

Court File No.: CV-16-1159500CL

**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

**NOTICE OF MOTION**

The Defendant, Serruya Private Equity Inc. ("Serruya"), will make a motion to a judge, on a date and time to be fixed at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- in writing under subrule 37.12.1(1) because it is on consent or unopposed or made without notice;
- in writing as an opposed motion under subrule 37.12.1(4);
- orally.

THE MOTION IS FOR:

- (a) An order dismissing or permanently staying this action as against Serruya, or in the alternative, striking out the Amended Statement of Claim of the plaintiff, Catalyst Capital Group Inc. ("Catalyst"), as against Serruya, on the ground that it is an abuse of process;

- (b) To the extent necessary, leave to admit into evidence the record in Court File No. CV-16-11272-00CL;
- (c) Costs of this motion and the action on a substantial indemnity basis; and
- (d) Such further and other relief as the Court may permit.

THE GROUNDS FOR THE MOTION ARE:

- (a) This is the second action brought by Catalyst regarding the alleged misuse of its confidential information by a consortium comprised of West Face Capital Inc. ("West Face"), Tennenbaum Capital Partners LLC ("Tennenbaum") LG Capital Investors LLC ("LG"), Globalive Capital Inc. ("Globalive"), Novus Wireless Communications Inc. ("Novus") and Serruya (collectively, the "Consortium") in the Consortium's successful bid to purchase an interest in WIND Mobile Inc. ("WIND") from VimpelCom Ltd. ("VimpelCom").
- (b) The first action was commenced by Statement of Claim issued June 25, 2014 in the Superior Court of Justice (Commercial List), bearing court file no. CV-16-11272-00CL (the "Moyle Action") against West Face and Brandon Moyle ("Moyle").
- (c) Moyle was a junior analyst who was employed by Catalyst until his resignation in May 2014. In June 2014, Moyle began employment as a junior analyst at West Face. As a result of the Moyle Action, Moyle only worked at West Face for approximately three weeks.

- (d) In the Moyse Action, Catalyst alleged, *inter alia*, that West Face unlawfully obtained confidential information about Catalyst's attempts to acquire WIND, and used that confidential information to (i) formulate an unsolicited proposal sent by certain of the Consortium members – specifically, West Face, Tennenbaum and LG (collectively, the "New Investors") – to VimpelCom on or about August 6, 2014; and (ii) formulate a successful bid by the Consortium to purchase VimpelCom's interest in WIND.
- (e) The trial of the Moyse Action was heard by Justice Newbould in June 2016. In reasons for judgment released August 18, 2016 (the "Newbould Decision"), Justice Newbould dismissed the Moyse Action in its entirety.
- (f) In the Newbould Decision, Justice Newbould made the following findings, among others:
- (i) The New Investors had no information about Catalyst's regulatory strategy or any bid that may have been made by Catalyst to acquire an interest in WIND;
  - (ii) Neither Vimpelcom nor Globalive had any discussions with the New Investors before the expiry of Catalyst's period of exclusivity on August 18, 2014;
  - (iii) The terms of the unsolicited proposal by the New Investors were not based on any information about Catalyst's attempt to acquire an interest in WIND;

- (iv) The unsolicited proposal by the New Investors did not affect VimpelCom's negotiations with Catalyst prior to the expiry of Catalyst's period of exclusivity on August 18, 2014;
  - (v) There is no evidence that West Face was acting on any confidential information belonging to Catalyst;
  - (vi) The purchase price offered by the Consortium, which was based on an enterprise value of \$300 million, was known to the marketplace by Vimpelcom as early as April 2014;
  - (vii) Catalyst did not suffer any damages as a result of any misuse of its confidential information;
  - (viii) Catalyst would not have closed a deal for the acquisition of WIND because VimpelCom would never have agreed to a deal that was conditional on Catalyst receiving Government of Canada approval of its regulatory concessions; and
  - (ix) The reason the deal between Catalyst and VimpelCom fell through was because Catalyst terminated negotiations after VimpelCom requested that Catalyst agree to a break fee.
- (g) Catalyst is bound by these and other findings of Justice Newbould, which are determinative of key liability and damages issues raised in this action. In order to succeed in this action, Catalyst would need the Court to make

findings that directly contradict findings that were made by Justice Newbould in the Moyse Action.

- (h) Catalyst's attempt to re-litigate issues that were already determined in the Moyse Action is an abuse of process.
- (i) In addition, this action amounts to litigation by instalment and should also be dismissed or permanently stayed for that reason.
- (j) The issues in this action arise in the same circumstances as the issues that were raised and determined by the Court in the Moyse Action. By March 2015, Catalyst was aware of any and all alleged facts upon which the current claim is based. Catalyst amended its claim in the Moyse Action multiple times and the last amendments were made in February 2016, three months before this action was commenced.
- (k) Catalyst could and should have added Serruya and the other defendants to the Moyse Action and pursued its current claims in that action. However, it made a tactical decision to "lie in the weeds". Catalyst's attempt to pursue its litigation by instalments is an abuse of process.
- (l) Section 140 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, and Rules 1.04, 21.01(3)(d) and 25.11 of the *Rules of Civil Procedure*.
- (m) Such further and other grounds as the Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) The pleadings and proceedings herein;
- (b) The court record in the *Moyse* Action;
- (c) The affidavit of Andrew Carlson, sworn December 7, 2016, and exhibits thereto (in the Motion Record of West Face Capital Inc., dated December 7, 2016); and
- (d) Such further and other evidence as the Court may permit.

January 26, 2017

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

**Lucas E. Lung LS#: 52595C**  
Tel: 416.601.2673  
Fax: 416.601.4192

Lawyers for the Defendant,  
Serruya Private Equity Inc.

- 7 -

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

**Rocco Di Pucchio LS#: 38185I**  
Tel: 416.598.2268  
rdipucchio@counsel-toronto.com

**Andrew Winton LS#: 54473I**  
Tel: 416.644.5342  
awinton@counsel-toronto.com

**Bradley Vermeersch LS#: 69004K**  
Tel: 416.646.7997  
bvermeersch@counsel-toronto.com

Fax: 416.598.3730

Lawyers for the Plaintiff

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

**David R. Byers LS#: 22992W**  
Tel: 416.869.5697  
dbyers@stikeman.com

**Daniel Murdoch LS#: 53123L**  
Tel: 416.869.5529  
dmurdoch@stikeman.com

**Vanessa Voakes LS#: 58486L**  
Tel: 416.869.5538  
vvoakes@stikeman.com

Fax: 416.947.0866

Lawyers for the Defendant,  
UBS Securities Canada Inc.

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

**Matthew Milne-Smith LS#: 44266P**  
**Andrew Carlson LS#: 58850N**  
Tel: 416.863.0900  
Fax: 416.863.0871

Lawyers for the Defendant,  
West Face Capital Inc.

AND TO: **NORTON ROSE FULBRIGHT CANADA LLP**  
Suite 3800  
Royal Bank Plaza, South Tower  
200 Bay Street, P.O. Box 84  
Toronto, ON M5J 2Z4

**Orestes Pasparakis**  
Tel: 416.216.4815  
Fax: 416.216.3930  
orestes.pasparakis@nortonrosefulbright.com

**Rahool P. Agarwal**  
Tel: 416.216.3943  
Fax: 416.216.3930  
rahool.agarwal@nortonrosefulbright.com

Lawyers for the Defendant, Vimpelcom Ltd.

**AND TO: BORDEN LADNER GERVAIS LLP**

Barristers and Solicitors  
Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON M5H 4E3

**James D.G. Douglas LS#: 20569H**

Tel: 416.367.6029  
Fax: 416.367.6749  
JDouglas@blg.com

**Caitlin Sainsbury LS#: 54122D**

Tel: 416.367.6438  
Fax: 416.367.6749  
CSainsbury@blg.com

Lawyers for the Defendant, Globalive Capital Inc.

**AND TO: BLAKE, CASSELS & GRAYDON LLP**

199 Bay Street, Suite 4000  
Commerce Court West  
Toronto, ON M5L 1A9

**Michael E. Barrack**

Tel: 416.863.5280  
Fax: 416.863.2653  
michael.barrack@blakes.com

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

AND TO: **McCARTHY TETRAULT LLP**  
Suite 5300, Toronto Dominion Bank Tower  
Toronto, ON M5K 1E6

**Junior Sirivar LS#: 47939H**

Tel: 416.601.7750

Fax: 416.868.0673

jsirivar@mccarthy.ca

**Ryann Atkins LS#: 657931I**

Tel: 416.601.7970

Fax: 416.868.0673

ratkins@mccarthy.ca

Lawyers for the Defendant, Novus Wireless Communications Inc.

AND TO: **DENTONS**  
Toronto-Dominion Centre  
77 King Street West, Suite 400  
Toronto, ON M5K 0AJ

**Michael D. Schafler**

Tel: 416.863.4457

Fax: 416.863.4592

michael.schafler@dentons.com

**Ara Basmadjian**

Tel: 416.863.4647

Fax: 416.863.4592

ara.basmadjian@dentons.com

Lawyers for the Defendant, Mid-Bowline Group Corp.

THE CATALYST CAPITAL GROUP INC. Plaintiff and Defendants  
VIMPELCOM LTD., ET AL.  
Defendants

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Proceeding commenced at TORONTO

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

**Lucas E. Lung LS#: 52595C**  
Tel: 416.601.2673  
Fax: 416.601.4192

Lawyers for the Defendant,  
Serruya Private Equity Inc.