

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *SECURITIES ACT*
R.S.O. 1990, C.S.5, AS AMENDED

THE HONOURABLE MR.)
JUSTICE GEOFFREY B. MORAWETZ)
FRIDAY, THE 28th DAY
OF DECEMBER, 2007

BETWEEN:

ONTARIO SECURITIES COMMISSION

Applicant

- and -

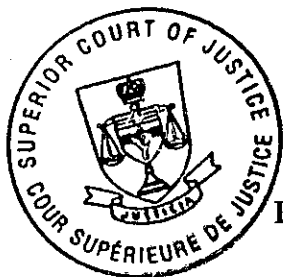
FACTORCORP INC. and FACTORCORP FINANCIAL INC.

Respondents

ORDER

THIS MOTION made by KPMG Inc., in its capacity as the Receiver and Manager (the "Receiver") of all of the property, assets and undertaking of FactorCorp Inc. and FactorCorp Financial Inc. (collectively, "the Companies"), for an Order approving the Document Delivery Protocol (as defined herein), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Third Report of the Receiver dated December 19, 2007 (the "Third Report"), the Supplemental Report to the Third Report dated December 27, 2007 (the "Supplemental Report") and on hearing the submissions of counsel for the Receiver and any other party appearing:

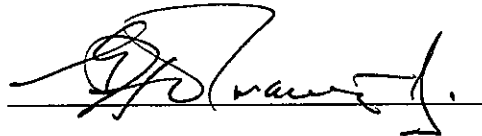


1. **THIS COURT ORDERS AND DECLARES** that the time for the service of the Notice of Motion, the Motion Record and the Third Report be and it is hereby abridged to the date of actual service, this Motion is properly returnable today and service upon any other party other than those served with the Notice of Motion be and it is hereby dispensed with.

2. **THIS COURT ORDERS** that the Third Report and the Supplemental Report be and they are hereby approved.

3. **THIS COURT ORDERS** that the Document Delivery Protocol attached hereto as Schedule "A" be and it is hereby approved.

4. **THIS COURT ORDERS** that Mr. Mark Twerdun shall be responsible for all costs incurred by Mr. Mark Twerdun and Peter Carey Barristers in connection with the Document Delivery Protocol, ~~as well as all of the costs incurred by the Third Party Imager in conducting the searches of the Imaged Documents (each as defined in the Third Report).~~



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

DEC 28th 2007

PER/PAR: 

Schedule "A"

Initial Document Delivery Protocol

- A. KPMG Inc., in its capacity as the Court-appointed Receiver and Manager (the "Receiver") of the property, assets and undertaking of FactorCorp Inc. and FactorCorp Financial Inc. (collectively, the "Companies") wishes to obtain possession of all of the Companies' books, records and documents (collectively, the "Records") in a timely and efficient manner, in accordance with the Orders of the Ontario Superior Court of Justice (Commercial List) dated October 17 and 30, 2007.
- B. Mr. Mark Twerdun ("Twerdun"), in his capacity as the sole officer and director of the Companies, wishes to review the Records for solicitor-client privilege (hereinafter referred to as "Privilege") solely on behalf of the Companies prior to the delivery of the Records to the Receiver.
- C. The Records which are subject to this Initial Document Delivery Protocol (the "Protocol") are those defined as the Imaged Documents and the Buchan-Terrell Documents in the Third Report of the Receiver dated December 19, 2007 (the "Third Report").
- D. This Protocol is intended to serve as an initial protocol only and it is understood that the Receiver reserves its rights to, among other things, request the delivery of additional Records, challenge any claim of Privilege which is asserted on behalf of the Companies with respect to the Records and/or take the position that the Records are not subject to any claim for Privilege.

The Buchan-Terrell Documents

1. Cassels, Brock & Blackwell LLP (“Cassels”) shall deliver the Buchan-Terrell Documents to Peter Carey Barristers (“Carey”), counsel for Mr. Twerdun, on or before 5:00 p.m. on Wednesday, January 2, 2008.
2. Twerdun shall have until Friday, January 25, 2008 to review the Buchan-Terrell Documents in order to determine whether Twerdun wishes to assert Privilege on behalf of the Companies in respect of any of the Buchan-Terrell Documents.
3. Twerdun shall prepare a list of the Buchan-Terrell Documents over which Privilege is being asserted, describing such privileged documents with sufficient specificity to permit them to be identified and stating the basis for the claim to Privilege (the “Buchan-Terrell List and Description”).
4. On or before 5:00 p.m. on Friday, January 25, 2008, Twerdun and/or Carey, shall deliver to the Receiver:
 - a. the Buchan-Terrell Documents over which Twerdun has not claimed Privilege; and
 - b. the Buchan-Terrell List and Description.
5. The determination with respect to Privilege asserted on behalf of the Companies in respect of any of the Buchan-Terrell Documents shall be reserved for a later date to be determined.

The Imaged Documents

6. The Receiver shall deliver a preliminary list of search terms and key words and phrases (the “Search Terms”) to Deloitte & Touche Forensic & Investigative


Services Inc., the Third Party Imager (as defined in the Third Report), on or before Thursday, January 3, 2008.

7. It is anticipated that the Third Party Imager shall conduct a search of the Imaged Documents based upon the Search Terms provided by the Receiver to be completed on or before Friday, January 4, 2008.
8. The Third Party Imager shall deliver all of the Imaged Documents which are produced as a result of the search conducted (the "Searched Documents") to Carey on or before Monday, January 7, 2008.
9. Provided that the Third Party Imager delivers all of the Searched Documents to Twerdun by Monday, January 7, 2008, Twerdun shall have until Friday, February 22, 2008 to review the Searched Documents in order to determine whether Twerdun wishes to assert Privilege on behalf of the Companies in respect of any of the Searched Documents.
10. Twerdun shall prepare a list of the Searched Documents over which Privilege is being asserted on a bi-weekly basis, describing such privileged documents with sufficient specificity to permit them to be identified and stating the basis for the claim to Privilege (the "Searched Documents List and Description").
11. On a bi-weekly basis, to be concluded on or before 5:00 p.m. on Friday, February 22, 2008, Twerdun and/or Carey, shall deliver to the Receiver:
 - a. the Searched Documents over which Twerdun has not claimed Privilege;
and
 - b. the Searched Documents List and Description.

12. The determination with respect to Privilege asserted on behalf of the Companies in respect of any of the Searched Documents shall be reserved for a later date to be determined.

13. The Receiver shall be entitled to conduct further searches of the Imaged Documents after reviewing the Searched Documents and the same process shall be followed with respect to any of the Imaged Documents which are subsequently searched by the Receiver.

Costs and Other Issues

14. Twerdun shall be responsible for all costs associated with the review of the Records by Twerdun and Carey ^{SB} ~~as well as the costs incurred by the Third Party Imager in conducting the searches of the Imaged Documents.~~ 

15. Once the Buchan-Terrell Documents and the Searched Documents have been delivered to the Receiver, Privilege is deemed to be waived with respect these documents.

16. The delivery date of February 22, 2008 may be extended by the Receiver and Carey, subject to mutual agreement in writing between the Receiver and Carey, but in any event, shall be no later than March 19 2008, unless otherwise ordered by the Ontario Superior Court of Justice (Commercial List).

ONTARIO SECURITIES COMMISSION
Applicant

and

FACTORCORP INC. and FACTORCORP FINANCIAL INC.
Respondents

Court File No.: 07-CL-7124

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced in Toronto

ORDER

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