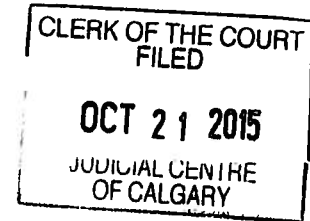


COURT FILE NO. 1401-05914
COURT COURT OF QUEEN'S BENCH OF ALBERTA
IN BANKRUPTCY AND INSOLVENCY
JUDICIAL CENTRE CALGARY
APPLICANT CP ENERGY MARKETING LP
RESPONDENT KYOTO FUELS CORPORATION



IN THE MATTER OF THE BANKRUPTCY OF
KYOTO FUELS CORPORATION, a corporation
incorporated pursuant to the laws of the Province
of Alberta

DOCUMENT **AFFIDAVIT OF VERIFICATION OF MATTHEW
RUDAKEWICH SWORN OCTOBER 21, 2015**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Norton Rose Fulbright Canada LLP
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Calgary, Alberta T2P 4H2
Phone: +1 403.267.8222
Fax: +1 403.264.5973
Email: kyle.kashuba@nortonrosefulbright.com

Attention: Kyle D. Kashuba
File No. 01139306-0007

AFFIDAVIT OF MATTHEW RUDAKEWICH

Sworn on October 21, 2015

I, Matthew Rudakewich, of the City of Calgary, in the Province of Alberta, SWEAR AND SAY THAT:

I. INTRODUCTION

1. I am a representative of CP Energy Marketing LP ("**Capital Power**"), a creditor of Kyoto Fuels Corporation ("**Kyoto**"), and as such, have personal knowledge of the facts and matters hereinafter deposed to except where stated to be based on information and belief and where so stated I verily believe the same to be true.
2. Capital Power has a registered office located at 1200 - 401, 9 Ave SW, Calgary, AB T2P 3C5, and its address for service purposes is c/o Norton Rose Fulbright Canada LLP, 400 3rd Avenue SW, Suite 3700, Calgary, AB T2P 4H2.

3. Kyoto has a registered office located at RR #8 S2 C24, Lethbridge, AB T1J 4P4.
4. I have reviewed the business records of Capital Power relevant to the within Application and have satisfied myself that I am possessed of sufficient information and knowledge to swear this Affidavit.

II. THE DEBT


5. Capital Power as lender entered into a series of loan agreements as amended, restated, modified, replaced or supplemented from time to time with Kyoto (collectively, the "**Loan Agreements**"), pursuant to which Capital Power agreed to provide Kyoto as borrower with certain credit facilities and advance funds all on the terms set out therein and all in related and amending documents (the "**Credit Facilities**").
6. In accordance with the terms of the Loan Agreements, Capital Power made various loans to Kyoto from time to time.
7. Kyoto agreed to repay the principal and interest advanced from time to time by Capital Power at such times and on such terms with such interest and costs as set out under the terms of the Loan Agreements and related security.
8. As at April 25, 2014, the total indebtedness outstanding under the Loan Agreements and Credit Facilities was approximately \$6,231,860 in principal, plus interest, associated costs, fees and disbursements with additional interest and other charges accrued and accruing thereon at the rates and on the terms established by the Loan Agreements.
9. Kyoto failed to make punctual payments in accordance with the terms of the Loan Agreements and Credit Facilities and, accordingly, for this and for other reasons, the Borrower was and is in default of the Loan Agreements and related security.
10. Following the issuance of demands for payment by Capital Power, Kyoto sought creditor protection under the *Companies' Creditors Arrangement Act* ("**CCAA**") and obtained a CCAA Initial Order in Alberta Court of Queen's Bench Action No. 1401-04022 on April 30, 2014. Ernst & Young Inc. ("**EY**") was appointed Monitor.
11. It was a term of the Loan Agreements and Security that upon default by the Borrower, Capital Power would be entitled to the appointment of a Court-appointed receiver and manager.

- 12. On May 29, 2014, Capital Power sought and obtained a lifting of the stay of proceedings in the Kyoto CCAA proceedings, and a Receivership Order was granted by Mr. Justice P.R. Jeffrey in respect of the property, undertakings and assets of Kyoto. EY was appointed Receiver over Kyoto.
- 13. EY in its capacity as Receiver has been administering the receivership estate of Kyoto, and has been on constant consultation with Kyoto's creditors.
- 14. The Kyoto receivership proceedings remain ongoing as at this date.
- 15. As at the date of the hearing of this Application, Kyoto is justly and truly indebted to Capital Power in the approximate sum of \$6,231,860 plus interest and costs continuing to accrue, as set out and permitted under the Loan Agreements and related security.

III. CONCLUSION

- 16. Based on my personal knowledge in this matter and the information I have reviewed in Kyoto's court filed materials, I verily believe that Kyoto, within 6 months preceding the filing of this Application for Bankruptcy Order, has committed acts of bankruptcy in that Kyoto is unable to meet its financial obligations as they become due including the satisfaction of amounts owing to me and other creditors, such amounts which exceed \$1,000.
- 17. The facts alleged in the Application for Bankruptcy Order are within my own knowledge true.
- 18. I make this Affidavit for no other or improper purpose.

SWORN before me at the City of
 Calgary in the Province of Alberta,
 this 21 day of October, 2015.



 A Commissioner for Oaths in and
 for the Province of Alberta



 Matthew Rudakewich

Yi Huang
 Student-at-Law