

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

NILE CAPITAL I S.À.R.L., NILE CAPITAL II S.À.R.L.,
LUXOR CAPITAL PARTNERS, LP and LUXOR CAPITAL PARTNERS
OFFSHORE MASTER FUND, LP

Plaintiffs
(Applicants)

- and -

EARTHRENEW CORPORATION, EARTHRENEW, INC., EARTHRENEW IP HOLDINGS LLC,
EARTHRENEW STRATHMORE 1 LP, EARTHRENEW STRATHMORE GENERAL PARTNER
LTD., EARTHRENEW SOLUTIONS LP, EARTHRENEW OPERATIONAL EMPLOYEE LP,
EARTHRENEW MANAGEMENT LP and EARTHRENEW MANAGEMENT GENERAL
PARTNER LTD.

Defendants
(Respondents)

NOTICE OF MOTION

TAKE NOTICE that a motion will be made by counsel for the Plaintiffs/Applicants, before the Honourable Madam Justice J. Strekaf, at the Courts Centre in the City of Calgary, in the Province of Alberta, on Monday the 18th day of October, 2010, at the hour of 1:00 o'clock in the afternoon, or so soon thereafter as counsel may be heard, for, *inter alia*, the following relief:

1. an order abridging time for service, if necessary, of this Notice of Motion and deeming such service to be good and sufficient;
2. a declaration that the Respondents, EarthRenew, Inc., EarthRenew IP Holdings LLC, EarthRenew Strathmore 1 LP, EarthRenew Strathmore General Partner Ltd., EarthRenew Management General Partner Ltd., EarthRenew Operational Employee LP, EarthRenew Management LP, EarthRenew Solutions LP (collectively, the "**Subsidiaries**") are bound by the terms and conditions of the secured debentures issued to the Applicants (the "**Secured Debentures**") on the basis that the Secured

Debentures were executed by Ms. Christianne Carin, the Chief Executive Officer of EarthRenew Corporation ("**EarthRenew**"), who had the authority to bind each of the Subsidiaries, and that the Applicants and the Respondents intended that each of the Subsidiaries be so bound and relied on Ms. Carin's authority for the purposes of binding the Subsidiaries to the terms and conditions of the Secured Debentures; and

3. in the alternative to paragraph 2 above, an order for rectification of the Secured Debentures issued to the Applicants adding the Subsidiaries as parties and signatories thereto; and
4. such further and other relief as this Honourable Court deems appropriate in the circumstances.

AND FURTHER TAKE NOTICE that the grounds upon which this application will be made are as follows:

1. the Respondent, EarthRenew, issued the Secured Debentures to the Applicants;
2. as security for the amounts payable pursuant to each one of the Secured Debentures, EarthRenew:
 - (a) mortgaged, charged and assigned to the holder of each one of the Secured Debentures, and their successors and assigns, and granted to the holder of each one of the Secured Debentures, a security interest in all of its present and after acquired Personal Property (as defined in each one of the Secured Debentures) and in each of its present and future Subsidiaries (as defined in each one of the Secured Debentures); and
 - (b) charged as and by way of a floating charge to and in favour to the holder of each one of the Secured Debentures, and their successors and assigns, all of its, and its present and future Subsidiaries (as defined in each one of the Secured Debentures), undertaking, real property and assets, both present and future, of every kind and nature, wherever situate;
3. the Secured Debentures were executed by Christianne Carin, the Chief Executive Officer of EarthRenew;

4. Ms. Carin is also a director and/or officer of each of EarthRenew Inc., EarthRenew Holdings, EarthRenew Strathmore and EarthRenew Management with signing authority for each of them and, accordingly, had the authority to bind each one of the Respondents;
5. while there were no signature blocks in the Secured Debentures referring to the Subsidiaries, they nevertheless executed the Secured Debentures through the agency of the person who signed on behalf of EarthRenew;
6. it was always the intention of the Applicants and EarthRenew that the Subsidiaries would be bound by the terms and conditions of the Secured Debentures and that, pursuant to each one of the Secured Debentures, EarthRenew and its Subsidiaries were granting a security interest in and to all of their present and after-acquired personal property and granting a floating charge on all of their present and future assets, properties and undertakings;
7. the Applicants perfected their security interests over EarthRenew and the Subsidiaries by registration under the *Personal Property Security Act*, R.S.A. 2000, c. P-7; and
8. such further and other grounds as counsel may advise and this Honourable Court may permit.

AND FURTHER TAKE NOTICE that the Applicants rely on the provisions of the *Judicature Act*, R.S.A. 2000, J-12, subsection 65(7) of the *Personal Property Security Act*, R.S.A. 2000, c. P-7, section 19 of the *Business Corporations Act*, R.S.A. 2000, c. B-9, the pleadings and proceedings filed in the within action, the inherent jurisdiction of this Honourable Court and such further and other material as counsel may advise and this Honourable Court may permit.

AND FURTHER TAKE NOTICE that in support of this application counsel will read and rely upon the Affidavit of Michael Conboy sworn October 6, 2010, filed and such further and other materials as counsel may advise and this Honourable Court may permit.

DATED at the City of Toronto, in the Province of Ontario, this 7th day of October, 2010.

AIRD & BERLIS LLP

A handwritten signature in black ink, appearing to be 'S. Graff', written over a horizontal line.

Per:

Steven L. Graff
Solicitors for the Applicants

TO: Clerk of the Court

**IN THE COURT OF QUEEN'S BENCH
OF ALBERTA JUDICIAL DISTRICT OF CALGARY**

Let the Notice of Motion be filed notwithstanding that it is a photocopy and not the original signature. The original Notice of Motion is contained in Volume 1 of the Motion Record prepared by Aird & Berlis LLP, Ontario counsel.

"J.T. Prowse"

M. C. Q. B. A.
October 14th, 2010

BETWEEN:

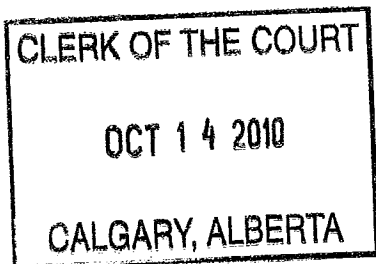
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Plaintiffs
(Applicants)

- and -

**EARTHRENEW CORPORATION, EARTHRENEW,
INC., EARTHRENEW IP HOLDINGS LLC,
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Defendants
(Respondents)



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