

Clerk's Stamp: **CLERK OF THE COURT
FILED
FEB 26 2016
JUDICIAL CENTRE
OF CALGARY**

COURT FILE NUMBER 1401-05914
COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
APPLICANT CP ENERGY MARKETING LP
RESPONDENT KYOTO FUELS CORPORATION
DOCUMENT APPLICATION

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
DENTONS CANADA LLP
Bankers Court
15th Floor, 850 - 2nd Street S.W.
Calgary, Alberta T2P 0R8
Attention: David W. Mann / Derek M. Pontin
Ph. (403) 268-7097/6301 Fx. (403) 268-3100
File No.: 131079-90

NOTICE TO RESPONDENT(S):

This application is made against you. You are a respondent.
You have the right to state your side of this matter before the Judge.

To do so, you must be in Court when the application is heard as shown below:

Date March 15, 2016
Time 10:00 am
Where Calgary Courts Centre
601 – 5th Street SW
Calgary AB, T2P 5P7
Before Whom Madam Justice K. Horner

Go to the end of this document to see what you can do and when you must do it.

Remedy claimed or sought:

1. An Order, in substantially the form attached hereto as Schedule "A", approving:

- a) the activities and accounts of Ernst & Young Inc. (the "**Receiver**"), in its capacity as monitor (under the *Companies' Creditors Arrangement Act*) and receiver and manager of Kyoto Fuels Corporation ("**KFC**"), and the activities and accounts of its legal counsel, Dentons Canada LLP ("**Dentons**");
 - b) a distribution of proceeds to Agriculture Financial Services Corporation ("**AFSC**") and CP Energy Marketing LP ("**CP**") and holdback for final closing matters; and
 - c) the final release and discharge of the Receiver from its duties, responsibilities and obligations as receiver and manager of KFC.
2. Such further and other relief as may be sought and this Honourable Court deems just and appropriate.

Grounds for making this application:

3. On April 30, 2016, Ernst & Young Inc. was appointed as Monitor of KFC following KFC being petitioned into a restructuring proceeding (the "**CCAA Proceeding**") by a secured creditor, T&E Ventures Inc. ("**T&E**").
4. On or about May 29, 2014, Ernst & Young Inc. was discharged as Monitor, subject to the passing of its accounts, and appointed as Receiver.
5. The Receiver's activities are set out in the Receiver's filed Reports. In summary, the Receiver (and prior to that, the Monitor):
 - a) reviewed the business and assets of KFC and retained 1817854 Alberta Ltd. as its consultant to assist with onsite management of the facility in the course of the CCAA Proceedings;
 - b) noted significant drawbacks to continuing to operate the facility as a going concern, including a high carrying cost (being primarily financed by interim financing) and lack of viable restructuring alternatives;
 - c) filed an application for advice and direction, recommending that the business and property of KFC be sold either in the CCAA Proceedings or in receivership;
 - d) worked with KFC's onsite engineering team, Integrated Industrial Solutions (2011) Inc., to decommission and safely "mothball" the KFC facility;
 - e) proceeded with a broad solicitation and sale process;
 - f) worked with the senior secured lenders through bid deadline extensions, liquidation proposals, environmental assessments and dismantling strategies in light of the lack of marketability of the assets of KFC;
 - g) retained Avison Young Lethbridge Inc. to assist with a commercial real estate marketing strategy for the KFC assets;
 - h) worked with Pelican Transfer Inc. to negotiate an unconditional sale agreement, which was subsequently Court-approved, extended and then ultimately defaulted on by Pelican Transfer Inc. resulting in forfeiture of a deposit of \$550,000 to the estate;
 - i) worked with 1886792 Alberta Ltd. Alberta Ltd. through to closing of the sale of the KFC assets;

- j) worked with Alberta Energy and other stakeholders throughout all stages of the process; and
 - k) settled and paid certain priority claims and completed an interim distribution of proceeds.
6. The Receiver has substantially completed the administration of this estate and it is appropriate that the Receiver seek its discharge as receiver and manager of KFC.

Material or evidence to be relied on:

- 1. The First Report, Second Report, Third Report, Supplemental Report, Second Supplemental Report, and Fourth Report of the Receiver.

Applicable Rules:

- 1. *Alberta Rules of Court.*

Applicable Acts and Regulations:

- 1. N/A

Any irregularity complained of or objection relied on:

- 1. N/A

How the Application is proposed to be heard or considered:

- 1. In person in Chambers.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of the affidavit or other evidence on the applicant a reasonable time before the application is to be heard or considered.

DRAFT

Clerk's stamp:

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COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT CP ENERGY MARKETING LP

RESPONDENT KYOTO FUELS CORPORATION

DOCUMENT Order
(re: Discharge)

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DATE ON WHICH ORDER WAS PRONOUNCED 2016

LOCATION WHERE ORDER WAS PRONOUNCED Calgary Courts Centre, Calgary, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER Honourable Justice

ORDER
(re: Discharge)

UPON the application of Ernst & Young Inc., in its capacity as receiver manager (the "**Receiver**") of Kyoto Fuels Corporation ("**KFC**") in these proceedings; AND UPON having read the Application of the Receiver, dated ____, 2016, the First Report, Second Report, Third Report, Supplemental Report, Second Supplemental Report and Fourth Report of the Receiver (collectively, the "**Reports**"), the Affidavit of Rosie Cooney, dated ____, 2016 (the "**Service Affidavit**"), and such other material in the pleadings and proceedings as deemed necessary; AND UPON hearing counsel for the Receiver, Agriculture Financial

Services Corporation ("AFSC"), CP Energy Marketing LP ("CP"), and all other interested parties; IT IS HEREBY ORDERED AND DECLARED THAT:

Service

1. The time for service of notice of this application is abridged to the time actually given and service of the Application and supporting material as described in the Service Affidavit is good and sufficient, and this hearing is properly returnable before this Honourable Court today and further service thereof is hereby dispensed with.
2. All capitalized terms not otherwise defined in this Order shall have the meaning ascribed to them in the Fourth Report.

Approval of Activities and Accounts

3. The Receiver's activities, as more fully described in the Reports, and the Statement of Receipts and Disbursements as attached to the Receiver's Fourth Report, are commercially reasonable and are hereby ratified and approved.
4. The Receiver's accounts for its fees and disbursements, as described in the Fourth Report, are hereby approved without the necessity of a formal assessment of its accounts.
5. The accounts of the Receiver's legal counsel, Dentons Canada LLP, for its fees and disbursements, as described in the Fourth Report are hereby approved without the necessity of a formal assessment of its accounts.

Approval of Final Distributions and Holdback

6. The Receiver is authorized and directed to distribute the remainder of the Net Proceeds, as defined in the Approval and Vesting Order, dated May 12, 2015, as follows:
 - (a) \$378,000 to AFSC in connection with its security interest in all property, assets and undertaking of KFC;
 - (b) \$562,000 to CP in connection with its security interest in all property, assets and undertaking of KFC; and
 - (c) \$72,489 to be held in reserve by the Receiver as a holdback to address any final contingencies as set out in the Fourth Report (the "Holdback").

Release

7. On the evidence before the Court, the Receiver has satisfied its obligations under and pursuant to the terms of the Orders granted in the within proceedings up to and including the date hereof, and the Receiver shall not be liable for any act or omission on its part including, without limitation, any act or omission pertaining to the discharge of its duties in the within proceedings, save and except for any liability arising out of any fraud, gross negligence or willful misconduct on the part of the Receiver, or with leave of the Court. Subject to the foregoing any claims against the Receiver in connection with the performance of its duties are hereby stayed, extinguished and forever barred.

8. No action or other proceedings shall be commenced against the Receiver in any way arising from or related to its capacity or conduct as Receiver, except with prior leave of this Court on notice to the Receiver, and upon such terms as this Court may direct.

Discharge

9. Upon the Receiver filing with the Clerk of the Court a Receiver's Certificate in the form attached to this Order as Schedule "A", confirming that the matters required to complete the receivership, as described in the Fourth Report, have been completed, then the Receiver shall be unconditionally and absolutely discharged as receiver and manager of KFC and all duties, responsibilities and obligations connected therewith, 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 the Receiver in its capacity as Receiver.

Miscellaneous

10. The Receiver shall serve, by courier, facsimile transmission, e-mail transmission, or ordinary post, a copy of this Order on all parties present at this application and on all parties who received notice of this application or who are presently on the service list established in these proceedings, and service on any or all other parties is hereby dispensed with. Service affected as aforesaid shall be good and sufficient service.

DRAFT

Justice of the Court of Queen's Bench of Alberta

Schedule A

Clerk's stamp:

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COURT OF QUEEN'S BENCH OF
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JUDICIAL CENTRE CALGARY

APPLICANT CP ENERGY MARKETING LP

RESPONDENT KYOTO FUELS CORPORATION

DOCUMENT Receiver's Certificate
(re: Discharge)

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CERTIFICATE
(re: Discharge)

WHEREAS the Order of Justice Nixon, made in these proceedings on March 15, 2016 (the "**Order**"), authorizes Ernst & Young Inc., the Court-appointed receiver manager (the "**Receiver**") of Kyoto Fuels Corporation ("**KFC**") in these proceedings, to file a Receiver's Certificate confirming the finalization of the receivership and discharge of the Receiver; NOW THEREFORE:

1. All capitalized terms used in this Receiver's Certificate shall have the meaning ascribed to them in the Order unless otherwise defined herein.
2. I am an authorized officer of Ernst & Young Inc., the Receiver in these proceedings.
3. I have reviewed the status of the administration of this receivership and the Receiver's Fourth Report, dated February 24, 2016. I hereby confirm that all matters required to complete this receivership, as more fully described in the Fourth Report, have been completed and the Receiver is, with the filing of this Certificate, unconditionally and absolutely discharged as receiver and manager of KFC.

4. I make this certificate pursuant to the provisions of the Order, knowing it to be true after having made due inquiry, and not in my personal capacity.

DATED at Calgary, Alberta, this ____ day of _____, 2016.

**ERNST & YOUNG INC. in its capacity as receiver
and manager in these proceedings, and not in
its personal or corporate capacity**

Per: Robert J. Taylor