

Court File No.: CV-16-553800

**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 MID-BOWLINE GROUP CORP.

1. The incorrectly named defendant, Mid-Bowline Group Corp. ("**Mid-Bowline**"), admits none of the allegations contained in the Statement of Claim and puts the plaintiff ("**Catalyst**") to the strict proof thereof.
2. While Mid-Bowline is generally aware of the identity of the parties as pleaded in paragraphs 2-11 of the Statement of Claim, it has no particular knowledge of the facts pleaded therein.
3. Mid-Bowline was incorporated on September 11, 2014. Through a series of amalgamations that occurred on March 2, 2016, Mid-Bowline was amalgamated into Mid-Bowline Holdings Corp. That entity then amalgamated with WIND Mobile Corp. ("**WIND**") to form a new WIND Mobile Corp. which on April 5, 2016 was continued as an Alberta corporation that is indirectly wholly owned by Shaw Communications Inc. ("**Shaw**").

4. The Statement of Claim fails to disclose any reasonable cause of action against Mid-Bowline.

5. In the alternative, any claim against this defendant is barred, as follows. On February 3, 2016, this Court approved a Plan of Arrangement (the “**Plan of Arrangement**”) under section 182 of the *Business Corporations Act* (Ontario). The Plan of Arrangement effected the acquisition by Shaw of all of the issued and outstanding shares (the “**Purchased Shares**”) of Mid-Bowline and its then wholly-owned subsidiary, WIND.

6. At the time that the Plan of Arrangement was before this Court, Catalyst was asserting in Superior Court of Justice file number CV-14-507120, as against West Face Capital Inc. (“**West Face**”), a constructive trust remedy over West Face’s interests in WIND, including the Purchased Shares.

7. On January 26, 2016, Justice Newbould issued Reasons for Decision in the Plan of Arrangement proceedings. Following those Reasons for Decision, Catalyst indicated a willingness to permit the Plan of Arrangement to proceed and to relinquish any claims over or in relation to the interests in Mid-Bowline and WIND being acquired by Shaw. An Order dated February 3, 2016, the terms of which were agreed to by Catalyst, was then issued by Justice Newbould approving the Plan of Arrangement. The Plan of Arrangement includes a paramouncy clause with respect to the Purchased Shares, as follows:

4.5 Paramouncy

From and after the Effective Time: (i) this Plan of Arrangement shall take precedence and priority over any and all Purchased Shares or Options issued prior to the Effective Time; (ii) the rights and obligations of the Former Shareholders and the former holders of Options shall be solely as provided for in this Plan of

Arrangement; and (iii) all actions, causes of action, claims or proceedings (actual or contingent and whether or not previously asserted) based on or in any way relating to any Purchased Shares or Options shall be deemed to have been settled, compromised, released and determined without liability except as set forth herein; provided, however, that nothing in this section 4.5 shall be construed to extinguish any right of The Catalyst Capital Group Inc. to assert any of the following matters, with the exception of any constructive trust or equivalent remedy over the Purchased Shares, which shall be deemed to have been settled, compromised, released and determined without liability, along with all other claims in this section 4.5:

- (a) its existing claims as asserted in the Amended Amended Statement of Claim as amended December 16, 2014 in the proceeding bearing Court File No.: CV-14-507120 in the Ontario Superior Court of Justice, against West Face Capital Inc. and Brandon Moyse;
- (b) as against any person (as defined in the OBCA), any potential claim for a tracing of the money received by West Face Capital Inc. from the disposition of its interest in the Corporation pursuant to the Arrangement; or
- (c) as against the Former Shareholders, any potential claim relating to their acquisition from VimpelCom Ltd. of their interest directly or indirectly in WIND Mobile Corp., including, to the extent permitted by law, for a tracing of the money received by them pursuant to the Arrangement.

8. The purported claim being advanced by Catalyst in this proceeding as against Mid-Bowline is barred by section 4.5 of the Plan of Arrangement. The causes of action being asserted are based on or are related to the Purchased Shares, and do not fall within any of the enumerated exceptions in section 4.5.

9. In addition, on February 3, 2016, Catalyst granted Shaw and each of its subsidiaries, affiliated or related entities a Full and Final Release (the "**Release**"). In relevant part, the Release provides as follows:

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, *Catalyst*, any and all of its

predecessors, subsidiaries, affiliated or related entities, including without limiting the generality of the foregoing, corporations, associations, partners, trusts, funds under management, syndicates, joint ventures, and all of their past and present officers, directors, employees, representatives and agents (*collectively, the "Releasors"*) *do hereby remise, release and forever discharge Shaw, and any and all of its predecessors, subsidiaries, affiliated or related entities, including without limiting the generality of the foregoing, corporations, associations, partners, trusts, funds under management, syndicates, joint ventures, and all of their past and present officers, directors, employees, representatives and agents (collectively, the "Releasees") of and from any and all actions, causes of action, suits, proceedings, debts, duties, accounts, bonds, covenants, contracts, claims, including the Constructive Trust Claim,¹ demands, damages, sums and sums of money, promises, grievances, executions, judgments and liabilities whatsoever, both in law and in equity, whether implied or expressed, which the Releasors ever had, may have or now have in any way related to the Purchased Shares by reason of any cause, deed, matter, omission or thing whatsoever and howsoever existing as of the date of this Full and Final Release, including, without limitation, in respect of the matters and issues raised in and by or which could have been raised in and by the Action, the Arrangement Proceeding, or any other proceeding.* [italics added]

[...]

IT IS FURTHER AGREED AND UNDERSTOOD that this Full and Final Release shall operate conclusively as an estoppel in the event of any claim, action, complaint or proceeding which might be brought in the future by the Releasors with respect to the subject matter hereof. This Full and Final Release may be pleaded in the event any such claim, action, complaint or proceeding is brought, as a complete defence and reply, and may be relied upon in any proceeding to dismiss the claim, action, complaint or proceeding on a summary basis and no objection will be raised by the Releasors in any subsequent action that other parties in the subsequent action were not privy to formation of this Full and Final Release.

10. Catalyst's purported claim as against Mid-Bowline is also barred by the Release because it relates to the Purchased Shares.

¹ Defined in the Full and Final Release as "an action in Ontario Superior Court of Justice, Court File No.: CV-14-507120 (the "Action") against Brandon Moyse and West Face Capital Inc. ("West Face") seeking various relief, including a potential constructive trust claim over West Face's interest in WIND, including its interest in the Purchased Shares (collectively, the "Constructive Trust Claim")."

11. Mid-Bowline asks that this action be dismissed as against it, with costs.

October 3, 2016

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PROCEEDING COMMENCED AT TORONTO

**STATEMENT OF DEFENCE OF
MID-BOWLINE GROUP CORP.**

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