

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF AN APPLICATION

pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as
am, section 101 of the *Courts of Justice Act*, R.S.O.1990, c.C.43 and the *Personal
Property Security Act*, R.S.O. c.P.10

BETWEEN:

**DAVINCI CAPITAL PARTNERS INC., in its capacity as trustee of
DAVINCI CAPITAL PRIVATE DEBT FUND**

Applicant

and

**THE CUSTOM FACTORY CANADA INC.
and ANTONIO PETOSA**

Respondents

MOTION RECORD

(Approval of Second Report and Discharge)
(Returnable November 26, 2018)

November 2, 2018

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TO: THE SERVICE LIST

AND TO ONTARIO SUPERIOR COURT OF JUSTICE
TORONTO COMMERCIAL LIST

RCP-E 37A (July 1, 2007)

**ONTARIO
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Court File No. CV-17-11742-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF AN APPLICATION

pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as
am, section 101 of the *Courts of Justice Act*, R.S.O.1990, c.C.43 and the *Personal
Property Security Act*, R.S.O. c.P.10

BETWEEN:

**DAVINCI CAPITAL PARTNERS INC., in its capacity as trustee of
DAVINCI CAPITAL PRIVATE DEBT FUND**

Applicant

and

**THE CUSTOM FACTORY CANADA INC.
and ANTONIO PETOSA**

Respondents

NOTICE OF MOTION

(Approval of Second Report and Discharge)

The receiver will make a motion to a Judge presiding over the Commercial List on
November 26, 2018 at 10:00 a.m., or as soon after that time as the motion can be heard at the
court house, 330 University Avenue, 7th Floor, Toronto, Ontario, M5G 1R7.

PROPOSED METHOD OF HEARING: The motion is to be heard

- in writing under subrule 37.12.1(1) because it is;
- in writing as an opposed motion under subrule 37.12.1(4);
- orally.

THE MOTION IS FOR

- I. An order:
 - (a) Approving the actions, activities, and conduct, and findings of the Receiver and its counsel as described in the Second Report of the Receiver, dated November 1, 2018;
 - (b) Authorizing the Receiver to make a distribution to Canada Revenue Agency pursuant to its deemed trust claim from remaining funds after payment of all final fees and expenses of the Receiver and its legal counsel;
 - (c) Approving the final statement of receipts and disbursements of the Receiver, dated October 31, 2018;
 - (d) Approving the professional fees and disbursements of the Receiver to October 29, 2018 and those of its counsel to October 31, 2018 as set out in the fee affidavits filed, and costs to complete for the Receiver and its counsel fixed at \$1,200 and \$3,500 respectively, plus HST;
 - (e) Discharging the Receiver upon payment of the amounts contemplated in the Second Report, specifically to the Receiver and its counsel for the costs to complete, and the distribution to the CRA of all residual funds; and
 - (f) Such further and other relief as to this Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

2. On March 22, 2017, Mr. Justice Hainey issued an Order (the “Appointment Order”) appointing Link & Associates Inc. as receiver of the assets and undertakings of The Custom Factory Canada Inc. (with the exception of the leased premises). The appointment was made under section 243(1) of the *Bankruptcy and Insolvency Act* (the “BIA”), and under section 101 of the *Courts of Justice Act*.
3. On April 21, 2017, Justice Hainey issued an order (the “Amendment Order”) making minor amendments to the Appointment Order.
4. On September 1, 2017, Justice Hainey issued an order (the “First Approval Order”) approving the activities of the Receiver as set out in the First Report of the Receiver dated August 14, 2017 (the “First Report”), the interim statement of receipts and disbursements, approving the professional fees of the Receiver and its counsel, among other relief.

Background

5. The Respondent debtor corporation, The Custom Factory Canada Inc. (“CFC Inc.”) was in the business of manufacturing and selling custom men’s clothing. The Respondent individual, Antonio Petosa (“Petosa”) was the principal and directing mind of this business and was its sole shareholder.
6. The Applicant, DaVinci Capital Partners Inc. (“DaVinci”) is a secured creditor of the Debtor. DaVinci made initial working capital loan advances totaling \$237,432, with the first advance made on February 23, 2017 (\$214,982.50) and the second on February 24, 2017 (\$22,359.50).

7. On Friday, March 3, 2017, CFC Inc. ceased operations. On Saturday, March 4, 2017, CFC Inc. met with the trustee to execute the necessary documents to assign CFC Inc. into bankruptcy. The documents were filed on Monday, March 6, 2017, and a certificate of assignment was issued by the Office of the Superintendent of Bankruptcy on Tuesday, March 7, 2017.

8. Following its appointment, among other matters, the Receiver

- (a) obtained an independent security opinion dealing with relative priorities among secured creditors;
- (b) realised on the Debtor's assets and collected the accounts receivable;
- (c) investigated the circumstances surrounding the bankruptcy filing and financial transactions conducted by the Debtor around the time of the bankruptcy, as well as the circumstances surrounding the removal of assets from the Company's premises around the same time; and
- (d) met with the Canada Revenue Agency for payroll account trust examination.

Status of the Receivership and Recovery Efforts

9. Since the First Report, the Receiver has prepared and filed corporate income tax and HST returns for the Debtor, collected further accounts receivable, and shared documents and information with creditors interested in taking proceedings under section 38 of the BIA to pursue fraudulent preferences and transfers at undervalue (as authorised under the First Approval Order).

10. The Trustee in Bankruptcy had performed the WEPPA filing on behalf of all affected employees, as the bankruptcy assignment and appointment of the Trustee preceded the Receiver's appointment by almost three weeks.

11. WEPPA has paid out a total of \$30,984.12 for wages and vacation pay (priority secured claims) and \$22,857.79 for termination pay (unsecured claims) in the bankruptcy. This means that WEPPA has a subrogated claim in the bankruptcy, but there are no assets in the bankrupt estate to satisfy those subrogated claims.

12. The Receiver's Charge set out in paragraph 18 of the Appointment Order was subject to (among other things) the priority secured claim for wages under section 81.4(4) of the BIA. However, there is no claim by WEPPA in the receivership. In any event, the deemed trust claim of the CRA for source deductions takes priority over all other claims, including those under section 81.4 or section 81.3.

13. The CRA has a claim for source deductions based on the Notice of Assessment dated August 18, 2017 is \$284,996.06, of which the deemed trust is approximately \$200,000. After the final fees of the Receiver and its counsel are paid, the amount to be distributed to the CRA will be no more than \$20,000.

14. Given the amount of the deemed trust claim, there is no recovery available to DaVinci as the secured creditor.

Final Statement of Receipts and Disbursements

15. The receipts and disbursements of the Receiver from the date of the Appointment Order up to and including October 31, 2018 are set out in Appendix F of the Receiver's Second Report.

The Final Statement of Receipts and Disbursements include the final fees and disbursements of the Receiver and its legal counsel, including the cost to complete and the proposed distribution of surplus funds to the CRA.

Professional Fees

16. For the period of August 1, 2017 to October 29, 2018, the Receiver's fees and disbursements total \$12,280, plus HST. The Receiver's estimated fees to complete the administration of the estate are \$1,200, plus HST.

17. For the period ending October 31, 2018, the fees and disbursements of Spark LLP, counsel to the Receiver, total \$1,248.00, plus HST. The estimated fees to complete the administration of the estate for the Receiver's legal counsel are \$3,500, plus HST.

18. The fees, in light of the work set out in this Notice of Motion and the Second Report, are fair and reasonable.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Second Report of the Receiver, dated November 1, 2018;
2. The fee affidavit of Robert Link, sworn October 29, 2018;
3. The fee affidavit of Sanjay Kutty, sworn November 1, 2018;
4. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

November 1, 2018

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RCP-E 37A (July 1, 2007)

IN THE MATTER OF OF AN APPLICATION pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as am, section 101 of the *Courts of Justice Act*, R.S.O.1990, c.C.43 and the *Personal Property Security Act*, R.S.O. c.P.10

DAVINCI CAPITAL PARTNERS INC., in its capacity as trustee of
DAVINCI CAPITAL PRIVATE DEBT FUND
Applicant

-and-

THE CUSTOM FACTORY CANADA INC. et al.

Respondents

Court File No. CV-17-11742-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**NOTICE OF MOTION
(SECOND REPORT AND DISCHARGE)**

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Lawyers for the Court-Appointed Receiver
Link & Associates Inc.

Court File No. CV-17-11742-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF AN APPLICATION

pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as
am, section 101 of the *Courts of Justice Act*, R.S.O.1990, c.C.43 and the *Personal
Property Security Act*, R.S.O. c.P.10

THE HONOURABLE)
)
MR. JUSTICE) THE
) DAY OF, 2018

B E T W E E N:

DAVINCI CAPITAL PARTNERS INC., in its capacity as trustee of DAVINCI
CAPITAL PRIVATE DEBT FUND

Applicant

and

THE CUSTOM FACTORY CANADA INC. and ANTONIO PETOSA

Respondents

ORDER

Approval of Second Report and Discharge of Receiver

THIS MOTION, made by the receiver for an Order

1. approving the activities of the Receiver as set out in the Second Report dated November 1, 2018 (the "Second Report");
2. authorizing the Receiver to make a distribution to the Canada Revenue Agency pursuant to its deemed trust claim from remaining funds after payment of all final fees and disbursements of the Receiver and its counsel;

3. approving the final statement of receipts and disbursements dated October 31, 2018;
4. approving the professional fees and disbursements of the Receiver and its counsel, including the costs to complete; and
5. discharging the Receiver upon payment of the amounts set out in the Second Report

was heard this day at the court house, 330 University Avenue, 7th Floor, Toronto, Ontario, M5G 1R7.

ON READING the Motion Record of the Court-Appointed Receiver, including the Second Report of the Receiver dated November 1, 2018, and the fee affidavits of Robert Link sworn on October 29, 2018, and Sanjay Kutty sworn November 1, 2018 and on hearing the submissions of counsel to the Receiver and other counsel present at the motion, no one else appearing although properly served according to the affidavit of service of Lenna McPherson, filed,

1. THIS COURT ORDERS that the activities of the Receiver, as set out in the Second Report, are hereby approved.
2. THIS COURT ORDERS that the final Statement of Receipts and Disbursements, dated October 31, 2018, and included as Exhibit F to the Second Report, is hereby approved.
3. THIS COURT ORDERS that the fees and disbursements of the Receiver, as set out in the Second Report and the fee affidavit of Robert Link, sworn October 29, 2018 (\$12,280 in fees, plus disbursements and HST), and the fee affidavit of Sanjay Kutty, sworn November 1, 2018 (\$1,248 in fees, plus disbursements and HST).

4. THIS COURT ORDERS that the costs to complete this receivership, being \$1,600 plus HST for the Receiver as set out in the fee affidavit of Robert Link, sworn October 29, 2018, and \$3,500 plus HST for counsel for the Receiver, as set out in the fee affidavit of Sanjay Kutty sworn November 1, 2018, are hereby approved.

5. THIS COURT ORDERS that following payment of the amounts set out in paragraphs 3 and 4 above, all residual funds shall be paid by the Receiver to the Canada Revenue Agency.

6. THIS COURT ORDERS that following payment of the amounts set out in paragraphs 3, 4, and 5 above, the Receiver shall be discharged as the Receiver for Custom Factory Canada Inc., 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 Link & Associates Inc., in its capacity as Receiver.

(Signature of Judge)

RCP-E 59A (July 1, 2007)

IN THE MATTER OF AN APPLICATION pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as am, section 101 of the *Courts of Justice Act*, R.S.O.1990, c.C.43 and the *Personal Property Security Act*, R.S.O. c.P.10

DAVINCI CAPITAL PARTNERS INC., in its capacity as trustee of
DAVINCI CAPITAL PRIVATE DEBT FUND
Applicant

-and-

THE CUSTOM FACTORY CANADA INC. et al.

Respondents

Court File No. CV-17-11742-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**ORDER
APPROVAL OF SECOND REPORT
AND DISCHARGE OF RECEIVER**

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Court File No. CV-17-11742-00CL

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

B E T W E E N:

**DAVINCI CAPITAL PARTNERS INC. in its capacity as trustee of
DAVINCI CAPITAL PRIVATE DEBT FUND**

Applicant

-and-

THE CUSTOM FACTORY CANADA INC. and ANTONIO PETOSA

Respondents

**SECOND REPORT OF THE COURT-APPOINTED RECEIVER
LINK & ASSOCIATES INC.**

(MOTION FOR DISTRIBUTION AND DISCHARGE)

NOVEMBER 1, 2018

INDEX OF APPENDICES

- A. Appointment Order dated March 22, 2017
- B. Amending Order dated April 21, 2017
- C. First Report of the Receiver dated August 16, 2017
- D. Order Approving First Report of the Receiver dated September 1, 2017
- E. Canada Revenue Agency Statement of Account for Source Deductions dated August 18, 2017
- F. Receiver's Statement of Receipts and Disbursements as at October 31, 2018
- G. Receiver's Fee Affidavit
- H. Fee Affidavit of Counsel to Receiver

INTRODUCTION

1. This is the second report (the **“Second Report”**) of Link & Associates Inc., filed in its capacity as the Court-Appointed Receiver (in such capacity, the **“Receiver”**) of The Custom Factory Canada Inc. (the **“Company”** or the **“Debtor”**).

2. The Receiver was appointed pursuant to the Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the **“Court”**) dated March 22, 2017 (the **“Appointment Order”**). A copy of the Appointment Order is attached hereto as **Appendix “A”**.

3. On April 19, 2017 the Receiver brought a motion to amend the Appointment Order. On April 21, 2017 the Appointment Order was amended by the Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the **“Amending Order”**). A copy of the Amending Order is attached hereto as **Appendix “B”**.

First Report of the Receiver

4. On August 16, 2017 the Receiver filed its first report (the **“First Report”**). A copy of the First Report (without appendices) is attached hereto as **Appendix “C”**.

5. A copy of the Order approving the First Report dated September 1, 2017 (the **“First Approval Order”**) is attached as **Appendix “D”**.

Purpose of this Second Report

6. The purpose of this Second Report is to report on and seek approval from this Honourable Court as to the following:

- (a) approval of the actions, activities, conduct and findings of the Receiver and its counsel to date as described in this Second Report;
- (b) authorizing the Receiver to make a distribution to Canada Revenue Agency pursuant to its deemed trust claim from remaining funds after payment of all final fees and expenses of the Receiver and its legal counsel;
- (c) approval of the Receiver's Final of Receipts and Disbursements as at October 31, 2018;
- (d) approval for the interim professional fees and disbursements of the Receiver from August 1, 2017 to October 29, 2018, plus cost to complete (fixed at \$1,200 plus HST) as set out in the fee affidavit of the Receiver filed and attached to this Second Report;
- (e) approval for the interim professional fees and disbursements legal counsel to the Receiver from August 1, 2017 to October 31, 2018, plus cost to complete (fixed at \$3,500 plus HST) as set out in the fee affidavit of legal counsel to the Receiver filed and attached to this Second Report;
- (f) the discharge of the Receiver; and
- (g) Such further and other relief as to this Honourable Court may seem just and appropriate.

Notice to Reader

7. In preparing this Second Report and making the comments herein the Receiver has relied upon information prepared or provided by the Company and from other third-party sources. While the Receiver has no reason to believe that this information is not materially correct, readers should note that the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of this information. In this Second Report, nothing of a material nature is believed to turn on the Receiver's reliance upon the information not otherwise audited or reviewed for accuracy.

8. Unless otherwise stated, all dollar amounts set out in this Second Report are expressed in Canadian dollars.

BACKGROUND

9. The Debtor was is in the business of manufacturing and selling custom men's clothing. The sole shareholder and director of the Debtor is Antonio Petosa ("**Petosa**").

10. The Applicant, DaVinci Capital Partners Inc. ("**DaVinci**") is a secured creditor of the Debtor.

11. DaVinci made an initial \$237,342 advance for working capital (\$300,000 gross advance less holdbacks and fees per the Loan Agreement) in two tranches, the first on February 23, 2017 in the amount of \$214,982.50 and the second on February 24, 2017 in the amount of \$22,359.50.

12. Unknown to DaVinci, the Debtor ceased operations on or about Friday, March 3, 2017 and met with Licensed Insolvency Trustee Schwartz Levitsky Feldman Inc. (the “Trustee”) on Saturday March 4, 2017 to execute the necessary documents to assign the Debtor into bankruptcy.

13. The bankruptcy assignment was filed on Monday, March 6, 2017 and the certificate of assignment was issued by the Office of the Superintendent of Bankruptcy on Tuesday, March 7, 2017.

ACTIVITIES OF THE RECEIVER

14. The actions and activities of the Receiver from commencement of the receivership up to August 15, 2017 are set out in the First Report, and are summarized briefly as follows, including but not limited to:

- i) making arrangements with the Landlord for access to the premises and assets;
- ii) obtaining an appraisal of assets;
- iii) obtaining an independent security opinion and dealing with the relative priorities among secured creditors;
- iv) realizing upon fixed assets and inventory;
- v) collection of accounts receivable;
- vi) attending the first meeting of creditors in the bankruptcy held at the office of the Trustee on March 27, 2017;

- vii) corresponding with Trustee and obtaining books and records in the possession of the Trustee;
- viii) investigating the circumstances surrounding the bankruptcy filing and financial transactions conducted by the Debtor at or around the time of the bankruptcy filing, and identifying several transactions which appeared to constitute fraudulent preferences or transfers undervalue;
- ix) investigating the circumstances surrounding the removal of assets from the Company's premises at the time of the bankruptcy filing and reporting its findings with respect to same;
- x) Meeting with Canada Revenue Agency ("**CRA**") for payroll account trust examination;
- xi) All creditor correspondence and related matters.

15. The actions and activities of the Receiver from the date of its First Report to current date are as follows, including but not limited to:

- i) Sharing documents and information with creditors interested in taking proceedings under Section 38 of the Bankruptcy and Insolvency Act (the "**BIA**") to pursue fraudulent preferences and transfers at undervalue, as it was authorized to do in the First Approval Order;

- ii) Prepared and filed the corporate income tax returns of the Debtor for both the December 31, 2016 year-end and the March 6, 2017 deemed year-end created by the bankruptcy;
- iii) Prepared and filed all HST returns and obtained all available refunds;
- iv) Collected further accounts receivable, directly and by way of small claims court actions, and in such small claims court actions having settled both satisfactorily prior to trial.

PROPOSED DISTRIBUTION

16. All residual funds after payment of the final fees and expenses of the Receiver and its counsel, will be paid to CRA on account of its deemed trust claim for Source Deductions as described further herein.

Recovery to Secured Creditors

17. There is no recovery available to DaVinci as the Secured Creditor given the quantum of the deemed trust claim of CRA.

Wage Earner Protection Program Act (“WEPPA”)

18. The Trustee in Bankruptcy performed the WEPPA filing on behalf of all affected employees, as the bankruptcy assignment and the appointment of the Trustee preceded the Receiver’s appointment by almost three weeks.

19. The Receiver notified WEPPA of its appointment upon the making of the Appointment Order.

20. The Receiver reviewed the Trustee's WEPPA filings and made suggestions to the Trustee as to certain amendments that should be made. The Trustee and Receiver exchanged information as needed and amended claims were filed by the Trustee as needed.

21. WEPPA has paid out (under the Trustee's estate number) a total of \$30,984.12 for wages and vacation pay (priority secured claims) and \$22,857.79 for termination pay (unsecured claims) in the bankruptcy.

22. Therefore, WEPPA has a subrogated claim in the bankruptcy. However, there are no assets in the bankruptcy to satisfy these subrogated claims.

23. The Receiver notes that the Receiver's Charge (to a maximum of \$100,000) set out in Paragraph 18 of the Appointment Order (which was made on notice to CRA) was granted subject to, among other things, the priority secured claim for wages under S.81.4 (4); however, there is no such claim by WEPPA in the receivership, only the bankruptcy.

24. Furthermore, the deemed trust claim of CRA for source deductions takes priority over all other claims, including those which arise under S.81.4 of the BIA (receivership) or S. 81.3 of the BIA (bankruptcy).

25. Therefore, the Receiver believes that its fees and disbursements are appropriately paid first under the Receiver's Charge, and all residual funds should be paid to CRA on account of its deemed trust claim.

26. The CRA's claim for Source Deductions based upon CRA Notice of Assessment dated August 18, 2017 is \$284,996.06. Copies of the Notices of Assessment for 2016 and 2017 are attached hereto as **Appendix "E"**.

27. Out of the total of \$284,996.06, the deemed trust (employee) portion of Source Deductions is approximately \$200,000, with the remainder (the employer portion) being classified as an unsecured claim due to the inversion of priorities following from the bankruptcy.

28. In any event, the amount to be distributed to CRA after final fees and expenses of the Receiver will be approximately \$17,500, which is far less than the amount of the deemed trust claim.

29. There are no further recoveries to be made in the receivership.

RECEIVER'S FINAL STATEMENT OF RECEIPTS & DISBURSEMENTS

30. All receipts and disbursements of the Receiver from the date of the Appointment Order up to and including October 31, 2018 (the "**Final R&D**") are set out in **Appendix "F"**.

31. The Final R&D provides for the final fees and disbursements of the Receiver and its legal counsel for the cost to complete the receivership, and the proposed distribution of surplus funds to CRA.

PROFESSIONAL FEES

32. The Receiver seeks to have its accounts and those of its legal counsel, approved by this Court as follows:

- i) The Receiver's fees and disbursements for the period of March 14, 2017 to July 31, 2017 were approved in the First Approval Order.
- ii) The Receiver's fees and disbursements for the period of August 1, 2017 to October 29, 2018, are \$12,280 plus HST, plus estimated fees to completion in the amount of \$1,200 plus HST, for a total of \$13,480 plus HST. The Receiver's detailed accounts and the affidavit of Robert Link regarding the fees and disbursements are appended hereto as **Appendix "G"**.
- iii) The fees and disbursements of the Receiver's legal counsel for the period of March 28, 2017 to July 31, 2017 were approved in the First Approval Order.
- iv) For the period of August 1, 2017 to October 31, 2018 the fees and disbursements of the Receiver's legal counsel, Spark LLP (inclusive of all applicable taxes) totalled \$1,410.24. Cost to complete fixed at \$3,500 plus HST Counsel's detailed accounts and the affidavit of Sanjay Kutty regarding the fees and disbursements are appended hereto as **Appendix "H"**.

SUMMARY AND RECOMMENDATIONS

33. For the reasons set out in this First Report, the Receiver respectfully requests that this Honourable Court issue an Order:

- i) Approving this Second Report;

{Spark: 00030585.1}

- ii) Approving the actions, activities, conduct and findings of the Receiver and its counsel as described in this Second Report;
- iii) Approving the Receiver's Final Statement of Receipts and Disbursements as at October 31, 2018, subject to final payments for fees and disbursements and distribution of remaining funds to CRA;
- iv) Approve a distribution to CRA on account of its deemed trust claim for Source Deductions up to the amount of its deemed trust claim, from remaining funds on hand after payment of final fees and expenses of the receivership including the final fees and disbursements of the Receiver and its legal counsel set out herein
- v) Approving the fees and disbursements of the Receiver and its counsel as submitted; and
- vi) Authorizing the discharge of the Receiver upon the Receiver making the distribution to CRA and paying the final professional fees.

All of which is respectfully submitted at Toronto, Ontario this 1st day of November, 2018.

LINK & ASSOCIATES INC.

Court-Appointed Receiver of
The Custom Factory Canada Inc.
And not in its personal or corporate capacity



Cv17-11742-001
Court File _____

Estate No. 31-2225416

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)

JUSTICE)

HAINES)

Wednesday THE 22ND

DAY OF March 2017

IN THE MATTER OF AN APPLICATION

pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as am.,
section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and the *Personal Property Security
Act*, R.S.O. c. P.10

BETWEEN:

DAVINCI CAPITAL PARTNERS INC. in its capacity as trustee of
DAVINCI CAPITAL PRIVATE DEBT FUND

Applicant

-and-

THE CUSTOM FACTORY CANADA INC. and ANTONIO PETOSA

Respondents

ORDER APPOINTING RECEIVER

THIS MOTION, made by the Applicant Davinci Capital Partners Inc. in its capacity as trustee of Davinci Capital Private Debt Fund (the "Applicant") for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA"), appointing Link & Associates Inc. as Receiver (the "Receiver") without security, of all the assets, undertakings and properties of The Custom Factory Canada Inc. ("CFC") and collectively with the other Respondent the "Debtors") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Application dated March 20, 2017, the Affidavit of Mark Irwin sworn March 19, 2017, the consent of Link & Associates Inc. to act as the Receiver and on hearing the submissions of Counsel for the Applicant,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

BANKRUPTCY OF CFC

2. **THIS COURT DECLARES** pursuant to section 69.4 of the BIA that the stay of proceedings against CFC imposed by section 69.3(1) of the BIA does not operate in respect of the Applicant and the Applicant is hereby authorized to commence this application against CFC.

3. **THIS COURT ORDERS** that the Trustee in Bankruptcy of CFC shall continue to have responsibility for any matter not provided for in this Order.

APPOINTMENT

4. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, in respect of CFC, Link & Associates Inc. is hereby appointed Receiver, without security, of all of CFC assets, undertakings and properties of every nature and kind whatsoever, and wherever located, including all proceeds thereof, acquired for, or used in relation to a business carried on by CFC, save and except for CFC's leased premises at Unit 600, 50 Wingold Avenue, Toronto, Ontario (collective the "Property"), for a period of thirty days or pending the appointment of a receiver or trustee in bankruptcy, or further order of this Court.

RECEIVER'S POWERS

5. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (d) to receive and collect the receivables now owed or hereafter owing to CFC and to exercise all remedies of CFC in collecting such monies, including, without limitation, to enforce any security held by CFC;
- (e) to settle, extend or compromise any indebtedness owing to CFC with respect to the Property;
- (f) to execute, assign, issue and endorse documents of whatever nature in respect of the Property, whether in the Receiver's name or in the name and on behalf of CFC, for any purpose pursuant to this Order;
- (g) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to CFC, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (h) to trace all Property of CFC, including but not limited to inventory and cash, that has been disbursed, transferred or conveyed by the Debtors within three months prior to the date of CFC's bankruptcy, and to take such proceedings as may be necessary to recover such Property or the money or proceeds therefrom from the person who acquired it from the Debtors or from any other person to whom he may have resold, transferred or paid over the proceeds of the Property as fully and effectually as the Receiver could have recovered the Property if it had not been so sold, disposed of, realized or collected;
- (i) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (j) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$200,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.
- (k) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

- (l) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (m) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (n) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (o) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (p) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have;
- (q) to examine under oath the Respondent Antonio Petosa regarding the affairs of CFC;
- (r) to obtain from the Respondent Antonio Petosa any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of CFC in his possession or control, in connection with which the Respondent Antonio Petosa shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, whether by independent service provider, electronic devices belonging to Antonio Petosa personally or otherwise;

- (s) to obtain from the Respondent Antonio Petosa copies of up-to-date statements relating to his personal bank account(s);
- (t) to examine under oath Michael Iscove, an individual having knowledge of the affairs of CFC;
- (u) to obtain from Michael Iscove any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of CFC in his possession or control, in connection with which Michael Iscove shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, whether by independent service provider, electronic devices belonging to Michael Iscove personally or otherwise;
- (v) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

6. **THIS COURT ORDERS** that (i) the Debtors, (ii) all of CFC's current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

7. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of CFC (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

8. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

9. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

10. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

11. **THIS COURT ORDERS** that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or CFC to carry on any business which CFC is not lawfully entitled to carry on, (ii) exempt the Receiver or CFC from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

12. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by CFC, without written consent of the Receiver or leave of this Court.

RECEIVER TO HOLD FUNDS

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for

herein, shall be held by the Receiver to be paid upon further Order of this Court or on consent of the Applicants.

EMPLOYEES

14. **THIS COURT ORDERS** that all employees of CFC shall remain the employees of the CFC. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by CFC, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*,

the Ontario *Environmental Protection Act*, the Ontario *Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, to a maximum of \$100,000.00, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Ontario Superior Court of Justice.

20. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$100,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.\

22. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

24. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

25. **THIS COURT ORDERS** that the Receiver be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

26. **THIS COURT ORDERS** that the Applicants, the Receiver, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time.

GENERAL

27. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

29. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within

proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

30. **THIS COURT ORDERS** that the Applicants shall have their costs of this application, up to and including entry and service of this Order, as provided for by the terms of the Applicants' security or, if not so provided by the Applicants' security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine or may be agreed between the parties.

31. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver, the Applicants and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

32. **THIS COURT ORDERS** that the Receiver shall return to report to this Court on notice the Respondents and any affected creditors on a date in to be fixed in April of 2017 or such other date as counsel may agree upon and this Court approves and appoints.



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

MAR 22 2017

PER / PAR:



SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Link & Associates Inc., the receiver (the "Receiver") of the assets, undertakings and properties The Custom Factory Canada Inc. ("CFC") acquired for, or used in relation to a business carried on by the CFC, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ___ day of _____, 2017 (the "Order") made in an action having Court file number ___-CL-_____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 2017.

Link & Associates Inc., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

DAVINCI CAPITAL PARTNERS INC. et al

Applicants

42

-and-

THE CUSTOM FACTORY CANADA INC. et al.

Respondents

2017-11742-002

Court File:.....

Estate No. 31-2225416

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceedings commenced at Toronto

ORDER

REGENT LAW
PROFESSIONAL CORPORATION
Barristers & Solicitors
200 Elgin Street, Suite 600
Ottawa, ON K2P 1L5

Ryan E. Flewelling
Payle Masic

Tel: (613) 319-9997
Fax: (416) 493-6270

Lawyers for the Applicants

Court File No. CV-17-11742-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

IN THE MATTER OF AN APPLICATION

pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as
am, section 101 of the *Courts of Justice Act*, R.S.O.1990, c.C.43 and the *Personal
Property Security Act*, R.S.O. c.P.10

THE HONOURABLE)	FRIDAY, THE 21ST
)	
MR. JUSTICE HAINEY)	DAY OF APRIL, 2017

B E T W E E N:

DAVINCI CAPITAL PARTNERS INC., in its capacity as
trustee of DAVINCI CAPITAL PRIVATE DEBT FUND

Applicant

and

THE CUSTOM FACTORY CANADA INC.
and ANTONIO PETOSA

Respondents

ORDER

(Amendment of Appointment Order)

THIS MOTION, made by the receiver for an Order Amending the Order of Mr. Justice Hainey, dated March 22, 2017 (the "Appointment Order"), was heard this day at the court house, 330 University Avenue, 7th Floor, Toronto, Ontario, M5G 1R7.

ON READING the Motion Record of the Court-Appointed Receiver, including the affidavit of Robert Link sworn on April 19, 2017 and on hearing the submissions of the lawyer(s) for the parties,

- I. THIS COURT ORDERS that the Appointment Order shall be amended as follows:
- (a) The following words from paragraph 4 of the Appointment Order shall be deleted:
“for a period of thirty days or pending the appointment of a receiver or trustee in bankruptcy, or further order of this Court.”
 - (b) Paragraph 32 of the Appointment Order shall be deleted and replaced with the following: “THIS COURT ORDERS that, on notice to the service list, the Receiver shall return to this Court to report periodically on the Receiver’s activities.”

RCP-E 59A (July 1, 2007)

IN THE MATTER OF AN APPLICATION pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as am, section 101 of the *Courts of Justice Act*, R.S.O.1990, c.C.43 and the *Personal Property Security Act*, R.S.O. c.P.10

DAVINCI CAPITAL PARTNERS INC., in its capacity as trustee of
DAVINCI CAPITAL PRIVATE DEBT FUND
Applicant

-and-

THE CUSTOM FACTORY CANADA INC. et al.

Respondents

Court File No. CV-17-11742-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

ORDER
(Amendment of Appointment Order)

SPARK LLP

169 King Street East, Third Floor
Toronto, ON M5A 1J4

Jeff Rosekat LSUC No. 43352Q

jeff@spark.law

Tel: 416.639.2151

Fax: 647.490.4888

Lawyers for the receiver

Court File No. CV-17-11742-00CL

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

B E T W E E N:

DAVINCI CAPITAL PARTNERS INC. in its capacity as trustee of
DAVINCI CAPITAL PRIVATE DEBT FUND

Applicant

-and-

THE CUSTOM FACTORY CANADA INC. and ANTONIO PETOSA

Respondents

**FIRST REPORT OF THE COURT-APPOINTED RECEIVER
LINK & ASSOCIATES INC.**

AUGUST 16, 2017

INDEX OF APPENDICES

- A. Order Appointing Receiver dated March 22, 2017
- B. Order Amending Appointment Order dated April 19, 2017
- C. Notice and Statement of Receiver dated March 31, 2017
- D. Legal Opinion on Security dated March 31, 2017
- E. Equipment Schedules from Century Services Appraisal dated October 25, 2016.
- F. Appraisal (updated) from Century Services dated March 24, 2017.
- G. Information Package for Sale of Assets by Receiver
- H. Notice of Bankruptcy and Statement of Affairs
- I. Correspondence and Statements from Major Unsecured Creditors Omitted from Bankruptcy Filing
- J. Patriot Equipment Finance Ltd. Lease Agreement with Debtor (undated)
- K. Invoice from Ruditeq Inc. to Patriot dated November 8, 2016
- L. Bill of Sale to Mirjana Baotic dated March 28, 2014
- M. Fax from Royal Bank to Receiver re: \$200,000 bank draft
- N. Email string between Receiver and Antonio Petosa May 25 to June 20, 2017
- O. Email to Rudi Kuehnhold of Ruditeq Inc. dated June 16, 2017
- P. Shareholder Loan Account Details – Antonio Petosa
- Q. Receiver's Interim Statement of Receipts and Disbursements as at August 15, 2017
- R. Receiver's Fee Affidavit
- S. Fee Affidavit of Counsel to Receiver

INTRODUCTION

1. This is the first report (the “**First Report**”) of Link & Associates Inc., filed in its capacity as the Court-Appointed Receiver (in such capacity, the “**Receiver**”) of The Custom Factory Canada Inc. (the “**Company**” or the “**Debtor**”).
2. The Receiver was appointed pursuant to the Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 22, 2017 (the “**Appointment Order**”). A copy of the Appointment Order is attached hereto as **Appendix “A”**.
3. On April 19, 2017 the Receiver brought a motion to amend the Appointment Order. On April 21, 2017 the Appointment Order was amended by the Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the “**Amending Order**”). A copy of the Amending Order is attached hereto as **Appendix “B”**.

Purpose of this First Report

4. The purpose of this First Report is to report on and seek approval from this Honourable Court as to the following:
 - (a) approval of the actions, activities, conduct and findings of the Receiver and its counsel as described in this First Report;
 - (b) to report on the results of the Receiver’s investigation into the circumstances surrounding the Debtor’s voluntary assignment into

bankruptcy and ceasing operations within days after obtaining new loan funding from the Applicant;

- (c) to report on the realization of the Debtor's assets by the Receiver to date;
- (d) approval of the Receiver's Interim Statement of Receipts and Disbursements as at August 15, 2017;
- (e) to seek an order directing Ruditeq Inc. to deliver up to the Receiver forthwith all information, emails and documents of any kind in its possession or control as set out in the Receiver's written demand for same dated June 16, 2017;
- (f) to report on the Receiver's efforts to recover payments made by the Debtor to third parties on the eve of bankruptcy, such payments made by the Debtor constituting preferences or transfers at undervalue as set out herein;
- (g) to seek an order permitting the Receiver to share documents and information obtained by the Receiver in the course of its investigation which may be material to potential third party claims for fraud and/or misrepresentation, or claims by creditors against third parties for preferences or transfers at undervalue, on terms and conditions it deems advisable;

- (h) approval for the professional fees and disbursements of the Receiver and those of its legal counsel to July 31, 2017 as set forward in the fee affidavits filed and attached to this First Report; and
- (i) Such further and other relief as to this Honourable Court may seem just and appropriate.

Notice to Reader

5. In preparing this First Report and making the comments herein the Receiver has relied upon information prepared or provided by the Debtors and from other third-party sources. While the Receiver has no reason to believe that this information is not materially correct, readers should note that the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of this information. In this First Report, nothing of a material nature is believed to turn on the Receiver's reliance upon the information not otherwise audited or reviewed for accuracy.

6. Unless otherwise stated, all dollar amounts set out in this First Report are expressed in Canadian dollars.

BACKGROUND

7. The Debtor was is in the business of manufacturing and selling custom men's clothing. The sole shareholder and director of the Debtor is Antonio Petosa ("**Petosa**").

8. The Applicant, DaVinci Capital Partners Inc. ("**DaVinci**") is a secured creditor of the Debtor. On or about February 17, 2017, the DaVinci and the Debtor entered in to a

loan agreement (the “**Loan Agreement**”) to provide up to \$850,000 of working capital to finance inventory purchases and day to day operations, and a \$300,000 term loan to enable it to purchase new equipment.

9. DaVinci made an initial \$237,342 advance for working capital (\$300,000 gross advance less holdbacks and fees per the Loan Agreement) in two tranches, the first on February 23, 2017 in the amount of \$214,982.50 and the second on February 24, 2017 in the amount of \$22,359.50.

10. Unknown to DaVinci, the Debtor ceased operations on or about Friday, March 3, 2017 and met with Licensed Insolvency Trustee Schwartz Levitsky Feldman Inc. (the “**Trustee**”) on Saturday March 4, 2017 to execute the necessary documents to assign the Debtor into bankruptcy.

11. The bankruptcy assignment was filed on Monday, March 6, 2017 and the certificate of assignment was issued by the Office of the Superintendent of Bankruptcy (“**OSB**”) on Tuesday, March 7, 2017.

12. DaVinci advised the Receiver that it attended at the Premises on March 14, 2017, to attempt to meet with Petosa as it had been unable to contact him since the loan advances were made.

13. DaVinci discovered that the business was closed and that the landlord, Harris Jordan Investments Ltd. (the “**Landlord**”) had terminated the Company’s lease for 50 Wingold Avenue, Toronto, Ontario (the “**Premises**”) for non-payment of rent.

14. The Landlord also informed DaVinci that assets of the Debtor, including inventory and equipment, had been removed from the Premises the prior weekend and that a security video was available which documented same.

15. The Applicant brought an urgent motion for the appointment of a Receiver and the Receiver was appointed on March 22, 2017.

INITIAL ACTIVITIES OF THE RECEIVER

16. On March 24, 2017 the Receiver attended at the Premises to meet with the Landlord and evaluate the remaining assets. The Receiver made arrangements with the Landlord for ongoing access to the Premises to facilitate the marketing and sale of the remaining assets, but did not take possession of the Premises.

Notice and Statement of Receiver

17. In accordance with Section 245(1) and 246(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”), the Receiver prepared and filed with the Office of the Superintendent of Bankruptcy, and sent to the Trustee, the statutory notice of its appointment (the “**245/246 Notice**”), a copy of which is attached as **Appendix “C”**.

18. The 245/246 Notice included an appropriate disclaimer that the Receiver needed to obtain a legal opinion on the registered security interests and investigate the alleged removal of assets.

19. The 245/246 Notice did not show any accounts receivable as an asset, as the Debtor reported no accounts receivable in its bankruptcy filing and the Receiver had not yet had

an opportunity to gain access to the accounting records in the possession of the Trustee to verify same.

20. The Receiver subsequently obtained the books and records of the Company from the Trustee including the computer which contained the accounting records.

21. The Receiver noted from the proofs of claim filed in the bankruptcy that Canada Revenue Agency had claims for unpaid payroll taxes and unremitted HST that together were approximately \$190,000.

22. The Receiver also understood from the Trustee that there were claims from employees for unpaid wages and vacation pay of approximately \$30,000.

SECURED CREDITORS AND LEGAL OPINION

23. At the date of the Appointment Order the Debtor had the following secured creditors as evidenced by *Personal Property Security Act* searches:

- i) DaVinci Capital Private Debt Fund
- ii) Patriot Equipment Finance Ltd.

24. The origin of the DaVinci loan is set out earlier in this First Report.

25. In November 2016, the Debtor obtained lease financing of \$200,000 from Patriot Equipment Finance Ltd. (“**Patriot**”) for the purchase of equipment (the “**Patriot Lease**”).

26. The Receiver obtained an independent legal opinion from its counsel, Spark LLP, on the validity and enforceability of the DaVinci security agreement (the “**DaVinci Security**”) and the relative priorities between the DaVinci Security and the security held by Patriot (the “**Patriot Security**”).

27. While the Patriot Lease was funded in November 2016, the Patriot Security was not registered at PPSA until February 10, 2017, while the DaVinci Security was registered at PPSA on February 24, 2017.

28. Whether the Patriot Lease is a true lease or a finance agreement, it was for a four-year term and therefore required to be registered at PPSA, and as noted above, was registered two weeks before the DaVinci Security.

29. The Security Opinion identified a deficiency in the Patriot Security, as the Patriot PPSA registration was only made against four (4) of the six (6) pieces of equipment listed on the Patriot Lease. Given this deficiency, it was agreed between Patriot and the Receiver that the proceeds of sale of the two unregistered pieces of equipment would be paid over to the Receiver.

30. Subject to the assumptions, qualifications and discussions contained in the Security Opinion, counsel is of the view that DaVinci holds a properly perfected security interest against the Debtor's assets save and except for the four pieces of equipment that formed part of the Patriot Lease.

31. A copy of the security opinion dated March 31, 2017 (the "**Security Opinion**") is provided in **Appendix "D"** to this First Report.

32. The Receiver subsequently identified a financial transaction which took place on November 29, 2016 between the Debtor and the supplier of the equipment under the Patriot Lease, which raised concerns about the relationship between the Debtor and the equipment supplier. These concerns are set out later in this First Report.

REALIZATION OF ASSETS BY THE RECEIVER

33. The Appointment Order provides that the Receiver is authorized:
- 3(j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
 - 3(k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$200,000; and
 - ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

34. The results of the Receiver's efforts to realize on the assets of the Debtor are set out below.

Accounts Receivable

35. Upon completing its initial assessment and obtaining information from the Trustee, the Receiver determined that in addition to the equipment and inventory remaining in the Premises, the Debtor also had gross accounts receivable of \$72,893.

36. Upon review of the aging the Receiver estimated that between \$30,000 and \$40,000 of accounts were potentially collectible. It was also determined that some of accounts on the receivable list were previously collected but not recorded in the Company's records.

37. To date the Receiver has collected approximately \$17,000 of accounts receivable. A number of accounts were sent for legal collections/small claims at the end of June, 2017.

Inventory

38. There were no finished goods of any significant quantity left in the Premises at the time of the Appointment Order.

39. Through a review of FedEx Ground shipping manifests, the Receiver traced a shipment of 1,275 shirts sent by courier to a retailer in Calgary, Alberta on March 3, 2017. A shipment of this quantity would have been expected to be in the tens of thousands of dollars but was not recorded in the books and records as a sale or a receivable.

40. The Calgary retailer advised the Receiver that it had been asked by Petosa to take a large shipment of shirts to assist with CFC's liquidity problems, and it agreed to do so at a discounted price of \$35 per shirt. However, the shipment was much larger than expected and included items that the Calgary retailer determined were unsuitable for its clientele and likely not saleable.

41. The Receiver negotiated and completed a sale of the 1,275 shirts to the Calgary retailer for \$31,000 plus applicable taxes on April 20, 2017.

42. There was also a quantity of raw materials (mostly partial bolts of fabric) remaining in the Premises. It was subsequently sold 'en bloc' for \$4,000 plus HST.

Machinery and Equipment

43. To evaluate the machinery and equipment remaining in the Premises, the Receiver obtained an updated appraisal from Century Services Inc. (“**Century**”). Century had previously performed an appraisal for the Company on October 25, 2016. A copy of the original appraisal (equipment schedules only) performed by Century for the Debtor dated October 25, 2016 (the “**Original Appraisal**”) is attached as **Appendix “E”**.

44. A copy of the updated appraisal performed by Century for the Receiver dated March 24, 2017 (the “**Updated Appraisal**”) is attached as **Appendix “F”**.

45. On a forced liquidation value (FLV) basis, Century originally appraised the Debtor’s machinery and equipment (excluding inventory) at \$89,155. In the Updated Appraisal it is down to \$64,730.

46. The reason for the lower value is attributed to there being approximately 25 fewer pieces of equipment at the Premises in March, 2017 than in October, 2016. At this time, it is uncertain whether this reduction can be entirely attributed to the removal of assets which took place on the eve of bankruptcy.

47. The FLV values in both appraisals include the equipment listed on the Patriot Lease. Therefore the FLV of the non-leased machinery and equipment that would be considered available for sale by the Receiver was approximately \$37,000.

48. The quantity and quality of assets did not lend itself to a protracted marketing and advertising campaign, nor an auction, as the costs of auction were projected to consume

the bulk of any recovery, not to mention additional overhead costs of rent and related expenses.

49. The Receiver prepared an information package and circulated it to parties that had expressed an interest in the assets, and to industry participants that the Receiver identified. A copy of the Information Package is attached as **Appendix “G”**.

50. Through the above process, the Receiver sold the fixed assets for net \$26,956.01 plus HST and raw materials inventory for net \$4,000 plus HST, such totals comparing favourably on an item-by-item basis to the values contained within the Century appraisals.

51. The Receiver also collected a further \$1,500 plus HST from Patriot for two pieces of equipment as a result of security registration priority, as described earlier in this First Report.

ASSIGNMENT IN BANKRUPTCY

52. As noted above the Debtor filed a voluntary assignment in bankruptcy. The date of bankruptcy is March 7, 2017.

53. The Trustee confirmed to the Receiver that the bankruptcy documents including the Statement of Affairs sworn by Petosa were actually signed on Saturday, March 4, 2017; however because it occurred on a weekend the documents are dated for the first business day following, which was Monday March 6, 2017.

54. Attached as **Appendix “H”** is the Notice of Bankruptcy and Notice of First Meeting of Creditors dated March 7, 2017, and the Statement of Affairs sworn by Petosa on March 4, 2017 but dated March 6, 2017.

55. The Receiver attended the first meeting of creditors held at the office of the Trustee on March 27, 2017. Petosa did not attend the first meeting of creditors in breach of his duties and a bankruptcy offence under section 198(2) of the BIA.

Concerns Regarding Timing of Bankruptcy

56. On May 26, 2017 the Trustee confirmed by reply email to the Receiver that Petosa first contacted him about making an assignment in bankruptcy for the Company approximately 4 or 5 days prior to paying the Trustee a \$10,000 retainer.

57. The retainer was paid to the Trustee on February 28, 2017, which appears to indicate that Petosa was considering bankrupting the Company at the same time he was receiving new loan funding from DaVinci.

Concerns Regarding Accuracy of Statement of Affairs

58. The Receiver believes that the information provided by Petosa to the Trustee in preparation of the Statement of Affairs sworn by Petosa in the bankruptcy proceeding is materially inaccurate, as follows:

- i) It fails to account for removal of assets on eve of bankruptcy, as documented by security video;
- ii) It fails to list any accounts receivable;

- iii) It significantly understates the debt owed to DaVinci and fails to list major unsecured creditors properly, or at all;
- iv) It shows Petosa is a unsecured creditor for \$120,000
- v) It fails to disclose significant payments made on eve of bankruptcy which appear to be preferences or transfers at undervalue.

59. The Receiver is in possession of security video from the Landlord which documents the removal of a significant amount of inventory, equipment and other assets from the Debtor's Premises over the weekend of March 4 to 5, 2017, following the execution of the bankruptcy documents.

60. The Debtor reported no accounts receivable on its Statement of Affairs. This has been proven incorrect.

61. The DaVinci loan is shown as \$115,000 when it is really \$237,000.

62. The Receiver has received notices and correspondence from three of the Debtor's key suppliers collectively owed in excess of \$100,000 (Albini S.p.A owed \$28,702 USD, Tessitura Monti S.p.A owed \$50,753 and JN Harper owed \$14,000) none of which are listed on the Statement of Affairs. Copies of correspondence and statements from Albini S.p.A., JN Harper and Tessitura Monti S.p.A. are attached as **Appendix "I"**.

63. Petosa is listed on the Statement of Affairs as an unsecured creditor for \$120,000. There is no evidence that Petosa was a creditor at the date of bankruptcy, and in fact quite the opposite as his shareholder loan account shows he owes the Company \$287,100.

INVESTIGATION OF TRANSACTIONS

64. The Receiver identified certain transactions in the Debtor’s banking records which required further investigation, considering the timing of the transactions, the amounts involved, and the sources and uses of funds for each. The Receiver has prepared a chronology of key events and transactions to accompany the following two sections of this First Report, as set out below:

Chronology of Key Events and Transactions

<u>Date</u>	<u>Event</u>
March 7, 2014	Predecessor company The Custom Factory Inc. (“ Oldco ”) files for bankruptcy.
March 28, 2014	Trustee in Bankruptcy of Oldco sells assets of Oldco ‘en bloc’ to Mirjana Baotic (“ Baotic ”), who was an employee of Oldco. Equipment sold to Baotic as described in the bill of sale dated March 28, 2014 is very similar to equipment now owned by The Custom Factory Canada Inc. (“ CFC Inc. ”). Baotic becomes financial controller of CFC Inc.
October 25, 2016	Century Services Inc. (“ Century ”) performs appraisal of CFC Inc. equipment.
November 8, 2016	CFC Inc. obtains commitment for \$200,000 lease financing from Patriot Equipment Finance (“ Patriot ”) to purchase equipment. Equipment to be sourced from equipment broker Ruditeq Inc. (“ Ruditeq ”). Ruditeq issues invoice dated November 8, 2016 directly to Patriot for the equipment.
November 18, 2016	Patriot meets with Antonio Petosa (“ Petosa ”) to sign lease documents.
November 21, 2016	Patriot confirms funding and requests confirmation of delivery and installation date for equipment from Ruditeq.
November 23, 2016	Patriot wires \$200,000 to Ruditeq in payment of Ruditeq invoice and again seeks confirmation of equipment delivery and installation date.
November 29, 2016	\$200,000 is deposited into the operating account of CFC Inc. The source of funds is a bank draft from Ruditeq. Of the \$200,000 deposited, \$50,000 is used to reduce CFC Inc.’s TD Bank overdraft, and \$150,000 paid to various individuals.
December 5, 2016	Patriot asks for update on delivery. Patriot advised by Ruditeq that equipment was delivered to CFC Inc. “last week” and forgot to inform Patriot.
February 17, 2017	DaVinci Capital signs loan agreement with CFC Inc.

<u>Date</u>	<u>Event</u>
February 23/24, 2017	CFC Inc. (Petosa) has initial discussion with trustee in bankruptcy about assigning CFC Inc. into bankruptcy.
February 23, 2017	Initial advance from DaVinci Capital of \$214,982.50 is made to CFC Inc.
February 24, 2017	Second advance of \$22,359.50 is made from DaVinci Capital to CFC Inc.
February 28, 2017	CFC Inc. pays \$10,000 retainer to trustee in bankruptcy and \$131,632 paid out to a number of persons and other entities including paying off unsecured TD loan and Visa card in name of CFC Inc. and Joseph Petosa.
March 3, 2017	CFC Inc. ceases operating.
March 4, 2017	CFC Inc. (Petosa) meets with trustee in bankruptcy to execute bankruptcy documents.
March 4 and 5, 2017	Removal of equipment and inventory from the business premises.
March 6, 2017	Bankruptcy documents are filed with the Superintendent. Employees arrive to locked premises and do not receive final pay.
March 7, 2017	Certificate of assignment in bankruptcy for CFC Inc. is issued by the Superintendent of Bankruptcy.
March 14, 2017	DaVinci representatives attend CFC Inc. business premises and are advised by Landlord that the lease has been terminated for non-payment of rent. Landlord also advises that CFC Inc. had removed inventory and equipment the previous weekend and that there is security video documenting the removal
March 22, 2017	Receiver is appointed.
March 27, 2017	Receiver obtains updated appraisal from Century, and obtains copy of previous Century appraisal performed for CFC Inc. dated October 25, 2016. Receiver notes certain pieces listed on the October 2016 appraisal match equipment allegedly purchased through, and delivered and installed by, equipment broker Ruditeq Inc. in late November / early December 2016.
June 16, 2017	Receiver makes demand on Ruditeq to comply with Appointment Order and deliver up all books and records pertaining to dealings with CFC Inc.
June 23, 2017	Receiver's counsel issues demand letters to various parties for repayment of monies received on the eve of bankruptcy totaling \$131,632.

Transactions between Debtor and Ruditeq Inc.

65. As set out earlier in this First Report, the Debtor obtained equipment financing from Patriot. A copy of the Patriot Lease is attached as **Appendix "K"**.

66. According to Patriot, the equipment being leased to the Debtor was purchased from Ruditeq Inc. (**“Ruditeq”**), an equipment broker located in Toronto. The invoice from Ruditeq to Patriot dated November 8, 2016 (the **“Ruditeq Invoice”**) is attached as **Appendix “L”**.

67. Based upon the invoice date of November 8, 2016, and the fact that Patriot wired funds to Ruditeq on November 23, 2016, the anticipated delivery and installation date of the leased equipment would have been expected to be late November or early December, 2016.

68. According to Claudio Mancuso (**“Mancuso”**), Managing Director of Patriot, he met with Petosa on November 18, 2016 to execute the lease documents.

69. Mancuso advised the Receiver that he spoke directly with the principal of Ruditeq on November 21, 2016 to confirm that the wire payment of \$200,000 was scheduled for release on November 23, 2016 and to confirm when delivery of the equipment would be made so that he could be present at the time of delivery.

70. Mancuso advised the Receiver that he contacted Ruditeq on November 23, 2016 to again seek confirmation of equipment delivery date. According to Mancuso he was told by the principal of Ruditeq that it was in the process of being scheduled and he would be informed once the date was confirmed.

71. Mancuso advised the Receiver that he again contacted the principal of Ruditeq on December 5, 2016 and was told that the equipment had already been delivered to the Debtor

the week prior. When asked why he was not informed, according to Mancuso he was told by the principal of Ruditeq that "it slipped his mind".

Equipment Discrepancies

72. Upon its appointment, the Receiver noted that certain of the pieces of equipment listed on the Ruditeq Invoice and allegedly delivered in late November/early December, are listed in the Original Appraisal dated October 25, 2016.

73. The Receiver has also observed that the some of the equipment allegedly delivered to the Debtor by Ruditeq as described on the Ruditeq Invoice could not be exactly matched by model year or serial number to any equipment located at the Premises.

74. The Receiver has prepared a schedule setting out these discrepancies, shown below:

Asset Description on Ruditeq Invoice November 8, 2016	Closest Matching Asset at Premises March 24, 2017	Receiver's Comments on Discrepancies
2011 Henhai 781 Pic Stitch Machine. No serial number.	2005 Hengtai "HT-781" Hand Stitch Sewing Machine S/N 051635	No serial number and manufacturer name spelled incorrectly on invoice. No evidence of 2011 machine on invoice being delivered.
2011 Feiya 1270 Embroidery Machine S/N 06432	2006 Feiya "CT1201" Single Head Embroidery Machine S/N 06432	Very alarming that year of manufacture and model number on invoice do not match but serial number is an exact match to machine already owned by Company.
2009 Brother "LK3-B448-E" Auto Button Sewer. No Serial Number.	Brother "LK3-B448-E" Button Sewer S/N M9589993	No serial number on invoice. No year of manufacture on machine at Premises. Unable to verify if a match to invoice.
2008 Gerber GTXL Automatic Cutter with Accumark, S/N 911	2008 Gerber "GTXL" Fabric Cutter S/N 911 w/ computerized control	No evidence of delivery or installation. Machine on invoice matches machine already owned by company per Century listing from October 25, 2016.
2011 Juki "LBH-1790S" Button Hole Machine S/N 2LOED00276	Juki "LBH-1790S" Button Hole Machine S/N 2LOED00276	No evidence of delivery or installation. Machine on invoice appears to exactly match serial number of Juki machine already owned by company per Century listing from October 25, 2016.
2009 Brother "BAS-610" Auto Pocket Welt Machine S/N M1688859	Brother "BAS-610" Programmable Pattern Sewing Machine S/N M1588859 w/ Controller	No evidence of delivery or installation. Machine on invoice appears to match machine already owned by company per Century listing from October 25, 2016 except S/N on invoice starts with "M168" and machine at Premises starts with "M158".

75. Furthermore, certain of the equipment listed in the Ruditeq Invoice looks very similar to the assets owned by Petosa's previous company, The Custom Factory Inc.

Assets of Predecessor Company

76. Petosa's previous company, The Custom Factory Inc. ("**Oldco**") filed for bankruptcy on March 7, 2014. It operated from the same Premises as the Debtor.

77. The assets of Oldco were sold by its Trustee in Bankruptcy to an individual named Mirjana Baotic ("**Baotic**") for \$80,000. Baotic was an employee both of Oldco and of the Debtor. Baotic's most recent position with the Debtor was that of Financial Controller.

78. The bill of sale from the Trustee of Oldco to Baotic dated March 28, 2014 (the "**Bill of Sale**") is attached as **Appendix "L"**.

79. The assets of Oldco sold to Baotic are substantially the same as the Debtor's assets. Notably, five of the six pieces of equipment listed on the Ruditeq Invoice also appear to be very similar to those listed on the Bill of Sale.

Transaction between Ruditeq Inc. and Debtor November 29, 2016

80. CFC's bank statements show a \$200,000 deposit to its operating account on November 29, 2016.

81. In a meeting with Petosa, attended by the Trustee, held on April 3, 2017 the Receiver inquired of Petosa the origin of this deposit. Petosa indicated that he could not recall the specifics of the \$200,000 deposit and speculated that it may have been a payment from a customer.

82. The Debtor's accounting records do not identify the source of funds or their purpose. Absent a credible or verifiable explanation from Petosa, the Receiver took steps to obtain a copy of the deposited item from the Debtor's bank branch with Toronto-Dominion Bank ("**TD Bank**").

83. The item that was deposited was a \$200,000 bank draft drawn on the Royal Bank of Canada ("**RBC**"). RBC confirmed to the Receiver that the source of funds was a Ruditeq Inc. bank account. A copy of the fax correspondence from RBC and a copy of the bank draft is attached as **Appendix "M"**.

84. When presented with a copy of the bank draft and further inquiry from the Receiver, Petosa stated in an email reply to the Receiver dated June 16, 2017 that the \$200,000 was actually a loan from Ruditeq to the Company that he personally guaranteed.

85. There is no evidence of a loan between Ruditeq and the Company. When it was pointed out to Petosa by the Receiver that failing to disclose a loan on his sworn Statement of Affairs, particularly one of this magnitude, could constitute a bankruptcy offence, he changed his story again and stated that it was a "personal loan that he personally guaranteed".

86. The entire email string between Petosa and the Receiver, commencing May 25, 2017 and ending June 20, 2017, is attached as **Appendix "N"**.

87. Given the various unverifiable explanations being put forward by Petosa, the Receiver contacted the owner of Ruditeq by telephone on June 16, 2017 and sent e-mail

correspondence the same day with a copy of the Appointment Order, requesting all particulars and documentation pertaining to Ruditeq's dealings with the Debtor.

88. A copy of the email from the Receiver to Rudi Kuehnhold (“**Kuehnhold**”) of Ruditeq Inc., along with a delivery receipt, is attached as **Appendix “O”**.

89. The Receiver followed up for a reply from Kuehnhold on June 29 and again on July 14, 2017.

90. On July 17, 2017, Receiver's counsel was contacted by a lawyer representing Ruditeq, indicating that while his client had information being requested by the Receiver, he was concerned about how the information may be used as evidence against him in future proceedings, civil or otherwise.

91. Receiver's counsel responded that the Receiver cannot provide assurances or protections of the nature being sought.

92. The Receiver believes the unexplained nature of this transaction, and the fact that it took place at the same time Ruditeq was purporting to procure and sell equipment to the Debtor from financing provided by Patriot, for the identical amount of \$200,000, requires further investigation and explanation.

93. The Receiver is seeking an order that Ruditeq be ordered to forthwith deliver up to the Receiver all information and documents required by the Receiver.

Payments Made by Debtor from Proceeds of Ruditeq Deposit

94. From the \$200,000 received by the Debtor from Ruditeq, the Debtor made the following payments same-day:

	Description	Payor/Payee	Amount
29-Nov-16	Deposit	Ruditeq Inc.	200,000.00
			\$ 200,000.00
29-Nov-16	Bank Draft #79661774	Enrico/Teresa Iafolla	50,000.00
29-Nov-16	Bank Draft #79661775	Antonio Sirianni	25,000.00
29-Nov-16	Bank Draft #79661776	Lucia / Saverio Sirianni	50,000.00
29-Nov-16	Bank Draft #79661777	Antonio Sirianni	25,000.00
29-Nov-16	Reduce TD line of credit	TD	50,000.00
			\$ 200,000.00

95. The Receiver notes that the above payments are just outside of the 3 month reviewable period for arms-length transactions.

96. When requested to provide an explanation for the payments to the Iafollas and Siriannis, Petosa stated in an email dated June 2, 2017 that they loaned the Company money *“about two years ago”*.

97. When it was pointed out to Petosa that none of the persons identified by him as having made loans to the company actually appear in the company’s financial records, he stated:

“There had been so many loans to the company by so many people that the book keeper kept them under my name until they were paid, but there were deposits from each one of the people that had made loans to the company”

98. A copy of Petosa's shareholder loan account is attached as **Appendix "P"**. According to this document, Petosa owes the Company \$287,100.85, while the Statement of Affairs states that he is owed \$120,000.

99. There are no deposits to Petosa's shareholder loan account which correlate to loans from third parties to the Company under "his name", however, the payments made on November 29, 2016 totalling \$150,000 were charged to his shareholder loan account.

100. The Receiver intends to demand and seek payment from Petosa for the amount of \$287,100.85 that is due by him to the Company.

PREFERENCES AND TRANSFERS UNDERVALUE

101. From the proceeds of the DaVinci Loan, the Debtor made payments to the following parties which constitute either preferences (payments to creditors) or transfers at undervalue (payments to non-creditors for little or no consideration) within 3 months of the date of bankruptcy.

Date	Description	Payor/Payee	Amount	
23-Feb-17	Loan Advance	DaVinci	214,982.50	
24-Feb-17	Loan Advance	DaVinci	22,359.50	
			\$ 237,342.00	
27-Feb-17	Pay Credit Card	TD Visa	24,191.99	Joseph Petosa (brother) named on card
28-Feb-17	Bank Draft	Mariane Spinosa	15,000.00	Ex-wife of Antonio Petosa
28-Feb-17	Bank Draft	Chantal Begin	11,000.00	Girlfriend of Antonio Petosa
28-Feb-17	Bank Draft	Exalte Le Salon	20,000.00	Edmonton Hair Salon owned by C. Begin
28-Feb-17	Wire Transfer	Michael Iscove	25,050.00	Loan Broker/Advisor
28-Feb-17	Cheque	Joe Di Liso	15,000.00	Former employee
28-Feb-17	Cheque	Lou Vena	10,000.00	Former employee
28-Feb-17	Loan Payment	TD Term Loan	11,390.01	Pay off loan in full (unsecured)
			\$ 131,632.00	

102. The banking records show the receipt of the DaVinci loan proceeds on February 23 and 24, 2017 and immediate disbursement of a significant portion of the loan proceeds on

February 28, 2017 to pay other debts which the Receiver believes are preferences and/or transfers at undervalue.

103. There were no payments made by CFC from the loan advances for business expenses such as rent, fabric suppliers, payroll tax arrears or HST arrears.

104. On June 23, 2017 counsel to the Receiver issued registered mail demands to all of the above recipients.

105. The demand letters sent out by Receiver's counsel were sent to the addresses on the service list for the return of this motion, except in cases where the recipient has since retained counsel, and none were returned as undeliverable.

106. As at the date of this First Report, the Receiver has recovered \$10,000 from one of the recipients.

107. Another one of the recipients acknowledged to the Receiver, through his counsel, that he received not only \$15,000, but also several pieces of equipment, such equipment forming part of the security granted by the Debtor to DaVinci only days earlier.

108. The Receiver acknowledges that for it, or any creditor, to formally litigate claims for preferences or transfers at undervalue pursuant to section 95 and section 96 of the BIA, an order under Section 38 of the BIA will be required.

109. The Receiver notes that it has limited funds available to fund multiple lawsuits, and furthermore that any surplus funds in the possession of the Receiver are subject to the CRA deemed trust for payroll tax arrears.

110. Rather than the Receiver taking further steps to litigate these matters, the Receiver believes that the most prudent course of action is for one or more of the creditors to take proceedings under section 38 of the BIA and pursue the preferences and transfers at undervalue directly, at their cost and for their benefit.

111. In the event one or more creditors wish to make use of section 38 to pursue claims for preference or transfers at undervalue, the Receiver believes it should be permitted and authorized to turn over to such creditor(s) all documents and information pertinent to such claims that came into the Receiver's possession as a result of its investigations and demands for payment.

112. This will permit the Receiver to finalize receivable collections, make a distribution of surplus funds to CRA, and conclude the receivership in a timely manner.

Possible Bankruptcy Offences

113. Based upon the results of the Receiver's investigation, it appears that the following bankruptcy offences may have been committed:

- i) fraudulent disposition of the bankrupt's property before or after the date of the initial bankruptcy event [**S. 198(1)(a) of the BIA**]
- ii) making a false entry or knowingly makes a material omission in a statement or accounting [**S. 198(1)(a) of the BIA**]
- iii) after or within one year immediately preceding the date of the initial bankruptcy event, obtaining any credit or any property by false representations made by the

bankrupt or made by any other person to the bankrupt's knowledge [S. 198(1)(e) of the BIA]

- iv) failure to attend the first meeting of creditors [S. 198(2) of the BIA]
- v) being engaged in any trade or business, at any time within the period beginning on the day that is two years before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included, that person has not kept and preserved proper books of account [S. 200 (1) of the BIA]

114. The Receiver has informed the Office of the Superintendent of Bankruptcy of its concerns regarding the events surrounding the bankruptcy and possible bankruptcy offences, and has requested intervention from the OSB including an investigation by the Debtor Compliance Unit.

OTHER MATTERS

The Receiver has attended to all of its statutory obligations and other matters, as follows:

Canada Revenue Agency

115. Canada Revenue Agency (“CRA”) originally filed a proof of claim in the bankruptcy for unremitted payroll taxes of approximately \$187,000 and HST of approximately \$40,000.

116. Due to the bankruptcy and reversal of priorities, the HST claim loses its deemed trust, as does the employer portion of source deductions, however the deemed trust portion of the original claim (employee portion) is approximately \$127,000.

117. However, the claim of CRA did not include the payroll assessment for 2017 and accordingly the Receiver requested CRA perform a further payroll trust examination.

118. The trust examination was conducted by CRA on July 18, 2017. Based on the discussion with the CRA auditor it appears that the payroll tax assessment will increase to approximately \$300,000.

119. The deemed trust (employee) portion of the gross payroll tax claim is expected to be in excess of \$200,000 once the final assessment has been issued by CRA.

Other Payroll Issues

120. The Receiver discovered several payments to one employee in the weeks prior to bankruptcy classified as “refunds” and another employee has started (through his legal counsel) that he was being paid in cash for the past 14 months.

121. Payments to employees in cash, or by classifying them as refunds, raises potential further areas of inquiry including failure to withhold and remit, and unreported and/or under-reported sales for excise tax purposes.

122. The foregoing concerns have been reported to CRA.

Wage Earner Protection Program Act (“WEPPA”)

123. The Trustee performed the initial WEPPA filing, as its appointment preceded the Receiver’s appointment by almost three weeks.

124. The Trustee and Receiver subsequently exchanged information as needed and amended claims were filed as needed.

125. WEPPA has paid out (under the Trustee's estate number) a total of \$30,984.12 for wages and vacation pay (secured) and \$22,857.79 for termination pay (unsecured).

126. The Receiver has fulfilled all of its obligations under WEPPA.

RECEIVER'S INTERIM STATEMENT OF RECEIPTS & DISBURSEMENTS

127. All receipts and disbursements of the Receiver from the date of the Appointment Order up to and including August 15, 2017 are set out in **Appendix "Q"**.

Projected Recovery to Secured Creditors

128. DaVinci's security interest is subject to the deemed trust for the employee portion of CRA for unremitted source deductions, which is expected to be in excess of \$200,000.

129. DaVinci's security interest is further subject to the super-secured claim under S.81 of the BIA for unpaid wages (paid by WEPPA) in the amount of \$30,984.12.

130. There is no prospect for recovery to DaVinci from the assets of the Debtor.

131. The only creditor likely to recover anything in the receivership is CRA.

PROFESSIONAL FEES

132. The Receiver seeks to have its accounts and those of its legal counsel, approved by this Court as follows:

133. For the period of March 22, 2017 to July 31, 2017, the Receiver's fees and disbursements (inclusive of all applicable taxes) total \$38,352.20. The Receiver's detailed

accounts and the affidavit of Robert Link regarding the fees and disbursements are appended hereto as **Appendix “R”**.

134. For the period of ending July 31, 2017, the fees and disbursements of the Receiver’s legal counsel, Spark LLP (inclusive of all applicable taxes) totalled \$13,568.53. Counsel’s detailed accounts and the affidavit of Sanjay Kutty dated August 14, 2017 regarding the fees and disbursements are appended hereto as **Appendix “S”**.

SUMMARY AND RECOMMENDATIONS

135. For the reasons set out in this First Report, the Receiver respectfully requests that this Honourable Court issue an Order:

- (a) Approving this First Report;
- (b) Approving the actions, activities, conduct and findings of the Receiver and its counsel as described in this First Report;
- (c) Approving the Receiver’s Interim Statement of Receipts and Disbursements as at August 15, 2017;
- (d) Approving the fees and disbursements of the Receiver and its counsel as submitted;
- (e) Requiring Ruditeq deliver up to the Receiver within 10 days of an Order all documents and information regarding its dealings with the Debtor and Petosa that are in its possession or control.

- (f) Authorizing the Receiver to share documents and information obtained by the Receiver in the course of carrying out its mandate which may be material to potential third party claims for fraud and/or misrepresentation, or claims by creditors against third parties for preferences or transfers at undervalue.

All of which is respectfully submitted at Toronto, Ontario this 16th day of August, 2017.

LINK & ASSOCIATES INC.

Court-Appointed Receiver of

The Custom Factory Canada Inc.

And not in its personal or corporate capacity

Court File No. CV-17-11742-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

IN THE MATTER OF AN APPLICATION

pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as
am, section 101 of the *Courts of Justice Act*, R.S.O.1990, c.C.43 and the *Personal
Property Security Act*, R.S.O. c.P.10

JUSTICE) FRIDAY, THE 1ST
)
) DAY OF SEPTEMBER, 2017

B E T W E E N:

DAVINCI CAPITAL PARTNERS INC., in its capacity as
trustee of DAVINCI CAPITAL PRIVATE DEBT FUND

Applicant

and

THE CUSTOM FACTORY CANADA INC.
and ANTONIO PETOSA

Respondents

ORDER

(Approval of First Report)

THIS MOTION, made by the Link & Associates Inc., the Court-Appointed Receiver in this matter for an Order

- a. approving the actions, activities, conduct, and findings of the Receiver and its counsel as set out in the First Report of the Receiver dated August 14, 2017 (the "First Report");
- b. approving the interim statement of receipts and disbursements of the Receiver;

- c. approving the professional fees and disbursements of the Receiver and its counsel to July 31, 2017 as set out below and in the fee affidavits, filed;
- d. directing Ruditeq and its principal, Rudi Kuehnhold, to deliver up to the Receiver forthwith all information, emails, and documents of any kind in its possession or control relating to the dealings between Ruditeq and the Debtor as described in the First Report; and
- e. permitting the Receiver to share documents and information obtained in the course of its investigations which may be material to third party claims for fraud or misrepresentation, or claims by creditors against third parties for preferences or transfers at undervalue, on terms and conditions which the Receiver deems advisable,

was heard this day at the court house, 330 University Avenue, 7th Floor, Toronto, Ontario

ON READING the Motion Record of the Court-Appointed Receiver, including the First Report, the fee affidavits of Robert Link dated August 16, 2017, and Sanjay Kutty, dated August 14, 2017, on hearing the submissions of the lawyer(s) for the parties,

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that the actions, activities, conduct, and findings of the Receiver and its counsel as set out in the First Report, are hereby approved.
3. THIS COURT ORDERS that the interim statement of receipts and disbursements dated August 16, 2017 and included as Exhibit Q to the First Report is hereby approved.

4. THIS COURT ORDERS that the fees and disbursements of (a) the Receiver, in the amount of \$38,352.20, inclusive of HST; and the Receiver's legal counsel, Spark LLP, in the amount of \$13,568.53, inclusive of HST, are hereby approved.
5. THIS COURT ORDERS that Ruditeq Inc. is hereby ordered to deliver up to the Receiver forthwith at the sole cost of Ruditeq Inc. all information, emails, and documents of any kind in the possession or control of Ruditeq Inc. or its principal(s), which relate to the dealings between Ruditeq Inc. and the Respondents.
6. THIS COURT ORDERS that the Receiver is permitted and authorised to share documents and information obtained by the Receiver in the course of its investigation which may be material to potential third party claims for fraud or misrepresentation, or which may be material to claims by creditors against third parties (by way of Section 38 Applications or otherwise) for preferences or transfers at undervalue, on such terms and conditions which the Receiver deems advisable.

RCP-E 59A (July 1, 2007)

IN THE MATTER OF OF AN APPLICATION pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as am, section 101 of the *Courts of Justice Act*, R.S.O.1990, c.C.43 and the *Personal Property Security Act*, R.S.O. c.P.10

DAVINCI CAPITAL PARTNERS INC., in its capacity as trustee of
DAVINCI CAPITAL PRIVATE DEBT FUND
Applicant

-and-

THE CUSTOM FACTORY CANADA INC. et al.

Respondents

Court File No. CV-17-11742-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

ORDER
(Amendment of Appointment Order)

SPARK LLP

169 King Street East, Third Floor
Toronto, ON M5A 1J4

Jeff Rosekat LSUC No. 43352Q

jeff@spark.law

Tel: 416.639.2151

Fax: 647.490.4888

Lawyers for the receiver



Canada Revenue Agency

Agence du revenu du Canada

Notice of Assessment

81 PD67A E (16)X Protected B when completed

Date August 18, 2017

Account number 837902170 RP 0001

- Important - See Reverse -

THE CUSTOM FACTORY CANADA INC.

TAXATION YEAR 2017

We have assessed you for the amounts shown for failure to remit as required. These amounts are due immediately and are hereby requested.

Please pay the amount shown as balance.

Summary		
Previous Balance	\$255,157.00	DR
Amount assessed		
Federal tax	\$9,894.69	INC
Provincial tax	\$3,364.19	INC
Canada Pension Plan	\$11,300.56	INC
E.I.	\$5,188.37	INC
Penalty		
Interest	\$91.25	INC
Payment		
BALANCE	\$284,996.06	DR
A balance of less than \$2.00 is neither due nor refunded.		

You must pay the amount owing immediately. Failure to do so may result in legal action being taken without further notice.

Bob Hamilton Commissioner of Revenue

Retain this part for your records Detach here and return part 2 with your payment

CUT HERE

CUT HERE



Canada Revenue Agency

Agence du revenu du Canada

This remittance voucher must only be used for source deductions amounts assessed, penalty and interest.

PD67A E (16)X Protected B when completed

2

04

Account number 837902170 RP 0001

THE CUSTOM FACTORY CANADA INC. SCHWARTZ LEVITSKY FELDMAN 1500 - 2300 Yonge St Toronto ON M4P 1E4

Amount of payment

Empty box for amount of payment

0620000004000000837902170RP00010000000000284996060620003



Canada Revenue Agency

Agence du revenu du Canada

Notice of Assessment

82 PD67A E (16)X Protected B when completed

Date August 18, 2017

Account number 837902170 RP 0001

- Important - See Reverse -

THE CUSTOM FACTORY CANADA INC.

TAXATION YEAR 2016

We have assessed you for the amounts shown for failure to remit as required. These amounts are due immediately and are hereby requested.

Please pay the amount shown as balance.

Summary		
Previous Balance	\$192,819.56	DR
Amount assessed		
Federal tax	\$21,966.87	INC
Provincial tax	\$7,468.74	INC
Canada Pension Plan	\$21,180.92	INC
E.I.	\$10,932.96	INC
Penalty		
Interest	\$787.95	INC
Payment		
BALANCE	\$255,157.00	DR
A balance of less than \$2.00 is neither due nor refunded.		

You must pay the amount owing immediately. Failure to do so may result in legal action being taken without further notice.

Bob Hamilton Commissioner of Revenue

Retain this part for your records Detach here and return part 2 with your payment



Canada Revenue Agency

Agence du revenu du Canada

This remittance voucher must only be used for source deductions amounts assessed, penalty and interest.

PD67A E (16)X Protected B when completed

2

04

Account number 837902170 RP 0001

THE CUSTOM FACTORY CANADA INC. SCHWARTZ LEVITSKY FELDMAN 1500 - 2300 Yonge St Toronto ON M4P 1E4

Amount of payment

Empty box for amount of payment

0620000004000000837902170RP0001000000000255157000620000

THE CUSTOM FACTORY CANADA INC.
Receiver's Statement of Receipts & Disbursements
as at October 31, 2018

RECEIPTS

Accounts Receivable	28,982.77
Sale of Finished Goods Inventory	31,000.00
Sale of Raw Materials Inventory	4,000.00
Sale of Machinery and Equipment	28,456.01
HST Collected on Sale of Assets	5,769.28
HST Refunds	5,056.20
Other Recoveries	10,000.00
Insurance Policy Refund	45.98
Total Receipts	\$ 113,310.24

DISBURSEMENTS

Filing Fee	\$ 70.00
Ascend Fee	275.00
Security Video	1,394.68
On site labour and premises costs	3,551.01
Collection Fees and Disbursements	3,636.96
Accounting Services	2,055.50
HST paid on expenses	1,424.04
HST remitted	1,357.64
Bank Charges and Miscellaneous	178.98
Receiver's Fees and Disbursements	46,220.00
Legal Fees and Disbursements	21,564.98
HST on Receiver Fees/Disbursements	6,008.60
HST on Legal Fees/Disbursements	2,761.85
Total Disbursements	\$ 90,499.24

Excess of Receipts over Disbursements as at October 31, 2018	\$ 22,811.00
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Less: Receiver's cost to complete (incl. HST)	(1,356.00)
Less: Final legal fees and disbursements (incl. HST)	(3,955.00)
Projected Funds Available for Distribution to CRA	\$ 17,500.00

Court File No. CV-17-11742-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF AN APPLICATION
pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as
am, section 101 of the *Courts of Justice Act*, R.S.O.1990, c.C.43 and the *Personal
Property Security Act*, R.S.O. c.P.10

BETWEEN:

DAVINCI CAPITAL PARTNERS INC., in its capacity as
trustee of DAVINCI CAPITAL PRIVATE DEBT FUND

Applicant

and

THE CUSTOM FACTORY CANADA INC.
and ANTONIO PETOSA

Respondents

**AFFIDAVIT OF ROBERT G. LINK
SWORN OCTOBER 29, 2018**

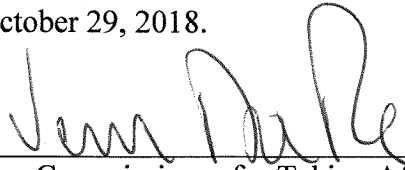
I, Robert G. Link, of the Town of Georgina, in the Province of Ontario, MAKE OATH

AND SAY:

1. I am the President of Link & Associates Inc., in its capacity as Court-Appointed Receiver, without security (the “**Receiver**”) of all of the assets, undertakings and properties of The Custom Factory Canada Inc. (the “**Debtor**”) pursuant to an Order of the Honourable Mr. Justice Hayney dated March 22, 2017 (the “**Appointment Order**”) and, as such, have knowledge of the matters contained in this affidavit.

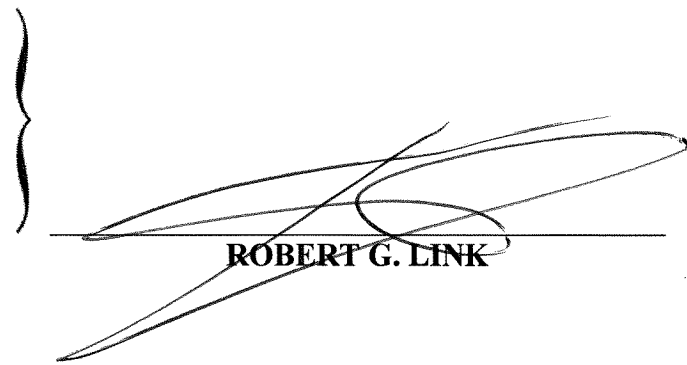
2. Details of the Receiver's activities from the date of the Appointment Order up to and including July 31, 2017 are provided in the First Report of the Receiver to Court dated August 16, 2017 (the "**First Accounts Approval Period**") and which were approved in the First Approval Order dated September 1, 2017.
3. Attached hereto and marked as **Exhibit "A"** are true copies of the accounts rendered by the Receiver for the period of August 1, 2017 up to and including October 29, 2018 (the "**Second Accounts Approval Period**") which include professional fees of the Receiver of \$12,280 plus HST, and final fees for cost to complete of \$1,200 plus HST, for a total of \$13,480 plus HST.
4. A total of 33.8 hours (including 3.0 hours cost to complete) were expended by the Receiver in the Second Accounts Approval Period in performing services in its capacity as Receiver pursuant to the Appointment Order, which equates to an average hourly rate of \$398.82.
5. The hourly billing rates outlined in Exhibit "A" are normal average hourly rates charged by Link & Associates Inc., for services rendered in relation to engagements similar to its engagement as Receiver. These accounts accurately reflect the services provided by the Receiver in this matter.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on October 29, 2018.



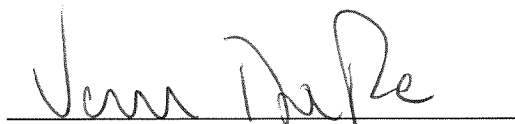
Commissioner for Taking Affidavits
(or as may be)

Jean D'Arre



ROBERT G. LINK

This is Exhibit "A" to the Affidavit of
Robert G. Link sworn this 29th day of October, 2018

A handwritten signature in cursive script, appearing to read "Jean Daple", is written over a horizontal line.

A Commissioner etc.

Link & Associates Inc.
Receivers + Trustees

August 31, 2017

The Custom Factory Canada Inc.
 c/o Link & Associates Inc.
 77 King Street West, Suite 3000
 Toronto, Ontario
 M5K 1G8

Invoice #1107

*** INVOICE ***

Re: Receivership of THE CUSTOM FACTORY CANADA INC.

To: Professional services rendered in our capacity as Court Appointed Receiver for the period of August 1 to August 31, 2017, as detailed in the attached timedockets.

Our fee:	\$ 4,200.00
HST @ 13%	546.00
Subtotal Fee:	\$ 4,746.00
TOTAL DUE:	\$ 4,746.00

	Hours	Hourly Rate	Total
Robert Link, CIRP, LIT	10.50	\$400	4,200.00
TOTAL	10.50		\$ 4,200.00

HST #81903 2178

Tel. 416.862.7785 Fax. 416.862.2136
 enquiries@linkassociates.ca

77 King Street West, Suite 3000, P.O. Box 95, TD Centre North Tower, Toronto, Ontario Canada M5K 1G8

The firm of Link & Associates Inc. is a Licensed Insolvency Trustee

Receivership of THE CUSTOM FACTORY CANADA INC.
Robert Link - Time Docket
For the month of August, 2017

<u>August 2, 2017</u>	0.8
Corr Rosekat re draft report; corr account debtors re unpaid accounts.	
<u>August 3, 2017</u>	0.3
Tel and email Flewelling;	
<u>August 8, 2017</u>	0.3
Tel DaVinci; email OSB;	
<u>August 14, 2017</u>	4.5
Drafting report and ancillary materials, schedules, exhibits.	
<u>August 15, 2017</u>	2.5
Compile exhibits and edits to report.	
<u>August 16, 2017</u>	1.0
Finalize report and exhibits, send fee affidavit to counsel.	
<u>August 18, 2017</u>	0.5
Review and approve motion record for service and filing.	
<u>August 21, 2017</u>	0.2
Email t/f collection lawyer re payment.	
<u>August 22, 2017</u>	0.1
Corr from counsel.	
<u>August 23, 2017</u>	0.2
Emails t/f counsel and OSB re service of motion record.	
<u>August 25, 2017</u>	0.2
Email from trustee, review CRA revised assessments.	
<u>August 29, 2017</u>	0.2
Reply to account debtor re o/s account.	
<u>August 30, 2017</u>	0.3
Corr collection lawyer; emails Rosekat.	
<u>August 31, 2017</u>	0.2
Review draft order.	

TOTAL	10.5
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Link & Associates Inc.
Receivers + Trustees

December 31, 2017

The Custom Factory Canada Inc.
 c/o Link & Associates Inc.
 77 King Street West, Suite 3000
 Toronto, Ontario
 M5K 1G8

Invoice #1121

*** INVOICE ***

Re: Receivership of THE CUSTOM FACTORY CANADA INC.

To: Professional services rendered in our capacity as Court Appointed Receiver for the period of September 1 to December 31, 2017, as detailed in the attached timedockets.

Our fee:	\$ 2,600.00
HST @ 13%	338.00
Subtotal Fee:	\$ 2,938.00
TOTAL DUE:	\$ 2,938.00

	Hours	Hourly Rate	Total
Robert Link, CIRP, LIT	6.50	\$400	2,600.00
TOTAL	6.50		\$ 2,600.00

HST #81903 2178

Tel. 416.862.7785 Fax. 416.862.2136
 enquiries@linkassociates.ca

77 King Street West, Suite 3000, P.O. Box 95, TD Centre North Tower, Toronto, Ontario Canada M5K 1G8

The firm of Link & Associates Inc. is a Licensed Insolvency Trustee

Receivership of THE CUSTOM FACTORY CANADA INC. Robert Link - Time Docket For the period of September 1 to December 31, 2017

<u>September 1, 2017</u>	1.0
Attend Court on approval motion.	
<u>September 5, 2017</u>	0.2
Corr collections lawyer.	
<u>September 7, 2017</u>	0.2
Receive entered order, email secured creditor re same.	
<u>September 12, 2017</u>	0.2
Email exchanges counsel and Patriot.	
<u>October 18, 2017</u>	0.1
Email from trustee re CRA corr.	
<u>October 23, 2017</u>	1.0
Email response with initial documentation pertaining to possible S.38 claims to secured creditor as requested.	
<u>October 24, 2017</u>	0.3
Obtain balance of docs from counsel re possible S.38 claims and provide to secured creditor as requested	
<u>November 17, 2017</u>	0.1
Email collections lawyer.	
<u>November 20, 2017</u>	1.5
Prepare and file 246(2) report and updated R&D; respond to creditor inquiry; file HST return.	
<u>December 11, 2017</u>	0.5
Tel and email accountant, arrange for 2015 and 2016 T2 filings; instruct JC re same; sign T183 and submit.	
<u>December 13, 2017</u>	0.4
Corr collections lawyer; respond to creditor inquiry.	
<u>December 22, 2017</u>	1.0
Review small claims actions x 2 and corr counsel re same; corr accountant re T2 filing; file revised RC59.	
TOTAL	6.5

Link & Associates Inc.
Receivers + Trustees

March 31, 2018

The Custom Factory Canada Inc.
c/o Link & Associates Inc.
77 King Street West, Suite 3000
Toronto, Ontario
M5K 1G8

Invoice #1129

*** INVOICE ***

Re: Receivership of THE CUSTOM FACTORY CANADA INC.

To: Professional services rendered in our capacity as Court Appointed Receiver for the period of January 1 to March 31, 2018, as detailed in the attached timedockets.

Our fee:	\$ 1,680.00
HST @ 13%	218.40
Subtotal Fee:	<u>\$ 1,898.40</u>
TOTAL DUE:	\$ 1,898.40

	Hours	Hourly Rate	Total
Robert Link, CIRP, LIT	3.50	\$400	1,400.00
Jason Colbert, CPA, CA	0.80	\$350	280.00
TOTAL	4.30		\$ 1,680.00

HST #81903 2178

Tel. 416.862.7785 Fax. 416.862.2136
enquiries@linkassociates.ca

77 King Street West, Suite 3000, P.O. Box 95, TD Centre North Tower, Toronto, Ontario Canada M5K 1G8

The firm of Link & Associates Inc. is a Licensed Insolvency Trustee

Receivership of THE CUSTOM FACTORY CANADA INC.
Robert Link - Time Docket
For the period of January 1 to March 31, 2018

<u>January 4, 2018</u>	0.2
Email exchanges collection agent.	
<u>January 16, 2018</u>	0.2
Email exchanges collection agent.	
<u>January 18, 2018</u>	0.4
Numerous emails t/f collection agent re settlements.	
<u>January 20, 2018</u>	0.2
Email t/f collection agent.	
<u>January 24, 2018</u>	0.5
Tel and fax CRA, review fax from CRA re tax filings.	
<u>February 6, 2018</u>	0.3
Email counsel to secured creditor compiled information re S.38 claims.	
<u>February 7, 2018</u>	0.3
Email collection agent; email accountant.	
<u>February 23, 2018</u>	0.5
Numerous emails t/f accountant, provide documents.	
<u>March 5, 2018</u>	0.2
Email accountant; email Patriot.	
<u>March 6, 2018</u>	0.4
Email external accountant re T2 filings, review and approve.	
<u>March 26, 2018</u>	0.2
Review draft S.38 letter.	
<u>March 27, 2018</u>	0.1
File HST return.	

TOTAL	3.5
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File:	Custom Factory	
Dockets for:	Jason Colbert	
Date	Description	Hours
February 5, 2018	Extract 2016 financial data from accounting system; review details; call w/ R. Link re. same	0.50
February 16, 2018	Extract 2015 financial data from accounting system; review details	0.30
	TOTAL	0.80

Link & Associates Inc.
Receivers + Trustees

October 29, 2018

The Custom Factory Canada Inc.
c/o Link & Associates Inc.
77 King Street West, Suite 3000
Toronto, Ontario
M5K 1G8

Invoice #1138

*** INVOICE ***

Re: Receivership of THE CUSTOM FACTORY CANADA INC.

To: Professional services rendered in our capacity as Court Appointed Receiver for the period of April 1 to October 29, 2018, as detailed in the attached timedockets.

Our fee:	\$ 3,800.00
Plus: Cost to Complete	\$ 1,200.00
HST @ 13%	650.00
Subtotal Fee:	\$ 5,650.00
TOTAL DUE:	\$ 5,650.00

	Hours	Hourly Rate	Total
Robert Link, CIRP, LIT	9.50	\$400	3,800.00
TOTAL	9.50		\$ 3,800.00

HST #81903 2178

Tel. 416.862.7785 Fax. 416.862.2136

enquiries@linkassociates.ca

77 King Street West, Suite 3000, P.O. Box 95, TD Centre North Tower, Toronto, Ontario Canada M5K 1G8

The firm of Link & Associates Inc. is a Licensed Insolvency Trustee

Receivership of THE CUSTOM FACTORY CANADA INC.
Robert Link - Time Docket
For the period of April 1 to October 29, 2018

<u>April 5, 2018</u>	0.3
Tel CRA; email TD bank seeking missing bank statements.	
<u>April 6, 2018</u>	0.4
Compile bank statements and email accountant same for 2017 T2 prep.	
<u>April 10, 2018</u>	1.0
Prepare and file Interim 246 report, fax to OR, email to Trustee.	
<u>May 7, 2018</u>	0.5
Corr accountant re final year end tax prep, instructions re same.	
<u>May 15, 2018</u>	0.5
Review deemed year end T2 filing, sign and approve, corr accountant.	
<u>September 27, 2018</u>	0.5
Review email, v/m from R Rutman (counsel to Petosa); tel re same; draft email response.	
<u>October 1, 2018</u>	0.1
Review email from R Rutman and reply to same.	
<u>October 10, 2018</u>	0.4
Tel CRA insolvency to advise of status and pending motion for distribution and discharge. Tel: counsel.	
<u>October 12, 2018</u>	2.0
Drafting 2nd Court Report. Email w/f R Rutman.	
<u>October 18, 2018</u>	3.0
Continue drafting 2nd Report, prepare fee affidavit, send to counsel to prep NOM and draft order.	
<u>October 29, 2018</u>	0.8
Final edits; swear fee affidavit.	
TOTAL	9.5

DAVINCI CAPITAL PARTNERS INC., in its capacity as trustee
of DAVINCI CAPITAL PRIVATE DEBT FUND
Applicant

-and-

THE CUSTOM FACTORY CANADA INC. et al.

Respondents

Court File No. CV-17-11742-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**AFFIDAVIT OF ROBERT G. LINK
SWORN OCTOBER 29, 2018**

SPARK LLP
67 Yonge Street
Toronto, ON M5E 1J8

Jeff Rosekat LSUC No. 43352Q

jeff@spark.law

Tel: 416.639.2151

Fax: 647.490.4888

Lawyers for the Court-Appointed Receiver
Link & Associates Inc.

Court File No. CV-17-11742-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF AN APPLICATION

pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as
am, section 101 of the *Courts of Justice Act*, R.S.O.1990, c.C.43 and the *Personal
Property Security Act*, R.S.O. c.P.10

BETWEEN:

**DAVINCI CAPITAL PARTNERS INC., in its capacity as trustee of
DAVINCI CAPITAL PRIVATE DEBT FUND**

Applicant

and

**THE CUSTOM FACTORY CANADA INC.
and ANTONIO PETOSA**

Respondents

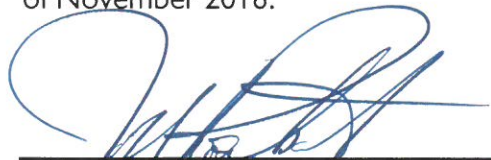
FEE AFFIDAVIT

I, SANJAY KUTTY, of the City of Toronto, in the Province of Ontario, HEREBY MAKE
OATH AND SAY:

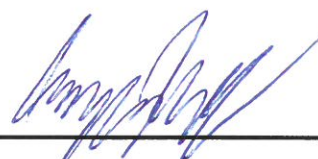
- I. I am a partner at the law firm Spark LLP, lawyers for the Court-Appointed Receiver, Link & Associates Inc., with respect to certain Property as described in the Initial Order of Justice Hainey dated March 22, 2017. My partner, Jeff Rosekat, has primary carriage of this matter. I am aware of the conduct of this matter and I have knowledge of the administration herein.

- 2. Attached to this affidavit as *Exhibit "A"* is a copy of the account of Spark LLP for the period of August 1, 2017 to October 31, 2018. The fees for this period total \$1,248.00 plus HST in the amount of \$162.24, for a total of \$1,410.24.
- 3. Spark LLP has agreed to fix the costs to complete the receivership at \$3,500, plus HST.
- 4. The work that has been done in connection with these accounts relates to a motion to amend the appointment order of the receiver, reviewing the security interests and respective priorities of the secured creditors and providing an opinion, supporting the receiver’s investigation and recovery efforts, reviewing preference payments and transfers at undervalue, and communicating with various parties and their lawyers.
- 5. Spark LLP has not received, and does not hope or expect to receive, and no promises have been made that we will receive any remuneration or compensation other than the amounts claimed herein.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, this 1st of November 2018.



Jeff Rosekat (LSUC# 43352Q), a commissioner for taking oaths, etc.



Sanjay Kutty



67 Yonge St.
Second Floor
Toronto, Ontario M5E 1J8
Canada
Phone: (416) 639-2150
www.spark.law

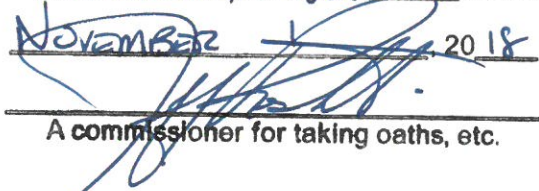
Link & Associates Inc.
77 King St. W
Suite 3000, P.O. Box 95
Toronto, ON M5K 1G8
CAN

Date: 10/31/2018
Invoice No.: 685
File No.: 0120

RE: Custom Factory Canada Inc. (Receivership)

Professional Services

Date	LWR	Description	Hours	Rate	Amount
10/24/2017	JR	Review and respond to email from R. Link; review correspondence to be forwarded.	0.30	\$520.00	\$156.00
07/13/2018	JR	Email exchange with R. Link regarding status of estate;	0.20	\$520.00	\$104.00
09/28/2018	JR	Email exchange with R. Link regarding current status of the estate;	0.20	\$520.00	\$104.00
10/31/2018	JR	Draft Notice of Motion for approval of second report;	1.70	\$520.00	\$884.00
For professional services rendered			2.40		\$1,248.00
				HST	\$162.24

This is Exhibit A to the affidavit
of SANJAY KUTTY sworn
NOVEMBER 1, 2018

A commissioner for taking oaths, etc.

Total Tax	\$162.24
Invoice Amount	\$1,410.24
Balance Due	\$1,410.24

GST/HST# 782662894 RT0001 Total tax Amount \$162.24

Payments made after 10/31/2018 are not reflected on this account.

Summary of Legal Professionals	Time Spent	Amount
Jeff Rosekat	2.40	\$1,248.00

IN THE MATTER OF OF AN APPLICATION pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as am, section 101 of the *Courts of Justice Act*, R.S.O.1990, c.C.43 and the *Personal Property Security Act*, R.S.O. c.P.10

DAVINCI CAPITAL PARTNERS INC., in its capacity as trustee of
DAVINCI CAPITAL PRIVATE DEBT FUND
Applicant

-and-

THE CUSTOM FACTORY CANADA INC. et al.

Respondents

Court File No. CV-17-11742-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

FEE AFFIDAVIT

SPARK LLP

169 King Street East, Third Floor
Toronto, ON M5A 1J4

Jeff Rosekat LSUC No. 43352Q

jeff@spark.law

Tel: 416.639.2151

Fax: 647.490.4888

Lawyers for the receiver

IN THE MATTER OF OF AN APPLICATION pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as am, section 101 of the *Courts of Justice Act*, R.S.O.1990, c.C.43 and the *Personal Property Security Act*, R.S.O. c.P.10

DAVINCI CAPITAL PARTNERS INC., in its capacity as trustee of
DAVINCI CAPITAL PRIVATE DEBT FUND
Applicant

-and-

THE CUSTOM FACTORY CANADA INC. et al.

Respondents

Court File No. CV-17-11742-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD

(Approval of Second Report and Discharge)
(Returnable November 26, 2017)

SPARK LLP

67 Yonge Street, 2nd Floor
Toronto, ON M5E 1J8

Jeff Rosekat LSUC No. 43352Q

jeff@spark.law

Tel: 416.639.2151

Fax: 647.490.4888

Lawyers for the Court-Appointed Receiver
Link & Associates Inc.