

ONTARIO

SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

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

and

CANACCORD GENUITY CORP.

Third Party

AND BETWEEN:

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 INVOP LTD. D/B/A PSY GROUP

Defendants to the Counterclaim

A N D B E T W E E N:

BRUCE LANGSTAFF

Plaintiff by Counterclaim

and

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL CORPORATION

Defendants to the Counterclaim

NOTICE OF MOTION

(Production from Non-Party)

The Defendant, Darryl Levitt (“**Levitt**”), will make a motion to a Judge presiding over the Commercial List, at 10:00am on March 4th, 2019 or such other date to be established by the Commercial List office, at the court house, 330 University Avenue, 8th Floor, Toronto, Ontario, M5G 1R7.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR

1. An Order requiring McEwan Enterprises Inc. d.b.a. The McEwan Group, who the Defendant understands is the owner of One Restaurant, and Hazelton Hotels International Inc., who the Defendant understands is the owner of The Hazelton Hotel (“Hazelton”):
 - (i) to produce a copy of the video recording taken on the morning of October 11th, 2017 between 9:00am and 11:30am at One Restaurant, location at

116 Yorkville Avenue, Toronto, Ontario, M5R 1C2 near Yorkville, and also situated inside The Hazelton Hotel at 118 Yorkville Avenue, Toronto, Ontario, M5R 1C2 (the “One Recording”);

- (ii) to immediately and continually preserve and prevent the deletion or destruction of the One Recording until such time when it has been produced to the satisfaction of Levitt;
- (iii) to produce all notes of meetings and consultations between Levitt and restaurant management on the subsequent date;
- (iv) to produce all records of meal payment receipts during the times of 9:00am and 11:30am on the October 11th, 2017;
- (v) to produce all notes and correspondence between hotel security and restaurant management in relation to identification and preservation of material;
- (vi) to produce all information and documents that may assist in identifying the person or persons involved with such meeting on October 11th, 2017;
- (vii) to make all disclosure and production pursuant to this Order within twenty (20) days of this Order;

- (viii) to produce all electronic documents pursuant to this Order in native format preserving all metadata;
2. An Order declaring that the video footage and records are necessary for the just determination of a defence and counterclaim that Levitt intends to assert and that they should be produced to Levitt;
 3. To the extent necessary, an Order that the word “document” used herein is used in the broadest possible sense, and includes, without limiting the generality of the foregoing, paper and electronic documents and data or data compilations, in any format, and stored in any medium whatsoever;
 4. To the extent necessary, an Order validating service of this Notice of Motion on Hazelton; and
 5. Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE

Background

- (a) Levitt is a Toronto-based individual and lawyer;

- (b) Levitt's reputation as a leading legal practitioner in his area of expertise has been recognized extensively by his peers and clients and is essential to his continued success in the legal and business community;
- (c) the Plaintiffs in the within Action issued a Statement of Claim against several Defendants, including Levitt;
- (d) the Plaintiffs admit that they retained or caused to be retained, Black Cube, a private investigative firm staffed with former Mossad and Israeli Defence Force intelligence operatives, which conducted a series of "stings" on current and former West Face employees, and against Justice Newbould, in an attempt to elicit unlawfully confidential information of West Face, and which attacked the honour, integrity and conduct of Justice Newbould, in finding for West Face in litigation with Catalyst, and to intimidate or discredit perceived enemies of the Plaintiffs, including Levitt (the "**Black Cube Campaign**");
- (e) Levitt alleges that the Plaintiffs repeatedly, publicly and falsely mounted a campaign of defamation in which they wrongfully accused Levitt of conspiring with others, as part of a "wolfpack" of conspirators, to manipulate illegally the share price of Callidus and profit therefrom (the "**Wolfpack Conspiracy Action**");

- (f) Levitt has reasonable grounds to believe that certain materials and records relating to the persons who were perpetrating the Black Cube Campaign against Levitt, including but not limited to the Plaintiffs, are within the possession of Hazelton, who is not a party to this Action;

- (g) Levitt believes that the material and records in Hazelton's possession could assist Levitt by:
 - (i) providing factual details that would assist Levitt in asserting and proving his defence and asserting a counterclaim to this Action and to seek damages against the Plaintiffs and others;

 - (ii) identifying other individuals and persons, not yet known to Levitt, who were also involved in the Black Cube Campaign and this Action; and

 - (iii) helping Levitt to locate other individuals and persons involved in perpetrating the Black Cube Campaign and this Action for the purpose of serving them to seek damages.

Evidence Relevant to the Wolfpack Conspiracy Action and the Black Cube Campaign

- (h) Levitt alleges that Black Cube operatives invited him for a meeting at One Restaurant at the Hazelton Hotel under false pretense in order to entice him to

disclose privileged and confidential information relating to litigation against Callidus, disclose information about Catalyst, as well as assess the extent of his knowledge relating to portfolio companies of the Plaintiffs in an effort to uncover the identity of any alleged whistleblowers;

- (i) Levitt alleges that such conduct was also designed to intimidate him;
- (j) through his investigative efforts, Levitt has reason to believe that Black Cube operatives met with him;
- (k) through his investigative efforts, Levitt determined that One Restaurant and The Hazelton Hotel have a practice of making video recordings at its locations;
- (l) Levitt has confirmed with personnel at the One Restaurant that they took video recordings of the respective location at the relevant time – the One Recording;
- (m) Personnel at the One Restaurant have confirmed that the One Recording has been preserved;
- (n) Personnel at the One Restaurant have confirmed that they requires a court Order to produce the preserved video recordings;

- (o) Levitt has reason to believe that the One Recording captures video images of the meeting that took place between Black Cube operatives and Levitt in furtherance of the Black Cube Campaign and Wolfpack Conspiracy Action and that the video recordings will help identify the perpetrators;
- (p) One Restaurant and the Hazelton Hotel are the only entities in possession of the One Recording;
- (q) Personnel at the One Restaurant have confirmed that they do not have a position with respect to the within motion;
- (r) Through an article that appeared in the Globe and Mail on January 25, 2019, Levitt became aware that the person posing as Michel Lambert strongly resembled the same person that had met with Levitt under false pretense and that his method of operating strongly resembled those as described in the relevant article. A subsequent investigation by the New York Times has revealed that such person recently attempted to elicit anti-Semitic comments from a non-profit organization, Citizens Lab, in an attempt to discredit its research, and that such person is a resident of Israel with former ties to the Israeli security establishment;
- (s) Such person identified himself at the meeting with Levitt and in email correspondence with Levitt, as Victor Petrov;

- (t) Levitt has limited information about the true identity, whereabouts or contact information of the persons responsible for establishing communications with him but has reason to believe the Plaintiffs or their agents are ultimately responsible;
- (u) Levitt believes that the correspondence and request for meetings were established at the direction of the Plaintiffs, as part of a campaign to damage Levitt's reputation in the legal and business community, to attempt to discredit Levitt, and by trying to obtain privileged and confidential information relating to litigation with the Plaintiffs as well as attempting to uncover identities of whistleblowers ;
- (v) Levitt seeks such information and documents (i.e. the One Recording) in order to properly identify the person and/or persons directly responsible for the correspondence and the meeting to enable him to prove the involvement of the Plaintiffs, to identify any additional wrongdoers involved in the above-noted conduct, and to obtain evidence that he would otherwise be unable to obtain to assert a defense in his claim and assert a counterclaim for damages.

The Requested Disclosure is Material to Levitt's Defence and Potential Counterclaim - without it would be unfair to Levitt

- (w) Levitt has reason to believe that the One Recording, (the "Requested Disclosure") is relevant to a defense and to a successful counterclaim;

- (x) Levitt has reason to believe that the One Recording relates to a meeting that took place between Levitt and a Black Cube operative and that this evidence may be helpful:
 - (i) in showing that the Plaintiffs are behind a conspiracy to harm Levitt's reputation, including the Black Cube Campaign; and/or
 - (ii) in identifying the Black Cube operatives or other parties that ought to be named as defendants to a counterclaim that Levitt intends to assert, or that may be material witnesses to the Wolfpack Conspiracy Action;
 - (iii) to facilitate an investigation as to whether any of his rights under the Canadian Charter have been violated; and
 - (iv) to determine whether any further wrongful and unlawful acts have been perpetrated against Levitt.

- (y) such Requested Disclosure would be relevant to material issues in this proceeding;

- (z) it would be unfair to require Levitt to proceed without having this evidence available to him;

- (aa) there would be no unfairness to the Respondents to oblige them to disclose the information requested;
- (bb) the interests of justice favour the disclosure sought by Levitt;
- (cc) Levitt is ready, able and willing to reimburse the Respondents for any reasonable costs associated with complying with the Orders requested;
- (dd) Rules 1.04, 16, and 30.10, of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;
- (ee) This Honourable Court's inherent and equitable jurisdiction to grant the relief sought, including pursuant to Section 96 of the *Courts of Justice Act*, R.S.O, 1990, c. C 43; and
- (ff) such further and other grounds as this Honourable Court may permit.

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

1. The affidavit of Darryl Levitt sworn February 5, 2019;
2. Such further and other evidence as counsel may advise and this Honourable Court may Permit.

February 6th, 2019

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THE CATALYST CAPITAL GROUP INC. et al.
Plaintiffs
WEST FACE CAPITAL INC. et al.
Plaintiffs by Counterclaim
BRUCE LANGSTAFF
Plaintiff by Counterclaim

- and - WEST FACE CAPITAL INC. et al.
Defendants
- and - THE CATALYST CAPITAL GROUP et. al.
Defendants to the Counterclaim
- and - THE CATALYST CAPITAL GROUP INC. et al.
Defendants to the Counterclaim

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

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