

Court File No. CV-17-587463-CLA1

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

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

Plaintiffs

and

**WEST FACE CAPITAL INC., GREGORY BOLAND, MSV 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

and

CANACCORD GENUITY CORP.

Third Party

THIRD PARTY DEFENCE AND COUNTERCLAIM

1. The third party, Canaccord Genuity Corp. ("Canaccord Genuity"), admits the allegations contained in paragraphs 4, 11 and 19 of the Third Party Claim.

2. Canaccord Genuity denies the allegations contained in paragraphs 1, 2, 5, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40 and 41 of the Third Party Claim.

3. Canaccord Genuity has no knowledge, or incomplete knowledge, in respect of the allegations contained in paragraphs 3, 6 and 23 of the Third Party Claim.

I. The Parties

4. Canaccord Genuity is the Canadian operating subsidiary of Canaccord Genuity Group Inc. The capital markets division of Canaccord Genuity offers investment banking, research, sales and trading services to institutional and corporate clients.

5. The defendant / third party plaintiff, Bruce Langstaff ("Langstaff"), was employed by Canaccord Genuity as a Managing Director, Canadian Equity Sales, from November 18, 2013 until his employment was terminated by Canaccord Genuity effective September 26, 2017.

II. Overview

6. The plaintiffs in the main action, The Catalyst Capital Group Inc. ("Catalyst") and Callidus Capital Corporation ("Callidus", and together with Catalyst, the "Plaintiffs"), claim that Langstaff participated in a conspiracy to launch a short attack on Callidus' stock (the "Alleged Conspiracy") perpetrated by other defendants to the main action.

7. Specifically, the Plaintiffs claim that, in August 2017, Langstaff assisted parties defined in the Statement of Claim as the "Wolfpack Conspirators" in taking short positions in the stock of Callidus in furtherance of the Alleged Conspiracy.

8. In his Statement of Defence and Counterclaim, Langstaff denies that the Alleged Conspiracy exists. Alternatively, Langstaff pleads that if the Alleged Conspiracy exists, he has no knowledge of it and did not participate in it. In particular, Langstaff denies having facilitated the

placement of any short trades in Callidus' stock during the relevant time period for any client of Canaccord Genuity or for himself.

9. In the Third Party Claim, Langstaff claims contribution and indemnity from Canaccord Genuity for any damages he is found to owe the Plaintiffs in the main action as a result of his acts or omissions while an employee of Canaccord Genuity.

10. Canaccord Genuity denies that Langstaff was involved in the Alleged Conspiracy and denies that Langstaff is liable to the Plaintiffs in the main action. In the alternative, if Langstaff is liable to the Plaintiffs, all such liability arises as a result of conduct undertaken by Langstaff outside of the scope of his employment for which Canaccord Genuity is not liable.

11. In the Third Party Claim, Langstaff also claims against Canaccord Genuity for damages in relation to the termination of his employment, including on the basis that Canaccord Genuity acted improperly by terminating Langstaff's employment as a result of pressure from the Plaintiffs.

12. Canaccord Genuity did not terminate Langstaff's employment because of any pressure exerted on Canaccord Genuity by the Plaintiffs. To the contrary, Canaccord Genuity terminated Langstaff's employment in good faith following repeated incidents of misconduct by Langstaff and as part of a broader restructuring by Canaccord Genuity.

13. Alternatively, if this Court determines that Langstaff engaged in the conduct alleged by the Plaintiffs in the main action, or any of it, Canaccord Genuity relies upon such finding as the basis for after-acquired just cause for its termination of Langstaff's employment.

14. In the further alternative, Canaccord Genuity pleads that the combination of Langstaff's known misconduct prior to his termination, and any findings by this Court of additional misconduct as alleged by the Plaintiffs in the main action, together form the basis for after-acquired just cause for Langstaff's termination.

III. Langstaff's Employment with Canaccord Genuity

15. On or about November 4, 2013, Langstaff executed an employment agreement with Canaccord Genuity (the "Employment Agreement"). Langstaff commenced employment with Canaccord Genuity as a Managing Director, Canadian Equity Sales, effective November 18, 2013.

16. Pursuant to the Employment Agreement, Langstaff was compensated at an annual rate of \$150,000 plus a discretionary bonus. With respect to the bonus, the Employment Agreement stated:

You must be employed at the time of the payment to be eligible for this discretionary bonus and, for greater certainty, in the event of a termination of employment prior to such date (whether with or without just cause), no bonus will have been earned and you will not be entitled to such bonus nor any portion thereof.

17. Langstaff was also paid a forgivable loan pursuant to Canaccord Genuity's stock matching program.

18. As part of his obligations under the Employment Agreement, Langstaff undertook not to divulge any information obtained as a result of his employment with Canaccord Genuity and to execute additional acknowledgements of his confidentiality obligations as reasonably requested by Canaccord Genuity from time to time.

19. Shortly after the commencement of his employment, Langstaff signed an acknowledgement of his obligations under Canaccord Genuity's Confidentiality & Non-Disclosure Policy.

IV. Inappropriate Conduct by Langstaff and the Restructuring

20. Leading up to the restructuring, which is described in greater detail below, Langstaff engaged in conduct that had the effect of embarrassing Canaccord Genuity and harming its relationships with two of its clients.

21. On the first occasion, Langstaff was disciplined with respect to the conduct in question. He received a formal disciplinary letter on August 9, 2017 (the "Disciplinary Letter") in which Canaccord Genuity expressed its disappointment with Langstaff's poor judgment and lack of professionalism, and reiterated Langstaff's obligations to comply with Canaccord Genuity's policies. Canaccord Genuity warned Langstaff that any similar conduct in the future would constitute grounds for further discipline, up to and including dismissal. Langstaff signed the Disciplinary Letter in full acceptance of its contents and terms on August 15, 2017.

22. Subsequently, Canaccord Genuity received a complaint from Catalyst with respect to Langstaff's supposed involvement in the Alleged Conspiracy. While Canaccord Genuity found no evidence that Langstaff had engaged in the Alleged Conspiracy, its investigation identified other conduct that fell below the reasonable performance standards expected of Langstaff by Canaccord Genuity and put Canaccord Genuity's business interests at risk.

23. In September 2017, Canaccord Genuity undertook a general restructuring and realignment of its capital markets division, particularly within the sales and trading group (the

“Restructuring”). As part of the Restructuring, Canaccord Genuity determined that it would terminate the employment of eight employees in its capital markets division, mostly within its sales and trading group. In determining which employees would be affected, Canaccord Genuity considered a wide range of factors including, but not limited to, cost, the employee’s performance, business risk, personality, and other business-related factors.

V. The Termination of Langstaff’s Employment

24. Canaccord Genuity had lost faith in Langstaff because of the harm he had caused to Canaccord Genuity’s business interests as set out above. As a result of this and other strategic and business considerations, Langstaff was included in the group of employees to be terminated as part of the Restructuring. Langstaff’s employment was terminated without cause on September 27, 2017, along with seven other Canaccord Genuity employees.

25. At the time of his termination, Canaccord Genuity paid Langstaff the minimum requirements under the *Employment Standards Act*. Canaccord Genuity offered Langstaff payment of reasonable compensation in lieu of notice, which was refused.

26. In January 2018, pursuant to the terms of the Employment Agreement, Canaccord Genuity released the shares held by Langstaff pursuant to the share matching program in the Employment Agreement. In the event that Canaccord Genuity is found to have just cause for Langstaff’s termination, Langstaff would not be entitled to the release of those shares under the terms of the Employment Agreement.

a) After-Acquired Cause

27. In the alternative, if this Court determines that Langstaff engaged in the conduct alleged by the Plaintiffs in the main action, or any of it, Canaccord Genuity relies upon such finding as the basis for after-acquired just cause for its termination of Langstaff's employment.

28. In the further alternative, Canaccord Genuity pleads that the combination of Langstaff's known misconduct prior to his termination, and any findings by this Court of additional misconduct as alleged by the Plaintiffs in the main action, together forms the basis for after-acquired just cause for Langstaff's termination.

b) No Bad Faith

29. Contrary to the allegations at paragraphs 59 to 67 of the Third Party Claim, Canaccord Genuity did not terminate Langstaff's employment as a result of any pressure by the Plaintiffs to do so. Rather, Langstaff was terminated in good faith as part of the Restructuring, and because of the repeated instances of inappropriate and unprofessional conduct that breached the terms of his employment with Canaccord Genuity and other business considerations. Any statement to the contrary made to Langstaff by employees of Canaccord Genuity or others was unauthorized, uninformed and mistaken.

30. For the reasons set out above, Canaccord Genuity's termination of Langstaff's employment was done entirely in good faith. Contrary to the allegations in the Third Party Claim, Langstaff's termination by Canaccord Genuity was in no way arbitrary, capricious, or done without regard to Langstaff's interests under the Employment Agreement.

31. In any event, even if Langstaff was terminated as a result of a request or demand by Catalyst and/or Callidus, which is denied, that reason would not constitute 'bad faith' termination of Langstaff's employment. To the contrary, Canaccord Genuity was entitled to terminate Langstaff's employment at any time and for any reason. The restructuring, Langstaff's inappropriate behaviour, and the harm this behaviour caused to Canaccord Genuity's business interests each constitute justifiable, good faith reasons for the termination of Langstaff's employment.

VI. Damages

32. If, as pled in the alternative above, Langstaff's conduct constituted just cause for his termination, then Langstaff is not entitled to any further payments or compensation.

33. If Langstaff's termination was without cause, then he is entitled to reasonable notice or compensation in lieu of notice. As set out above, Canaccord Genuity has offered reasonable compensation in lieu of notice for Langstaff's termination, which has been refused. The amounts claimed by Langstaff at paragraphs 43 to 56 of the Third Party Claim as compensation over the notice period are excessive and unreasonable.

34. Contrary to paragraphs 12 to 17 of the Third Party Claim, any additional discretionary bonus amounts were payable to Langstaff entirely at Canaccord Genuity's sole discretion.

35. Under the Employment Agreement, Langstaff ceased to be eligible for any discretionary bonus payments following the termination of his employment on September 26, 2017. Canaccord Genuity denies that Langstaff is entitled to any amounts for earned but unpaid compensation,

including but not limited to any bonus amounts, as alleged or at all. Contrary to the allegation at paragraph 43 of the Third Party Claim, Canaccord Genuity has not been unjustly enriched.

36. Canaccord Genuity denies that it breached any duties or obligations owed to Langstaff, as alleged at paragraphs 59 to 66 of the Third Party Claim, or at all.

37. If Canaccord Genuity is found to have breached a duty or obligation owed to Langstaff, which is denied, Canaccord Genuity denies that Langstaff has suffered any damages for which Canaccord Genuity is responsible.

38. In the alternative, if Langstaff has suffered damages for which Canaccord Genuity is liable, which is denied, Langstaff has failed to mitigate his damages by seeking other employment or pursuing other opportunities. In the further alternative, Langstaff has mitigated his damages but has failed to take such mitigation into account in his claim for damages.

39. In response to the allegations at paragraphs 57 and 58 of the Third Party Claim, Canaccord Genuity denies that Langstaff is entitled to the declaration sought.

VII. Extraordinary Damages are Not Warranted

40. Canaccord Genuity denies that any extraordinary damages are warranted, including punitive and aggravated damages, or damages for the breach of the duty of good faith and fair dealing. As set out above, Canaccord Genuity has acted in good faith at all times and has discharged its duties to Langstaff.

41. Accordingly, there are no damages for which Canaccord Genuity is liable to Langstaff.

VIII. Langstaff is not Entitled to Contribution and Indemnity in the Main Action

42. Any losses suffered by the Plaintiffs in the main action, which are denied, were not caused or contributed to by an act or omission of either Langstaff or Canaccord Genuity.

43. Canaccord Genuity denies that the Plaintiffs have suffered any damages for which Langstaff is liable.

44. In the alternative, any liability to the Plaintiffs on the part of Langstaff arises from conduct outside the scope of Langstaff's employment with Canaccord Genuity. As a result, Canaccord Genuity is not liable to Langstaff for contribution and indemnity for any amounts that he may be ordered to pay the Plaintiffs in the main action.

45. Contrary to the allegation at paragraph 34 of the Third Party Claim, Langstaff was not an "officer or director" of Canaccord Genuity, and Canaccord Genuity has no statutory or common law obligation to indemnify Langstaff or to contribute to any award for damages, costs, interest, penalties, taxes or other amounts in the main action.

46. Canaccord Genuity asks that this proceeding be dismissed with costs.

COUNTERCLAIM

47. Canaccord Genuity claims as against Langstaff for:

- a) 86,000 shares of Canaccord Genuity Group Inc. (formerly called Canaccord Financial Inc.) or the monetary equivalent thereof;
- b) Pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C-43;

- c) Costs of this counterclaim and of the main action on a substantial indemnity basis; and
- d) Such further relief as this Honourable Court deems just.

48. Canaccord Genuity repeats and relies on the allegations in the Statement of Defence to Langstaff's Third Party Claim.

49. Pursuant to the Employment Agreement, the parties agreed:

If you purchase Common shares in the capital of Canaccord Financial Inc. [now called Canaccord Genuity Group Inc.] ("CF Shares") within six months of the date you begin employment with Canaccord in any amount up to \$300,000 (the "Match Limit"), then Canaccord will loan to you, without interest, on the Standard Forgivable Matching Purchase Loan Terms established by Canaccord (the "Terms"), a matching amount of money (the "Loan") for the purpose of purchasing additional CF Shares in the market (which, because of market conditions, may be less than the number of shares you purchase).

...

If you resign from your employment with Canaccord or you are terminated from that employment for cause then, subject to applicable securities laws relating to exempt issuer bids, you will forthwith sell and Canaccord will forthwith purchase the shares representing the unforgiven portion of the Loan for a consideration per share equal to the Purchase Price Per Share (as defined in the Terms), and Canaccord will accept that amount in full satisfaction of any amount of the Loan then outstanding. After the date of resignation or termination, you will not be entitled to any of the benefits or rights accruing to the shares repurchased by Canaccord and such rights will accrue only to Canaccord. The "shares representing the unforgiven portion of the Loan" is the proportion of the CF Shares purchased with the Loan (the "Canaccord Match Shares") that the amount of the Loan which has not been forgiven at the date of resignation or termination bears to the Aggregate Purchase Price (as defined in the Terms).

50. Pursuant to the share matching provisions of the Employment Agreement, Canaccord Genuity purchased 86,000 shares of Canaccord Genuity Group Inc. (formerly called Canaccord Financial Inc.), to be held as collateral against the forgivable loan. On January 9, 2018, following Langstaff's termination, Canaccord Genuity released 86,000 shares of Canaccord Genuity Group

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Inc. (formerly called Canaccord Financial Inc.) to Langstaff in accordance with the Employment Agreement.

51. If, as pled in the alternative above, Canaccord Genuity is found to have terminated Langstaff's employment for just cause, then Langstaff was not entitled to the forgiveness of the loan or to the release of shares pursuant to the share matching program. In that event, Langstaff has received a windfall of 86,000 shares of Canaccord Genuity Group Inc. (formerly called Canaccord Financial Inc.) If, at the time of judgment, the shares have decreased in value, then Langstaff is liable for the return of the shares as well as the difference in value between the cost at purchase and the value on the date of judgment. If, at the time of judgment, the shares have increased in value, then Langstaff is liable for the return of the shares or an amount of money equal to their value on the date of judgment.

52. Canaccord Genuity proposes that this Counterclaim be tried concurrently with the Third Party Claim.

March 9, 2018

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