

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF ONTARIO)

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

APPLICANTS
(Appellant)

-and-

BRANDON MOYSE AND WEST FACE CAPITAL INC.

RESPONDENTS
(Respondents)

RESPONSE TO MOTION FOR EXTENSION OF TIME
(BRANDON MOYSE, RESPONDENT)
(Pursuant to Rule 49 of the *Rules of the Supreme court of Canada*)

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RESPONSE TO MOTION FOR EXTENSION OF TIME**INTRODUCTION**

1. The respondent Brandon Moyse (“Moyse”) submits this memorandum of argument in opposition to the motion of The Catalyst Capital Group Inc. (“Catalyst”) for an extension of time to seek leave to appeal to this Honourable Court from a judgment of the Court of Appeal for Ontario.

2. Moyse agrees with and adopts the submissions of West Face Capital Inc. (“West Face”) in its memorandum of argument filed in opposition to Catalyst’s motion, and respectfully requests that the Court decide Catalyst’s motion immediately.

A. *PREJUDICE TO MOYSE*

3. In addition to the arguments proffered by West Face, Moyse emphasizes that he has suffered, and will continue to suffer, prejudice as a consequence of Catalyst’s lengthy, unjustified delay in seeking leave.

4. This litigation has been a source of significant stress and hardship for Moyse. Such stress has been compounded by numerous delays caused by the failure of Catalyst to meet various filing deadlines and by Catalyst obtaining lengthy adjournments of scheduled hearing dates for its own purposes. In addition to the obvious stress which comes from being a defendant in this sort of high-profile action, Moyse was required to be off work for over a year, without any certainty as to when he could resume his career, and was the subject of prolonged contempt proceedings initiated by Catalyst, in which Catalyst sought to have him imprisoned.¹

5. Even the hearing of Catalyst’s appeal before the Court of Appeal was significantly delayed as a consequence of Catalyst’s conduct, which included obtaining an adjournment for the purposes of considering whether or not to pursue a fresh evidence motion arising out of a sting operation conducted on both the trial judge and Moyse. The appeal finally proceeded on

¹ Affidavit of Brandon Moyse, Affirmed August 16, 2018 [“Moyse Affidavit”], paras. 8-9.

February 20 and 21, 2018, approximately 17 months after Catalyst filed its Notice of Appeal.²

6. When the Court of Appeal dismissed Catalyst's appeal without even calling on counsel for the respondents, and when Catalyst's deadline for seeking leave to appeal that judgment came and went, Moyse reasonably believed that the "black cloud" that had hovered over him for four years had finally lifted, and he would be permitted to move on with his life at last.³

7. Among other things, "moving on with his life" entailed seeking to become registered with the Ontario Securities Commission as an Advising Representative, which would allow him to take on more significant responsibilities and advance his career. Because the application for registration as an Advising Representative includes a question pertaining to outstanding civil actions, Moyse has now had to hold off on applying until this litigation is finally resolved, to the further detriment of his career advancement.⁴

8. There can be no doubt that Catalyst's unexplained and unjustified delay of more than fifteen weeks to seek leave has had a significant prejudicial effect on Moyse, affecting him from both a personal and professional perspective.

9. In order to mitigate the unfairness and prejudice to Moyse, and for the reasons set out in West Face's memorandum, Catalyst's motion should be disposed of at the earliest opportunity rather than upon adjudication of the application for leave to appeal, particularly in light of the extent of the delay, the lack of diligence on the part of Catalyst and its counsel, and the lack of merit in Catalyst's leave application.

B. ORDER REQUESTED

10. Moyse respectfully requests an order dismissing Catalyst's motion to extend time to file its application for leave to appeal, with costs.

² Moyse Affidavit, para. 11.

³ Moyse Affidavit, para. 14.

⁴ Moyse Affidavit, paras. 16-20.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 17th day of August 2018.

A handwritten signature in blue ink, appearing to be 'Robert A. Centa', written over a horizontal line.

Robert A. Centa
Kris Borg-Olivier
Denise Cooney

Counsel for the Respondent, Brandon Moyse

SCC File No.

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RESPONDENTS
(Respondents)

AFFIDAVIT OF BRANDON MOYSE
AFFIRMED AUGUST 16, 2018

I, Brandon Moyses, of the City of Toronto, SOLEMNLY AFFIRM AS FOLLOWS:

1. I am one of the Respondents in this proceeding, and, as such, have knowledge of the matters contained in this affidavit.
2. I am submitting this affidavit in response to the motion of The Catalyst Capital Group Inc. ("**Catalyst**") to extend the time limit for filing its application for leave to appeal to the Supreme Court of Canada from the Order of the Court of Appeal for Ontario dated February 21, 2018 (the "**Appeal Judgment**"), in which the Court of Appeal dismissed Catalyst's appeal of the trial judgment of Justice Newbould dated August 18, 2016 (the "**Trial Judgment**").
3. Catalyst never sought my consent to an extension of time for filing its application. If it had, I would not have provided my consent.

4. I am currently 30 years of age. I was born and raised in Montreal, Quebec, and earned a Bachelor of Arts in Mathematics from the University of Pennsylvania. I currently live in Toronto with my wife.

5. I was employed by Catalyst from November 2012 to May 2014. Prior to working for Catalyst, I was employed at Credit Suisse in New York and RBC Capital Markets in Toronto as a junior banker on their respective Debt Capital Markets desks.

6. After I resigned from my employment at Catalyst in May 2014, I worked briefly at West Face Capital Inc. ("**West Face**") for three weeks in June and July 2014. As a result of this litigation, in which Catalyst alleged, among other things, that I passed on certain of Catalyst's confidential information to West Face, I was off work at West Face from July 16, 2014, until I resigned on August 31, 2015.

7. I had significant difficulties securing a new job, as this litigation is well known in the Toronto investment community and many of the firms I interviewed with expressed concerns that Catalyst would commence further litigation against them. I eventually secured a position in December 2015 as an investment analyst at Stornoway Portfolio Management Inc. in Toronto, where I continue to be employed.

8. This litigation has been a source of significant stress and hardship for me on a personal level and this stress has been compounded by the many delays caused by the failure of Catalyst to meet various filing deadlines or its decisions to seek lengthy adjournments of scheduled hearing dates for its own purposes. These delays are described in the affidavit of Andrew Carlson, which is filed on behalf of West Face.

9. It was incredibly stressful for me and my wife (then my fiancée) for me to be off work for over a year, without any certainty as to when I could resume my career. It was equally stressful for me to be the defendant in an action in which Catalyst claimed general and punitive damages against me. Even more difficult was the almost year-long period – due to delays caused by Catalyst – during which Catalyst pursued prolonged contempt proceedings against me, in which it sought to have me imprisoned.

10. It was gratifying to have the contempt motion against me dismissed and, subsequently, to have all the claims against me and West Face dismissed in their entirety. I was not surprised that Catalyst appealed the Trial Judgment, but at least the end of this ordeal appeared to be in sight.

11. As described in the affidavit of Andrew Carlson, Catalyst's conduct (including obtaining an adjournment from the Court of Appeal for the purposes of considering whether or not to pursue a fresh evidence motion arising out of a sting operation conducted on both the trial judge and me) resulted in a significant delay in the hearing of its appeal. The appeal finally proceeded on February 20 and 21, 2018, approximately 17 months after Catalyst filed its Notice of Appeal.

12. I was in court when the Court of Appeal dismissed Catalyst's appeal without calling on my or West Face's counsel to respond to the appeal on the merits.

13. My counsel advised me that Catalyst would have until April 23, 2018 to seek leave to appeal to the Supreme Court of Canada.

14. When the April 23, 2018 deadline came and went, it felt as if this litigation was well and truly at an end, and the black cloud that had hovered over me for four years had lifted at last. I was devastated to learn that Catalyst is now moving for an extension of time to seek leave to appeal the Appeal Judgment, more than four months after its deadline for doing so.

15. Besides creating renewed stress for me and my wife, Catalyst's decision to seek leave to appeal months after the deadline has also had a prejudicial impact on my career in the financial industry.

16. I have been seeking to become registered with the Ontario Securities Commission as an Advising Representative, which would essentially allow me to be a portfolio manager and engage in "registerable activities" such as initiating trades and interfacing with clients. Becoming registered would be helpful to my career development as it would allow me to take on more and more significant responsibilities.

17. On July 30, 2018, I completed the proficiency requirements for registration. I was preparing my application when I was advised by my counsel that Catalyst had in fact decided to seek leave to appeal to the Supreme Court of Canada.

18. I must now hold off on seeking registration in part because the application requires me to answer the following question:

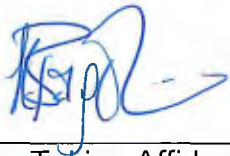
Are there currently any outstanding civil actions alleging fraud, theft, deceit, misrepresentation or similar misconduct against you or a firm where you are or were a partner, director, officer or major shareholder?

19. Until this litigation is finally resolved, I would have no choice but to answer "yes" to this question, which I expect would result in lengthy delays in the processing of, if not outright rejection of, my application.

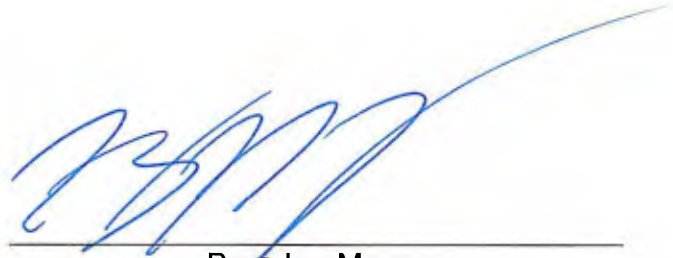
20. I have both the requisite proficiency and necessary experience to become registered, so the only remaining step in the process is the formal application. I must now hold off on submitting my application, to the further detriment of my career advancement.

21. I am hopeful that Catalyst's motion for an extension of time will be rejected, thus allowing me to put this matter behind me at last.

AFFIRMED BEFORE ME at the City of Toronto, in the Province of Ontario on August 16, 2018



Commissioner for Taking Affidavits
(or as may be)



Brandon Moyse

THE CATALYST CAPITAL GROUP INC.
Appellant

-and-

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PROCEEDING COMMENCED AT
TORONTO

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