

Court File No. CV-21-00664778-00CL

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

BETWEEN:

**SKYMARK FINANCE CORPORATION**

Applicant

and

**MAHAL VENTURE CAPITAL INC. and GOLDEN MILES FOOD  
CORPORATION**

Respondents

**FACTUM OF THE CORPORATION  
OF THE CITY OF BRANTFORD  
(Motion Returnable June 4, 2024 - Omit Tax Dispute hearing)**

May 30, 2024

**THE CORPORATION OF THE  
CITY OF BRANTFORD**  
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**TO: SERVICE LIST**

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## **PART I - OVERVIEW**

1. This Factum is filed by The Corporation of the City of Brantford (“City”). The City is a single tier municipality established under the laws of the Province of Ontario and is currently owed unpaid property taxes equal to \$1,091,422.94 plus interest with respect to omit tax notices that were issued on November 24, 2022 regarding the property municipally known as 155 Adams Blvd. Brantford, Ontario, N3S 7V8.
2. The City adopts the defined terms in the KSV and MNP Factums.
3. This Factum is filed seeking an order that either KSV, as Receiver, or the Purchaser is liable for the Omit Taxes. The City takes the position that one or the other must be liable for the unpaid property taxes and that the APA cannot be interpreted to deprive the City of its statutory obligation to collect and receive unpaid property taxes with respect to the Property.
4. The Question for the Court on this motion is who among KSV and the Purchaser is liable for the unpaid property taxes currently owing with respect to the Property.

## **PART II - FACTS**

5. On October 1, 2021 KSV was appointed as the receiver and manager of all the assets, undertakings and properties of Mahal Venture Capital Inc. and Golden

Miles Food Corporation owned or used in connection with the flour mill located on the property municipally known as 155 Admas Blvd. Brantford, Ontario. This included the real property upon which a flour mill was built.<sup>1</sup>

6. At that time, there were unpaid property taxes associated with the Property and the City was aware that the property was not properly assessed given that the flour mill had recently been built. Upon receiving notification of KSV's appointment, the City informed KSV that there were unpaid property taxes and that the property was not properly assessed. The City provided KSV with the following information by e-mail:

Upon review of this property, it has come to my attention that this property is still not properly assessed.

MPAC still has the property assessed as Industrial Vacant Land (IX) with a value of \$1,889,000.

A request was submitted to MPAC in the Spring to have this rectified as the property has not been vacant land for a least a couple of years.

I have followed up with MPAC again today with a request to have this property valued and assessed properly and omitted assessment notices issued before they close off assessment changes for 2021. This will result in additional taxes being added to the property and omitted tax notices being issued.<sup>2</sup>

7. The City followed up with the Municipal Property Assessment Corporation (MPAC) on October 28, 2021 and asked that MPAC re-assess the property.<sup>3</sup>

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<sup>1</sup> Affidavit of Pat Telfer signed May 2, 2024 at para 5.

<sup>2</sup> Affidavit of Pat Telfer signed May 2, 2024 at para 5 and Exhibit A.

<sup>3</sup> Affidavit of Pat Telfer signed May 2, 2024 at para 6.

8. On November 22, 2021 Justice McEwen issued an order approving the sale process affecting the property.<sup>4</sup>
  
9. Shortly thereafter, KSV made inquiries with the City regarding the status of unpaid property taxes. On January 18, 2022 KSV sent an e-mail to the City which included the following:

I am sending this email to follow up with you regarding your email below dated October 28, 2021.

We have not heard anything further from the City of Brantford or MPAC regarding the assessment changes referenced in your below email. As you are aware, we are conducting a sale process for this property and interested parties need to know what the future property tax obligations would be on this property. As far as we are aware, the property is still incorrectly classified as Industrial Vacant Land.<sup>5</sup>

10. It appears that KSV was in the process of advertising the Property and was aware that the status of unpaid property taxes was a material consideration which could impact the amount that a potential purchaser was willing to pay to acquire the Property.
  
11. The City responded to KSV on January 18 and informed KSV that the property had not yet been re-assessed by MPAC. KSV was made aware that MPAC was in the process of assessing the value of the land but that the process had not been completed at that point.<sup>6</sup>

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<sup>4</sup> Order of Justice McEwen dated November 22, 2021

<sup>5</sup> Affidavit of Pat Telfer signed May 2, 2024 at para 8 and Exhibit D

<sup>6</sup> Affidavit of Pat Telfer signed May 2, 2024 at para 8.

12. At that time KSV knew that the Property would be reassessed and that an additional tax liability for previous tax years would be assessed. KSV acknowledges that prospective purchasers were never explicitly made aware of the pending reassessment<sup>7</sup>.
13. On April 11, 2022 the Court granted the Sale Approval Order with respect to the Property and on May 18, 2022 the sale closed.<sup>8</sup>
14. On May 19, 2022 KSV wrote to the City to confirm the sale of the Property and to request that any subsequent tax bills be sent to the Purchaser.<sup>9</sup>
15. Prior to that, the City delivered two tax certificates to KSV. The tax certificates were in the amount of \$156,501.53 and \$3,710.13 respectively. As of that date, the tax certificates represented the assessed, but unpaid property taxes affecting the Property. On May 25, 2022 KSV sent the City a cheque in the amount of \$167,402.39. This cheque covered the assessed, but unpaid property taxes (including interest) up to May 31, 2022. The City received the cheques on May 30, 2022 and deposited them on the same date.<sup>10</sup>
16. MPAC completed its reassessment of the Property in October 2022 and issued three omit tax assessments to the City on October 28, 2022. The omit tax

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<sup>7</sup> Factum of the Court Officer at para 53.

<sup>8</sup> Factum of the Court Officer at para 9 and 11, Fifth Report at para 1.0(5) and 1.0(7).

<sup>9</sup> Affidavit of Pat Telfer signed May 2, 2024 at para 14.

<sup>10</sup> Affidavit of Pat Telfer signed May 2, 2024 at para 16 and Exhibit I.

assessments were for the years 2020, 2021 and 2022 and the reassessment resulted in the assessed value of the Property increasing. As a result, the City was obligated by statute to send Omit Tax Bills to the property owner. The Omit Tax Bills were for the following amounts:<sup>11</sup>

- i. 2020 - \$391,116.18
- ii. 2021 - \$347,819.93
- iii. 2022 - \$352,486.83

17. The Omit Tax Bills were issued to the Purchaser on November 24, 2022 and the City did not receive any response from the Purchaser until legal counsel for Farm Credit Canada (FCC) wrote to the City in June 2023 disputing liability for the Omit tax claims.<sup>12</sup>

18. FCC was the lender that funded the purchase of the Property. FCC denied liability for the Omit Taxes and took the position that the approval and vesting order issued by the Court in 2022 relieved the Purchaser from any liability associated with the taxes.

19. To date, the Omit Taxes have not been paid and the total amount due and owing to the City as of June 1, 2024 with respect to the Omit Taxes will be **\$1,316,529.16** inclusive of interest.

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<sup>11</sup> Affidavit of Pat Telfer signed May 2, 2024 at para 17 and Exhibit J.

<sup>12</sup> Affidavit of Pat Telfer signed May 2, 2024 at para 19 and Exhibit L.

## **PART III – ISSUES**

20. This Factum addresses the following issues:

- i. Is the City entitled to receive payment on account of the Omit Taxes?
- ii. Who between KSV and the Purchaser is liable to pay the Omit Taxes?
- iii. If the Purchaser is liable to pay the Omit Taxes does the City's claim rank ahead of Farm Credit Canada (FCC)?

21. For the reasons that follow, the City submits that it is obligated to collect the Omit Taxes and it is entitled to receive payment on account of same. The City also submits that the APA and AVO cannot eliminate the City's entitlement to receive payment of the Omit Taxes and that either KSV or the Purchaser must be obligated to pay the Omit Taxes.

## **PART IV – LAW AND DISCUSSION**

### **A. Municipal Entitlement and Obligation**

22. The City has a statutory obligation to issue and collect Omit Taxes if MPAC exercises its authority under the *Assessment Act*, R.S.O. 1990, c. A.31 to reassess a property for the current tax year and/or the two preceding tax years.

23. MPAC has the exclusive authority to assess and reassess properties across Ontario and is required to prepare an assessment role for each municipality in Ontario on an annual basis.<sup>13</sup>

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<sup>13</sup> Assessment Act, R.S.O. 1990, c. A.31, section 14(1).



24. If the nature of the property changes during the current tax year or the two proceeding tax years MPAC is required to re-assess the property, and upon doing so will issue a notice to the municipality within which the land resides. The Municipality is then required to send an omit tax notice to the property owner.<sup>14</sup>

25. Under the *Municipal Act*, 2001, S.O. 2001, c. 25 taxes are deemed to be imposed on January 1 of each year and the City's treasurer is obligated to adjust the tax roll for any given year to reflect changes to the assessment roll based on changes made under the *Assessment Act*. If the changes made under the *Assessment Act* result in a greater tax liability the treasurer is required to send a new tax bill to collect the additional tax amount. Taxes may be recovered against the current owner or the subsequent owner of the assessed land and unpaid property taxes form a special priority lien which has priority over every other claim except the Crown.<sup>15</sup>

26. The special priority lien created by section 349(3) of the *Municipal Act* cannot be lost or impaired by any neglect, omission or error of the municipality or through taking no action to register a tax arrears certificate.<sup>16</sup>

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<sup>14</sup> Assessment Act, R.S.O. 1990, c. A.31, section 31, 33 and 34

<sup>15</sup> Municipal Act, 2001, S.O. 2001, c. 25, sections 307, 340, 341 and 349

<sup>16</sup> Municipal Act, 2001, S.O. 2001, c. 25, section 349(3)

27. Together, the *Assessment Act* and the *Municipal Act* operate to require MPAC to re-assess any property if there is a change in the nature of the land and a municipality is required to issue a new tax notice and to collect any amount of property tax which is in excess of the amount that was initially levied.

28. The language of the statutory sections noted above is mandatory and not permissive and a municipality must collect any amount of tax that is levied as a result of a reassessment.

29. In *Credit Union Central of Ontario Ltd. v. Heritage Property Holdings Inc.* 2008

ONCA 167 the Ontario Court of Appeal endorsed a motion judge's findings regarding the priority lien created by the above noted sections of the *Assessment Act* and the *Municipal Act*. At paragraph 16 the Court of Appeal repeated the motion judge's findings and said:

Certain aspects of those reasons relate only indirectly to the issue at hand, addressing the special lien that the City of Hamilton retains over the property for tax arrears by virtue of the *Assessment Act*, R.S.O. 1990, c. A.31, ss. 33 and 34, and the *Municipal Act*, 2001, S.O. 2001 c. 25, ss. 340, 341 and 349. No issue is taken with the motion judge's analysis of these provisions or with his conclusion that the City of Hamilton retains a special lien on the property "in respect of putative outstanding property taxes and supplementary or omitted taxes through an as yet inchoate reassessment for 2005 to 2007." The parties also do not take issue with the motion judge's characterization of the special lien or his determination as to the person or persons responsible for the payment of any taxes found to be owing on the reassessment. On those matters, the motion judge observed:

The liens arising from taxes payable for the years 2005, 2006 and 2007 are deemed to be effective on January 1 in each year respectively: *Municipal Act*, s. 307. Once the reassessment process is completed and the additional taxes determined, those taxes will be imposed and due to the City with a special lien on the subject lands

in priority to every claim, privilege, lien or encumbrance of every person except the Crown: Municipal Act, s. 349(3).

Taxes may be recovered with costs as a debt due to the municipality from the taxpayer originally assessed for them and from any subsequent owner of the assessed land. If the lien arises prior to the date of sale then the purchaser, as a subsequent owner, is liable to the City. If the lien arises subsequent to the date of sale then the purchaser is liable to the municipality as the taxpayer originally assessed for the property: s. 349(1) of the Municipal Act.<sup>17</sup>

30. This case is directly on point with the facts of the present case and supports the City's position that the municipality cannot be liable for the Omit Taxes. In this case, the Ontario Court of Appeal correctly decided that no matter when the lien arises someone is liable to pay the municipality.

31. The Court's finding is consistent with a long line of cases from the Ontario Court's which highlight the importance of taxation to society and the policy considerations which elevate a municipalities priority above all others in the context of bankruptcy and receivership.

32. In *Toronto Dominion Bank v. Usarco Ltd.*, [2001] O.J. No. 649<sup>18</sup>, the Ontario Court of Appeal summarized case law discussing the priority which municipal taxes enjoy above all other claims. Although the case was decided in the context of a private lender asserting priority over unpaid municipal taxes, the Court's

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<sup>17</sup> *Credit Union Central of Ontario Ltd. v. Heritage Property Holdings Inc.* 2008 ONCA 167 at para 16 [emphasis added]

<sup>18</sup> *Toronto Dominion Bank v. Usarco Ltd.*, [2001] O.J. No. 649 at para 33-39

summary of the case law remains instructive. From this case, the following principles can be discerned:

- i. Ontario Courts have recognized the importance of taxation to society dating back to 1924;
- ii. Taxes serve important social purposes and are entitled to judicial respect provided they are imposed by a proper legislative body;
- iii. Property taxes are required to ensure that municipalities can provide services which they are required to provide;
- iv. The statutory scheme enacted through the *Municipal Act* and the *Assessment Act* prevent an order granting a receiver and manager priority over unpaid municipal taxes.

33. In essence, Ontario Courts have consistently recognized the importance of property taxes and the law has developed to ensure that municipalities are able to collect unpaid property taxes in receivership proceedings despite the varied fact scenarios which have been presented to the Courts.

34. With that in mind, the City asserts that regardless of how the Court interprets the APA and the AVO the City must be paid the full amount of the Omit Taxes plus interest and either KSV or the Purchaser is responsible for doing so.

## **B. Which Party is Obligated to Pay**

35. This question turns on the Court's interpretation of the APA and the AVO. The Court's interpretation should be informed by the manner in which Omit Taxes have previously been characterized in the context of receivership proceedings.

36. The Ontario Court of Appeal has already considered a case that is factually very similar to the facts of this case. In *Credit Union Central of Ontario Ltd. v. Heritage Property Holdings Inc.* 2008 ONCA 167 the Ontario Court of Appeal considered a fact scenario that is virtually identical to the facts of the present case.

37. In that that case, the purchaser signed an agreement of purchase of sale to purchase a property that was being used as a golf course. After signing the agreement of purchase and sale, but before the sale closed, the purchaser learned that MPAC was going to reassess the property and that the property taxes for the current tax year as well as the two previous tax years would increase. There was a dispute regarding whether the purchaser or the Receiver would be liable for the Omit Taxes once the reassessment was completed and Omit Tax bills were issued.<sup>19</sup>

38. In order to properly interpret the Agreement of Purchase and Sale and the approval and vesting order the court was required to determine how to

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<sup>19</sup> *Credit Union Central of Ontario Ltd. v. Heritage Property Holdings Inc.* 2008 ONCA 167 at para 1-4.

characterize the omit tax claims which everyone knew would be issued, but had not been issued at the time the sale concluded.

39. At paragraphs 27 and 30 the Court of appeal characterized the Omit Taxes as a “future claim for taxes that existed at the time of closing”. In essence, the Court of Appeal confirmed that the Omit Taxes in that case were not a future or contingent liability, but rather were a liability that existed prior to, and at the time of closing.<sup>20</sup>

40. The APA and the AVO must be interpreted in light of the Court of Appeal’s finding in *Credit Union Central of Ontario Ltd.*

41. Part of the definition of “permitted encumbrances” in the APA is:

Encumbrances related to Taxes and utilities arising by operation of law (statutory or otherwise) which relate to or secure Liabilities that in each case are not yet due or are not in arrears or, if due or in arrears, the validity of which is being contested<sup>21</sup>

42. Sections 2.1 and 2.2 of the APA state:

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<sup>20</sup> Credit Union Central of Ontario Ltd. v. Heritage Property Holdings Inc. 2008 ONCA 167 at para 27 and 30.

<sup>21</sup> Sixth Report of KSV a page 99, APA article 1.1 [Emphasis Added]

2.1 Purchase and Sale of Purchased Assets. At the Closing Time, on and subject to the terms and conditions of this Agreement, the Sale Procedure and the Approval and Vesting Order, the Vendor shall sell to the Purchaser, and the Purchaser shall purchase from the Vendor, all of the Debtors' and the Vendor's right, title and interest, if any, in and to the Purchased Assets, which shall be free and clear of all Encumbrances other than Permitted Encumbrances, to the extent and as provided for in the Approval and Vesting Order.

2.2 Assumption of Assumed Liabilities. At the Closing Time, on and subject to the terms and conditions of this Agreement, the Purchaser shall assume and agree to pay when due and perform and discharge in accordance with their terms, the Assumed Liabilities. Notwithstanding any other provision of this Agreement, the Purchaser shall not assume any Liabilities hereunder other than the Assumed Liabilities, except as required under Applicable Law<sup>22</sup>

43. Article 4 of the AVO states:

4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "Receiver's Certificate"), all of the Receiver's and

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<sup>22</sup> Sixth Report of KSV a page 103-104, APA article 2.1 and 2.2 [Emphasis Added]

the Companies' right, title and interest in and to the Purchased Assets described in the APA shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice McEwen dated October 1, 2021; (ii) all charges, security interests or claims evidenced by registrations pursuant to the Personal Property Security Act (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule "B" hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "C") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets and are non-enforceable and non-binding as against the Purchaser.<sup>23</sup>

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<sup>23</sup> Sixth Report of KSV at page 136, AVO paragraph 4 [Emphasis Added]



44. Based on the terms of the APA, the AVO and the characterization of omit taxes in *Credit Union Central of Ontario Ltd.*, the City submits that KSV should be liable for the Omit Taxes.

45. The Omit Taxes were a liability which existed prior to the date of closing and by virtue of section 307 of the *Municipal Act* are deemed to be due on January 1 of the year in which they are imposed. As a result, the Omit Taxes, by operation of law, were “due and owing” prior to the date of closing. Accordingly, the Omit Taxes were not a permitted encumbrance under the APA and KSV should be responsible to pay.

46. “Schedule C” of the AVO<sup>24</sup> repeated the language of the APA and the same analysis applies with respect to when the Omit Taxes are deemed to be due.

47. However, if the Court disagrees and decides that KSV is not liable for the Omit Taxes, it follows that the Omit Taxes are a permitted encumbrance and are not vested out.

48. If the Court decides that the Omit Taxes were not yet due and were not in arrears as of the date of closing, the APA and the AVO expressly permit the Omit Tax liability as an encumbrance that is not vested out by the AVO.

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<sup>24</sup> Sixth Report of KSV at page 144, AVO Schedule C.

49. Section 2.1 of the APA states that the purchased assets will be conveyed to the Purchaser free and clear of all encumbrances other than Permitted Encumbrances to the extent provided by the AVO. The AVO specifically carves out the encumbrances listed in Schedule C of the Order as permitted encumbrances and Schedule C repeats the definition of Permitted Encumbrances contained in the APA.

50. As a result, either KSV or the Purchaser must be liable for the Omit Taxes.

51. MNP Ltd.'s Factum identifies *Grant Thornton Limited et al. 1902408 Ontario Ltd.*, 2022 ONSC 2011 as authority for the proposition that purchasers in the context of receiverships must be able to rely on vesting orders or the modern insolvency regime would crumble.<sup>25</sup>

52. That case is distinguishable on the facts, particularly because the Court did not expressly consider what was included as a "permitted encumbrance" under schedule F of the relevant approval and vesting order. Rather, the Court in that case considered whether the word "levies" should be interpreted, in the context of that case, to include municipal taxes that were issued by way of an omit tax notice.<sup>26</sup>

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<sup>25</sup> *Grant Thornton Limited et al. v. 1902408 Ontario Ltd.*, 2022 ONSC 2011 at para 49

<sup>26</sup> *Grant Thornton Limited et al. v. 1902408 Ontario Ltd.*, 2022 ONSC 2011 at para 46 and 47

53. In this case, the Court must determine whether the Omit Taxes are a permitted encumbrance under the express terms of the APA and Schedule C of the AVO.

54. As noted above, based on the Ontario Court of Appeal decision in *Credit Union Central of Ontario Ltd* and the express terms of the APA and AVO, liability appears to rest with KSV for the Omit Taxes. However, if the Court finds that KSV is not responsible for the Omit Taxes, the court should find that the Purchaser is responsible for the Omit Taxes.

### **C. Omit Taxes Rank ahead of FCC**

55. MNP Ltd. suggests that if the Purchaser is liable for the Omit Taxes they are an unsecured claim in the GPM receivership and rank behind the secured claims of FCC.<sup>27</sup>

56. MNP has provided no authority for this proposition and in fact the proposition is contrary to decided case law, the *Assessment Act* and the *Municipal Act*.

57. In *Toronto Dominion Bank v. Usarco Ltd.* [2001] O.J. No. 649 the Ontario Court of Appeal determined that a municipalities claim for realty taxes in a receivership ranks ahead of a fully secured creditor.<sup>28</sup> In fact, Ontario Courts have decided that a municipalities claim for realty taxes ranks ahead of a receiver's claim for

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<sup>27</sup> Factum of MNP Ltd. at para 43.

<sup>28</sup> *Toronto Dominion Bank v. Usarco Ltd.* [2001] O.J. No. 649 at para 2 and

management fees and disbursements.<sup>29</sup> Accordingly, if the Purchaser is found to be responsible for the Omit Taxes the City's claim would not only rank ahead of FCC's claim, it would also rank ahead of MNP Ltd.'s claims for management fees and disbursements.

58. This is consistent with the *Municipal Act* which establishes a special lien which ranks in priority to any other claim, privilege, lien or encumbrance except the Crown.<sup>30</sup>

## **PART V – ORDER REQUESTED**

59. For the Reasons set out above, the City requests that the Court determine that KSV as Receiver is liable for the Omit Taxes.

60. In the alternative, the City requests that the Court make an Order that the Purchaser is responsible for the Omit Taxes and that the City's claim is:

- i. Not vested out as a result of the AVO dated April 11, 2022;
- ii. Ranks ahead of FCC's secured claim in the GPM Receivership; and
- iii. Ranks ahead of any claim advanced by MNP Ltd. for management fees and disbursements in the GPM Receivership.

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<sup>29</sup> Toronto Dominion Bank v. Usarco Ltd. [2001] O.J. No. 649 at para 38 citing *Hamilton Wentworth Credit Union Ltd. (Liquidator of) v. Courtcliffe Parks Ltd.* (1995), 28 M.P.L.R. (2d) 59 at para 72-73.

<sup>30</sup> Municipal Act, 2001, S.O. 2001, c. 25, section 349(3).

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 30<sup>th</sup> day of May, 2024.

A handwritten signature in black ink, appearing to read "G Daley". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

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Geoffrey B. Daley

## **SCHEDULE “A”**

### **LIST OF AUTHORITIES**

1. Credit Union Central of Ontario Limited v. Heritage Property Holdings Inc., 2008 ONCA 167 (CanLII) <https://canlii.ca/t/1w0s7>
2. Toronto-Dominion Bank v. Usarco Ltd., 2001 CanLII 24004 (ON CA), <https://canlii.ca/t/1fbns>
3. Grant Thornton Limited et al. v. 1902408 Ontario Ltd., 2022 ONSC 2011 (CanLII), <https://canlii.ca/t/jnlrb>

## SCHEDULE "B"

### TEXT OF RELEVANT STATUTES AND REGULATIONS

#### Assessment Act, R.S.O. 1990, c. A.31

##### Assessment Role

**14** (1) The assessment corporation shall prepare an assessment roll for each municipality, for each locality and for non-municipal territory and the assessment roll shall contain the following information as well as the information required under subsections (1.1) and (1.2):

1. The name and surnames, in full, if they can be ascertained, of all persons who are liable to assessment in the municipality or in the non-municipal territory, as the case may be.
2. The amount assessable against each person who is liable to assessment, opposite the person's name.
3. A description of each property sufficient to identify it.
4. The number of acres, or other measures showing the extent of the land.
5. The current value of the land.
6. The value of the land liable to taxation.
7. The value of land exempt from taxation.
8. The classification of the land.
9. Such other information as may be prescribed by the Minister. 2006, c. 33, Sched. A, s. 13 (1).

##### Additional contents, land in a municipality or locality

(1.1) The assessment roll shall also contain the following information respecting land in a municipality or locality:

1. The name of every tenant who is a supporter of a school board.
2. The type of school board the owner or tenant, as the case may be, supports under the *Education Act*.
3. Whether the owner or tenant, as the case may be, is a French-language rights holder.
4. Religion of the owner or tenant, as the case may be, if he or she is Roman Catholic.

5. In the case of a corporation, whether the corporation is a designated ratepayer under the *Education Act*.
6. Whether the land is liable to school taxes only.
7. The value of the land leased to tenants referred to in subsection 4 (3) of the *Municipal Tax Assistance Act*. 2006, c. 33, Sched. A, s. 13 (1).

### **Notice of assessment**

**31** (1) If there is a change in any information described in subsection 14 (1), (1.1) or (1.2) in respect of a parcel of land and the change is not reflected in the last assessment roll as returned, the assessment corporation shall deliver to every person described in subsection 14 (1) who is affected by the change a notice, in a form approved by the Minister, showing,

- (a) the person's assessment and the current value of the parcel of land;
  - (a.1) the classification of the parcel of land;
- (b) the person's school support, if applicable; and
- (c) such other particulars as are directed by the Minister to be shown in the notice,

and the assessment corporation shall enter in the roll opposite the name of the person the date of delivery of the notice or shall make one or more certificates to be attached to the roll or to any part of the roll certifying the date or dates upon which the notices were delivered, and the entry, certificate or certificates are proof, in the absence of evidence to the contrary, of the delivery. R.S.O. 1990, c. A.31, s. 31 (1); 1997, c. 5, s. 20; 1997, c. 43, Sched. G, s. 18 (23); 2004, c. 7, s. 4 (1); 2006, c. 33, Sched. A, 21 (1-3).

### **Exception**

(1.0.1) Subsection (1) does not apply where the only change is an adjustment made under section 19.1. 2008, c. 19, Sched. A, s. 4.

### **Time for delivery of notice**

(1.1) The assessment corporation shall deliver a notice required under subsection (1) no later than,

- (a) the 14th day before the day the assessment roll is completed, if the Minister does not prescribe an earlier day; or
- (b) the day prescribed by the Minister, if the Minister prescribes an earlier day. 2004, c. 7, s. 4 (2); 2006, c. 33, Sched. A, s. 21 (4).



### **Delivery of notice, residents**

(2) If the person assessed is resident in the municipality or non-municipal territory, as the case may be, in which the land is located, the notice shall be delivered by leaving it at the person's residence or place of business or by mailing it addressed to the person at the person's residence or place of business. 2006, c. 33, Sched. A, s. 21 (5).

### **Same, non-residents**

(3) If the person assessed is not resident in the municipality or non-municipal territory, as the case may be, in which the land is located, the notice shall be delivered by mailing it addressed to the person at the person's last known address. 2006, c. 33, Sched. A, s. 21 (5).

### **Notice of address**

(4) When a person assessed furnishes the assessment corporation with a notice in writing giving the address to which the notice of assessment may be delivered to the person and requesting that the notice be delivered to the address, the notice of assessment shall be so delivered, and the notice stands until revoked in writing. R.S.O. 1990, c. A.31, s. 31 (4); 1997, c. 43, Sched. G, s. 18 (23).

### **Information notice**

(5) The assessment corporation shall deliver with the notice required by subsection (1), or publish in a newspaper having general circulation in the municipality or area in which the land assessed is situated, a notice setting out,

- (a) the last day for making a request for reconsideration or appealing to the Assessment Review Board, as the case may be;
- (b) the times and places where the information in the assessment roll may be examined and discussed with the assessment corporation;
- (c) any significant and unusual change in the amount of the assessment; and
- (d) any other information which, in the opinion of the assessment corporation, is desirable,

but any failure to send the notice does not affect the validity of any assessment. R.S.O. 1990, c. A.31, s. 31 (5); 1997, c. 43, Sched. G, s. 18 (23); 2006, c. 33, Sched. A, s. 21 (6, 7); 2008, c. 7, Sched. A, s. 5.

### **Rights of way**

(6) Subsection (1) applies with respect to land referred to in subsection 3 (4) with the following modifications:

1. The clauses in subsection (1), other than clause (c), do not apply.
2. The notice shall show the number of acres or other measure showing the extent of the land. 1997, c. 29, s. 16.

### **Application to certain changes**

(7) Subsection (1) applies with respect to a change described in subsection 34 (1) in respect of which the assessment corporation could have, but did not, make an assessment under that subsection. 1998, c. 3, s. 6; 2006, c. 33, Sched. A, s. 21 (8).

### **Regulations, notices**

(8) The Minister may make regulations that apply if a parcel of land is assessed against more than one person,

- (a) providing that in specified circumstances notice under subsection (1) need not be given to any persons to whom notice is required under that subsection;
- (b) providing that in specified circumstances notice under subsection (1) may be given to the persons specified in the regulation instead of to all or to any of the persons to whom notice is required under that subsection. 2012, c. 8, Sched. 1, s. 2.

### **Change re land omitted from tax roll**

**33** (1) The following rules apply if land liable to assessment has been in whole or in part omitted from the tax roll for the current year or for all or part of either or both of the last two preceding years, and no taxes have been levied for the assessment omitted:

1. The assessment corporation shall make any assessment necessary to correct the omission.
2. If the land is located in a municipality, the clerk of the municipality shall alter the tax roll upon receiving notice of the change, and the municipality shall levy and collect the taxes that would have been payable if the assessment had not been omitted.
3. If the land is located in non-municipal territory, the Minister shall alter the tax roll upon receiving notice of the change, and shall collect the taxes that would have been payable if the assessment had not been omitted. 2006, c. 33, Sched. A, s. 23 (1).

(1.1) REPEALED: 2020, c. 36, Sched. 3, s. 6 (1).

### **Definition**

(2) For the purposes of this section,

“omitted” includes the invalidation or setting aside of an assessment by any court or assessment tribunal on any ground except that the land is not liable to taxation.  
R.S.O. 1990, c. A.31, s. 33 (2).

### **Changes to next assessment roll**

(6) If the assessment corporation makes an assessment or classification under this section, the appropriate changes shall be made on the assessment roll for the next year, even if the day as of which land is valued for the next year is the same as for the current year. 1998, c. 3, s. 7; 2006, c. 33, Sched. A, s. 23 (4)

### **Supplementary assessments to be added to tax roll**

**34** (1) If, after notices of assessment have been given under section 31 and before the last day of the taxation year for which taxes are levied on the assessment referred to in the notices,

- (a) an increase in value occurs which results from the erection, alteration, enlargement or improvement of any building, structure, machinery, equipment or fixture or any portion thereof that commences to be used for any purpose;
- (b) land or a portion of land ceases,
  - (i) to be exempt from taxation,
  - (ii) to be farm lands the current value of which is determined in accordance with subsection 19 (5),
  - (iii) to be conservation land the current value of which is determined under subsection 19 (5.2),
  - (iii.1) to be land in the managed forests property class the current value of which is determined under subsection 19 (5.2) or (5.2.1),
  - (iv) to be land the current value of which is based on current use under regulations made under subsection 19 (2), or
  - (v) to be classified in a subclass of real property;
- (c) Repealed: 1997, c. 5, s. 22 (1).
- (d) a pipeline increases in value because it ceases to be entitled to the reduction provided for in subsection 25 (9),

the assessor may make the further assessment that may be necessary to reflect the change, and upon receiving notice of the further assessment, the clerk of the municipality or, in the case of land in non-municipal territory, the Minister shall enter a supplementary assessment on the tax roll and the amount of taxes to be levied thereon shall be the amount of taxes that would have been levied for the portion of the taxation

year left remaining after the change occurred if the assessment had been made in the usual way. R.S.O. 1990, c. A.31, s. 34; 1997, c. 5, s. 22 (1); 1997, c. 29, s. 18 (1); 1998, c. 3, s. 8 (1); 2002, c. 17, Sched. F, Table; 2005, c. 28, Sched. A, s. 4; 2006, c. 33, Sched. A, s. 24 (1).

### **Limitations**

(2.1) The following apply with respect to subsection (2):

1. Subsection (2) does not affect the tax levied for the taxation year in respect of a part of the taxation year preceding the change event.
2. Paragraph 1 does not apply to a change event described in clause (c) of the definition of “change event” in subsection (2.2).
3. REPEALED: 2000, c. 25, s. 9.

1998, c. 3, s. 8 (2); 2000, c. 25, s. 9.

### **“change event”**

(2.2) For the purposes of subsections (2) and (2.1),

“change event” includes,

- (a) a change in the use of all or part of the parcel of land,
- (b) an act or omission that results in all or part of the parcel of land ceasing to be in a class or subclass of real property, and
- (c) the opting, by a council of a single or upper tier municipality, to have a class or subclass of real property apply or cease to apply within the municipality. 1998, c. 3, s. 8 (2); 2002, c. 17, Sched. F, Table; 2018, c. 8, Sched. 1, s. 8 (2).

(2.3) REPEALED: 2006, c. 33, Sched. A, s. 24 (3).

### **Re-classification**

(3) If subclause (1) (b) (ii) or (v) apply with respect to land or a portion of land, the assessment corporation, in addition to making a further assessment, may also change the classification of the land. 1997, c. 29, s. 18 (2); 2006, c. 33, Sched. A, s. 24 (4).

### **Changes to next assessment roll**

(4) If the assessment corporation makes an assessment or classification under this section, or could have done so but did not, the appropriate changes shall be made on the assessment roll for the next year, even if the day as of which land is valued for the next year is the same as for the current year. 1998, c. 3, s. 8 (3); 2006, c. 33, Sched. A, s. 24 (5).

## **Municipal Act, 2001, S.O. 2001, c. 25**

### **Taxes to be levied equally**

**307** (1) All taxes shall, unless expressly provided otherwise, be levied upon the whole of the assessment for real property or other assessments made under the *Assessment Act* according to the amounts assessed and not upon one or more kinds of property or assessment or in different proportions. 2001, c. 25, s. 307 (1).

### **Tax ratios**

(2) If, in this or any other Act or any by-law passed under any Act, taxes, fees or charges are expressly or in effect directed or authorized to be levied upon rateable property of a municipality for municipal purposes, unless expressly provided otherwise,

- (a) such taxes, fees or charges shall be calculated as percentages of the assessment for real property in each property class; and
- (b) the tax rates and the rates to raise the fees or charges shall be in the same proportion to each other as the tax ratios established under section 308 for the property classes are to each other. 2001, c. 25, s. 307 (2).

### **Deemed imposition**

(3) Taxes imposed for a year shall be deemed to have been imposed and to be due on January 1 of the year unless the by-law imposing the tax provides otherwise. 2001, c. 25, s. 307 (3).

### **Tax roll**

**340** (1) The treasurer of a local municipality shall prepare a tax roll for each year based on the last returned assessment roll for the year. 2001, c. 25, s. 340 (1).

### **Contents**

- (2) The tax roll shall show for each separately assessed property in the municipality,
- (a) the assessment roll number of the property;
  - (b) a description of the property sufficient to identify it;
  - (c) the name of every person against whom land is assessed, including a tenant assessed under section 18 of the *Assessment Act*;
  - (d) the assessed value of the property;
  - (e) the total amount of taxes payable;

- (f) the amounts of taxes payable for,
  - (i) the general local municipality levy,
  - (ii) each special local municipality levy,
  - (iii) the general upper-tier levy,
  - (iv) each special upper-tier levy,
  - (v) each school board,
  - (vi) all other purposes; and
- (g) if parts of the property are in two or more property classes, the matters set out in clauses (d), (e) and (f) for each part. 2001, c. 25, s. 340 (2); 2002, c. 17, Sched. A, s. 58.

### **Certification**

(3) The treasurer shall certify the tax roll for a year in the manner determined by the treasurer. 2006, c. 32, Sched. A, s. 138.

### **Collection**

(4) The treasurer shall collect the taxes once the tax roll has been prepared. 2001, c. 25, s. 340 (4).

### **Section Amendments with date in force (d/m/y)**

### **Adjustments to roll**

**341** (1) The treasurer shall adjust the tax roll for a year to reflect changes to the assessment roll for that year made under the *Assessment Act* after the tax roll is prepared. 2001, c. 25, s. 341 (1).

### **Consequences of adjustments**

(2) Taxes for the year shall be collected in accordance with the adjusted tax roll as if the adjustments had formed part of the original tax roll and the local municipality,

- (a) shall refund any overpayment to the owner of the land as shown on the tax roll on the date the adjustment is made; or
- (b) shall send another tax bill to raise the amount of any underpayment. 2001, c. 25, s. 341 (2); 2006, c. 32, Sched. A, s. 139.

### **Same, refund to include credit**

(3) A local municipality may credit all or part of the amount of a tax refund owing under clause (2) (a) to an outstanding tax liability of the owner. 2017, c. 10, Sched. 1, s. 42

### **Recovery of taxes**

**349** (1) Taxes may be recovered with costs as a debt due to the municipality from the taxpayer originally assessed for them and from any subsequent owner of the assessed land or any part of it. 2001, c. 25, s. 349 (1).

### **Interpretation**

(2) Subsection (1) does not affect the taxpayer's or owner's recourse against any other person. 2001, c. 25, s. 349 (2).

### **Taxes on escheated, etc. land**

(2.1) For greater certainty, taxes that are levied or charges that are imposed under section 208 on the following land may not be recovered as a debt due to the municipality from the Crown:

1. Land that is vested in the Crown in right of Ontario because of an escheat or forfeiture as a result of the dissolution of a corporation.
2. Land that belongs to the Crown in right of Ontario as a result of the death of an individual who did not have any lawful heirs. 2017, c. 10, Sched. 1, s. 45.

### **Special lien**

(3) Taxes are a special lien on the land in priority to every claim, privilege, lien or encumbrance of every person except the Crown, and the lien and its priority are not lost or impaired by any neglect, omission or error of the municipality or its agents or through taking no action to register a tax arrears certificate. 2001, c. 25, s. 349 (3).

### **Proof of debt**

(4) In any action to recover taxes, the production of the relevant part of the tax roll purporting to be certified by the treasurer as a true copy is, in the absence of evidence to the contrary, proof of the debt. 2001, c. 25, s. 349 (4).

### **Separate action**

(5) The municipality may treat each year's taxes as a separate amount owing to the municipality and may bring separate actions for the purposes of recovering each amount. 2001, c. 25, s. 349 (5).

SKYMARK FINANCE CORPORATION  
Applicant

-and-

MAHAL VENTURE CAPITAL INC., et al  
Respondents

Court File No CV-21-00664778-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT  
TORONTO

**FACTUM OF  
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