

COURT OF APPEAL FOR ONTARIO

CITATION: The Catalyst Capital Group Inc. v. Moyse, 2018 ONCA 447

DATE: 20180511

DOCKET: C62655

Doherty, MacFarland and Paciocco JJ.A.

BETWEEN

The Catalyst Capital Group Inc.

Plaintiff (Appellant)

and

Brandon Moyse and West Face Capital Inc.

Defendants (Respondents)

Brian H. Greenspan, David C. Moore and Michelle Biddulph, for the appellant

Robert A. Centa, Kristian Borg-Olivier and Denise Cooney, for the respondent,
Brandon Moyse

Kent E. Thomson, Matthew Milne-Smith and Andrew Carlson, for the respondent,
West Face Capital Inc.

Heard: February 20 and 21, 2018

On appeal from the decision of Justice F. Newbould of the Superior Court of Justice, dated August 18, 2016, dismissing Catalyst's action, reported at 2016 ONSC 5271, and an application for leave and, if leave is granted, an appeal from the costs decision of Justice F. Newbould, dated October 7, 2016.

COSTS ENDORSEMENT

[1] The respondent, West Face Capital Inc. (“West Face”), seeks costs in the amount of \$250,000, inclusive of disbursements and HST. The respondent, Brandon Moyses, seeks costs in the amount of \$149,905.18, also inclusive of disbursements and HST.

[2] The appellant, Catalyst Capital Group Inc. (“Catalyst”), argues that West Face should have its costs in the amount of \$150,000 and that Mr. Moyses should have no costs or, alternatively, costs in an amount well below the amount requested by Mr. Moyses.

[3] The respondents were entirely successful on the appeal. They are entitled to reasonable costs on a partial indemnity basis.

[4] The costs claimed, for what was basically a one-day appeal, are high. They reflect a full-out, no expense spared defence of the trial judgment. Catalyst did not provide the court with its bill of costs, but we have no doubt that it would reflect the same “leave no stone unturned” approach to the appeal. Given the history of this litigation, both sides would reasonably expect that the other side would pursue all legal avenues vigorously and thoroughly without financial restraint.

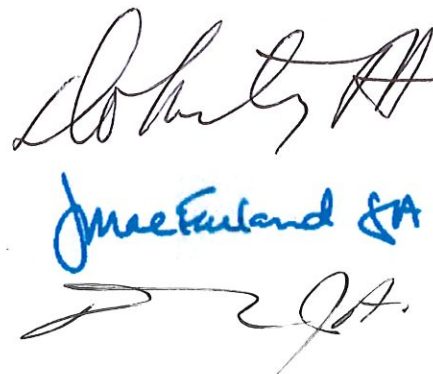
[5] The nature of the appeal also justifies significant preparation-related costs. Although the legal issues raised were, with one exception, not complex or novel, the appeal record was large. The grounds of appeal were essentially attempts to

re-litigate most of the crucial findings of fact. The appellant's written arguments were lengthy and replete with detailed references to the evidence. The respondents were required to engage in a detailed, careful and time-consuming review of the full record. Given the manner in which the appeal was advanced, the respondents had to prepare to virtually retry the crucial factual issues on appeal.

[6] The appeal was adjourned at the last moment in September at the request of Catalyst. The adjournment turned out to be unnecessary. There were considerable costs thrown away and those costs should be included in the amounts awarded to the respondents.

[7] The respondents brought a motion related to the fresh evidence in November 2017. That motion was never heard on its merits. We would impose no costs in respect of matters relating to that motion.

[8] Having regard particularly to the success of the respondents, the nature of the appeal, and the costs thrown away when the appeal was adjourned, we award costs to West Face in the amount of \$200,000 and costs to Mr. Moyse in the amount of \$100,000. Both are inclusive of disbursements and HST.


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