

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

Defendants

NOTICE OF MOTION

(Motion for particulars/ to strike the Statement of Claim, returnable August 14th,

2018)

The defendant, Darryl Levitt, will make a Motion to a Judge presiding over the Commercial List on Wednesday July 11, 2018 at 10:00 a.m., or as soon after that time as the Motion can be heard at the court house, 330 University Avenue, 7th Floor, Toronto, Ontario, M5G 1R7.

PROPOSED METHOD OF HEARING: The Motion is to be heard (choose appropriate option)

orally.

THE MOTION IS FOR:

- (a) An Order for particulars of the following paragraphs of the Statement of Claim in this proceeding in accordance with the Demand for Particulars attached as Schedule “A”:
Paragraphs 1(a); 1(b); 1(c); 1(d); 1(e); 1(f); 1(g); 37; 41, 43, 51; 57; 58; 59; 61; 63; 64;
65; 66; 68; 69; 70; 74; 75; 76; 77; 78; 79; 81; 82; 84; 86; 87; 89; 92; 93; 101; 103; 104;
114(a); 115; 116; 117; 119; 120; 121; 122; 125; 127; 128; and, 129;
- (b) The costs of this motion on a substantial indemnity basis; and,
- (c) Such further and other Relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

- (a) The plaintiffs commenced this action on November 7, 2017 against 32 defendants, ten of whom are unknown. The Statement of Claim (the “Pleading”) is a lengthy, 132 paragraph pleading that alleges approximately six causes of action against all of the defendants. The plaintiffs claim general, special, aggravated and punitive damages jointly and severally against all of the defendants on the basis of each cause of action.
- (b) In the Pleading, the defendant Darryl Levitt (“Levitt”) is identified as one of four “Guarantor Conspirators”, as one of 24 “Conspirators”, and as one of six “Guarantors” (as therein defined). The factual allegations against the defendants are made against various groupings defendants. As such, the Pleading fails to disclose the case being made against Levitt as an individual defendant.

- (c) The plaintiffs broadly allege the following causes of action collectively against each defendant in the action: (i) defamation; (ii) injurious falsehood; (iii) intentional interference with economic relations; (iv) civil conspiracy; and, (v) unjust enrichment in the first paragraph of the Pleading.
- (d) On May 18, 2018, Levitt delivered a Demand for Particulars with regard to the Statement of Claim. On May 23, 2018, Levitt, other defendants, and the plaintiffs appeared before the Honourable Justice Hainey at a 9:30 a.m. hearing.
- (e) At the hearing, the Honourable Justice Hainey ordered that the plaintiffs respond to the demands for particulars made by Levitt and other defendants by June 15, 2018.
- (f) As of June 26, 2018, , the plaintiffs have not delivered a response to Levitt's demand for particulars. In doing so, the plaintiffs have failed to comply with a timetable as ordered by a Judge, and have breached an interlocutory order of this Court.
- (g) Rule 25.06(8), which requires that allegations of fraud, breach of trust, malice or intent be pleaded with full particulars, applies to each and every cause of action alleged by the plaintiffs:
 - (i) The torts of injurious falsehood and intentional interference with economic relations each require that the tortfeasor acted intentionally.
 - (ii) With respect to the tort of civil conspiracy, the Conspiracy (as defined in the Pleading) alleged is that the defendants conspired to cause economic harm to the plaintiffs. Therefore, in the circumstances of the Pleading, the conspiracy requires a finding of an intent to injure, or knowledge that an injury is likely to occur.
 - (iii) In their claim for unjust enrichment, the plaintiffs claim that the defendants received a benefit resulting from their participation in an unlawful short selling

attack. Accordingly, this allegation also involves an allegation of intent or malice against the defendants.

- (iv) The defamation claimed against the defendants involves an allegation that unspecified malicious and false statements were made.
- (h) The Pleading falls short of making Levitt aware of the claims made against him, all of which require full particulars. Furthermore, because the plaintiffs plead intentional torts, the claims against Levitt engage Rule 25.06(8) of the *Rules of Civil Procedure*. When Rule 25.06(8) is engaged, it is mandatory that a pleading contain full particulars as they are required elements to support the causes of action pleaded. As full particulars are not present in the Pleading, it is clearly deficient with regard to all causes of action alleged, as discussed below.

Injurious Falsehood

- (i) Actions for injurious falsehood involve the publication of false statements, either orally or in writing, reflecting adversely on the plaintiff's business or property, and so calculated as to induce persons not to deal with the plaintiff. There must be a showing that the published statements are untrue, that they were made maliciously, that they were made without just cause or excuse, and that the plaintiff suffered special damages.
- (j) The Pleading fails to plead facts particularizing what alleged false statement was published by Levitt, the form of that false statement, how such a false statement reflected adversely on the Plaintiff's business, and the harm suffered by the Plaintiffs as a result of the false statement.

- (k) The Pleading does not allege any particular malicious conduct by Levitt. The particulars of an alleged false statement are not pleaded. TAs a result there are also no particulars pleaded to suggest that Levitt believed any such statement to be untrue.

Intentional Interference with Economic Relations

- (l) Intentional interference with economic relations requires that the defendant intend to cause loss to the plaintiff, either as an end in itself or as a means of, for example, enriching himself. If the loss suffered by the plaintiff is merely a foreseeable consequence of the defendant's actions, that is not enough. A pleading for unlawful interference with economic relations requires a pleading that a defendant committed an actionable wrong directed against a third party that intentionally caused the plaintiff economic harm.
- (m) The Pleading does not disclose full particulars of an actionable wrong committed against a third party. Nor does the Pleading specify what conduct of Levitt is alleged to have interfered in the plaintiff's economic relations, when such conduct occurred, with whom, what economic relations were interfered with, the particulars of which investors suffered a loss, and how the plaintiffs were harmed and to what extent financially.

Conspiracy

- (n) The plaintiffs plead unlawful conspiracy against all of the defendants. A claim for unlawful conspiracy requires a factual basis to establish that Levitt used unlawful means with knowledge that his acts were aimed at the plaintiffs and knowing or constructively knowing his acts would result in injury to the plaintiffs.

- (o) The material facts in the Pleading do not contain the particulars of the Conspiracy as against Levitt. The Pleading does not establish who the parties to the Conspiracy were, when the Conspiracy was entered into, what the terms of the Conspiracy were, what Levitt's involvement in the Conspiracy is alleged to be, what acts Levitt took in furtherance of the conspiracy, and what acts Levitt undertook to hide the conspiracy.

Unjust Enrichment

- (p) 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.
- (q) The plaintiffs' claims of unjust enrichment against Levitt is premised on alleged profits made by short-selling Callidus shares. However, short-selling is not unlawful.
- (r) The plaintiffs allege that they suffered an alleged deprivation as a result of defamation/interference with economic relations/ conspiracy. These causes of action are not properly pleaded. Furthermore, there are no allegations that Levitt engaged in short-selling shares, and it is not pleaded that Levitt received any specific benefit.
- (s) In the circumstances of the general facts the plaintiffs have included in the Pleading, the unjust enrichment claims are grounded in intentional torts and therefore require full particulars.

Defamation

- (t) An action for defamation requires pleading with particularity. The plaintiffs must describe the allegedly defamatory words; who the plaintiffs allege uttered the defamatory words, to whom the defamatory words were spoken and when the defamatory words were spoken.
- (u) The plaintiffs have not established a cause of action in defamation against Levitt. They have instead made general, vague, and unspecified allegations of defamation. For example, paragraphs 64, 65 and 73-77, 86-92, of the Pleading omit particulars of:
 - (i) The words spoken or otherwise distributed that are alleged to be defamatory;
 - (ii) The date on which the words were spoken or otherwise distributed;
 - (iii) Where the words were spoken or otherwise distributed;
 - (iv) Who is alleged to have spoken the defamatory words, or what words were spoken by Levitt; and,
 - (v) The names of the persons to whom the words were spoken or otherwise published.

Damages Claimed

- (v) The Pleading broadly claims general and aggravated damages as against all of the defendants, jointly and severally.
- (w) Consequently, the Pleading fails to disclose the amount of damages claimed as against Levitt and which claims for relief are connected to which damages. Furthermore, the plaintiffs have claimed punitive damages as against all defendants, including Levitt. The Pleading fails to set out the means of Levitt, which is a material fact.

- (x) As such, Levitt requires the particulars of the damages claimed against him.
- (y) Rules 3.04, 25.06, 25.10, 57.03 and 60.13 of the *Rules of Civil Procedure*; and,
- (z) 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 Demand for Particulars attached as Schedule “A”; and,
- (b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

June 28th, 2018

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

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PROCEEDING COMMENCED AT
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RCP-E 4C (May 1, 2016)