

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

**VIMPELCOM LTD., GLOBALIVE CAPITAL INC., UBS SECURITIES
CANADA INC., TENNENBAUM CAPITAL PARTNERS LLC, 64NM
HOLDINGS GP LLC, 64NM HOLDINGS LP, LG CAPITAL INVESTORS
LLC, SERRUYA PRIVATE EQUITY INC., NOVUS WIRELESS
COMMUNICATIONS INC., WEST FACE CAPITAL INC. AND MID-
BOWLINE GROUP CORP.**

Defendants

**STATEMENT OF DEFENCE
of GLOBALIVE CAPITAL INC.**

1. The defendant, Globalive Capital Inc. ("Globalive") has no knowledge of the allegations contained in paragraphs 2 and 5 to 10 of the statement of claim.
2. Except as hereinafter expressly admitted, Globalive denies each and every other allegation in the statement of claim and puts the plaintiff to the strict proof thereof.

Background to WIND

3. Globalive is a diversified investment corporation based in Toronto and incorporated pursuant to the laws of Ontario. Anthony Lacavera is the Chairman of Globalive and former Chairman and Chief Executive Officer of WIND (as defined below).

4. Globalive founded Globalive Wireless Management Corp. (which would subsequently be renamed WIND Mobile Corp., and is referred to herein as “WIND” for simplicity) in 2008 along with Orascom Telecom Holdings (“Orascom”). WIND was originally structured so that Globalive indirectly held 67% of the voting shares and 34% of the total equity of WIND through a holding company called Globalive Investment Holdings Corp. (“GIHC”). GIHC held all the shares of WIND. Orascom held 100% of the non-voting shares and 32% of the voting shares in GIHC, for 65% of the total equity in WIND. A former Orascom employee held 1% of the voting shares in GIHC in the form of non-participating equity.
5. In 2011, the defendant VimpelCom Ltd. (“VimpelCom”), a corporation based in the Netherlands, incorporated under the laws of Bermuda, and listed on the New York Stock Exchange, acquired the majority shareholder of Orascom. This transaction gave VimpelCom control of Orascom’s stake in GIHC.
6. This ownership structure of WIND remained in place until September 2014, when a consortium comprised of Globalive and the defendants Tennenbaum Capital Partners LLC (“Tennenbaum”), 64NM Holdings, LP (“64NM LP”), West Face Capital Inc. (“West Face”), Novus Wireless Communications Inc. (“Novus”), and Serruya Private Equity Inc. (“Serruya”) purchased VimpelCom’s interest in WIND through a corporation called Mid-Bowline Group Corp. (“Mid-Bowline”).
7. From WIND’s founding in 2008 until early 2015, Globalive’s principal executives managed WIND’s day-to-day operations.

VimpelCom Decides to Sell its Interest in WIND

8. Beginning in or around 2013, VimpelCom sought to divest its interest in WIND. At that point WIND owed VimpelCom over \$1.5 billion in principal and interest. WIND also owed \$150 million in third party vendor debt, which was scheduled to come due on April 30, 2014.

9. VimpelCom engaged the defendant UBS Securities Canada Inc. to assist VimpelCom in its efforts to find a purchaser for its debt and equity interest in WIND, or for WIND in its entirety. VimpelCom conducted this process entirely independently of Globalive, and told Globalive it would approach Globalive when and if its support was required for a transaction acceptable to VimpelCom.
10. Globalive understood from VimpelCom that VimpelCom's primary concern when evaluating potential bidders for its interest in WIND to be the bidder's ability to close, including the bidder's financial wherewithal and no impediment to timely regulatory approvals.
11. From 2013 until it signed a support agreement on August 7, 2014, Globalive regularly participated in discussions regarding the potential for acquiring VimpelCom's interest in WIND with numerous potential co-investors, including but not limited to representatives of Tennenbaum, West Face, and 64NM LP.

VimpelCom Grants Catalyst Exclusive Negotiating Rights

12. On or about July 23, 2014, VimpelCom advised Globalive that it had entered into an exclusivity agreement (the "Exclusivity Agreement") with The Catalyst Capital Group Inc. ("Catalyst"). Globalive was not a party to the Exclusivity Agreement and was not provided with a copy of the Exclusivity Agreement.
13. At or around the same time, VimpelCom began negotiating with Globalive to secure Globalive's support for the proposed sale of WIND to Catalyst. During the period of the Exclusivity Agreement, as extended, VimpelCom consistently indicated to Globalive that VimpelCom was optimistic that an agreement with Catalyst would be reached.

The Unsolicited Proposal

14. On or around August 6, 2014, Michael Leitner of Tennenbaum sent VimpelCom an unsolicited proposal on behalf of Tennenbaum, West Face, and 64NM (the "New Investors") for VimpelCom's (but not Globalive's) interest in WIND. A more formal offer

letter and form of purchase agreement were delivered by the New Investors to VimpelCom on or around the evening of August 7, 2014.

15. Globalive was not a party to the unsolicited proposal made by the New Investors, and Globalive expressly denies the allegations contained at paragraph 61 of the statement of claim that Mr. Lacavera agreed that Michael Leitner should send the unsolicited proposal to VimpelCom.
16. Globalive expressly denies the allegations contained at paragraph 84 of the statement of claim that VimpelCom and UBS engaged in discussions with Globalive and/or Mr. Lacavera and the New Investors regarding the New Investors' unsolicited proposal between August 6 and August 18, 2014.

The Support Agreement

17. On or around August 7, 2014, VimpelCom entered into a support agreement with Globalive (the "Support Agreement"), having received assurances from Globalive that no agreement or understanding with the New Investors was in place and that Globalive was not part of the proposal from the New Investors. Globalive's obligations under the Support Agreement, offered in exchange for Globalive having an economic participation in the proceeds of a resulting transaction, were limited to its agreement: (i) to sell its interests in GIHC and WIND to a buyer of VimpelCom's choosing, and (ii) alternatively, to supporting VimpelCom in putting WIND into insolvency in the event the sale did not proceed (since, at that time, VimpelCom considered insolvency to be the next best alternative to a transaction with Catalyst). At VimpelCom's request, Globalive notified the New Investors that Globalive had entered into the Support Agreement and that Globalive would not engage in discussions with the New Investors regarding a combined proposal to VimpelCom.
18. From on or around August 7, 2014 until the expiry of the Exclusivity Agreement on August 18, 2014, Globalive believed that the Catalyst transaction was the only realistic alternative to an insolvency process for WIND (which Globalive believed would be

destructive to WIND's value, and hence to Globalive's share under the Support Agreement, and also to Globalive's reputation) and so Globalive actively assisted VimpelCom in seeking to advance negotiations with Catalyst. VimpelCom made it clear to Globalive during VimpelCom's period of exclusivity with Catalyst that VimpelCom intended to force WIND into insolvency if a deal with Catalyst could not be reached. Indeed, over the course of early 2014, WIND, at VimpelCom's instruction, had counsel engage a monitor and prepare the required filings for Companies' Creditors Arrangement Act ("CCAA") protection.

19. Over the course of 2013 and 2014, Globalive had approached Catalyst on numerous occasions with a view to participating with Catalyst in a transaction. The terms of the Support Agreement expressly permitted Globalive to seek to participate in the Catalyst transaction, and so after having signed the Support Agreement, Globalive expressed to Catalyst its desire to invest alongside Catalyst in its acquisition of WIND.

The Negotiations between VimpelCom and Catalyst after August 7, 2014

20. From August 7, 2014 to August 18, 2014 (when the Exclusivity Agreement, as extended, expired), Globalive and its principals, as executives of WIND, focused their efforts on assisting VimpelCom to close a transaction with Catalyst.
21. In their capacity as executives of WIND assisting with the population of disclosure schedules and operational and financial representations and warranties, Globalive's principals received various copies of an evolving draft share purchase agreement with Catalyst from VimpelCom's counsel at Bennett Jones LLP, including on August 3, 2014. Bennett Jones LLP described this draft as a substantially complete share purchase agreement. Globalive understood that once a support agreement was reached between Globalive and VimpelCom, this draft share purchase agreement and such support agreement were to be provided to VimpelCom's supervisory board for approval.
22. The "substantially complete" draft share purchase agreement contained a detailed "hell or high water" clause which prohibited Catalyst from taking any actions, specifically

including seeking regulatory concessions, which might delay or impede obtaining the regulatory approvals required to close the transaction. The draft share purchase agreement provided at section 6.3(e) that Catalyst could continue to pursue regulatory concessions that WIND had already been pursuing, but only to the extent that such pursuit could not “be expected to prevent or delay the obtaining of” any governmental or regulatory approval. Globalive understood that this provision was of central importance to VimpelCom, both due to VimpelCom’s negative experiences with the Canadian Government and due to the fact that, despite very strong operational results and an increasingly favourable regulatory environment, WIND was rapidly running out of money to fund its operations and meet its obligations and VimpelCom had no interest in providing further financing to WIND.

23. It was Globalive’s understanding that on August 11, 2014, representatives of Catalyst and VimpelCom had a “courtesy call” with Industry Canada to advise it of the impending sale to Catalyst. At that time, five days after the New Investors’ unsolicited proposal, VimpelCom, VimpelCom’s counsel, and WIND’s management (including the principals of Globalive) were actively preparing for closing the Catalyst acquisition. Accordingly, it was clear to Globalive that VimpelCom was still committed to exclusive negotiations with Catalyst.
24. The VimpelCom supervisory board met to review and approve the proposed share purchase agreement with Catalyst on or about August 11, 2014. At some point following their review of the proposed share purchase agreement, VimpelCom’s supervisory board indicated that, in order to proceed with the transaction with Catalyst, it would require Catalyst to agree to a break fee of between \$5 million and \$20 million to cover any further financing of WIND required as a result of regulatory approval taking longer than expected. Catalyst rejected this requirement, but VimpelCom advised Globalive that VimpelCom remained optimistic a resolution of the issue would be reached.
25. Globalive worked diligently with VimpelCom and its advisors to come up with possible solutions to the break fee issue that would satisfy both the VimpelCom supervisory

board and Catalyst, but Catalyst would not agree to any solutions proposed by VimpelCom. Globalive was aware that VimpelCom's Exclusivity Agreement with Catalyst (as extended) expired on August 18, 2014. VimpelCom subsequently confirmed to Globalive that the Exclusivity Agreement had not been further extended.

26. Contrary to the allegations contained at paragraphs 84 to 89 of the statement of claim, the proposed transaction between VimpelCom and Catalyst did not fail as a result of any actions taken by Globalive or the New Investors, but rather solely because Catalyst refused to agree to the break fee that VimpelCom's supervisory board ultimately required.
27. At no point between August 7, 2014 and the expiry of the exclusivity period did Globalive or its principals, including Mr. Lacavera, negotiate with the New Investors in relation to joining with the New Investors in making a competing bid to VimpelCom.

The Consortium's Offer

28. Upon expiry of the Catalyst exclusivity period on August 18, 2014, VimpelCom was seriously considering proceeding with a CCAA process. WIND filing for insolvency protection was only avoided when Globalive joined with the New Investors to propose a new bid for VimpelCom's interest in WIND, which did not occur until after August 18, 2014. Subsequently, Globalive explained to VimpelCom that the New Investors, together with Globalive, Novus, and Serruya (the "Consortium"), were serious and well-financed, and that their proposed structure would permit VimpelCom to conclude an exit from WIND in a short period and without any regulatory approval. On this basis, Globalive convinced VimpelCom to consider the Consortium's offer for a short period following August 18, 2014 as an alternative to an insolvency process. VimpelCom initially agreed to do so on a non-exclusive basis. Shortly thereafter, VimpelCom agreed to negotiate with the Consortium on an exclusive basis.
29. Pursuant to the offer from the Consortium, Mid-Bowline (which was owned and controlled by Globalive and capitalized with non-voting equity from the New Investors)

proposed to buy the entirety of VimpelCom's interest in WIND through its wholly-owned subsidiary, Mid-Bowline Holdings Corp. No regulatory approval would be required for such acquisition, because none of the New Investors would acquire or hold any direct or indirect voting interests in GIHC or WIND and the transaction accordingly did not involve any change of control. VimpelCom would be paid for its interest in WIND immediately upon executing an agreement. The Consortium intended that, following such acquisition, the shareholdings of Mid-Bowline would be re-organized such that voting rights and total equity would be held in proportion to each investor's investment. This re-organization required regulatory approvals. Such approvals were ultimately obtained, and the re-organization was implemented.

Globalive Did Not Misuse Catalyst's Confidential Information

30. At no time did Globalive or its principals receive any confidential information about Catalyst's regulatory strategy and thus did not receive Catalyst's Confidential Information as defined in the statement of claim. Neither Globalive nor any of its principals provided any information to the New Investors that was not provided to Catalyst in July 2014 in respect of VimpelCom or WIND as alleged at paragraph 45 of the statement of claim. Furthermore, at no time did Globalive inform the New Investors that VimpelCom and Catalyst had reached an agreement in principle as alleged at paragraph 48 of the statement of claim.
31. At no time did Globalive or its principals, including Mr. Lacavera, know that Catalyst intended to terminate Mr. Lacavera's position as Chief Executive Officer of WIND and to eliminate his equity position as described in paragraph 75 of the statement of claim. In fact, Catalyst representatives advised Globalive's principals that Globalive would be given an opportunity to participate in subsequent financings of WIND. The Catalyst representatives further acknowledged that they had no experience operating a mobile telephone company and had no new executive team in mind at that time, and thus that Catalyst needed Globalive and its principals, including Mr. Lacavera, to have an ongoing and active role in the management and operation of WIND.

32. At no time during the relevant period were Globalive or any of the principals of Globalive, including Mr. Lacavera, parties to any non-disclosure or confidentiality agreements with Catalyst; in particular, neither Globalive nor Mr. Lacavera was a party to the confidentiality agreement between VimpelCom and Catalyst described at paragraph 26 of the statement of claim, and in fact neither ever saw that agreement.
33. In the alternative, if Globalive received Confidential Information of Catalyst's, no one at Globalive, including Mr. Lacavera, communicated such Confidential Information to any person or organization as alleged at paragraphs 73 to 80 of the statement of claim.

Globalive Did Not Induce Breach of Contract

34. As pleaded above, Globalive was not a party to the Exclusivity Agreement, nor was Mr. Lacavera a party thereto. Neither owed any duties or obligations to Catalyst in connection therewith. In any event, Globalive expressly denies that the Exclusivity Agreement was breached as alleged at paragraphs 84 to 89 of the statement of claim.
35. In the alternative, in the event the Exclusivity Agreement was breached, neither Globalive nor Mr. Lacavera in any way induced, procured or caused VimpelCom or any other person or organization to breach the Exclusivity Agreement or any other contract that is material to the within action with Catalyst, as alleged at paragraphs 84 to 89 of the statement of claim. Globalive expressly denies that Mr. Lacavera, Globalive or the New Investors ever discussed how they might cause VimpelCom to breach the Exclusivity Agreement so as to prevent Catalyst from successfully acquiring WIND as alleged at paragraph 51 of the statement of claim.

Globalive Did Not Participate in any Conspiracy to Injure Catalyst

36. Globalive did not make any agreement with the New Investors or any of the other defendants to carry out any conduct using any means, illegal or otherwise, that it knew or ought to have known would have caused harm to Catalyst as alleged at paragraphs 73 to 89 of the statement of claim. More particularly, neither Globalive nor Mr. Lacavera conspired with the New Investors as alleged at paragraphs 51 to 72 of the statement of

claim to induce VimpelCom to breach the Exclusivity Agreement or to cause VimpelCom to cease negotiating in good faith with Catalyst. Neither Globalive nor Mr. Lacavera played any role in preparing or authorizing the delivery of the “Proposal” described at paragraphs 81 to 83 of the statement of claim. In any event, none of Globalive, Mr. Lacavera or any of the New Investors engaged in any conduct that caused, or was intended to cause, harm to Catalyst.

This Action is an Abuse of Process

37. In any event, the within action is an abuse of the process of the Court. On or around June 25, 2014, Catalyst commenced an action against West Face and Brandon Moyse under court file number CV-16-11272-00CL (the “Moyse Action”). Mr. Moyse was employed as a junior analyst at Catalyst until May 2014, and at West Face from June 23 to July 16, 2014.
38. In the Moyse Action, among other things, Catalyst originally sought an injunction restraining West Face from competing with Catalyst and from taking certain actions in respect of WIND.
39. Catalyst amended its statement of claim in the Moyse Action four times, but as ultimately amended on or around February 25, 2016, Catalyst alleged, among other things, that Moyse had passed confidential information concerning Catalyst’s strategy related to its bid for WIND to West Face, and that West Face, in turn, used that confidential information to formulate the Proposal and ultimately to formulate with the Consortium the successful bid for VimpelCom’s interest in WIND. At that time, Catalyst was aware any and all alleged facts upon which the claims in the within action are based, and Catalyst could have added Globalive and the other defendants to the within action as defendants to the Moyse Action, to the extent they were not already defendants.
40. The trial of the Moyse Action was heard by Justice Newbould from June 6 to June 13, 2016 on the Commercial List without a jury, after which Justice Newbould dismissed the

Moyse Action in its entirety in reasons for judgment dated August 18, 2016 (the “Newbould Decision”).

41. On the basis of a full and complete evidentiary record, with extensive evidence led and witnesses cross-examined on these issues, Justice Newbould made the following findings of fact in the Newbould Decision that were fundamental or necessarily incidental to his holding that the Moyse Action should be dismissed:
- (a) that none of the New Investors knew that Catalyst was a bidder for VimpelCom’s interest in WIND or the terms of any bid Catalyst made;
 - (b) that the terms of the Proposal were not based on any information related to Catalyst’s bid for WIND;
 - (c) that neither VimpelCom nor Globalive had any discussions with any of the New Investors before the Exclusivity Agreement lapsed;
 - (d) that VimpelCom’s strong aversion to any risk of the failure to gain regulatory approval of any proposed sale of its interest in WIND was well-known in the market early in 2014 at the latest;
 - (e) that there is no evidence that the Proposal played any part in the position taken by VimpelCom with Catalyst that it wanted a break fee from Catalyst;
 - (f) that Catalyst did not suffer any damages as a result of the misuse of confidential Catalyst information;
 - (g) that it was Catalyst’s refusal to agree to a break fee requested by VimpelCom that caused Catalyst to end negotiations with VimpelCom;
 - (h) that VimpelCom would not agree to any deal that carried any risk of the Government not approving it; and

- (i) that despite a detailed provision in the share purchase agreement that Catalyst was prepared to sign which prohibited the pursuit of regulatory concessions that would impede closing the transaction, Catalyst was not willing to complete an acquisition of WIND without obtaining certain regulatory concessions from the Government of Canada that were not forthcoming and, as a result, there was no chance that Catalyst could have successfully concluded a deal with VimpelCom.
42. Globalive pleads and relies on the findings of Justice Newbould in the Newbould Decision. The same factual issues raised by Catalyst in the within action were before the Court in the Moyse Action and were the subject of the Newbould Decision. The within action is therefore an abuse of process.
43. Finally, Catalyst has engaged in litigation by installment, which is in itself an abuse of process. Catalyst made similar factual allegations to those in this action and the Moyse Action in proceedings in relation to a plan of arrangement involving Mid-Bowline, which Justice Newbould also rejected in reasons for his decision to approve the arrangement dated January 26, 2016, under Court File Number CV-15-11238-00CL. In that decision, Justice Newbould characterized Catalyst's actions as "lying in the weeds", and Catalyst has demonstrated a pattern of raising new causes of action on the same facts when it appeared its other tactics would not succeed.

In the Alternative, Catalyst Did Not Suffer Any Compensable Damages

44. Moreover, Catalyst did not suffer any damages as a result of any actions of Globalive. As determined by Justice Newbould in the Moyse Action, the sole cause of Catalyst's inability to acquire WIND was its own refusal to agree to the break fee that VimpelCom's supervisory board required. Globalive did not directly or indirectly cause VimpelCom's supervisory board to require the break fee, nor did any action on the part of Globalive have any bearing on Catalyst's refusal to agree to it. Similarly, Globalive did not directly or indirectly cause VimpelCom or Catalyst not to further extend the Exclusivity Agreement while seeking to resolve the outstanding issue of the break fee.

45. In the alternative, to the extent Catalyst suffered any damages, they were not foreseeable or are too remote to be compensable.
46. In the further alternative, to the extent Catalyst suffered any damages, they failed to take reasonable steps mitigate those damages, including agreeing to the break fee required by VimpelCom's supervisory board.
47. Furthermore, Globalive's actions were not high-handed, wilful, wanton, reckless or contemptuous. Catalyst is therefore not entitled to punitive, aggravated or exemplary damages as claimed at paragraphs 1(b)(ii) and 101-102 of the statement of claim.
48. Globalive requests the within action be dismissed, with costs payable to Globalive on a substantial indemnity basis.

September 30, 2016

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- and -

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Plaintiff

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**ONTARIO
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**STATEMENT OF DEFENCE
of GLOBALIVE CAPITAL INC.**

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