

Court File No. CV-17-587463-00CL
Court File No. CV-17-586096

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

**THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL
CORPORATION**

Plaintiffs

and

**WEST FACE CAPITAL INC., GREGORY BOLAND, M5V ADVISORS
INC. C.O.B. ANSON GROUP CANADA, ADMIRALTY ADVISORS
LLC., FRIGATE VENTURES LP, ANSON INVESTMENTS LP, ANSON
CAPITAL LP, ANSON INVESTMENTS MASTER FUND LP, AIMF GP,
ANSON CATALYST MASTER FUND LP, ACF GP, MOEZ KASSAM,
ADAM SPEARS, SUNNY PURI, CLARITYSPRING INC., NATHAN
ANDERSON, BRUCE LANGSTAFF, ROB COPELAND, KEVIN
BAUMANN, JEFFREY MCFARLANE, DARRYL LEVITT, RICHARD
MOLYNEUX and JOHN DOES #1-10**

Defendants

A N D B E T W E E N:

WEST FACE CAPITAL INC. and GREGORY BOLAND

Plaintiffs by Counterclaim

and

**THE CATALYST CAPITAL GROUP INC., CALLIDUS CAPITAL
CORPORATION, NEWTON GLASSMAN, GABRIEL DE ALBA, JAMES
RILEY, VIRGINIA JAMIESON, EMMANUEL ROSEN, B.C.
STRATEGY LTD. D/B/A BLACK CUBE, B.C. STRATEGY UK LTD.
D/B/A BLACK CUBE and PSY GROUP INC.**

Defendants to the Counterclaim

**NOTICE OF MOTION
(Black Cube Defendants' Motion to Strike)**

-2-

The Defendants to the Counterclaim, B.C. Strategy Ltd. d/b/a Black Cube, B.C. Strategy UK Ltd. d/b/a BLACK CUBE, will make a Motion to a Judge presiding over the Commercial List on a date to be fixed by the Court at the court house, 330 University Avenue, 7th Floor, Toronto, Ontario, M5G 1R7.

PROPOSED METHOD OF HEARING: The Motion is to be heard

in writing under subrule 37.12.1(1) because it is ;

in writing as an opposed motion under subrule 37.12.1(4);

orally.

THE MOTION IS FOR AN ORDER

- (a) striking out, without leave to amend, particular paragraphs of the Counterclaim in this proceeding (as identified below);
- (b) awarding the Black Cube Defendants their costs of this motion; and,
- (c) granting such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE

The Parties and Litigation

- (a) This is one of many proceedings between the “Catalyst Parties” (meaning the defendants that are or are affiliated with The Catalyst Capital Group Inc.)

-3-

and the “West Face Parties” (West Face Capital Inc. and its affiliated and related parties);

- (b) Catalyst and West Face are essentially at war through litigation. The outstanding proceedings include (these proceedings collectively are referred to herein as the “Catalyst / West Face Litigation”):
 - (i) The “Moyses Litigation” in which Catalyst sued West Face and others for misuse of confidential information and other related causes of action arising out of the sale of WIND Mobile in 2014. The Court of Appeal for Ontario on March 22, 2018 dismissed Catalysts’s appeal from the trial decision rendered by (now retired) Justice Frank Newbould;
 - (ii) The “Defamation Litigation” in which Catalyst has sued West Face for defamation for conspiring with a third party, Veritas, to publish negative investment market reports about Callidus Capital, an investment company in which Catalyst owns approximately 60 percent of the shares;
 - (iii) The “Vimplecom Litigation”, which also relates to the WIND Mobile transaction; and,
 - (iv) This proceeding, in which Catalyst alleges that West Face engaged in a “Wolfpack Conspiracy”, pursuant to which various parties

-4-

conspired to drive down the share price of Catalyst's publicly-traded investment funds while at the same time short-selling those funds;

The Counterclaim

- (c) West Face and other defendants in this proceeding have commenced a counterclaim (the "Counterclaim") seeking compensatory damages of \$500 million plus punitive damages of \$50 million;
- (d) The defendants to the counterclaim can be divided into two groups: the "Catalyst Defendants", meaning those persons (legal or natural) who are related to Catalyst, and the "Other Counterclaim Defendants", meaning those parties who are arm's length from Catalyst. The "Black Cube Defendants" (or, simply, "Black Cube") refer to the two "Black Cube" companies, which are arm's length from Catalyst and are collectively engaged in the business of providing litigation support and intelligence-gathering services worldwide;
- (e) The core of the Counterclaim is the allegation that the Counterclaim Defendants conspired to engage in a systemic and coordinated campaign of defamation and economic interference targeting West Face as part of and in retaliation for the business and litigation disputes already ongoing between these parties. The Counterclaim specifically pleads conspiracy and other derivative causes of action;

Catalyst's Motion

- (f) The Catalyst Defendants have moved to strike the Counterclaim in its entirety, pursuant to a Notice of Motion dated March 27, 2018;

Black Cube Defendants' Motion to Strike

- (g) This motion to strike particular paragraphs of the Counterclaim, brought by the Black Cube Defendants, is in the alternative to Catalyst's motion to strike the Counterclaim in its entirety;
- (h) The Counterclaim in this proceeding contains allegations that ought to be struck as being irrelevant, scandalous, vexatious and improperly inserted only for colour;
- (i) The Counterclaim contains two allegations in particular that are irrelevant to the proceeding or, at best, of marginal relevance and have been inserted purely for colour, in an improper attempt to embarrass the Black Cube Defendants. These are:
- (i) The "Newbould Allegations" relating to Black Cube's alleged "sting" operation on The Honourable Justice Frank Newbould. This allegation is made in paragraphs 29(a), 30(c), 81, 82, 86, and 92-99, and those paragraphs ought to be struck, without leave to amend; and,

-6-

- (ii) The “Weinstein Allegations” relating to the Black Cube Defendants’ retainer by film executive Harvey Weinstein. The Weinstein Allegation is contained in paragraphs 83 and 84, and those paragraphs ought to be struck, without leave to amend;
- (j) The offending paragraphs expand the scope of this proceeding into matters that are irrelevant and scandalous, and will embarrass all concerned. There is no purpose to the two allegations beyond simply causing embarrassment, and as such the paragraphs are irrelevant and must be struck;
- (k) Rule 25.11 of the Rules of Civil Procedure;
- (l) Such further and other grounds as the lawyers may advise.

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

- (a) The pleadings in this action;
- (b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

-7-

April 13, 2018

ADAIR GOLDBLATT BIEBER LLP
95 Wellington Street West
Suite 1830, P.O. Box 14
Toronto ON M5J 2N7

John J. Adair (52169V)
Tel: 416.941.5858
jadair@agblp.com
Gordon McGuire (58364S)
Tel: 416.941.5860
gmcguire@agblp.com

Tel: 416.499.9940
Fax: 647.689.2059

Lawyers for the Defendant to the
Counterclaim,
B.C. Strategy Ltd. d/b/a Black Cube, B.C.
Strategy UK Ltd. d/b/a BLACK CUBE

TO: **TORYS LLP**
Barristers and Solicitors
79 Wellington Street West
Suite 3000
Box 270, TD South Tower
Toronto ON M5K 1N2

Linda Plumpton
Tel: 416.865.8193
lplumpton@torys.com
Andrew Bernstein
Tel: 416.865.7678
abernstein@torys.com

Tel: 416-865-0040
Fax: 416-865-7380

Lawyers for the Defendants,
M5V Advisors Inc. C.O.B. ANSON GROUP CANADA, ADMIRALTY
ADVISORS LLC., Frigate Ventures LP, Anson Investments LP, Anson
Capital LP, Anson Investments Master Fund LP, AIMF GP, Anson Catalyst
Master Fund LP, ACF GP, Moez Kassam, Adam Spears and Sunny Puri

-8-

AND TO: **LERNERS LLP**
Barristers and Solicitors
130 Adelaide Street West
Suite 2400
Toronto ON M5H 3P5

Brian N. Radnoff
bradnoff@lerners.ca
Tel: 416.601.2387
Fax: 416-867-9192

Lawyers for the Defendants,
Clarityspring Inc. and Nathan Anderson

AND TO: **MILBURN & ASSOCIATES**
Barristers & Solicitors
20 Toronto Street
Suite 860
Toronto ON M5C 2B8

A. Jane Milburn
Tel: 647.728.8081
Fax: 647.689.2983
jmilburn@milburnlaw.ca
Devin M. Jarcaig
Tel: 647.728.8083
Fax: 647.689.2983
djarcaig@milburnlaw.ca

Tel: 416-238-7865
Fax: 647-689-2983

Lawyers for the Defendant,
Bruce Langstaff

-9-

AND TO: **ST. LAWRENCE BARRISTERS LLP**
144 King Street East
Toronto ON M5C 1G8

M. Philip Tunley

Tel: 647.245.8282

Fax: 647.245.8285

phil.tunley@stlbarristers.ca

Alexi N. Wood

Tel: 647.245.8283

Fax: 647.245.8285

alex.wood@stlbarristers.ca

Jennifer P Saville

Tel: 647.245.2222

Fax: 647.245.8285

jennifer.saville@stlbarristers.ca

Tel: 647-245-8284

Fax: 647-245-8285

Lawyers for the Defendant,
Rob Copeland

-10-

AND TO: **HUNT PARTNERS LLP**
21 Balmuto Street
Suite 1404
Toronto ON M4Y 1W4

Andrew Burns
aburns@huntlegal.caom
Tel: 416.350.2934
Fax: 416.943.1484

Lawyers for the Defendant,
Kevin Baumann

SCOTT VENTURO RUDAKOFF LLP
Lawyers
1500, 222 3rd Avenue SW
Calgary AB T2P 0B4

Eugene J. Bodnar
Tel: 403.261.9043
gbodnar@svrlawyers.com
Breanne Campbell
Tel: 403.261.9043
b.campbell@svrlawyers.com

Tel: 403-261-9043
Fax: 403-265-4632

Co-Counsel with Hunt Partners LLP,
Lawyers for the Defendant,
Kevin Baumann

AND TO: **JEFFREY MCFARLANE**

Defendant

-11-

AND TO: **DANSON & ZUCKER**
Barristers and Solicitors
375 University Avenue
Suite 701
Toronto ON M5G 2J5

Symon Zucker
sz@bondlaw.net
Tel: 416-863-9955
Fax: 416-863-4896

Lawyers for the Defendant,
Darryl Levitt

AND TO: **SOLMON ROTHBART GOODMAN LLP**
Barristers and Solicitors
375 University Avenue
Suite 701
Toronto ON M5G 2J5

Melvyn L. Solmon
msolmon@srglegal.com
Tel: 416.947.1093 Ext. 333
Fax: 416-947-0079

Lawyers for the Defendant,
Richard Molyneux

AND TO: **JOHN DOES #1-10**

Defendant

-12-

AND TO: **MOORE BARRISTERS**
393 University Avenue
Suite 1600
Toronto ON M5G 1E6

David C. Moore (16996U)

Tel: 416.581.1818 Ext. 222

Fax: 416.581.1279

david@moorebarristers.ca

Kenneth G.G. Jones (29918I)

Tel: 416.581.1818 Ext. 224

Fax: 416.581.1279

kenjones@moorebarristers.ca

Tel: 416.581.1818

Fax: 416.581.1279

Lawyers for the Plaintiffs (Defendants to the Counterclaim), The Catalyst Capital Group Inc. and Callidus Capital Corporation and the Defendants to the Counterclaim, Newton Glassman, Gabriel De Alba and James Riley

AND TO: **DAVIES WARD PHILLIPS & VINEBERG LLP**
Barristers and Solicitors
155 Wellington Street West
37th Floor
Toronto ON M5V 3J7

Kent Thomson (24264J)

Tel: 416.863.5566

kthomson@dwpv.com

Matthew Milne-Smith (44266P)

Tel: 416.863.5595

mmilne-smith@dwpv.com

Andrew Carlson (58850N)

Tel: 416.367.7437

acarlson@dwpv.com

Tel: 416-863-0900

Fax: 416-863-0871

Lawyers for the Defendants (Plaintiffs by Counterclaim)

-13-

AND TO: **MACKENZIE BARRISTERS**
120 Adelaide Street West
Suite 2100
Toronto ON M5H 1T1

Gavin MacKenzie
gavin@mackenziebarristers.com
Tel: 416.304.9293
Fax: 416-304-9296

Lawyers for the Defendant to the Counterclaim,
Virginia Jamieson

AND TO: **EMMANUEL ROSEN**
ID No. 56548456
26 Shaar Ha'amakim Street
Hod Hasaron Merkus 45000

Defendant to the Counterclaim

AND TO: **PSY GROUP INC.**
No. 51-517203-9
25 Basel Street
Petah Tikva 49000

Defendant to the Counterclaim

RCP-E 37A (July 1, 2007)

THE CATALYST CAPITAL GROUP INC. et al. -and- MSV ADVISORS INC. C.O.B. ANSON GROUP CANADA et al.

Plaintiffs Defendants

GREGORY BOLAND et al. -and- THE CATALYST CAPITAL GROUP INC. et al.

Plaintiffs by Counterclaim Defendants to the Counterclaim

Court File No. CV-17-587463-00CL/Court File No. CV-17-586096

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
 TORONTO

NOTICE OF MOTION
(Black Cube Defendants' Motion to Strike)

ADAIR GOLDBLATT BIEBER LLP
 95 Wellington Street West
 Suite 1830, P.O. Box 14
 Toronto ON M5J 2N7
 John J. Adair (52169V)
 jadair@agblp.com
 Tel: 416.941.5858
 Gordon McGuire (58364S)
 gmcguire@agblp.com
 Tel: 416.941.5860
 Tel: 416.499.9940
 Fax: 647.689.2059

Lawyers for the Defendant to the Counterclaim,
 B.C. Strategy Ltd. d/b/a Black Cube, B.C. Strategy UK Ltd.
 d/b/a BLACK CUBE