of these Proceedings;
- monitoring the MVCI/Golden Miles Receivership Proceedings and the Bankruptcy, and liaising with the Mahal Receiver and its legal counsel in respect of status updates on the Mahal Receivership;

- negotiating and drafting the KLN Minutes of Settlement and the KLN Release;
- drafting this Fourth Report and the motion materials in respect of the Second Settlement Approval Motion;
- coordinating the development of and posting of relevant documents to the Case Website;
- communicating with the former external accountant of Skymark in respect of tax matters;
- responding to enquiries from stakeholders and others; and
- addressing all other matters pertaining to the administration of these Proceedings.

6.0 RECEIVER'S RECEIPTS AND DISBURSEMENTS

6.1 A summary of the Receiver's receipts and disbursements for the period from March 6, 2023 to March 27, 2024 (the "**Reporting Period**") related to Skymark is set out below:

Skymark Finance Corporation Receiver's Summary Receipts and Disbursements for the Period March 6, 2023 to March 27, 2024	
	Amount (CAD\$)
Receipts	
Proceeds from Non-Core Loans	5,789,556
Consumer Portfolio collections (note 1)	2,139,867
Interest	148,635
Total Receipts	8,078,058
Disbursements	
Professional fees and disbursements	1,839,255
Wages, benefits and source deductions	186,777
HST, net	139,363
Rent and utilities	35,627
Other legal fees and disbursements	34,634
Paralegal and security discharge costs	29,203
General and administration	11,743
Total Disbursements	2,276,601
Net Cash Flows	5,801,456

1. Consumer Portfolio collections include: (i) amounts collected prior to Closing; and (ii) monthly VTBN payments.

6.2 The Skymark receipts for the Reporting Period are comprised predominantly of: (a) Non-Core Loans proceeds, which include distributions received from the Mahal Receiver and certain settlement proceeds approved in the First Settlement Approval Order; and (b) Consumer Portfolio collections comprised of (i) monthly lease and loan payments (the "**Consumer Loan Payments**") collected in respect of the Consumer Portfolio during the Reporting Period, (ii) amounts remitted directly by consumer debtors who had chosen to pay out their Consumer Loan(s) in full prior to the maturity date (the "**Prepayments**"), and (iii) monthly Vendor Take-Back Note payments through January 2024 (the February payment is due and payable at the end of March).

- 6.3 Disbursements during the Reporting Period include: (a) the professional fees of the Receiver, Fasken, and UK counsel incurred in support of these Proceedings; (b) paralegal and other costs incurred in association with discharging NOSIs (as defined in the Third Report) in cases where Prepayments were made during the Reporting Period; (c) other costs incurred to operate the Consumer Loans business including general and administration costs.
- 6.4 As at March 27, 2024, the balance in (a) the Receiver's Skymark trust account was approximately \$5.8 million; (b) the Reserve Account established in accordance with the APA and described in Section 9.0 of the Third Report was approximately \$115,077; and (c) the Receiver's Merk trust account was approximately \$700.
- 6.5 There have been no cash flows generated by Merk during the Reporting Period as Merk is not operating, has no employees and has had no activity during the Reporting Period.

7.0 CONCLUSION AND RECOMMENDATION

7.1 The Receiver respectfully recommends that the Court make an order granting the relief sought in the Second Settlement Approval Motion for the following reasons:

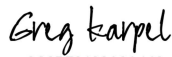
- a) the KLN Settlement will result in a material realization to the Skymark estate and eliminate the costs and risk associated with complex and protracted litigation in respect thereof;
- b) the KLN Settlement was negotiated among two sophisticated parties and represents a reasonable compromise of the claims and issues related to the KLN Holdback;
- c) the Bridging Receiver (likely the sole economic stakeholder in these Proceedings) supports and has consented to the KLN Settlement;
- d) the KLN Settlement Agreement contains a confidentiality provision which requires that the KLN Settlement Agreement and KLN Release be kept confidential;
- e) the confidentiality provision in the KLN Settlement Agreement is a material provision upon which KLN relied in executing such agreements;
- f) in the Receiver's experience, confidentiality provisions are typical in settlement agreements;
- g) while the Receiver is permitted to disclose the fact of the KLN Settlement (without disclosing its specific terms) it agreed to keep the underlying agreements confidential;

- h) the Receiver is therefore seeking a Court Order to seal **Confidential Appendix “A”** containing the KLN Settlement Agreement and the KLN Release in the Court file; and
- i) the Receiver is not aware of any party that would be prejudiced if this information is sealed on the terms described above.

7.2 Based on the foregoing, the Receiver respectfully recommends that the Court make an order granting the relief sought on the Second Settlement Approval Motion and detailed in Section 1.9 of this Fourth Report.

All of which is respectfully submitted,

Alvarez & Marsal Canada Inc., solely in its capacity as court-appointed receiver and manager of 2305145 Ontario Inc. (formerly Skymark Finance Corporation) and Merk Investments Ltd. and not in its personal or corporate capacity.

DocuSigned by:

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Per: Greg Karpel, Senior Vice-President

CONFIDENTIAL
APPENDIX “A”