

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

BETWEEN:

**KSV KOFMAN INC., by and on behalf of URBANCORP CUMBERLAND 1 LP
by its general partner URBANCORP CUMBERLAND 1 GP INC.**

Applicant

- and -

URBANCORP RENEWABLE POWER INC.

Respondent

Application Under Section 101 of the *Courts of Justice Act*, R.S.O. 1990,
c. C.43, as amended, and Section 243 of the *Bankruptcy and Insolvency Act*,
R.S.C. 1985, c. B-3, as amended

NOTICE OF APPLICATION

TO: THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED BY THE APPLICANT. The claim made by the Applicant appears on the following pages.

THIS APPLICATION will come on for a hearing before a Judge presiding over the Commercial List at 393 University Avenue, Toronto on June 28, 2018 at 2:00 p.m. or as soon after that time as the matter can be heard.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the Application, or to be served with any documents in the Application, you or an Ontario lawyer acting for you must forthwith prepare a Notice of Appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your Notice of Appearance, serve a copy of the evidence on the Applicant's lawyer and file it, with proof of service, in the court office where the Application is to be heard as soon as possible, but at least 2 days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: June 28, 2018

Issued by:



Address of Court Office:

330 University Avenue, 7th Floor
Toronto, ON M5G 1R7

TO: **Urbancorp Renewable Power Inc.**
P.O. Box 96, Toronto Station C
Toronto, Ontario, M6J 3M7
Attention: Ted Saskin

APPLICATION

1. In its capacity as monitor of Urbancorp Cumberland 1 LP ("**Cumberland**") and Urbancorp Cumberland 1 GP Inc. and certain related and affiliated entities pursuant to the *Companies Creditors Arrangement Act*, RSC 1985, c C-36 (as amended, the "**CCAA**") The Applicant, KSV Kofman Inc. ("**KSV**") makes this application for an Order:

- (a) abridging the time for, and validating the service of, the Application such that it is properly returnable on June 28, 2018;
- (b) pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**"), and section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), appointing KSV Kofman Inc. ("**KSV**") as receiver and manager of all of the assets, undertakings and properties of Urbancorp Renewable Power Inc. (the "**Property**");
- (c) dispensing with the requirement for the delivery of a notice of intention to enforce security in the prescribed form, pursuant to section 243(1.1)(b) of the BIA;
- (d) such further and other relief as counsel may advise and this Honourable Court deems just.

THE GROUNDS FOR THE APPLICATION ARE:

2. Cumberland was authorized to make a loan to Urbancorp Renewable Power Inc. ("**URPI**") pursuant to an Order issued on November 22, 2017 by the Ontario

Superior Court of Justice – Commercial List. The loan is in the maximum amount of \$500,000 bearing interest at a rate of 12% *per annum*, and is evidenced by a term sheet dated October 24, 2017 (the “**Term Sheet**”) and a promissory note dated February 2, 2018 (the “**Loan**”). The Loan is secured by a general security agreement dated January 7, 2018 registered against URPI in favour of Cumberland.

3. The stated purposes of the Loan are (i) to fund certain repairs and maintenance required in respect of the Geothermal Assets (defined below), and (ii) to finance URPI’s participation in four ongoing civil actions in connection with the Energy Supply Agreements (defined below) (the “**Litigation**”).

4. The current amount outstanding under the Loan is nearly \$100,000, excluding accrued interest.

5. URPI is a corporation incorporated under the laws of Ontario, with its head office in Toronto. The sole shareholder of URPI appears to be Alan Saskin or persons or entities related to him, and URPI is currently not the subject of any insolvency proceedings.

6. URPI manages four geothermal heating/cooling systems located in four real property development projects (collectively, the “**Geothermal Assets**”) pursuant to management agreements entered into between URPI and the registered owners of the Geothermal Assets (collectively, the “**Management Agreements**”), as well as energy supply agreements with each of the condominium corporations existing at each development where the Geothermal Assets are situated (the “**Energy Supply Agreements**”).

7. With the exception of the owners of 50% of the interests in the Fuzion Geothermal Asset, the registered owners of the Geothermal Assets are entities that are subject to the same CCAA proceedings as Cumberland.

8. URPI has no property or assets, other than its entitlement to the payment of fees pursuant to and calculated in accordance with the Management Agreements and Energy Supply Agreements. Since the commencement of the CCAA Proceedings, URPI has received almost no payments under the Energy Supply Agreements, and accordingly has no income or other cash flow sources apart from the Loan at this time.

9. The estimated repair costs for the Geothermal Assets far exceed the maximum amount available under the Loan, without taking into account any amounts required to fund URPI's continued participation in the Litigation.

10. Furthermore, without any income, URPI has no ability to repay the outstanding amount of the Loan absent a sale of the Geothermal Assets. The significant increase in estimated repair expenses represents a material change in URPI's financial condition, and constitutes an event of default under the Term Sheet. Accordingly, on behalf of the Lender, KSV is exercising its discretion to enforce its security by seeking the appointment of a receiver and manager of the Property of URPI.

11. KSV is the most appropriate candidate to act as receiver and manager of URPI, given its involvement as Monitor of the Urbancorp CCAA Entities' CCAA Proceedings, as well as its oversight of URPI since its appointment as Monitor, including with respect to assessing necessary repairs to the Geothermal Assets and oversight of the Litigation.

12. In the circumstances, where the primary economic stakeholders of URPI are the registered owners of the Geothermal Assets, nearly all of which are subject to Cumberland's CCAA proceedings (the exceptions being the holders of the 50% ownership interest in the Fuzion Geothermal Asset referenced above, URPI in respect of its entitlement to management fees under the Energy Supply Agreements, and certain entities within the Cumberland CCAA proceedings having Court File No. CV-16-11541-00CL, who have indicated they may have an interest in the Edge and Curve Geothermal Assets), and where KSV has been authorized to take specific actions with respect to URPI on behalf of those stakeholders subject to the Cumberland CCAA proceedings (Court File No. CV-16-11389-00CL), it is appropriate for the Court to exercise its discretion to dispense with the need for KSV to serve URPI with notice of intention to enforce its security, pursuant to section 243(1.1)(b) of the BIA.

13. Notice of the intention to enforce on the security under the Loan was provided to all interested parties through the service of the Twenty-Seventh Report of KSV in its capacity as Monitor of the Cumberland CCAA Entities on June 22, 2018;

14. It is just and convenient to appoint KSV as receiver and manager of URPI in the circumstances.

15. KSV has consented to act as receiver and manager.

16. Section 101 of the CJA and sections 243(1) and 243(1.1)(b) of the BIA.

17. Rules 1.04, 2.03, 3.02, 14.05 and 38 of the *Rules of Civil Procedure*, R.R.O 1990, Reg. 194.

18. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

- (a) the Twenty-Seventh Report dated June 22, 2018 of KSV in its capacity as Monitor of the Urbancorp Cumberland CCAA Entities, and the appendices attached thereto;
- (b) the Consent of KSV; and
- (c) such further and other materials as counsel may advise and this Honourable Court may permit.

June 28, 2018

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by its general partner URBANCORP
CUMBERLAND 1 GP INC. (Applicant)

URBANCORP RENEWABLE
POWER INC. (Respondent)

and

Court File No: CV-18-600624-0001

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

Proceeding commenced at Toronto

NOTICE OF APPLICATION

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