

**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

FACTUM OF THE ANSON DEFENDANTS¹

(Anson Defendants' Motion to Strike the Statement of Claim, returnable July 11, 2018)

June 27, 2018

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¹ Please see Schedule A for a list of the Anson Defendants as named in the Statement of Claim and the correct name of each entity.

Schedule A

Named Defendant	Actual Name
M5V Advisors Inc. cob Anson Group Canada	Anson Advisors Inc. cob Anson Funds
Admiralty Advisors LLC	Anson Management GP LLC
Frigate Ventures LP	Anson Funds Management LP
Anson Investments LP	Correct
Anson Capital LP	Does not exist
Anson Investments Master Fund LP	Correct
AIMF GP	AIMF GP LLC
Anson Catalyst Master Fund LP	Correct
ACF GP	ACF GP LLC
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SCHEDULE A – LIST OF AUTHORITIES

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PART I - OVERVIEW

1. In their statement of claim, the plaintiffs allege a complex conspiracy theory that they claim culminated in the publication of defamatory information about both of them, resulting in Callidus' share price declining. The claim pleads insufficient facts to sustain their theory.
2. Of the twenty two named defendants (and the 10 additional "John Doe" defendants), nine defendant entities (to the extent they exist) and three individuals are affiliated with Anson. The plaintiffs have failed to provide any particulars as to what any of these defendants did. They plead no allegations as to any allegedly unlawful activities participated in by any particular Anson defendant. In fact, no specific conduct by any of the Anson Defendants is pleaded at all.
3. Moreover, the pleadings fail to meet the special rules relating to the causes of action pleaded. Both civil conspiracy and defamation are subject to heightened standards for pleading, given both their seriousness and complexity. Neither is adequately pleaded in the statement of claim, nor are the additional claims for unlawful interference and unjust enrichment that rely on the defamation claim.
4. The Anson Defendants delivered a demand for particulars in January of 2018. In April 2018, Justice Hainey ordered the plaintiffs to reply by June 1, 2018 and no reply has been received. The Court can therefore only assume that the plaintiffs have no particulars.
5. In short, the plaintiffs' pleading fails to disclose a reasonable cause of action. It therefore should be struck.

PART II – SUMMARY OF FACTS

6. The plaintiffs have filed a statement of claim that includes extensive allegations against numerous defendants. In broad strokes, they allege that the 32 defendants, collectively, conspired to defame the plaintiffs in order to cause a drop in the plaintiff Callidus' share price, and that defamation in fact resulted, which allowed the defendants to profit on their short-selling strategies with respect to Callidus stock.
7. Though the broad strokes of the claim are intelligible, the details are not.

8. Although the plaintiffs have brought their claim against 22 separate named defendants and 10 unnamed defendants, they have not particularized their allegations against the nine entities defined collectively as “Anson” in the statement of claim, nor have they particularized their allegations against the three individual defendants associated with Anson (Moez Kassam, Adam Spears and Sunny Puri, the “Individual Anson Defendants”). These twelve defendants are referred to in this factum as the “Anson Defendants.”

9. In addition to the Anson Defendants, the plaintiffs have claimed against West Face Capital Inc., a private equity corporation, and its principal. They have also claimed against: (i) a New York-based company, ClaritySpring Inc., and its principal; (ii) a former employee of Canaccord Genuity; (iii) a reporter with the Wall Street Journal; and (iv) four individuals alleged to have previously executed personal guarantees as a term of receiving loans from the plaintiff Callidus. In addition, they name 10 John Doe defendants.

Statement of Claim, paras. 7-8, 21-22, 24-30, 39, Motion Record (“MR”), Tab 2, pp. 19-20, 22, 25

10. Apart from a mention of Anson being told about the defendants’ alleged plans, there is no reference anywhere in the statement of claim to particular conduct by any of the Anson Defendants. Instead, the Anson Defendants are lumped in with the other ten other named defendants.

Statement of Claim, paras. 23, 59, MR, Tab 2, pp. 22, 28

11. The plaintiffs have also failed to distinguish between the various Anson Defendants, instead pleading baldly that “[t]he Individual Anson Defendants and the entities that comprise Anson at all material times operated, acted and marketed themselves as a single entity.” The statement of claim alleges that the Individual Anson Defendants and Anson are vicariously liable for the acts or omissions of one another. In the alternative, the plaintiffs claim that each of the Individual Anson Defendants and Anson acted as agent for the others.

Statement of Claim, para. 20, MR, Tab 2, p. 21

12. The claim lacks specificity in terms of the causes of action pleaded, which appear to include civil conspiracy, defamation, interference with economic relations, and unjust enrichment.

13. For example, a large part of the statement of claim relates to prior litigation between Callidus and certain of the non-Anson individual defendants. While these components of the claim refer to specific defendants (excluding, by implication, the Anson Defendants), there are also references in these paragraphs to “funding” that supported the prior litigation by “the Wolfpack Conspirators”, which is defined to include Anson. The Anson Defendants do not and cannot know from the pleading if these allegations are meant to include any Anson defendant and, if so, which defendant and in relation to what prior litigation.

Statement of Claim, paras. 41, 51, 63, MR, Tab 2, pp. 25, 27, 29

14. Similarly, another component of the claim relates to the filing of complaints relating to Callidus and Catalyst at the OSC. While these components of the claim refer to specific non-Anson defendants having filed the complaints (excluding, by implication, the Anson Defendants), there are also references in these sections to rumour-spreading by “the Conspirators”, which is defined to include Anson. Again, the Anson Defendants do not and cannot know from the pleading if these allegations are meant to include any Anson defendant and, if so, which, nor can they know what particular conduct by the Anson Defendants is alleged.

Statement of Claim, paras. 64, 73-74, MR, Tab 2, pp. 29, 31-32

15. In January 2018, the Anson Defendants sought particulars that would enable them to defend the plaintiffs’ claims. They have asked the plaintiffs for particulars of:

- (a) the enterprise liability and personal liability allegations pleaded in relation to the Anson Defendants (Demand for Particulars, paras. 1, 28, 30);
- (b) Anson’s involvement, if any, in the allegations of conspiracy and malicious conduct (Demand for Particulars, paras. 2-3, 6, 11, 20, 29);
- (c) which, if any, of the allegations relating to the “Guarantee Actions” and the funding of them are in fact allegations against Anson (Demand for Particulars, para. 4);

- (d) which entities at Anson, if any, received information about the “Guarantors” and were allegedly encouraged to support West Face’s “planned short attack” (Demand for Particulars, para. 5); and
- (e) Anson’s alleged participation, if any, in the plaintiffs’ allegations of defamation, and for the details of the defamation allegations (Demand for Particulars, paras. 7-9, 12-19, 21-27, 30).

16. Despite repeated follow up over several months, no response to the Demand for Particulars has been received. In May, Anson sought a case management conference in order to set a schedule for the hearing of this motion to strike. At that conference, the plaintiffs were ordered to deliver a response to demand for particulars by June 1. No response has been provided.

PART III – LAW & ARGUMENT

Pleadings must be sufficiently particular and disclose a reasonable cause of action

17. At the heart of the rules of pleading is the principle that a defendant is entitled to know the case that it must meet. Pleadings (including any particulars that are provided) define the issues, prevent surprise, enable the parties to prepare for trial, and facilitate the just and efficient conduct of the litigation. They weed out hopeless claims and they assist courts in ensuring that the judicial process is not abused.

Crestohl v. B'Nai B'Rith Canada, 2009 CanLII 39484 (Ont. S.C.J.)
at para. 13-14, Book of Authorities ("BOA"), Tab 1

Knight v. Imperial Tobacco Canada Ltd., 2011 SCC 42 at paras.
19-20, 22, 25, BOA, Tab 2

18. Rules 21 and 25 enable the Court to strike a statement of claim that meaningfully fails to fulfil these functions. Under rule 21.01(1)(b), the Court may strike a statement of claim on the ground that, even if all of the facts in the pleading are taken as true, it is plain and obvious that the action has no chance of success. The Court may also strike a pleading on the basis that it contains insufficient particulars: without a sufficient statement of the material facts on which the plaintiff relies, a defendant cannot plead in response to the plaintiff's claim.

Rules of Civil Procedure, rr. 21.01(1)(b), 25.06(1), BOA, Tab 25

Hunt v. Carey Canada Inc., [1990] 2 S.C.R. 959 at para. 33, BOA, Tab 3

Copland v. Commodore Business Machines Ltd. (1985), 52 O.R. (2d) 586 (Master) at para. 21, BOA, Tab 4

19. The Anson Defendants acknowledge that there is a high threshold on a motion to strike. Conversely, this means that there is a low bar for a sufficient pleading. However, there are circumstances in which the plaintiff simply fails to meet that low bar. In those cases, the Court has not hesitated to strike pleadings.

Frank v. Legate, 2015 ONCA 631, BOA, Tab 5

Sun Life Assurance Co. of Canada v. 401700 Ontario Ltd. (1991), 3 OR (3d) 684 (Gen. Div.), BOA, Tab 6

Balanyk v. University of Toronto (1999), 1 C.P.R. (4th) 300 (Ont. S.C.J.) , BOA, Tab 7

Skypower CL 1 LP and Others v. Ontario Power & HMQ, 2014 ONSC 6950, BOA, Tab 8

There is no cause of action sufficiently pleaded against the Anson Defendants

20. A court “will not permit a plaintiff to leave an adversary ‘shrouded in mystery’ as to what his or her action is all about.”

Lana International Ltd. v. Menasco Aerospace Ltd. (1996), 28 O.R. (3d) 343 (Gen. Div.) at paras. 24-25 [*Lana*], quoting in part R.E. Brown in *The Law of Defamation in Canada*, vol. 2, 2d ed. (Toronto: Carswell, 1994), BOA, Tab 9

21. Though the general thrust of the plaintiffs’ pleading may be comprehensible, its claim against Anson is not. The plaintiffs have brought this claim against 22 named and 10 unnamed defendants. Twelve of those defendants are defined as being part of “Anson” or the “Individual Anson Defendants” in the statement of claim. Although the Anson Defendants comprise the majority of the named defendants to the action, no specific facts are pleaded with respect to any conduct by Anson, nor are any facts pleaded in support of the plaintiffs’ claim that the Anson entities are effectively interchangeable with one another.

Statement of Claim, paras. 18-19, MR, Tab 2, p. 21

22. In fact, there is only a single reference to “Anson” outside the descriptions of the parties to the claim, and that reference does not attribute any particular conduct to Anson or any of the Individual Anson Defendants. It merely pleads that Anson was informed about the conduct of other defendants.

Statement of Claim, para. 59, MR, Tab 2, p. 28

23. Such a pleading cannot be sustained against the Anson Defendants: no reasonable cause of action against it is disclosed, and the Anson Defendants are in no position to be able to provide a responsive defence to the claim.

The enterprise liability allegations are deficient

24. As a matter of pleading, it is inappropriate to lump together corporate defendants without specifying the allegations made against each defendant. Each defendant in a matter is entitled to discern the cause of action asserted against it and the facts that underpin that claim. A claim against one defendant does not on its own establish a claim against an affiliated entity.

Martin v. Astrazeneca Pharmaceuticals PLC, 2012 ONSC 2744 at para. 120 [*Martin*], BOA, Tab 10

25. ***Paragraph 20 should be struck from the claim.*** Courts have described the approach of lumping affiliated defendants together as the “enterprise liability” approach, and they have struck pleadings that are drafted in this way.

Martin at paras. 120-123, BOA, Tab 10

Hughes v. Sunbeam Corp. (Canada), 11 BLR (3d) 236 (Ont. S.C.J.) at paras 48-49, var'd on other grounds (2002), 61 O.R. (3d) 433 (C.A.), leave to appeal to S.C.C. refused, BOA, Tab 11

Cunningham v. Hamilton, 1995 ABCA 141 at para. 4, BOA, Tab 12

26. A parent corporation is not interchangeable with its subsidiary. Although the law may find liability on the part of a parent corporation for the acts of a subsidiary where there is both complete control of the subsidiary and the subsidiary was incorporated for a fraudulent or improper purpose, the pleading must include material facts to underpin such an allegation. No such facts have been pleaded in this case.

Martin at paras. 121, 123, BOA, Tab 10

27. Finally, while the plaintiffs have pleaded that each Anson entity “is the agent of the other”, this is a bald pleading which has repeatedly been struck.

Martin at para. 126, BOA, Tab 10

28. The remainder of the statement of claim is deficient as against the Anson Defendants, since it too fails to provide either a reason that the Anson entities may permissibly be “lumped together” or particulars as to which of the Anson Defendants (if any) is being referred to in any given reference to the “Conspirators” or the “Wolfpack Conspirators”.

29. ***Paragraphs 121-122 and the claims against the Individual Anson Defendants should be struck.*** As for the Individual Anson Defendants, facts giving rise to personal liability must be specifically pleaded, i.e. the plaintiffs must plead sufficient particulars which disclose a basis for attaching liability to the individual defendants in their personal capacities. No such wrongdoings have been pleaded. There are no particulars of any sort in relation to the Individual Anson Defendants that would justify keeping them in as defendants to this claim.

Lana at para. 30, BOA, Tab 9

Tran v. University of Western Ontario, 2015 ONCA 295 at paras. 17-19, BOA, Tab 13

ScotiaMcLeod Inc. v. Peoples Jewellers Ltd. (1995), 26 O.R. (3d) 481 (C.A.) at paras. 24-26, BOA, Tab 14

30. The plaintiffs’ “enterprise liability” theory is the only theory that implicates any of the Anson Defendants has been implicated in any of the alleged causes of action. No conduct by any Anson Defendant has been alleged, and there are no facts on which this Court could evaluate the claims individually. In light of the absence of any meaningful particulars, even when demanded, the claim must be struck.

No proper pleading of defamation

31. Pleadings in a defamation action are held to a higher standard than pleadings in other causes of action. A more detailed outline of the material facts alleged in support of the claim must be provided. Given how serious a defamation allegation is and how important the context is

to evaluation of the claim, “it is particularly important that the defendant know the case it has to meet.”

The Catalyst Capital Group Inc. v. Veritas Investment Research Corporation, 2017 ONCA 85 at para. 24, BOA, Tab 15

Cassagnol v. Pickering Automobiles Inc., [2001] O.J. No. 4117 (S.C.J.) at paras. 6-10, BOA, Tab 16

Lysko v. Braley (2006), 79 O.R. (3d) 721 (C.A.) at paras. 87-98, 122-126 ["*Lysko*"], BOA, Tab 17

Magnotta Winery Corp. v. Ontario (Liquor Control Board), [2000] O.J. No. 776 (Master) at paras. 18-21, BOA, Tab 18

Esguerra v. Liland Insurance Inc., [2009] O.J. No. 5274 (S.C.J.) at paras. 11-14, BOA, Tab 19

32. The plaintiff must describe with “reasonable certainty, clarity, particularity and precision”:

- (a) the allegedly defamatory words;
- (b) who, among the multiple defendants, the plaintiff alleges uttered the allegedly defamatory words;
- (c) to whom were the allegedly defamatory words spoken; and
- (d) when and where the allegedly defamatory words spoken.

Lysko at para. 91, BOA, Tab 17

33. The plaintiffs’ defamation claim appears to focus on:

- (a) Allegations that unspecified defendants abused the Ontario Securities Commission’s “whistleblower” program by making defamatory complaints about Callidus and/or the plaintiffs and spreading rumours about the complaints “within the financial industry” (paras. 73-74 of the Statement of Claim); and
- (b) Allegations that unspecified defendants engaged journalists and approached news organizations in an attempt to publish defamatory information about the plaintiffs, plus allegations that defamatory information was ultimately published in a Wall Street Journal article (paras. 74-93, 103-105 and 109).

34. The plaintiffs have failed to plead these and other instances of defamation with the particularity required by law. As described below, the plaintiffs make vague allegations of defamation by unspecified defendants against Callidus and/or both plaintiffs to unnamed members of the “financial industry” (as well as to the OSC and readers of the Wall Street Journal). None of the required particulars have been specifically pleaded. The deficiencies include the following:

- (a) In paragraphs 64, 65 and 73-74, the plaintiffs make vague allegations of defamation about “false information” being spread “through the Bay Street rumour mill”. These paragraphs include none of the particulars required to plead defamation, including what the false words were, who spoke them, when and where the words were spoken, and to whom they were spoken. It is unclear whether these allegations are even made against the any Anson Defendant.
- (1) At paragraphs 75-78 of the statement of claim, the plaintiffs plead generally that the defendants contacted and engaged a journalist named Bruce Livesey to write a negative story targeting the plaintiffs. The plaintiffs have failed to plead (a) the alleged defamatory words in Livesey’s “freelance negative story”, (b) any particular participation by Anson in engaging, compensating, speaking to or working with Livesey, (c) to which individuals at the news outlets the story was provided, and (d) when and where the alleged defamatory acts occurred.
- (2) At paragraphs 79 and 81-83, the plaintiffs make general, vague and unspecified allegations of defamation about the “Conspirators” approaching Reuters and “other reputable news organizations” in 2017 and encouraging them to publish a negative story about the plaintiffs. The plaintiffs have failed to plead any particulars about the Anson Defendants’ involvement in this alleged defamation, if any, or about the specifics of the defamation itself.
- (3) At paragraphs 84-93, the plaintiffs plead generally that the defendants contacted and engaged with “Copeland of the WSJ” to publish a false and defamatory article about the plaintiffs. However, they have failed to plead any particulars about Anson’s involvement in this alleged scheme (if any), or whether there are

other instances of defamation alleged beyond the publication of the article on August 14, 2017 and particulars of the alleged instances of defamation.

35. In the absence of particulars, the claim of defamation must be struck against the Anson Defendants. Anson cannot respond to a pleading that provides no information as to the specific facts pleaded in relation to it or to the specific claims that are directed towards it. Despite Anson's repeated demands for particulars, these have not been provided. The claims should be struck without leave to amend. In the alternative, if leave to amend is granted, an early court-ordered deadline for any amendments should be imposed.

Lysko at paras. 92-96, BOA, Tab 17

Leschyna v. CIBC World Markets Inc., [2005] O.J. No. 5678 (S.C.J.) at paras. 33-41, 43-44, BOA, Tab 20

Conspiracy is deficiently pleaded

36. In addition to their direct allegations of defamation against the defendants, the plaintiffs have pleaded that the defendants are liable in civil conspiracy. The civil conspiracy claims are purportedly based on allegations of either defamation/injurious falsehood or breaches of the *Securities Act*.

37. Insofar as the civil conspiracy claims relate to allegations of defamation, they are deficient, as described above. The *Securities Act* allegations are addressed in the section below.

38. In addition to the above deficiencies relating to defamation, the pleadings requirements for conspiracy are also high. The Ontario Court of Appeal has explained that a statement of claim alleging conspiracy should:

[D]escribe who the several parties are and their relationship with each other. It should allege the agreement between the defendants to conspire, and state precisely what the purpose or what were the objects of the alleged conspiracy, and it must then proceed to set forth, with clarity and precision, the overt acts which are alleged to have been done by each of the alleged conspirators in pursuance and in furtherance of the conspiracy; and lastly, it must allege the injury and damage occasioned to the plaintiff thereby.

Normart Management Ltd. v. West Hill Redevelopment Co. (1998), 37 O.R. (3d) 97 (C.A.) at para. 21, quoting in part Bullen, Leake

and Jacob in *Precedents of Pleadings*, 12th ed. (London: Sweet & Maxwell, 1975), BOA, Tab 21

39. When a claim for conspiracy has been alleged without the necessary particulars it has been struck, since a “recitation of a series of events coupled with an assertion that they were intended to injure the plaintiff is insufficient, nor is it appropriate to lump some or all of the defendants together into a general allegation that they conspired”.

Penson Financial Services Canada Inc. v. Connacher, 2010 ONSC 2843 at para 15, BOA, Tab 22

40. The plaintiffs have failed to plead the requisite particulars of the cause of action in conspiracy as it relates to Anson or the Individual Anson Defendants. Specifically, they have failed to plead any particulars of:

- (a) the individuals or entities among the Anson Defendants who allegedly entered into an agreement to injure the plaintiffs;
- (b) the individuals or entities among the Anson Defendants who are alleged to have used unlawful means with the knowledge that their actions were directly aimed at the plaintiffs for the purpose of causing injury to the plaintiffs;
- (c) the individuals or entities among the Anson Defendants who are alleged to have participated in the “Conspiracy” (as defined at paragraph 61 of the Statement of Claim); and
- (d) the overt acts taken in furtherance of the alleged conspiracy by each of the Anson Defendants.

41. In short, there are no facts in the pleading that could sustain a conspiracy claim against Anson. While the plaintiffs have pleaded that Anson used a short-selling strategy in relation to the plaintiff Callidus’ shares (a pleading to which Anson has not yet responded), short-selling is not unlawful and the plaintiffs do not plead that it is. This allegation alone is insufficient to sustain a claim of conspiracy.

No cause of action under the Securities Act

42. The plaintiffs have alleged that the defendants, collectively, breached sections 126.1 and 126.2 of the *Securities Act*, and that these breaches are “unlawful acts” that, in part, form the basis of their civil conspiracy claim. The pleaded sections of the *Securities Act* prohibit fraud and market manipulation as well as the making of misleading and untrue statements.

Statement of Claim, paras. 114-117, MR, Tab 2, pp. 41-42

43. The plaintiffs rely in part on their defamation allegations to support this component of the pleading. The deficiencies regarding those allegations are set out above.

44. They also rely on the allegation that the defendants took open short positions in advance of the publication of allegedly defamatory information “so as to take advantage of market price declines when the Article was published” and tipped others off as to this strategy and its timing. Again, however, the plaintiffs have failed to plead the requisite particulars that would enable the Anson Defendants to defend the claim.

Statement of Claim, para. 114(b), MR, Tab 2, p. 41

45. While the Anson Defendants understand that they are alleged to have participated in the “short attack” on the plaintiff Callidus (based on the allegation at paragraph 59 and the heading between paragraphs 93 and 94 of the Statement of Claim), the plaintiffs do not plead that short-selling is itself unlawful. Rather, the plaintiffs’ claim relates to the context in which the short-selling occurred, i.e., that it was allegedly timed with the publication of defamatory information and that tip-offs and previews about the publication of the information were provided by the defendants.

46. The deficiency in the plaintiffs’ claim relates to this latter issue: the plaintiffs have pleaded no material facts regarding the Anson Defendants’ particular involvement, if any, in the following “details of the Defendants’ conduct” that are set out in the statement of claim:

- (a) providing tip-offs and previews to selected investors of the Defendants’ intention to disseminate false negative information into the market concerning Callidus, and of the planning timing of such dissemination;

- (b) the concerted accumulation of open short positions in advance of the publication of the article so as to take advantage of market price declines when the article was published;
- (c) encouraging selected investors to do the same;
- (d) the defendants' participation in and preparation of the Article with its false and misleading negative content concerning Callidus;
- (e) the Defendants' efforts to ensure publication of the Article; and
- (f) the Defendants' actions after the Article was published to continue the downward pressure on the price of Callidus Shares.

No claim for intentional interference with economic relations

47. A claim for unlawful interference with economic relations or intentional interference with economic relations requires a pleading that a defendant has committed an actionable wrong directed against a third party that intentionally caused the plaintiff economic harm. Breaches of criminal or regulatory law do not meet the criteria for claims under this tort.

A.I. Enterprises Ltd. v. Bram Enterprises Ltd., [2014] 1 S.C.R. 177
at paras. 45, 74, BOA, Tab 23

48. In their pleadings on this topic, the plaintiffs have alleged that the Defendants “deceived third-party market participants into believing that Callidus and Catalyst were engaged in fraudulent activity.” There are no specific third parties referred to in the claim. The plaintiffs have not pleaded any facts that could sustain an actionable claim by third parties. This claim therefore cannot stand and should be struck.

No claim for unjust enrichment

49. Finally, a claim for unjust enrichment requires that the defendant receive a benefit, that the plaintiff experience a corresponding deprivation, and that there be no juristic reason for the enrichment.

Apotex Inc. v. Eli Lilly and Company, 2015 ONCA 305 at para. 20
[Eli Lilly]

50. The plaintiffs' plea of unjust enrichment against the Anson Defendants is premised on alleged profits made by short selling Callidus' shares. Again, short selling is not unlawful. The defendants' plea of an absence of a juristic reason is premised on the Anson Defendants having committed defamation and/or another tort to cause the share price to decline. However, since none of those torts are properly pleaded, the plea in unjust enrichment cannot stand.

51. Moreover, as the Court of Appeal has observed, the purpose of the doctrine of unjust enrichment is to reverse unjust transfers of wealth, and a plaintiff must be able to show that the benefit that accrued to a defendant ought to have accrued to it as a result of a legal entitlement or contribution it made. Here, the plaintiffs have alleged that the profit from the defendants' alleged short-selling corresponded to a decline in Callidus's market capitalization – but the decline in market capitalization is not a loss transferred from or lost by the plaintiffs. There is no "bilateral context" that could sustain a pleading of unjust enrichment as a standalone cause of action.

Eli Lilly at paras. 20, 43, 55, leave to appeal to S.C.C. ref'd (2016 CanLII 940), BOA, Tab 24

52. Finally, there is no reason to give the plaintiffs leave to amend their claim. The Anson Defendants demanded particulars over six months ago, and the Court ordered they be provided by June 1, 2018. The plaintiffs chose not to respond. The only logical inference is that they have no further particulars, giving them an opportunity to amend their claim would only unnecessarily prolong what has already been an unnecessarily lengthy and expensive process.

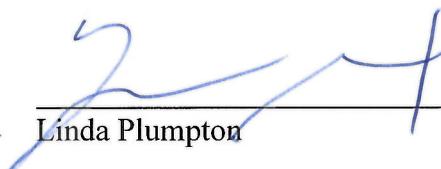
PART IV – ORDER SOUGHT

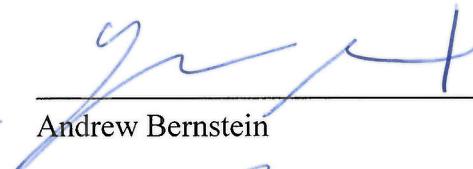
53. The Anson Defendants respectfully seek:

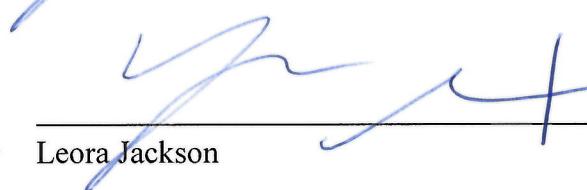
- (a) an order striking out the statement of claim and dismissing this action as against the Anson Defendants;
- (b) in the alternative, an order for particulars of paragraphs 20, 37, 41, 51, 59, 61, 63, 64-66, 68, 73, 75-79, 81-83, 84, 86, 87, 89, 92, 93, 103, 112, 114, 118, 121 and 122 of the statement of claim, in accordance with the Anson Defendants' demand for particulars dated January 22, 2018;
- (c) the costs of this motion, and of the action, on a substantial indemnity scale; and,

(d) such further and other relief as this Honourable Court may deem just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

per 
Linda Plumpton

per 
Andrew Bernstein

per 
Leora Jackson

Lawyers for the Anson Defendants

SCHEDULE A – LIST OF AUTHORITIES

1. *Crestohl v. B'Nai B'Rith Canada*, 2009 CanLII 39484 (Ont. S.C.J.)
2. *Knight v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42
3. *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959
4. *Copland v. Commodore Business Machines Ltd.* (1985), 52 O.R. (2d) 586 (Master)
5. *Frank v. Legate*, 2015 ONCA 631
6. *Sun Life Assurance Co. of Canada v. 401700 Ontario Ltd.* (1991), 3 OR (3d) 684 (Gen. Div.)
7. *Balanyk v. University of Toronto* (1999), 1 C.P.R. (4th) 300 (Ont. S.C.J.)
8. *Skypower CL 1 LP and Others v. Ontario Power & HMQ*, 2014 ONSC 6950
9. *Lana International Ltd. v. Menasco Aerospace Ltd.* (1996), 28 O.R. (3d) 343 (Gen. Div.)
10. *Martin v. Astrazeneca Pharmaceuticals PLC*, 2012 ONSC 2744
11. *Hughes v. Sunbeam Corp. (Canada)*, 11 BLR (3d) 236 (Ont. S.C.J.), var'd on other grounds (2002), 61 O.R. (3d) 433 (C.A.), leave to appeal to S.C.C. refused
12. *Cunningham v. Hamilton*, 1995 ABCA 141
13. *Tran v. University of Western Ontario*, 2015 ONCA 295 at paras. 17-19
14. *ScotiaMcLeod Inc. v. Peoples Jewellers Ltd.* (1995), 26 O.R. (3d) 481 (C.A.) at paras. 24-26
15. *The Catalyst Capital Group Inc. v. Veritas Investment Research Corporation*, 2017 ONCA 85 at para. 24
16. *Cassagnol v. Pickering Automobiles Inc.*, [2001] O.J. No. 4117 (S.C.J.) at paras. 6-10
17. *Lysko v. Braley* (2006), 79 O.R. (3d) 721 (C.A.) at paras. 87-98, 122-126
18. *Magnotta Winery Corp. v. Ontario (Liquor Control Board)*, [2000] O.J. No. 776 (Master) at paras. 18-21
19. *Esguerra v. Liland Insurance Inc.*, [2009] O.J. No. 5274 (S.C.J.)
20. *Leschyna v. CIBC World Markets Inc.*, [2005] O.J. No. 5678 (S.C.J.)

21. *Normart Management Ltd. v. West Hill Redevelopment Co.* (1998), 37 O.R. (3d) 97 (C.A.) at para. 21
22. *Penson Financial Services Canada Inc. v. Connacher*, 2010 ONSC 2843 at para 15
23. *A.I. Enterprises Ltd. v. Bram Enterprises Ltd.*, [2014] 1 S.C.R. 177 at paras. 45, 74
24. *Apotex Inc. v. Eli Lilly and Company*, 2015 ONCA 305, leave to appeal to S.C.C. ref'd (2016 CanLII 940)

SCHEDULE B – TEXT OF STATUTES, REGULATIONS & BY-LAWS

RULE 21 DETERMINATION OF AN ISSUE BEFORE TRIAL

WHERE AVAILABLE

To Any Party on a Question of Law

21.01 (1) A party may move before a judge,

(a) for the determination, before trial, of a question of law raised by a pleading in an action where the determination of the question may dispose of all or part of the action, substantially shorten the trial or result in a substantial saving of costs; or

(b) to strike out a pleading on the ground that it discloses no reasonable cause of action or defence, and the judge may make an order or grant judgment accordingly. R.R.O. 1990, Reg. 194, r. 21.01 (1).

(2) No evidence is admissible on a motion,

(a) under clause (1) (a), except with leave of a judge or on consent of the parties;

(b) under clause (1) (b). R.R.O. 1990, Reg. 194, r. 21.01 (2).

To Defendant

(3) A defendant may move before a judge to have an action stayed or dismissed on the ground that,

Jurisdiction

(a) the court has no jurisdiction over the subject matter of the action;

Capacity

(b) the plaintiff is without legal capacity to commence or continue the action or the defendant does not have the legal capacity to be sued;

Another Proceeding Pending

(c) another proceeding is pending in Ontario or another jurisdiction between the same parties in respect of the same subject matter; or

Action Frivolous, Vexatious or Abuse of Process

(d) the action is frivolous or vexatious or is otherwise an abuse of the process of the court, and the judge may make an order or grant judgment accordingly. R.R.O. 1990, Reg. 194, r. 21.01 (3)

RULE 25 PLEADINGS IN AN ACTION

RULES OF PLEADING — APPLICABLE TO ALL PLEADINGS

Material Facts

25.06 (1) Every pleading shall contain a concise statement of the material facts on which the party relies for the claim or defence, but not the evidence by which those facts are to be proved. R.R.O. 1990, Reg. 194, r. 25.06 (1).

[...]

PARTICULARS

25.10 Where a party demands particulars of an allegation in the pleading of an opposite party, and the opposite party fails to supply them within seven days, the court may order particulars to be delivered within a specified time. R.R.O. 1990, Reg. 194, r. 25.10.

STRIKING OUT A PLEADING OR OTHER DOCUMENT

25.11 The court may strike out or expunge all or part of a pleading or other document, with or without leave to amend, on the ground that the pleading or other document,

- (a) may prejudice or delay the fair trial of the action;
- (b) is scandalous, frivolous or vexatious; or
- (c) is an abuse of the process of the court. R.R.O. 1990, Reg. 194, r. 25.11.

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

THE CATALYST CAPITAL GROUP INC. v. WEST FACE CAPITAL INC. et al.
et al.
Plaintiffs Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**FACTUM OF THE ANSON DEFENDANTS
(Anson Defendants' Motion to strike Statement of
Claim, returnable July 11, 2018)**

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