

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AIDE MEMOIRE OF
THE CATALYST CAPITAL GROUP INC.**

October 20, 2016

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**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
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Defendants

AIDE MEMOIRE OF THE CATALYST CAPITAL GROUP INC.

1. The Defendant, West Face Capital Inc. (“West Face”), has scheduled this 9:30 appointment to schedule a motion to transfer this matter to the Commercial List.
2. This action arises out of The Catalyst Capital Group Inc.’s (“Catalyst”) negotiations with VimpelCom Ltd. (“VimpelCom”) in 2014 to purchase VimpelCom’s interest in Wind Mobile Corp. (“Wind”). During the course of Catalyst’s negotiations, the parties entered into a confidentiality agreement to keep negotiations secret and, later, an exclusivity agreement.
3. Catalyst alleges that the Defendants, among other things:
 - (a) Breached the confidentiality and exclusivity agreements;
 - (b) Conspired to induce VimpelCom to breach the exclusivity agreement;
 - (c) Failed to negotiate in good faith with Catalyst;
 - (d) Induced VimpelCom to breach the exclusivity agreement; and
 - (e) Misused confidential information by transmitting and using Catalyst’s confidential information as part of a successful bid to purchase Wind from VimpelCom.

4. In response to Catalyst's allegations, West Face claims that the issues in this action have already been litigated in *The Catalyst Capital Group Inc. v. Brandon Moyses et al*, 2016 ONSC 5271 (the "**Moyse Action**"). However, the current action concerns different allegations and causes of action and names several different parties than those in the Moyse Action.

5. In January 2016, Mid-Bowline Group Corp. ("Mid-Bowline") applied to have a plan of arrangement approved by the Court. Catalyst opposed the application and informed the Court of its intention to amend its Statement of Claim in the Moyse Action to add a claim for inducing breach of contract against West Face and others, based on the revelations in the affidavits Mid-Bowline filed in support of its application. West Face vehemently opposed Catalyst's proposed amendments and asked the Court to order an expedited trial of the Moyse Action.

6. In his reasons approving the plan of arrangement, Justice Newbould expressly barred Catalyst from amending its Statement of Claim in the Moyse Action to include a claim of inducing the VimpelCom contracts. Justice Newbould's ruling expressly prevented any issue of inducing breach of contract to be heard in the Moyse Action.

7. After the release of those reasons, the parties to the Mid-Bowline application consented to an amendment of the plan of arrangement to expressly exclude from the general release of claims any claims relating to the sale of Wind by VimpelCom to the shareholders of Mid-Bowline.

8. Prior to the trial of the Moyse Action, Catalyst issued and served the Statement of Claim for this action. **This action does not concern the alleged transmission of Catalyst's confidential information by Brandon Moyses to West Face.** Instead, it only concerns the conduct of the named defendants with respect to Catalyst's confidential and exclusive negotiations with VimpelCom. Catalyst commenced this action as a separate proceeding due to West Face's

own arguments, Justice Newbould's order that Catalyst could not amend its claim in the Moyse Action, and the subsequent amendments to Mid-Bowline's plan of arrangement.

The Motion to Transfer this Action to the Commercial List Requires a Formal Hearing

9. West Face's motion to transfer this matter to the Commercial List requires a full and formal hearing with evidence, factums, oral argument and reasons. This is a complex motion that requires more than a judge's "rubber stamp". There are several reasons why a transfer to the Commercial List is not appropriate.¹ Catalyst's substantive arguments against a transfer should be heard and considered on a formal motion, not at a 9:30 appointment, which is reserved for ex parte, urgent, on consent and scheduling matters.

Catalyst Opposes a Transfer to the Commercial List

10. Catalyst opposes West Face's motion to transfer this matter to the Commercial List for six reasons:

- (a) ***Does Not Meet Criteria.*** This action does not fall under sub-paragraphs 1(a) through (l) of the Commercial List Practice Direction, nor does it fall within the traditional boundaries of the "basket clause". It does not require the specialized expertise of a judge of the Commercial List.
- (b) ***Not a Complex Commercial Case.*** The subject matter of this case is not a *specialized commercial* matter. The causes of action are breach of contract, inducing breach of contract, breach of confidence and conspiracy. All of these causes of action are regularly heard on the Civil List.

¹ The fact that West Face filed a 22-page factum demonstrates that this is not a matter appropriate for a 9:30 appointment.

- (c) ***A Jury Will Be the Finder of Fact.*** From a fact-finding perspective, nothing is gained if this action is heard on the Commercial List, as the trier of fact in this proceeding will be a civil jury, not a judge.

- (d) ***No Need for Commercial List Case Management.*** On October 4, 2016, Catalyst wrote to the Honourable Regional Senior Justice Morawetz to request case management on the Civil List. The request was referred to Justice McEwen. The parties are awaiting Justice McEwen's response to that request. Having sought a transfer to the Commercial List, the Defendants have no basis to now oppose case management on the Civil List and the matter need not be transferred to the Commercial List for this reason.

- (e) ***Regular List Best Suited to Hear Matter.*** The regular Civil List is best equipped to host a jury trial (*ie.* has the proper security apparatus and court rooms for juries) and has experience doing so.

11. Notably, the Moyse Action was initially brought on the regular Civil List without any objection from the defendants. Two substantial motions were heard on the Civil List without complaint. West Face only sought to transfer the Moyse Action to the Commercial List after Catalyst opposed the Mid-Bowline application, which was properly commenced on the Commercial List because it was a *CBCA* matter. In the course of that hearing, the Moyse Action was transferred to the Commercial List for the purpose of scheduling an expedited summary trial, not because of any unique commercial aspect of the case that required the expertise of a Commercial List judge.

12. West Face's motion to transfer this matter is not-so-thinly veiled "judge shopping". The motion was only commenced after the reasons for judgment in the Moyse Action were released, and more than 3 months after the action was commenced. In light the decision in the Moyse Action, West Face and the other Defendants now move for a quick end to this action before a judge who has already made adverse findings on the credibility of Catalyst's witnesses. This is the sort of procedural gamesmanship that should be discouraged in light of the many reasons for this matter to remain on the regular Civil List.

13. If West Face is asking for Justice Newbould to seize himself of this matter, Catalyst is concerned this would not be appropriate given that the Moyse Action is under appeal and, specifically, findings of credibility and many factual findings that West Face relies on in its motions to strike are at issue in that appeal.

14. If West Face is simply asking for a judge of the Commercial List and not Justice Newbould to be seized of the matter, then it is equally inappropriate to transfer the action because all of the benefits of the Commercial List case management tools are available on the regular Civil List and no efficiencies will be gained from such the transfer.

15. For these reasons, Catalyst will oppose the motions to transfer this action to the Commercial List and requires a formal motion be scheduled at the 9:30 appointment on October 21, 2016.

THE CATALYST CAPITAL GROUP INC.
Plaintiff

-and- VIMPELCOM LTD. et al.
Defendants

Court File No. CV-16-553800

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