

**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 TENNENBAUM CAPITAL PARTNERS LLC, 64NM HOLDINGS GP LLC,
64NM HOLDINGS LP AND LG CAPITAL INVESTORS LLC**

1. The defendants Tennenbaum Capital Partners, LLC, 64NM Holdings GP LLC, 64NM Holdings LP and LG Capital Investors LLC (collectively the “**U.S. Investor Defendants**”), admit the allegations contained in paragraphs 6, 7, 33, 34 and 35 of the Statement of Claim.
2. Except as hereinafter expressly pleaded to the contrary, the U.S. Investor Defendants deny or have no knowledge of all of the other allegations contained in the Statement of Claim, and further deny that the plaintiff is entitled to the relief claimed in paragraph 1.

The U.S. Investor Defendants

3. Tennenbaum Capital Partners, LLC (“**Tennenbaum**”) is a leading alternative investment management firm based in Santa Monica, California. Tennenbaum launched its first institutional fund in 1999. Since then, the firm has invested in excess of US\$16 billion in over 400 companies.

4. LG Capital Investors LLC (“**LGCI**”) is a single-family investment office that was established by Lawrence Guffey in 2014.

5. Both Tennenbaum and LGCI have extensive experience and involvement in the telecommunications industry worldwide.

6. 64NM Holdings GP LLC is the general partner of 64NM Holdings LP (“**64NM**”), a special-purpose investment vehicle created by LGCI for the specific purpose of participating in the acquisition of WIND Mobile Corp. (“**WIND**”).

7. Ultimately, Tennenbaum and 64NM participated in an acquisition of WIND with a group of other investors as set out below.

Tennenbaum’s Initial Investment in WIND

8. WIND is a Canadian wireless telecommunications provider. By 2012, Globalive Capital Inc. (“**Globalive**”) and Vimpelcom Ltd. (“**Vimpelcom**”) indirectly held the vast majority of the equity in WIND.

9. In May 2012, Tennenbaum acquired approximately US\$25 million of WIND’s third party vendor debt.

10. During 2013 and 2014, Tennenbaum repeatedly reached out to Vimpelcom and WIND to provide additional debt and equity capital to fund the business on a go forward basis, including buying certain of Vimpelcom's shareholder loans as part of a funding transaction.

11. By March 2014, WIND had approximately US\$150 million in outstanding third party vendor debt, along with significantly more debt owed to its parent company Vimpelcom.

12. The third party vendor debt (including the debt held by Tennenbaum) came due on April 30, 2014. In March and April 2014, WIND and Vimpelcom reached out to the third party lenders, including Tennenbaum, to seek an extension and/or refinancing of these instruments. No such agreements were made prior to the debts' maturity on April 30, 2014. Thus, as of May 1, 2014, WIND was in default on its debts to its third party lenders, including Tennenbaum.

Vimpelcom Looks to Sell its Interest in WIND

13. Very shortly thereafter (i.e. in very early May 2014), Tennenbaum and LGCI learned that Vimpelcom had decided to sell its debt and equity interests in WIND and that it had retained UBS Securities Canada Inc. ("**UBS**") to manage the sale process.

14. It became known in the marketplace that Vimpelcom was willing to sell its interest in WIND based on an enterprise value of approximately \$300 million.

15. Tennenbaum and LGCI understood that Vimpelcom's priorities in any sale were speed and certainty of closing and minimizing the risk that the Canadian Government would not approve the transaction. Accordingly, Tennenbaum and LGCI believed that the approach which would be most likely to win Vimpelcom's favour in a competitive auction process would be the one that minimized this regulatory approval risk to Vimpelcom.

Tennenbaum's Initial Discussions to Purchase WIND

16. After learning that Vimpelcom was looking to sell its interests in WIND, Tennenbaum met with WIND in early May 2014 and subsequently began working to acquire WIND.

17. On or around May 12, 2014, Tennenbaum was granted access to the WIND data room. Tennenbaum started conducting due diligence, and continued to do so throughout May and June 2014.

18. Tennenbaum also began canvassing for other investors who would be interested in joining with Tennenbaum to purchase WIND. Tennenbaum spoke to a number of potential equity partners, including LGCI and others.

19. On or around May 30, 2014, an investor group led by Tennenbaum (which included Blackstone and Oak Hill) proceeded with continued diligence of WIND and was provided with access to management.

20. In early June, Tennenbaum had preliminary discussions with West Face Capital Inc. ("**West Face**") about providing principally debt capital and a smaller minority equity position in support of the investor group's potential acquisition, but by mid-June West Face declined to participate.

21. Tennenbaum already had strong knowledge of WIND's business given it had been a lender for approximately two years. Tennenbaum did not believe that Government concessions to permit spectrum acquired by WIND to be sold to an incumbent were necessary for WIND's survival.

22. Tennenbaum's due diligence efforts were focused on learning more about WIND's wireless network and how the company would be able to obtain access to additional spectrum over

time to create a competitive network to the incumbents (Rogers, Bell and Telus). Tennenbaum believed that network capacity was a crucial indicator of success and it was not willing to acquire equity in WIND until it had sufficient comfort that there was a path forward. These concerns were largely addressed on July 7, 2014, when Industry Canada announced a set-aside auction of AWS-3 wireless spectrum for new entrants like WIND.

23. Tennenbaum continued to conduct due diligence and negotiate with Vimpelcom regarding the potential acquisition of WIND into July 2014. LGCI became involved with Tennenbaum's investor group in or around this time period.

24. By late July 2014, Blackstone and Oak Hill's interests in continuing to pursue WIND were waning. Tennenbaum therefore resumed discussions with West Face to partner alongside of Tennenbaum and LGCI.

Vimpelcom Enters Exclusivity with Another Party

25. On July 23, 2014, Tennenbaum and LGCI were informed that Vimpelcom had entered into a period of exclusivity.

26. This development signalled to Tennenbaum and LGCI that another party had made a more advanced proposal for WIND that provided a clearer path to closing a deal.

27. At the time, Tennenbaum and LGCI did not know who the other party was, but they believed it was likely the plaintiff, The Catalyst Capital Group Inc. ("**Catalyst**"), given that Catalyst had an existing investment in Mobicity (another Canadian telecommunications provider), there was public discussion of Catalyst's interest in merging Mobicity in WIND and

Catalyst had been seeking financing in the market. Neither Tennenbaum nor LGCI knew for certain whether Catalyst was the other bidder.

New Investor Group is Formed

28. Despite the fact that Vimpelcom had entered into a period of exclusivity with another bidder, Tennenbaum and LGCI continued working toward an alternative proposal for WIND. Tennenbaum and LGCI believed that the best way to do this, given Vimpelcom's expressed preferences for speed and certainty of closing, was to structure the transaction to minimize regulatory risk of closing.

29. In or around late July and early August, the "**New Investors**" (Tennenbaum, LGCI and West Face) engaged in discussions amongst themselves regarding an alternative, streamlined transaction structure whereby the New Investors would acquire Vimpelcom's interests in WIND without having to first seek regulatory approval from the Canadian Government by leaving Globalive's interest in place, and simply stepping into the shoes of Vimpelcom. This would allow a faster and more certain closing for Vimpelcom than any structure that required transferring Globalive's interest in WIND.

30. By that point, given that Vimpelcom was in exclusivity with another party, Tennenbaum and LGCI believed that the window of opportunity to acquire WIND was very quickly closing, and that they needed to put forward the best possible proposal in the hopes that Vimpelcom would consider it as an alternative to insolvency if it was unable to reach an agreement with the other party.

Benefits of the New Investors' Transaction Structure

31. There were two principal benefits to the New Investors' streamlined transaction structure. One was to meet Vimpelcom's consistently expressed desire to minimize the risk of a transaction not obtaining regulatory approval. Vimpelcom could be paid in full with a negligible risk of any need for regulatory approval.

32. A second related benefit was speed. Vimpelcom would be paid in full for its interests in WIND immediately upon signing of the purchase agreement, rather than having to wait until after regulatory approval had been obtained.

33. Further, the simplicity of a securities purchase agreement limited the amount of documentation that needed to be negotiated and provided Vimpelcom with a simple and straightforward agreement.

New Investors Submit an Unsolicited Proposal

34. The New Investors put together a proposal based on this transaction structure and, late on August 6, 2014, Tennenbaum, on behalf of the New Investors, submitted an unsolicited proposal to Vimpelcom to acquire Vimpelcom's minority equity and debt interest in WIND at Vimpelcom's price (the "**Proposal**").

35. The Proposal was entirely unsolicited, and was entirely "blind", in the sense that the U.S. Investor Defendants had had no substantive communications with Vimpelcom since Vimpelcom entered exclusivity on July 23, 2014. The U.S. Investor Defendants knew nothing about the negotiations between Vimpelcom and the other party.

36. Tennenbaum submitted a more formal version of the Proposal the following day, August 7, 2014. The Proposal was conditional only on the participation of Globalive.

37. That same day (August 7, 2014), Anthony Lacavera of Globalive informed the New Investors that Globalive had signed a support agreement with Vimpelcom, pursuant to which it agreed to support a sale transaction acceptable to Vimpelcom.

38. Neither Vimpelcom nor Globalive resumed or engaged in any negotiations with the U.S. Investor Defendants until after Vimpelcom's exclusivity period with the other party expired on August 18, 2014. The U.S. Investor Defendants made no further proposals to Vimpelcom between August 7 and 18.

Negotiations after the Exclusivity Period Expires

39. After August 18, 2014, the New Investors started negotiating with Vimpelcom regarding their Proposal.

40. The New Investors subsequently joined with Globalive and two additional investors known to Globalive (Serruya Private Equity Inc. and Novus Wireless Communications Inc.) (collectively, the "**Consortium**") to attempt to complete a transaction with Vimpelcom.

41. The Consortium worked to convince Vimpelcom that the Consortium could raise the necessary funds and close the transaction that had been proposed. On or around August 25, 2014, the members of the Consortium were granted exclusive negotiating rights.

42. 64NM was formed by LGCI on September 9, 2014 for the specific purpose of participating in the acquisition of WIND. 64NM replaced LGCI as the participating entity in the Consortium from that date forward.

43. On or around September 16, 2014, the Consortium acquired Vimpelcom's interest in WIND based on an enterprise value of \$300 million.

No Knowledge of Any Contract or Negotiations

44. Prior to closing the transaction in September 2014, the U.S. Investor Defendants had no knowledge of any alleged agreement(s) between the Catalyst and Vimpelcom (including the terms of any exclusivity agreement), no knowledge of the negotiations between Catalyst and Vimpelcom and no knowledge of any offers that Catalyst made to Vimpelcom.

No Inducement of Breach of Contract

45. Since they had no knowledge of any alleged agreement(s) between Catalyst and Vimpelcom, the U.S. Investor Defendants could not have intended to procure any breach thereof, and did not intend to procure any breach thereof. The U.S. Investor Defendants expressly deny that they induced Vimpelcom to breach any contract with Catalyst.

No Conspiracy

46. Similarly, the U.S. Investor Defendants expressly deny participating in any conspiracy to induce Vimpelcom to breach any contract with Catalyst.

No Misuse of Confidential Information

47. The U.S. Investor Defendants did not have or misuse any confidential information belonging to Catalyst. The U.S. Investor Defendants only learned about Catalyst's regulatory strategy when this information was subsequently disclosed in an affidavit sworn May 27, 2016 by Catalyst's principal Newton Glassman as part of another proceeding involving this transaction earlier this year.

48. Prior to that date, neither Mr. Lacavera nor anybody else communicated any confidential information belonging to Catalyst to the U.S. Investor Defendants (including any information regarding Catalyst's regulatory strategy), and no such information was used by the U.S. Investor Defendants in developing the transaction structure that the New Investors proposed to Vimpelcom in August 2014. On the contrary, the transaction structure was developed based on the U.S. Investor Defendants' belief that it was the best possible proposal that the New Investors could put forward to Vimpelcom at the time based on their own independent assessment of WIND.

No Damages

49. There is no basis in law or fact for claiming any damages or the other relief set out in the statement of claim against any of the U.S. Investor Defendants.

50. Catalyst was unable to conclude a transaction to acquire WIND, not because of the U.S. Investor Defendants or the Consortium, but rather because Catalyst refused to agree to Vimpelcom's terms. The U.S. Investor Defendants only learned about the details regarding Catalyst's failed negotiations with Vimpelcom when they were disclosed by Catalyst in another proceeding involving this transaction earlier this year, including:

- (a) That Vimpelcom would not agree to any deal that carried any risk of the Government not approving the deal. However, Catalyst would not agree to a deal without Government concessions permitting the sale of spectrum to an incumbent in five years. Catalyst wanted to ensure that its purchase was conditional on receiving regulatory concessions from Industry Canada, but Vimpelcom would not agree to the conditions Catalyst sought; and

- (b) Vimpelcom also required that Catalyst agree to a break fee. Catalyst told Vimpelcom that the request for a break fee was unacceptable and Catalyst shut down communications and let the period of exclusivity expire.

51. Accordingly, there was no chance that Catalyst could have successfully concluded a deal with Vimpelcom, even absent the involvement of the U.S. Investor Defendants. The unsolicited offer made to Vimpelcom by U.S. Investor Defendants (among others) in August 2014 played no role in Vimpelcom's decision not to conclude a transaction with Catalyst. Rather, it was Catalyst's failed negotiating strategies and refusal to compromise on critical issues which caused Vimpelcom to explore other alternatives.

52. Furthermore and in the alternative, the damages claimed by Catalyst are excessive, exaggerated and remote, and Catalyst has failed to mitigate its damages.

Estoppel and Abuse of Process

53. The U.S. Investor Defendants plead and rely on the decisions and factual findings in the plan of arrangement proceedings *Re Mid-Bowline Group Corp.* bearing court file number CV-15-11238-00CL (reasons for judgment reported at 2016 ONSC 669) and *Catalyst Capital Group Inc. v. Moyse*, bearing court file number CV-16-11272-00CL (reasons for judgment reported at 2016 ONSC 5271).

54. The U.S. Investor Defendants plead and rely on the doctrines of *res judicata*, issue estoppel, cause of action estoppel, collateral attack and abuse of process.

55. The U.S. Investor Defendants plead that this action is frivolous, vexatious, or otherwise would bring the administration of justice into disrepute.

56. The U.S. Investor Defendants ask that this action be dismissed with costs.

October 7, 2016

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THE CATALYST CAPITAL GROUP -and- VIMPELCOM LTD. et al.
INC.
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Court File No. CV-16-553800

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

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