

**COURT OF APPEAL FOR ONTARIO**

B E T W E E N:

SKYMARK FINANCE CORPORATION

Applicant

and

MAHAL VENTURE CAPITAL INC. and GOLDEN MILES FOOD  
CORPORATION

Respondents

**NOTICE OF APPEAL**

(Appeal pursuant to s. 193 of the *Bankruptcy and Insolvency Act*)

**MNP LTD., IN ITS CAPACITY AS COURT APPOINTED RECEIVER OF 12175622 CANADA INC. AND GPM FOOD INC. AND WITHOUT PERSONAL OR CORPORATE LIABILITY (THE “MNP RECEIVER”), APPEALS** to the Court of Appeal from the Order of Justice Steele, dated June 18, 2024, made at Toronto, Ontario at the Superior Court of Justice (Commercial List).

**THE APPELLANT ASKS** for:

1. An Order setting aside the Order of the Honourable Justice Steele dated June 18, 2024 (the “**June 18 Order**”) directing that KSV Restructuring Inc., in its capacity as licensed insolvency trustee of the Respondents (the “**KSV Receiver**”), is not liable or otherwise obligated to pay 12175622 Canada Ltd. (the “**Purchaser**”), the MNP Receiver as receiver of the Purchaser, or the City of Brantford (the “**City**”) the amounts set out in

the omit tax bills dated November 25, 2022 or any other omit tax bill issued by the City to the Purchaser (the “**Omit Tax Claims**”);

2. An Order that the KSV Receiver, in its capacity as receiver of the Respondents, is liable for the Omit Tax Claims;

3. Costs of the motion below and of this appeal; and

4. Such further and other relief as counsel may request and this Honourable Court may deem just.

**GROUND OF APPEAL** are as follows:

1. This is an appeal from the June 18 Order, which was granted on a motion brought by the KSV Receiver with respect to the distribution of proceeds held following the sale of the assets of the Respondents (the “**Purchased Assets**”) by the KSV Receiver to the Purchaser;

2. In substance, this appeal concerns whether liability for the Omit Tax Claims should be borne by the receivership estate administered by the KSV Receiver or by the Purchaser and the receivership estate being administered by the Appellant, the MNP Receiver;

3. The Learned Judge erred in law in holding that the Omit Tax Claims had not “crystallized” prior to the issuance of the receiver’s certificate (the “**Receiver’s Certificate**”) delivered pursuant to approval and vesting order (the “**AVO**”) issued in

connection with the sale of the Respondents' assets to the Purchaser and therefore were not vested out of the Purchased Assets and extinguished as against the Purchaser;

4. The Learned Judge erred in law in holding that the Omit Tax Claims could not be vested out of the Purchased Assets and extinguished as against the Purchaser by the AVO because they had not been quantified prior to the issuance of the Receiver's Certificate and the closing of sale transaction;

5. The Learned Judge erred in law in holding that the Omit Tax Claims were not due prior to the issuance of the Receiver's Certificate and the closing of sale transaction and therefore were not vested out of the Purchased Assets and extinguished as against the Purchaser by the AVO;

6. The Learned Judge erred in law in holding the Omit Tax Claims had not arisen prior to the issuance of the Receiver's Certificate and the closing of the sale transaction and therefore were not vested out of the Purchased Assets and extinguished as against the Purchaser by the AVO;

7. The Learned Judge erred in law in distinguishing the decision of This Honourable Court in *Credit Union Central of Ontario Limited v Heritage Property Holdings Inc.*, 2008 ONCA 167, which decision held that: (i) tax liabilities due to a municipality crystallized, became due and arose prior to the granting of an AVO, notwithstanding the fact that the relevant tax liabilities had not been quantified at the date of the closing of a sale transaction pursuant to an approval and vesting order; and, (ii) approval and vesting orders provide protection to purchasers by causing the conveyance of property free and

clear of all encumbrances or claims and are a key mechanism for providing certainty at the conclusion of insolvency proceedings;

8. The Learned Judge erred in law in finding that section 307(3) of the *Municipal Act, 2001* does not make taxes assessed under the *Assessment Act* due on January 1 of the year to which they relate. The Learned Judge further erred in finding that, under section 307(3) of the *Municipal Act, 2001*, the Omit Tax Claims did not arise until November 25, 2022 when the omit tax bills were issued;

9. The Learned Judge erred in law in finding that section 349 of the *Municipal Act, 2001* applies in the present case and in failing to hold that the AVO displaces section 349 of the *Municipal Act, 2001* and establishes unqualified rights in favour of the Purchaser;

10. The Learned Judge erred in law by failing to give effect to fundamental principles of insolvency law concerning when claims crystallize and arise, including principles providing that a claim may arise before an insolvency event even though the claim may not be quantifiable at that time;

11. The Learned Judge erred by holding that the principal of the Purchaser knew that the Omit Tax Claims existed in the absence of any probative evidence to support this conclusion; and

12. The Learned Judge erred by failing to take account of evidence of the Receiver's knowledge that a reassessment would occur.

**THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:**

1. The property involved in the appeal exceeds in value \$10,000;

2. Sections 183(2) and 193 of the *Bankruptcy and Insolvency Act*, RSC, 1985, c B-3, as amended;
3. Section 6(1)(b) of the *Courts of Justice Act*, RSO 1990, c C.43, as amended; and
4. Leave to appeal is not required.

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Court-appointed Receiver of 12175622  
Canada Inc. and GPM Food Inc.

**TO: THE SERVICE LIST**

Court of Appeal No:  
Court File No. CV-21-00664778-00CL

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PROCEEDING COMMENCED AT  
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