

COURT OF APPEAL FOR ONTARIO

DATE: 20170927

DOCKET: C62655

Rouleau J.A. (In Chambers)

BETWEEN

The Catalyst Capital Group Inc.

Plaintiff (Appellant)

and

Brandon Moyse and West Face Capital Inc.

Defendants (Respondents)

Rocco DiPucchio, Brian Greenspan and David Moore, for the appellant

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

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

Heard: September 25, 2017

On appeal from the judgment of Justice F. Newbould of the Superior of Justice, dated August 18, 2016.

ENDORSEMENT

[1] Mr. Greenspan for the appellant advised the parties and the court that he is seeking to adjourn the matter now scheduled to be heard starting tomorrow. He advises that on Thursday last, he was provided with information that requires immediate investigation and may well lead to the tendering of a fresh evidence

application with impact on the appeal. Apparently related to this, irreconcilable difference between the appellant and counsel of record, Lax O'Sullivan, have arisen such that Lax O'Sullivan has concluded that it has no option but to seek to be removed as counsel of record.

[2] The respondents oppose any adjournment as they are ready and anxious to proceed and are suffering some prejudice by the delay. Mr. Moyse has this cloud over his name and West Face is under pressure to distribute the profits it has made on the transaction.

[3] In the circumstances, I consider that it would be unfair to force the appellant on without counsel. I therefore reluctantly agree to adjourn the appeal. In order to allow for the possibility of the fresh evidence requiring additional court time I will provide the dates of February 20, 21 and 22 for the appeal. I will remain seized of any issues that may arise with respect to the potential fresh evidence. Counsel are to inform me once it is determined if a fresh evidence application will be brought. If no fresh evidence will be tendered, the appeal will be scheduled for only 2 of the days set aside.

[4] The appellant is to retain new counsel forthwith and the necessary notice of change of solicitors filed with the court. The issue of costs is left to the panel hearing the appeal.

A handwritten signature in black ink, appearing to read "Paul Bowler J.A.", is located at the bottom right of the page. The signature is written in a cursive style with a large initial 'P' and 'B'.