

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

THE HONOURABLE MR. )  
JUSTICE GEOFFREY B. MORAWETZ )  
WEDNESDAY, THE 18<sup>TH</sup> DAY  
OF MARCH, 2009



**ONTARIO SECURITIES COMMISSION**

Applicant

– and –

**FACTORCORP INC. AND FACTORCORP FINANCIAL INC.**

Respondents

**ORDER**

THIS MOTION, made by 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 “Debtors”), for an order, among other things, approving the activities of the Receiver as set out in the Fifth Report of the Receiver dated March 11, 2009 (the “Fifth Report”) and discharging the Receiver, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Fifth Report, the Fee Affidavits (as defined herein), and on hearing the submissions of counsel for the Receiver and Cassels Brock and Blackwell LLP (“Cassels”), no one else appearing although served as evidenced by the Affidavit of Roxana Manea sworn March 12, 2009, filed:

1. THIS COURT ORDERS that the time for service of the Notice of Motion and Motion Record herein be and is hereby abridged such that this Motion is properly returnable today, that all parties entitled to notice of the Motion have been duly served with notice, that no other parties are affected by this Order, and that any requirement for service of the Notice of Motion and the Motion Record upon any party other than the parties served is unnecessary and is hereby dispensed with and that the service of the Notice of Motion and the Motion Record is hereby validated in all respects.
2. THIS COURT ORDERS that the conduct and activities of the Receiver, as set out in the Fifth Report, be and are hereby approved.
3. THIS COURT ORDERS that the Receiver's Statements of Receipts and Disbursements for the period of October 17, 2007 to March 10, 2009 be and is hereby approved.
4. THIS COURT ORDERS that the fees and disbursements of the Receiver and its legal counsel, as set out in the Fifth Report and the fee affidavits of J. Bradley Butcher sworn March 12, 2009 and James H. Grout sworn March 11, 2009 (collectively, the "Fee Affidavits"), be and are hereby approved.
5. THIS COURT ORDERS that, after payment of the fees and disbursements herein approved, the Receiver shall pay the monies remaining in its hands to KPMG Inc. in its capacity as trustee in bankruptcy (the "Trustee") of the consolidated estate of the Debtors, less (i) a holdback amount of \$15,000 with respect to the Receiver's further fees and expenses and those of its legal counsel for the period from March 1, 2009 up to and including the effective date of the Receiver's Discharge and (ii) a holdback amount of \$15,000 with respect to Cassels' review of the Debtors' books and records on behalf of the Receiver (the "Cassels Account").
6. THIS COURT ORDERS that the Receiver's and its legal counsel's accounts attached as Exhibits to the Fee Affidavits, including those of Cassels, be sealed pending completion of the administration of the consolidated estate by the Trustee or until further Order of the Court.
7. THIS COURT AUTHORIZES AND DIRECTS the Receiver to pay the Cassels Account referred to in paragraph 5 above, forthwith.

8. THIS COURT ORDERS that upon payment of the amounts set out in paragraph 5 hereof, and upon the Receiver filing a certificate certifying that it has completed the other activities described in the Report, the Receiver shall be discharged as Receiver of the property, assets and undertaking of the Debtors, provided however that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of KPMG Inc. in its capacity as Receiver.

9. THIS COURT ORDERS AND DECLARES that KPMG Inc. is hereby released and discharged from any and all liability that KPMG Inc. now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of KPMG Inc. while acting in its capacity as Receiver herein. Without limiting the generality of the foregoing, KPMG Inc. is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings.

10. THIS COURT DECLARES that the balance of any claim by Cassels for unpaid professional fees and disbursements shall be an unsecured claim against the Debtors.



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ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

MAR 19 2009

PER / PAR: 

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**

**ThorntonGrouffFinnigan LLP**  
Suite 3200, P.O. Box 329  
Canadian Pacific Tower  
Toronto-Dominion Centre  
Toronto, Ontario  
M5K 1K7

**Rachelle F. Moncur L.S.U.C. (#45474I)**

Tel: (416) 304-1616

Fax: (416) 304-1313

Lawyers for KPMG Inc. in its capacity as  
Receiver and Manager