

Court File No.: CV-16-553800

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**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

**NOTICE OF MOTION**

The incorrectly named defendant, Mid-Bowline Group Corp. (“Mid-Bowline”), will make a motion to a judge of the Commercial List on a date to be determined at 10:00 a.m., or as soon after that time as the motion can be heard, at the courthouse at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

- (a) an Order transferring this action to the Commercial List;
- (b) an Order striking out the claim against Mid-Bowline for failing to disclose a reasonable cause of action, without leave to amend;

- 2 -

- (c) in the alternative to paragraph (b) above, only in the event it is determined that a reasonable cause of action is pleaded, an Order declaring that such claim is barred by a Plan of Arrangement under section 182 of the Ontario *Business Corporations Act*, RSO 1990, c. B.16 (the “**Plan of Arrangement**”), as approved by Order of Justice Newbould dated February 3, 2016;
- (d) in the further alternative, an Order declaring that any such claim is barred by a Full and Final Release dated February 3, 2016 as between Shaw Communications Inc. (“**Shaw**”), 1503357 Alberta Ltd. and The Catalyst Capital Group Inc. (“**Catalyst**”);
- (e) to the extent necessary, an Order striking the Jury Notice served by Catalyst in this case;
- (f) costs; and
- (g) such further and other relief as this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

- (a) 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 indirectly wholly owned by Shaw;

- 3 -

- (b) the Statement of Claim fails to disclose any reasonable cause of action against Mid-Bowline;
- (c) in the alternative, any claim against Mid-Bowline is barred. On February 3, 2016, this Court approved the Plan of Arrangement, which 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;
- (d) at the time that the Plan of Arrangement was before this Court, Catalyst was asserting in Ontario Superior Court of Justice Court File No.: 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;
- (e) 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 was then issued, on consent, by Justice Newbould approving the Plan of Arrangement;
- (f) 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;

- (g) in addition, on February 3, 2016, Catalyst gave Shaw and each of its subsidiaries, affiliated or related entities a Full and Final Release. Catalyst's purported claim as against Mid-Bowline is also barred by the Full and Final Release because it relates to the Purchased Shares;
- (h) the subject matter of this proceeding has been the subject of case management and substantive decisions by this Court and, in particular, Justice Newbould. A jury trial is not required. It is in the interests of justice that this matter be transferred to the Commercial List;
- (i) Rules 1.04, 21.01(1)(a) and (b), 37, 47 and 57 of the *Rules of Civil Procedure*, RRO 1990, Reg 194;
- (j) sections 108 and 131 of the *Courts of Justice Act*, RSO 1990, c. C.43; and
- (k) 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 motion:

- (a) the Statement of Claim issued May 31, 2016;
- (b) the Statement of Defence of Mid-Bowline dated October 3 2016, and the documents referenced therein; and
- (c) such further and other evidence as counsel may advise and this Honourable Court may permit.

October 3, 2016

**DENTONS CANADA LLP**  
77 King Street West, Suite 400  
Toronto-Dominion Centre  
Toronto, ON M5K 0A1

**Michael D. Schafler**  
LSUC #: 39268J  
Tel.: (416) 863-4457  
Fax: (416) 863-4592  
michael.schafler@dentons.com

**Ara Basmadjian**  
LSUC #: 64315H  
Tel.: (416) 863-4647  
Fax: (416) 863-4592  
ara.basmadjian@dentons.com

Lawyers for the Defendant, Mid-Bowline  
Group Corp.

TO: **LAX O'SULLIVAN LISUS GOTTLIEB LLP**  
145 King Street West, Suite 2750  
Toronto, ON M5H 1J8

**Rocco Di Pucchio**  
LSUC #: 38185I  
Tel.: (416) 598-2268  
Fax: (416) 598-3730  
rdipucchio@counsel-toronto.com

**Andrew Winton**  
LSUC #: 54473I  
Tel.: (416) 644-5342  
Fax: (416) 598-3730  
awinton@counsel-toronto.com

**Bradley Vermeersch**  
LSUC #: 69004K  
Tel.: (416) 646-7997  
Fax: (416) 598-3730  
bvermeersch@counsel-toronto.com

Lawyers for the Plaintiff, The Catalyst Capital  
Group Inc.

AND TO: **NORTON ROSE FULBRIGHT CANADA LLP**  
200 Bay Street, Suite 3800  
Royal Bank Plaza, South Tower  
Toronto, ON M5J 2Z4

**Orestes Pasparakis**

LSUC #: 36851T

Tel.: (416) 216-4815

Fax: (416) 216-3930

orestes.pasparakis@nortonrosefullbright.com

**Rahool Agarwal**

LSUC #: 54528I

Tel.: (416) 216-3943

Fax: (416) 216-3930

rahool.agarwal@nortonrosefullbright.com

**Michael Bookman**

LSUC #: 65047W

Tel.: (416) 216-2492

Fax: (416) 216-3930

michael.bookman@nortonrosefullbright.com

Lawyers for the Defendant, VimpelCom Ltd.

AND TO: **BORDEN LADNER GERVAIS LLP**  
40 King Street West, 44<sup>th</sup> Floor  
Scotia Plaza  
Toronto, ON M5H 3Y4

**James D.G. Douglas**  
LSUC #: 20569H  
Tel.: (416) 367-6029  
Fax: (416) 361-2747  
jdouglas@blg.com

**Caitlin Sainsbury**  
LSUC #: 54122D  
Tel.: (416) 367-6438  
Fax: (416) 361-2745  
csainsbury@blg.com

**Graham Splawski**  
LSUC #: 68589T  
Tel.: (416) 367-6206  
Fax: (416) 361-2786  
gsplawski@blg.com

Lawyers for the Defendant, Globalive  
Capital Inc.

AND TO: **STIKEMAN ELLIOTT LLP**  
5300 Commerce Court West  
199 Bay Street  
Toronto, ON M5L 1B9

**David R. Byers**  
LSUC #: 22992W  
Tel.: (416) 869-5697  
Fax: (416) 947-0866  
dbyers@stikeman.com

**Daniel Murdoch**  
LSUC #: 53123L  
Tel.: (416) 869-5529  
Fax: (416) 947-0866  
dmurdoch@stikeman.com

**Vanessa Voakes**  
LSUC #: 58486L  
Tel.: (416) 869-5538  
Fax: (416) 947-0866  
vvoakes@stikeman.com

Lawyers for the Defendant, UBS Securities  
Canada Inc.

AND TO: **BLAKE, CASSELS & GRAYDON LLP**  
199 Bay Street, Suite 4000  
Commerce Court West  
Toronto, ON M5L 1A9

**Michael Barrack**  
Tel.: (416) 863-5280  
Fax: (416) 863-2653  
michael.barrack@blakes.com

**Kiran Patel**  
Tel.: (416) 863-2205  
Fax: (416) 863-2653  
kiran.patel@blakes.com

Lawyers for the Defendants, Tennenbaum  
Capital Partners, 64 NM Holdings GP LLC, 64  
NM Holdings LP, and LG Capital Investors LLC



AND TO: **LERNERS LLP**  
130 Adelaide Street West, Suite 2400  
Toronto, ON M5H 3P5

**Lucas E. Lung**  
LSUC #: 52595C  
Tel.: (416) 601-2673  
Fax: (416) 601-4192  
llung@lernalers.ca

Lawyers for the Defendant, Serruya Private  
Equity Inc.

AND TO: **MCCARTHY TÉTRAULT LLP**  
66 Wellington Street West, Suite 5300  
TD Bank Tower  
Toronto, ON M5K 1E6

**Junior Sirivar**  
LSUC #: 47939H  
Tel.: (416) 601-7750  
Fax: (416) 868-0673  
jsirivar@mccarthy.ca

**Jacqueline Cole**  
LSUC #: 65454L  
Tel.: (416) 601-7704  
Fax: (416) 868-0673  
jcole@mccarthy.ca

Lawyers for the Defendant, Novus Wireless  
Communications Inc.

AND TO: **DAVIES WARD PHILLIPS & VINEBERG LLP**  
155 Wellington Street West  
Toronto, ON M5V 3J7

**Kent E. Thomson**  
LSUC #: 24264J  
Tel.: (416) 863-5566  
Fax: (416) 863-0871  
kentthomson @dwpv.com

**Matthew Milne-Smith**  
LSUC #: 44266P  
Tel.: (416) 863-5595  
Fax: (416) 863-0871  
mmilne-smith @dwpv.com

**Andrew Carlson**  
LSUC #: 58850N  
Tel.: (416) 367-7437  
Fax: (416) 863-0871  
acarlson @dwpv.com

Lawyers for the Defendant, West Face  
Capital Inc.

Court File No.: CV-16-553800

**THE CATALYST CAPITAL GROUP INC.**  
Plaintiff

- and -

**VIMPELCOM LTD. et al.**  
Defendants

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

**NOTICE OF MOTION**

**DENTONS CANADA LLP**  
77 King Street West, Suite 400  
Toronto-Dominion Centre  
Toronto, ON M5K 0A1

**Michael Schafler**  
LSUC #: 39268J  
Tel.: (416) 863-4457  
Fax: (416) 863-4592  
michael.schafler@dentons.com

**Ara Basmadjian**  
LSUC #: 64315H  
Tel.: (416) 863-4647  
Fax: (416) 863-4592  
ara.basmadjian@dentons.com

Lawyers for the Defendant, Mid-Bowline  
Group Corp.