Court of Appeal File No. C65431

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff (Appellant)

- and -

VIMPELCOM LTD., GLOBALIVE CAPITAL INC., UBS SECURITIES CANADA INC., TENNENBAUM CAPITAL PARTNERS LLC, 64NM HOLDINGS GP LLC, 64NM HOLDINGS LP, LG CAPITAL INVESTORS LLC, SERRUYA PRIVATE EQUITY INC., NOVUS WIRELESS COMMUNICATIONS INC., WEST FACE CAPITAL INC. and MID-BOWLINE GROUP CORP.

Defendants (Respondents)

FACTUM OF THE DEFENDANT (RESPONDENT) GLOBALIVE CAPITAL INC.

October 31, 2018

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PART I OVERVIEW

1. This is an appeal by The Catalyst Capital Group Inc. ("Catalyst") of Justice Hainey's (the "Motions Judge") decision, dated April 18, 2018 (the "Motion Decision"). The Motions Judge dismissed the within action on the basis of issue estoppel, cause of action estoppel and/or abuse of process. The Motions Judge also struck Catalyst's breach of contract claim as against, *inter alia*, Globalive Capital Inc. ("Globalive"), without leave to amend. Catalyst's appeal raises no error that would justify any intervention with the Motion Decision, and should be dismissed.

2. This action is Catalyst's second attempt to litigate its failure to close a deal to purchase the telecom company WIND Mobile Corp. ("WIND") in 2014. On its first attempt, Catalyst commenced an action against West Face Capital Inc. ("West Face") and one of Catalyst's former employees ("Moyse"), alleging that the consortium that ultimately purchased WIND (the "Consortium", which included West Face and Globalive) did so by misusing Catalyst's confidential information (the "Moyse Action"). After the trial of the Moyse Action, at which Catalyst cross-examined witnesses from many of the defendants in this action, including Globalive, Justice Newbould dismissed the action. He held, among other things, that Catalyst was entirely responsible for failing to acquire WIND when it unilaterally refused to negotiate a modest "break fee", and that in any event it would never have closed a deal for WIND because it insisted on regulatory concessions from the Government of Canada that were not forthcoming. The Court of Appeal upheld Justice Newbould's decision.

3. Days before the trial of the Moyse Action, Catalyst commenced the within action. Catalyst named all of the members of the Consortium as defendants, as well as the vendor VimpelCom Inc., ("VimpelCom"), and its investment banker ("UBS"). In his decision, the Motions Judge held that Catalyst's claims in this action against Globalive were barred by issue estoppel, cause of action

estoppel, and abuse of process. In short, the Motions Judge held that:

(a) the issue of whether Catalyst had suffered any damages – a component of all of the causes of action in the Moyse Action and this action, save for breach of contract – was fundamental to the Moyse Action and was barred by issue estoppel;

(b) the factual matrix underlying all of the claims in this action was squarely before Justice Newbould in the Moyse Action, and Catalyst was therefore estopped from now raising any claims that it could have raised in that action;

(c) in respect of both issue estoppel and cause of action estoppel, though not a named party in the Moyse Action, Globalive was West Face's privy in interest, and therefore could benefit from the estoppel as it had a "meaningful voice" at the trial of the Moyse Action, and Justice Newbould's findings necessarily applied to the entire Consortium;

(d) the current action is an abuse of process as, in order to succeed in the current action, Catalyst would need the Court to make directly contradictory findings of fact to those Justice Newbould made in the Moyse Action, which would bring the administration of justice into disrepute; and

(e) Catalyst knew of the factual basis for all of its claims in this action long before the trial of the Moyse Action, but chose to "lie in the weeds", and this action is therefore litigation by installment, which constitutes an abuse of process.

4. There is no basis to interfere with the Motions Judge's findings of fact in respect of the above issues. The Motions Judge correctly held that the within action is an attempt to relitigate matters that were squarely before Justice Newbould. In so holding, he made no palpable and over-riding error that would warrant intervention by this Court.

5. Finally, the Motions Judge struck Catalyst's breach of contract claim against Globalive without leave to amend. Catalyst has never alleged that Globalive was a party to any contract with it, despite amending its claim three times. Pleadings are not a "moving target", and the Motions Judge reasonably exercised his discretion to strike Catalyst's breach of contract claim and to deny Catalyst leave to amend.

PART II FACTS

A. Background – VimpelCom's Sale of its Interest in WIND

6. Globalive is a diversified investment corporation based in Toronto and incorporated pursuant to the laws of Ontario. Anthony Lacavera ("Lacavera") is the Chairman of Globalive and the former Chairman and Chief Executive Officer of WIND.[1]

7. Globalive founded WIND in 2008 along with Orascom Telecom Holdings ("Orascom"). WIND was originally structured so that Globalive indirectly held 67% of the voting shares and 34% of the total equity of WIND through a holding company called Globalive Investment Holdings Corp. ("GIHC"). GIHC held all the shares of WIND. Orascom held 100% of the non-voting shares and 32% of the voting shares in GIHC, for 65% of the total equity in WIND.[2]

8. In 2011, VimpelCom, a non-Canadian corporation, acquired the majority shareholder of Orascom, and thereby gained control of Orascom's stake in GIHC.[3] This ownership structure of WIND remained in place until September 2014, when the Consortium purchased VimpelCom's interest in WIND through a corporation called Mid-Bowline Group Corp. ("Mid-Bowline", then

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[1] Trial Affidavit of Simon Lockie, sworn June 6, 2016 ("Lockie Trial Affidavit"), para. 1, **Joint Compendium of the Defendants (Respondents) ("JC"), Vol. 5, Tab 77B, pp. 1070-1071.**

[2] A former Orascom employee held 1% of the voting shares in GIHC in the form of non-participating equity: Lockie Trial Affidavit, para. 9, **JC, Vol. 5, Tab 77B, pp. 1074-1075**; Reasons for Judgment of Justice Hainey in *Catalyst Capital Group Inc. v. VimpelCom Ltd.*, 2018 ONSC 2471, dated April 18, 2018 ("Motion Decision"), para. 13, **JC, Vol. 1, Tab 5, p. 102.**

[3] Motion Decision, para. 13, **JC, Vol. 1, Tab 5, p. 102**; Lockie Trial Affidavit, para. 14, **JC, Vol. 5, Tab 77B, p. 1076**.

known as AAL Management Corp.).[4]

9. From WIND's founding in 2008 until early 2015, Globalive's principal executives managed WIND's day-to-day operations.[5]

10. Beginning in 2013, VimpelCom sought to divest its interest in WIND. At that point WIND owed VimpelCom over $1.5 billion in principal and interest, in addition to approximately $150 million in third party vendor debt, which was to come due on April 30, 2014. VimpelCom was willing to sell its interest in WIND based on an enterprise value of approximately $300 million, of which approximately $150 million would satisfy the vendor finance debt and the remainder would go to VimpelCom and Globalive. Failing such a transaction, VimpelCom had advised it would seek to force WIND into insolvency and recover its debt in that manner.[6]

11. In the spring of 2014, VimpelCom engaged in discussions, through its investment banker UBS, with numerous potential bidders for its interest in WIND. The potential bidders included some of the defendants in this action, as well as Catalyst.[7] Pursuant to these negotiations, Catalyst and VimpelCom entered into a confidentiality agreement on March 21, 2014 (the "Confidentiality Agreement").[8]

12. Given its stated willingness to exit its WIND investment at a relatively low enterprise value, VimpelCom's primary concern in evaluating potential bidders was the ability to close the transaction, including financial wherewithal and no impediment to timely regulatory approvals.

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[4] Motion Decision, para. 27, **JC, Vol. 1, Tab 5, pp. 104-105**; Affidavit of Andrew Carlson, sworn December 7, 2016 ("Carlson Affidavit"), para. 6(g) – (h), **JC, Vol. 3, Tab 56, p. 447.**

[5] Transcript of the Cross-Examination of Simon Lockie, dated June 10, 2016 ("Lockie Cross-Examination"), pp. 1188 – 1189, **JC, Vol. 5, Tab 78, p. 1109-1110.**

[6] Motion Decision, para. 14, **JC, Vol. 1, Tab 5, p. 103**; Lockie Trial Affidavit, paras. 17 – 19, **JC, Vol. 5, Tab 77B, pp. 1077-1078.**

[7] Motion Decision, paras. 14 and 17, **JC, Vol. 1, Tab 5, p. 103**; Lockie Trial Affidavit, para. 17, **JC, Vol. 5, Tab 77B, pp. 1077-1078.**

[8] Motion Decision, para. 15, **JC, Vol. 1, Tab 5, p. 103.**

Thus, in its standard form of share purchase agreement VimpelCom included a "hell or high water" clause which effectively prohibited any intended purchaser from taking any step (e.g., as expressly stated, requesting regulatory concessions from Industry Canada) that "would be expected to prevent or delay the obtaining of any consent or approval" required to close the transaction.[9]

13. In connection with its bidding on WIND, Catalyst sought assurances from the Government of Canada in the spring of 2014 that if Catalyst purchased WIND the Government would allow WIND to sell its wireless spectrum to one of the incumbent wireless carriers – Rogers, Bell, or TELUS – after five years. Catalyst was of the view that WIND would not be able to secure the financing required to remain a viable independent carrier without this concession, and so would not close a deal for WIND without it.[10] However, the Government explicitly stated on numerous occasions that no such concession would ever be granted, and VimpelCom never indicated it would accept such a contingency as a part of any sale.[11]

14. On July 23, 2014, VimpelCom entered into an exclusivity agreement with Catalyst (the "Exclusivity Agreement"), which precluded VimpelCom from dealing or negotiating with any other bidders during its term. The Exclusivity Agreement was subsequently extended by mutual agreement of the parties, and (as described below) the parties allowed it to expire by its own terms on August 18, 2014.[12] Globalive was not a party to the Exclusivity Agreement,[13] and did not receive a copy of the Exclusivity Agreement at any time in 2014.

15. Late on August 6, 2014, Michael Leitner of Tennenbaum Capital Partners LLC

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[9] Lockie Trial Affidavit, para. 21, **JC, Vol. 5, Tab 77B, p. 1079.**
[10] Trial Affidavit of Newton Glassman, sworn May 27, 2016, paras. 10-11, **JC, Vol. 3, Tab 64, pp. 605-606.**
[11] Reasons for Judgment of Justice Newbould in *Catalyst Capital Group Inc. v. Moyse*, 2016 ONSC 5271, dated August 18, 2016 ("Moyse Decision"), para. 131, **JC, Vol. 1, Tab 14, pp. 261-262.**
[12] Moyse Decision, para. 30, **JC, Vol. 1, Tab 14, p. .**
[13] Motion Decision, paras. 19, 23, and 26, **JC, Vol. 1, Tab 5, p. 104;** Transcript of the Examination-in-Chief of Simon Lockie, dated June 10, 2016 ("Lockie Examination-in-Chief"), p. 1181, **JC, Vol. 5, Tab 78, p. 1103.**

("Tennenbaum") sent an unsolicited offer to VimpelCom (the "Unsolicited Offer") on behalf of West Face, Tennenbaum and 64 NM Holdings LP ("64NM", collectively with Tennenbaum, the "US Investors", and collectively with Tennenbaum and West Face, the "New Investors"), to purchase VimpelCom's interest in WIND (but not Globalive's).[14] Mr. Leitner sent a more formal offer and a draft share purchase agreement to VimpelCom on August 7, 2014. Mr. Leitner also informed Globalive of the Unsolicited Offer on that date.[15] There is no evidence that suggests that the Unsolicited Offer was put to VimpelCom's supervisory board (similar to a board of directors).[16] Catalyst became aware of the Unsolicited Offer in September or October of 2014, after the Exclusivity Agreement expired.[17]

16. In early August, 2014, Globalive believed that the Catalyst transaction was the only realistic alternative to an insolvency process (which Globalive believed would be destructive to WIND's value), so Globalive both actively assisted VimpelCom in seeking to advance negotiations with Catalyst and expressed to Catalyst its desire to invest alongside Catalyst in its acquisition of WIND. Until the expiry of the exclusivity period, Globalive continued to believe that Catalyst would acquire WIND,[18] and on August 6, 2014, Globalive entered into an agreement with VimpelCom to support the prospective transaction (the "Support Agreement").[19]

17. Around August 11, 2014, the VimpelCom supervisory board met to review and approve

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[14] Motion Decision, para. 21, **JC, Vol. 1, Tab 5, p. 104.**
[15] Lockie Trial Affidavit, para. 24, **JC, Vol. 5, Tab 77B, pp. 1080-1081.**
[16] Moyse Decision, para. 127, **JC, Vol. 1, Tab 14, p. 260.**
[17] Carlson Affidavit, para. 9, **JC, Vol. 3, Tab 56, pp. 448-451.**
[18] Motion Decision, para. 22, **JC, Vol. 1, Tab 5, p. 104**; Lockie Trial Affidavit, para. 26, **JC, Vol. 5, Tab 77B, p. 1081.**
[19] Globalive's obligations under the Support Agreement, offered in exchange for Globalive having an economic participation in the proceeds of a resulting transaction, were limited to its agreement: (i) to sell its interest in WIND to a buyer of VimpelCom's choosing, and (ii) alternatively, to support VimpelCom in putting WIND into insolvency in the event the sale did not proceed (since, at the time, VimpelCom considered insolvency to be the next best alternative to a transaction with Catalyst): Lockie Trial Affidavit, para. 25, **JC, Vol. 5, Tab 77B, p. 1081.**

the proposed share purchase agreement with Catalyst.[20] At some point following its review, the supervisory board informed VimpelCom's management that, in order to proceed with the transaction with Catalyst, the board would require Catalyst to agree to a break fee of between $5 million and $20 million to cover any further financing of WIND required as a result of regulatory approval of the sale to Catalyst taking longer than expected. Newton Glassman, Catalyst's principal, was infuriated by this request, and advised his deal team that the deal was effectively dead or in deep trouble. Catalyst told VimpelCom that the request for the break fee was unacceptable, shut down communications, and let the Exclusivity Agreement expire on August 18, 2014.[21]

18. Upon expiry of the Exclusivity Agreement, VimpelCom was seriously considering proceeding with an insolvency process.[22] Shortly after the expiry, the Consortium was formed and made an offer to VimpelCom as an alternative to an insolvency process.[23] The Consortium was composed of Globalive, West Face, the US Investors, Serruya Private Equity Inc. ("Serruya"), and Novus Wireless Communications ("Novus").

19. The benefit of the offer that the Consortium made to VimpelCom was that, in the first step, the Consortium (which included Globalive, the controlling shareholder of WIND) would only acquire VimpelCom's non-controlling interest in WIND. Accordingly, there would be no change of control and therefore no risk that the transaction would not gain regulatory approval, as none was required. With this structure, the Consortium took on all risk of failing to gain regulatory approval in the second step of the transaction, which was a restructuring of the various Consortium

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[20] Motion Decision, para. 24, **JC, Vol. 1, Tab 5, p. 104.**
[21] Motion Decision, para. 26, **JC, Vol. 1, Tab 5, p. 104**; Moyse Decision, paras. 128 – 129, **JC, Vol. 1, Tab 14, p. 261.**
[22] Motion Decision, para. 25, **JC, Vol. 1, Tab 5, p. 104.**
[23] Lockie Trial Affidavit, paras. 35-36, **JC, Vol. 5, Tab 77B, pp. 1086-1087.**

members' interests in WIND that did constitute a change of control and hence required regulatory approval. The Consortium's proposed structure satisfied VimpelCom's well-known requirement of a clean and timely exit from WIND. VimpelCom accepted the offer, and the Consortium acquired WIND through Mid-Bowline on September 16, 2014.[24]

B. Catalyst Commences the Moyse Action

20. In June, 2014, Moyse, a junior analyst with Catalyst, left Catalyst and joined West Face. Shortly thereafter, Catalyst commenced the Moyse Action naming Moyse and West Face as defendants, seeking to preclude West Face from bidding for WIND. However, less than one month after the Consortium closed its purchase of VimpelCom's interest in WIND, on October 9, 2014, Catalyst amended its claim to include a claim against West Face alleging breach of confidence in relation to the Unsolicited Offer and the Consortium's later offer.

21. In the context of the Moyse Action, Catalyst became aware of all of the material facts underpinning its claim in this action. In January, 2015, Catalyst moved to enjoin West Face from exercising any role in WIND management, which was dismissed. In the context of that motion, James Riley, a partner in Catalyst, admitted in cross-examination that Catalyst was aware of the facts underlying a potential claim for inducing breach of the Exclusivity Agreement.[25]

22. Also in the context of that motion, West Face filed an affidavit sworn by one of its partners, which outlined that: (i) in June, 2014, West Face was considering a transaction for WIND that included Lacavera, and that this relationship proved crucial in completing the Consortium's transaction for WIND months later; (ii) West Face did not receive any information from WIND management (i.e., Globalive) as to whether its proposals would be satisfactory to VimpelCom

[24] Lockie Trial Affidavit, paras. 35-37, **JC, Vol. 5, Tab 77B, pp. 1086-1088.**
[25] Excerpts from the Transcript of the Cross-Examination of James Riley (Moyse Litigation) held May 13, 2015, Q. 507-514, **JC, Vol. 3, Tab 67, pp. 728-729.**

during the period of the Exclusivity Agreement; and (iii) Globalive, having been asked by VimpelCom to do so, advised the New Investors on August 7, 2014 that it had entered into the Support Agreement and that it would therefore be engaging in no further discussions with the New Investors.[26]

23. In the May 11, 2016 examination for discovery of Catalyst's witness in the Moyse Action, it was put to the witness whether Catalyst would be adding Globalive as a party in that action. In answer to an undertaking, counsel for Catalyst confirmed that "Catalyst is not pursuing a claim in this proceeding that [Globalive], any of its subsidiaries or any of its three principals (Brice Scheschuk, Mr. Lacavera or Simon Lockie ("Lockie") have breached any kind of legal duty or obligation to Catalyst in respect of their discussions with West Face".[27]

C. The Consortium Sells Mid-Bowline By Way of Plan of Arrangement

24. On December 16, 2015, Mid-Bowline announced a deal to sell WIND to Shaw for $1.6 billion by way of a plan of arrangement (the "Plan of Arrangement"). Justice Newbould concluded that the Plan of Arrangement was fair and reasonable on January 24, 2016, but he did not immediately approve the Plan of Arrangement. Rather, he adjourned the hearing to allow an expedited trial of Catalyst's claim for a constructive trust over West Face's shares in Mid-Bowline, arising from the claims in the Moyse Action. Ultimately, Catalyst relinquished its constructive trust claim, and the Plan of Arrangement was approved on January 26, 2016.[28]

25. In the context of the Plan of Arrangement application, Mid-Bowline filed a significant

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[26] Affidavit of Anthony Griffin, sworn March 7, 2015, Tab 1 of West Face's Responding Motion Record (Injunction Motion), paras. 31, 36 – 37, 72, 76 – 78, **JC, Vol. 4, Tab 71, pp. 770-772, 774-775.**

[27] Transcript of the Examination for Discovery of Gabriel De Alba held May 11, 2016 ("De Alba Discovery Transcript"), Q. 505, **JC, Vol. 3, Tab 60, p. 554**; Catalyst's Revised Undertakings, Under Advisements and Refusals Chart of the Examination for Discovery of Gabriel De Alba, held May 11, 2016, dated June 2, 2016 ("Catalyst Undertakings"), at no. 34, **JC, Vol. 3, Tab 61, p. 561.**

[28] Motion Decision, paras. 34 – 37, **JC, Vol. 1, Tab 5, pp. 105-106.**

amount of evidence, including affidavits sworn by Anthony Griffin (of West Face), Hamish Burt (of 64NM/LG), Michael Leitner (of Tennenbaum)[29] and Lockie (of Globalive).[30] Catalyst did not cross-examine any of Mid-Bowline's affiants.[31]

26. Lockie's evidence directly addressed the key issues in this action, including as follows:

> West Face certainly never conveyed any information about Catalyst, its strategies or its intentions, to me or (to my knowledge) anyone else at Globalive. However, I do not believe that West Face could have used purportedly confidential information about Catalyst-required regulatory concessions in order to defeat Catalyst's bid. My understanding of Catalyst's bid was that it was not conditional on regulatory concessions. To the best of my knowledge, information and belief, Catalyst never insisted on any regulatory concessions as a condition of closing, and no such condition was included in any draft of the Share Purchase Agreement between VimpelCom … and Catalyst that I reviewed. On the contrary, I believe that VimpelCom would have refused to consider any bid of WIND that was conditional on regulatory concessions …
>
> In summary, to the best of my knowledge, from the time that Catalyst obtained exclusive negotiating rights on July 23, 2014, right up to August 18, 2014, VimpelCom perceived Catalyst to be the only credible bidder. VimpelCom, together with Globalive, made extensive efforts to close a deal with Catalyst. To the best of my knowledge, based on my discussions with Mr. Saratovsky of VimpelCom and my active support of VimpelCom's negotiations pursuant to the Support Agreement, the proposed bid of the New Investors was not taken seriously before August 18, 2014, and did not play a role in VimpelCom's negotiations with Catalyst or assessment of the Catalyst offer. Indeed, VimpelCom extended the period of exclusivity on August 11, five days after the New Investors made an unsolicited proposal to VimpelCom. VimpelCom preferred insolvency to the New Investors' bid until after the exclusivity expired, Globalive joined the Investors, and we convinced VimpelCom to consider the Investors' proposal as an alternative to insolvency with a very short time to close and no regulatory approvals.[32]

27. Catalyst did not deliver significant responding materials, but led evidence to the effect that it intended to amend its claim in the Moyse Action to include claims for inducing breach of the

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[29] Motion Decision, paras. 92 – 95, **JC, Vol. 1, Tab 5, pp. 123-124.**
[30] Motion Decision, para. 100, **JC, Vol. 1, Tab 5, p. 125.**
[31] Carlson Affidavit, paras. 41, 46, **JC, Vol. 3, Tab 56, pp. 462, 463-464.**
[32] Affidavit of Simon Lockie, sworn January 8, 2016 (Plan of Arrangement)("Lockie Plan of Arrangement Affidavit"), paras. 4, 39, **JC, Vol. 5, Tab 77A, pp. 1053, 1068.**

Exclusivity Agreement.[33]

28. In approving the Plan of Arrangement, Justice Newbould found that Catalyst had known about all the facts relevant to any claim for inducing VimpelCom to breach the Exclusivity Agreement in early 2015. Justice Newbould found that such a claim, which involved a tracing claim, would necessarily involve all the members of the Consortium. He held Catalyst had known about such a claim since March 13, 2015 (as described above), and that:

> **The intended action has not been started. It could have been started in March, 2015 when the facts were disclosed and known to Catalyst. To lie in the weeds until the hearing of the application and assert such a right to stop the plan of arrangement is troubling indeed and not acting in good faith.** Waiting and seeing how things are going in the litigation process before springing a new theory at the last moment is not to be encouraged. Apart from the statement of Mr. Riley that the information was first learned in the material in this application, which was not true, no evidence has been given by Catalyst to explain why this new intended claim was not brought sooner. [emphasis added][34]

D. Justice Newbould Dismisses the Moyse Action at Trial

29. In June, 2016, Justice Newbould tried the Moyse Action *via* an expedited process on the agreement of the parties. Over 30 witnesses gave evidence in chief by way of affidavit, and were then briefly examined further in chief and cross-examined at trial. Catalyst cross-examined West Face's witnesses about whether VimpelCom, Globalive and/or UBS revealed the state of the VimpelCom/Catalyst negotiations to West Face, whether VimpelCom breached the Exclusivity Agreement, and whether the Consortium induced it to do so. Catalyst chose not to call any witnesses from VimpelCom or UBS, nor did it choose to examine any other witnesses from the Consortium, including Lacavera. There was nothing preventing Catalyst from doing so.

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[33] Carlson Affidavit, paras. 47 – 48, **JC, Vol. 3, Tab 56, p. 464**; Reasons for Judgment of Justice Newbould in *Re Mid-Bowline Group Corp.*, 2016 ONSC 669, dated January 26, 2016 ("Plan of Arrangement Decision"), at para. 52, **JC, Vol. 1, Tab 8, p. 170.**

[34] Plan of Arrangement Decision at paras. 52, 56, 59, **JC, Vol. 1, Tab 8, pp. 170-172.** Also cited in the Motion Decision, para. 36, **JC, Vol. 1, Tab 5, p. 106.**

30. West Face called Lockie as a witness at trial. His evidence in chief was substantially similar to his evidence on the Plan of Arrangement.[35] Catalyst's counsel cross-examined Lockie at length, including on: (i) Globalive's efforts to make a bid for an interest in WIND in 2014; (ii) Globalive's relationship and communications with the New Investors, and the Unsolicited Offer;[36] (ii) the Support Agreement;[37] (iii) Globalive's involvement with VimpelCom's attempts to sell its interest in WIND, including VimpelCom's negotiations with Catalyst;[38] and (iv) Globalive's understanding of the regulatory environment in 2014 and previously.[39]

31. Justice Newbould dismissed the Moyse Action in its entirety in Reasons for Judgment released on August 18, 2016 (the "Moyse Decision").[40] With respect to the Unsolicited Offer, Justice Newbould found that none of the New Investors based any of their actions on any Catalyst confidential information, and that all of the information on which the Unsolicited Offer was based was public. He made the following holdings that are relevant to this appeal:

(a) there was sufficient information in the market for West Face to believe Catalyst was a bidder for WIND;[41]

(b) VimpelCom made its price known as early as April, 2014 (i.e. based on a $300 million enterprise value);[42]

(c) the New Investors knew from UBS that VimpelCom entered into an exclusivity agreement, which they believed was with Catalyst, but they had no substantive

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[35] Which evidence he adopted in examination: Lockie Trial Affidavit, **JC, Vol. 5, Tab 77B, p. 1070**; Lockie Examination-in-Chief, p. 1156, **JC, Vol. 5, Tab 78, p. 1093;** Motion Decision, para. 100, **JC, Vol. 1, Tab 5, p. 125.**
[36] Lockie Cross-Examination, pp. 1194 – 1195, **JC, Vol. 5, Tab 78, p. 1111-1112.**
[37] Lockie Cross-Examination, pp. 1197 – 1199, **JC, Vol. 5, Tab 78, p. 1114-1116.**
[38] Lockie Cross-Examination, pp. 1198 – 1204, **JC, Vol. 5, Tab 78, p. 1115-1121.**
[39] Lockie Cross-Examination, pp. 1205 – 1210, **JC, Vol. 5, Tab 78, p. 1122-1127.**
[40] Motion Decision, para. 41, **JC, Vol. 1, Tab 5, pp. 108-109;** Moyse Decision, **JC, Vol. 1, Tab 14, p. 223.**
[41] Moyse Decision, para. 89, **JC, Vol. 1, Tab 14, p. 248.**
[42] Moyse Decision, para. 96, **JC, Vol. 1, Tab 14, pp. 250-251.**

communications with VimpelCom during the period of the exclusivity;[43]

(d) "neither VimpelCom nor Globalive had any discussion with any of the [New Investors] before the exclusivity period with Catalyst expired on August 18, 2014";[44]

(e) there was no evidence that West Face thought there was a serious issue about obtaining regulatory approval because the transaction was not structured to need any. If West Face thought this was an issue, it would not make sense given the size of the investment for West Face to ignore it just because it knew Catalyst had such a condition;[45]

(f) the lack of any need for regulatory concessions in the New Investors' and Consortium's bids had nothing to do with Catalyst's strategy;[46] and

(g) if Moyse provided West Face with any of Catalyst's confidential information, West Face did not use it in its acquisition of WIND.[47]

32. In any case, Justice Newbould found that Catalyst could not have suffered any damages, as it would have never closed the deal with VimpelCom. This finding is fatal to Catalyst's claim against Globalive. His Honour found there were two reasons Catalyst would never have closed the deal: (i) because Catalyst would not agree to a break fee, and (ii) because Catalyst would never have completed a deal without first securing regulatory concessions from the Government, which were not forthcoming. Specifically, His Honour found:

> Catalyst has failed to establish that it suffered any detriment by any misuse of Catalyst confidential information. There is no evidence that the bid of the consortium of August 7, 2017 [the Unsolicited Offer] was even looked at by the board of VimpelCom during

[43] Moyse Decision, para. 104, **JC, Vol. 1, Tab 14, p. 253.**
[44] Moyse Decision, para. 105, **JC, Vol. 1, Tab 14, pp. 253-254.**
[45] Moyse Decision, para. 109, **JC, Vol. 1, Tab 14, p. 255.**
[46] Moyse Decision, para. 114, **JC, Vol. 1, Tab 14, p. 257.**
[47] Moyse Decision, para. 125, **JC, Vol. 1, Tab 14, p. 260.**

> the period of exclusivity with Catalyst, or that it played any part in the position taken by VimpelCom with Catalyst that it wanted a break fee from Catalyst. **It was that position taken by VimpelCom that caused Catalyst to terminate discussions with VimpelCom**[48] …
>
> Mr. Glassman acknowledged in his evidence that the real reason the deal between Catalyst and VimpelCom fell through **was because of the break fee that VimpelCom requested that Catalyst would not agree to**[49] …
>
> There is another reason why Catalyst has not established any damages from misuse of confidential Catalyst information. **It is clear that VimpelCom would not agree to any deal that carried any risk of the Government not approving the deal.** Mr. Glassman's evidence throughout was that Catalyst would not agree to a deal without Government concessions permitting the sale of spectrum to an incumbent in five years … Given that evidence, and VimpelCom's refusal to agree to a deal that contained any such condition, there was no chance that Catalyst could have successfully concluded a deal with VimpelCom[50] … [emphasis added]

E. The Court of Appeal Dismisses Catalyst's Appeal in the Moyse Action

33. On March 22, 2018, the Court of Appeal unanimously dismissed Catalyst's appeal of the Moyse Decision (the "Moyse Appeal Decision"). Catalyst's appeal focused on Justice Newbould's fact finding process, and Catalyst's allegation that Justice Newbould refused to allow Catalyst to amend its claim to include an inducing breach of contract claim. The Court of Appeal rejected all of these arguments, but found that the evidence related to the dealings with VimpelCom was "germane" to the issues in the trial.

34. The Court held, *inter alia*, that: (i) Catalyst did not move in the Moyse Action to amend its claim to include a claim for inducing breach of contract, and the refusal to allow such an amendment in the Plan of Arrangement had no impact on the Moyse Action;[51] (ii) the evidence of the dealings between the Consortium and VimpelCom was "germane" to Catalyst's claim and

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[48] Moyse Decision, para. 127, **JC, Vol. 1, Tab 14, p. 260.**
[49] Moyse Decision, para. 129, **JC, Vol. 1, Tab 14, p. 261**; Also cited in the Motion Decision, para. 41, **JC, Vol. 1, Tab 5, pp. 108-109.**
[50] Moyse Decision, para. 131, **JC, Vol. 1, Tab 14, pp. 261-262**; Also cited in the Motion Decision, para. 59, **JC, Vol. 1, Tab 5, pp. 114-115.**
[51] *The Catalyst Capital Group Inc. v. Moyse*, 2018 ONCA 283 ("Moyse Appeal Decision"), para. 40, **JC, Vol. 1, Tab 16, p. 234.**

West Face's defence;[52] and (iii) Justice Newbould heard a "great deal" of evidence about the Consortium's dealings with VimpelCom, particularly in August 2014. Catalyst did not object to any of this evidence and asked Justice Newbould to make certain findings in respect of it.[53]

F. Catalyst's Claims in This Action

35. As discussed above, on May 31, 2016, four business days before the trial of the Moyse Action began, Catalyst issued the statement of claim in the within action, and served it the next day. In the statement of claim, as most recently amended (dated May 30, 2017), Catalyst claimed against Globalive for misuse of confidential information, conspiracy, inducing breach of contract, and breach of contract. All of these claims are related to the Unsolicited Offer (to which Globalive had no connection) and the Consortium's ultimate purchase of VimpelCom's interest in WIND, which were the subject of Justice Newbould's findings in the Moyse Action.[54]

G. The Motion Decision

36. In September, 2016, after the release of the Moyse Decision, all the defendants in this action moved to permanently stay or dismiss this action as *res judicata* and an abuse of process. After the hearing in August 2017, the Motions Judge reserved his decision pending the release of the Moyse Appeal Decision. The parties made supplementary written submissions on the Moyse Appeal Decision prior to the Motions Judge rendering the Motion Decision on April 18, 2018.[55]

37. In the Motion Decision, the Motions Judge dismissed Catalyst's claim as against all the defendants as an abuse of process, and as against West Face, the US Investors and Globalive on the grounds of issue estoppel and cause of action estoppel. The Motions Judge also struck

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[52] Moyse Appeal Decision, para. 41, **JC, Vol. 1, Tab 16, p. 234.**
[53] Moyse Appeal Decision, para. 42, **JC, Vol. 1, Tab 16, p. 234.**
[54] Amended Amended Amended Statement of Claim, dated May 30, 2017 ("Statement of Claim"), **JC, Vol. 1, Tab 4, p. 65.**
[55] Motion Decision, para. 43, **JC, Vol. 1, Tab 5, p. 109.**

Catalyst's breach of contract claims as against Globalive and UBS without leave to amend.[56]

PART III ISSUES and ARGUMENT

A. Issues Raised by the Appellant

38. The issues on this appeal, in respect of Globalive, are:

(a) whether the Motions Judge erred in holding that Catalyst's action is barred by the *res judicata* doctrines of issue estoppel and cause of action estoppel;

(b) whether the Motions Judge erred in holding the action is an abuse of process; and

(c) in the alternative, if the action is not barred by *res judicata* or abuse of process, whether the Motions Judge erred in holding that Catalyst's breach of contract claim should be struck without leave to amend.

39. The Motions Judge did not make a reviewable error in respect of any of the above holdings.

B. Standard of Review

40. The Motion Decision is entitled to substantial deference. There is no dispute as to the legal tests the Motions Judge applied in respect of issue estoppel and cause of action estoppel. The Motions Judge's application of these tests to the facts is reviewable on a reasonableness standard, and Catalyst has identified no palpable and over-riding error that would warrant interference with the decision.[57]

41. The deference owed to the Motions Judge's discretionary finding of abuse of process is greater. As Lange puts it, "[w]hether the doctrine of abuse of process by relitigation is applied,

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[56] Motion Decision, paras. 120 – 121, **JC, Vol. 1, Tab 5, p. 130.**

[57] *Benhaim v. St. Germain*, 2016 SCC 48 at paras. 36 – 38, **Joint Book of Authorities of the Defendants (Respondents) ("JBOA"), Vol. 1, Tab 13**; *Hryniak v. Mauldin*, 2014 SCC 7 at paras. 80 – 84**, JBOA, Vol. 4, Tab 47**; *Housen v. Nikolaisen*, 2002 SCC at para. 36, **JBOA, Vol. 4, Tab 46.**

with or without estoppel support, its invocation sounds a death knell to a successful appeal".[58]

42. Furthermore, while the Motions Judge's decision to strike Catalyst's breach of contract claim is reviewable on a correctness standard, his decision to deny leave to amend is discretionary and is entitled to deference.[59]

C. Catalyst's Claim is Barred by *Res Judicata*

43. The Motions Judge did not err in holding that Catalyst's claim is barred by the *res judicata* doctrines of issue estoppel and cause of action estoppel. Contrary to Catalyst's characterization of these doctrines in its factum, which does not distinguish between them, the Motions Judge correctly distinguished between the two. Issue estoppel concerns a particular issue, in this case whether Catalyst could have suffered any loss as a result of the defendants' actions. Cause of action estoppel is a broader doctrine, and considers the factual matrix that was before the Court at the trial of the Moyse Action. This involved Catalyst's attempt to purchase VimpelCom's interest in WIND, the Unsolicited Offer and the Consortium's ultimately successful bid. This latter form of estoppel precludes a litigant from subsequently making any claim that it could have made on the facts, but for whatever reason chose not to make.

44. Both of these doctrines are available to Globalive because, as the Motions Judge found, though it was not a party, it was West Face's privy in interest in the Moyse Action.

i. Catalyst's Claims of Misuse of Confidential Information, Conspiracy and Inducing Breach of Contract Are Barred by Issue Estoppel

45. Globalive adopts West Face's submission, outlined in paragraphs 32 to 49 of its factum, that the Motions Judge did not make a palpable and overriding error in holding that issue estoppel

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[58] Donald J. Lange, *The Doctrine of Res Judicata in Canada*, 4th ed (Toronto: LexisNexis, 2015) at 192, **JBOA, Vol. 7, Tab 101.**

[59] *RWDI Air Inc. v. N-SCI Technologies Inc.*, 2015 ONCA 817 ("*RWDI*") at para. 14, **JBOA, Vol. 6, Tab 86.**

precludes Catalyst from relitigating the same issues in this action as it did in the Moyse Action. In order for issue estoppel to apply, the Motions Judge applied the test set out in *Danyluk*, being that: (i) the same issue was decided in the prior action; (ii) the prior decision was final; and (iii) the parties were the same.[60] Catalyst does not contest on appeal that the decision in the Moyse Action was final.

46. The Motions Judge did not err in holding that Catalyst raised the same issue in the Moyse Action and in this action, namely whether Catalyst would have closed a deal for VimpelCom's interest in WIND. Catalyst does not contest on appeal that Justice Newbould decided this issue in the Moyse Action and that it would need to be decided in this action. Rather, Catalyst contends that this issue was not "fundamental" to Justice Newbould's decision in the Moyse Action, and that his findings in this regard were *obiter*. Catalyst contends this cannot support an estoppel.[61]

47. Catalyst's submission is incorrect. The Motions Judge did not err in finding that the issue of whether Catalyst would have acquired WIND was fundamental to both actions.[62] In the Moyse Action, as against West Face, Catalyst pleaded: (i) misuse of confidential information; and (ii) unjust enrichment.[63] To succeed in misuse of confidential information, Catalyst was required to prove that it suffered detriment from West Face's actions.[64] Similarly, to succeed in unjust enrichment, Catalyst was required to prove that it suffered a detriment and West Face was

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[60] *Danyluk v. Ainsworth Technologies*, 2001 SCC 44 at para. 25, **JBOA, Vol. 2, Tab 27.**
[61] Catalyst Factum, paras. 43, 44, 69, 74.
[62] Motion Decision, para. 65, **JC, Vol. 1, Tab 5, p. 116.**
[63] Moyse Action Amended Amended Amended Statement of Claim, dated February 25, 2016 ("Moyse Claim"), paras. 34.1 – 34.7, 34.13 – 34.16, **Appeal Book and Compendium ("AB"), Tab 14, pp. 295 – 296, 297 – 298** (See also JC, Vol. 1, Tab 12, pp. 201-202, 203). Catalyst also pleaded that West Face induced Moyse to breach his employment contract with Catalyst, but that claim is not relevant here.
[64] *LAC Minerals Ltd. v. International Corona Resources Ltd.*, [1989] 2 S.C.R. 574, 1989 CarswellOnt 126 ("*LAC Minerals*") at paras. 16, 42, **JBOA, Vol. 4, Tab 55**; *Lysko v. Braley* (2006), 79 O.R. (3d) 721, 2006 CarswellOnt 1758 (C.A.) ("*Lysko*") at para. 17, additional reasons at 2006 CarlswellOnt 3159 **JBOA, Vol. 5, Tab 59**. Catalyst pleaded this element of the cause of action generically: Moyse Claim, para. 34.7, **AB, Tab 14, p. 296** (See also JC, Vol. 1, Tab 12, p. 202).

correspondingly enriched.[65] At the trial of the Moyse Action, the only loss Catalyst claimed was its inability to purchase WIND.[66] As discussed in paragraphs 37 to 41 of the West Face Factum, proof of each element of a cause of action is fundamental to a litigant's claim. A litigant must necessarily present evidence on, and fully argue, each element. If a finding in respect of one element is overturned, findings in respect of the other elements become critical to the ultimate determination. Just because Catalyst failed to prove more than one element of these causes of action, it does not follow that Catalyst can now relitigate any of the other elements.

48. The issue of whether Catalyst suffered any damage is also fundamental to the causes of action pleaded in this action, except for breach of contract. Catalyst has claimed for: (i) misuse of confidential information; (ii) conspiracy; and (iii) inducing breach of contract. A necessary element of all of these torts is proof of damage.[67] Contrary to Catalyst's submission in paragraph 70 – 74 of its factum, the Motions Judge's finding that the issue of damage was fundamental to this action has nothing to do with the remedies that may or may not be available – in respect of all three causes of action the issue of damage arises at the liability stage of the inquiry. Any consideration of remedy can only arise after Catalyst proves liability.

49. Similar to the Moyse Action, the only loss or damage that Catalyst has pleaded in this action was its inability to acquire WIND.[68] Therefore, to succeed in this action, Catalyst must lead

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[65] *Garland v. Consumers' Gas Co.*, 2004 SCC 25 at para. 30, **JBOA, Vol. 3, Tab 39**. Catalyst also pleaded these elements of the cause of action generically: Moyse Claim, para. 34.14, **AB, Tab 14, p. 298** (See also JC, Vol. 1, Tab 12, p. 203)**.**

[66] Moyse Decision, paras. 126 – 130, **JC, Vol. 1, Tab 14, pp. 260-261.**

[67] For inducing breach of contract, see *OBG Ltd. v. Allan*, [2007] U.K.H.L. 21 at paras. 39-44, **JBOA, Vol. 5, Tab 74**, and *Correia v. Canac Kitchens*, 2008 ONCA 506 at para. 99, **JBOA, Vol. 2, Tab 25**; for breach of confidence, see Moyse Appeal Decision, at para. 8, **JC, Vol. 1, Tab 16, p. 225**; *LAC Minerals*, *supra*, at paras. 16, 42, **JBOA, Vol. 4, Tab 55;** *Lysko, supra*, at para. 17, **JBOA, Vol. 5, Tab 59**; and for conspiracy, see *Canada Cement Lafarge Ltd. v. B.C. Lightweight Aggregate*, [1983] 1 S.C.R. 452, 1983 CarswellBC 812 at paras. 22 – 23, 34, **JBOA, Vol. 2, Tab 21;** *Agribrands Purina Canada Inc. v. Kasamekas*, 2011 ONCA 460 at para. 24, additional reasons at 2011 ONCA 581, **JBOA, Vol. 1, Tab 7**.

[68] Statement of Claim, paras. 125 – 127, 133, **JC, Vol. 1, Tab 4, pp. 94-95.**

the same evidence as it did in the Moyse Action as to whether it would have purchased WIND, and the Court would need to make findings that directly contradict Justice Newbould's finding that Catalyst would never have acquired WIND.[69]

50. As outlined in the West Face Factum at paragraphs 42 to 45, the Motions Judge correctly found that this case is directly analogous to *Foreman*[70] and *Dableh*.[71] Notably, in *Foreman*, the Court did not parse the technical aspects of the causes of action pleaded, or the parties named, in the previous action – rather it looked broadly at what the plaintiff was asking the Court to find in the second action.[72] As Justice Perell held in *Millwrights*, "a litigant cannot avoid an issue estoppel by atomizing the legal question before the courts to find some unexamined atom".[73]

51. In this case, despite its attempts to find an unexamined atom, Catalyst cannot escape the fact that its failure to acquire WIND has already been examined. The result of that examination would be as fatal to this action as it was to the Moyse Action.

ii. Catalyst's Action is Barred by Cause of Action Estoppel

52. Globalive also adopts West Face's submissions, at paragraphs 50 to 59 of its factum, that the Motions Judge did not make a palpable and overriding error in holding that Catalyst's current action is barred by cause of action estoppel. This form of estoppel precludes Catalyst from litigating *any* issues that arose on the facts that were before Justice Newbould. In order for cause of action estoppel to apply: (i) there must have been a final decision; (ii) the parties are the same

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[69] Motion Decision, paras. 65 – 70, **JC, Vol. 1, Tab 5, pp. 116-117**; Moyse Decision, paras. 130 – 131, **JC, Vol. 1, Tab 14, pp. 261-262.**
[70] Motion Decision, paras. 57, 67 – 69, **JC, Vol. 1, Tab 5, pp. 113, 116-117.**
[71] *Dableh v. Ontario Hydro* (1994), 58 C.P.R. (3d) 237, 1994 CarswellOnt 175 (Gen. Div.) ("*Dableh*") at para 16, additional reasons at 1995 CarswellOnt 2275 (Gen. Div.), leave to appeal ref'd (1995), 60 C.P.R. (3d) 459, 1995 CarswellOnt 4546 (Gen. Div.), **JBOA, Vol. 2, Tab 26.**
[72] *Foreman v. Niven*, 2009 BCSC 1476 ("*Foreman*") at paras. 2 – 4, 37, **JBOA, Vol. 3, Tab 37.**
[73] *Trustees of the Millwright Regional Council of Ontario Pension Trust Fund v. Celestica Inc.*, 2016 ONSC 3235 ("*Millwrights*") at para. 44, **JBOA, Vol. 7, Tab 92.**

or are their privies; (iii) the cause of action must not be separate and distinct; and (iv) the basis of the cause of action in the subsequent action must have been argued or could have been argued in the prior action had the parties exercised reasonable diligence.[74]

53. Contrary to Catalyst's assertion,[75] the "cause of action" for the purpose of this doctrine is the factual matrix that was before the Court in the Moyse Action, which is a different use of the phrase "cause of action" than as is commonly used to mean the legal theory for liability. The relevant formulation of a cause of action looks only to the facts that were before the Court.[76] Once a factual matrix is squarely before the Court, the legal issues arising from it must be litigated. As discussed in the West Face Factum at paragraphs 55 to 56, the cases Catalyst cites for the contrary assertion do not stand for the proposition for which Catalyst relies on them.

54. Rather, Justice Sharpe's analysis in *Las Vegas Strip* is applicable here. In that case, a strip club applied the City of Toronto for a declaration that its operation was a legal non-conforming use, which was dismissed. In a proceeding tried at the same time, a competitor sought and obtained an injunction preventing the club from operating. While the application for leave to appeal this decision was pending, the club brought another application seeking a declaration that the by-law was invalid on the basis of municipal law principles and the *Charter*. The Court held that this second proceeding was barred by cause of action estoppel, holding the issues should have been raised previously. The Court held that to avoid the application of cause of action estoppel, the new claim must be one that, "stands on its own separate set of facts and could have been brought at any

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[74] *Mpampas v. Schwartz Levitsky Feldman Inc.*, 2007 CarswellOnt 5156 (Sup. Ct.) at para. 11, aff'd 2008 ONCA 581, **JBOA, Vol. 5, Tab 69.**

[75] Catalyst Factum, paras. 56, 58 – 60.

[76] *Las Vegas Strip Ltd. v. Toronto (City)* (1996), 30 O.R. (3d) 286, 1996 CarswellOnt 3426 (Sup. Ct.) ("*Las Vegas*"), aff'd (1997), 32 O.R. (3d) 651, 1997 CarswellOnt 1279 (C.A.), **JBOA, Vol. 4, Tab 57**; Motion Decision at paras. 76-84, **JC, Vol. 1, Tab 5, pp. 118-121**; *Grandview v. Doering*, [1976] 2 SCR 621 ("*Doering*"), **JBOA, Vol. 3, Tab 31**; *Henderson v. Henderson* (1843), 67 E.R. 313 at 319 (H.L.), **JBOA, Vol. 4, Tab 45.**

time without reference to the issues in the earlier action".[77]

55. None of the claims in this action could be brought without reference to the facts in the Moyse Action. The Motions Judge held that the set of facts that gave rise to Catalyst's claim in both the Moyse Action and here was its failure to acquire WIND. In the Moyse Action it was required to bring forward its "whole case" in respect of that factual matrix.[78]

56. As discussed above, Catalyst cross-examined witnesses from all the New Investors as well as Globalive at length, including about the genesis of the Unsolicited Offer and the Consortium's bid. Catalyst could have summonsed witnesses from VimpelCom and UBS, but it chose not to. As the Motions Judge, and Court of Appeal in the Moyse Action, found, there was nothing preventing Catalyst from amending its claim in the Moyse Action.[79]

57. In addition, the way Catalyst chose to frame its claim in the Moyse Action necessarily involved an investigation into the entirety of the factual matrix. Catalyst admitted that it had no direct evidence of Moyse passing confidential information to West Face, so it asked the Court to examine the entirety of West Face's conduct to infer misuse of confidential information. This required the Court to consider whether West Face's actions demonstrated that it received *any* confidential information, not just confidential information *from Moyse*.[80]

58. Both Catalyst's inducing breach of contract claim and its breach of contract claim arise

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[77] *Las Vegas, supra*, at para 21, **JBOA, Vol. 4, Tab 57**. This was similarly the case in *Doering*, where the Supreme Court held an action by a farmer whose fields had been flooded was barred by cause of action estoppel. After the flood, the farmer sued the city for negligently altering a dam, which he claimed caused the flood. After that action was dismissed, the farmer again sued the city for having maintained the river at artificially high levels behind the same dam, causing the river water to enter an aquifer and saturate the soil with water. The Court recognized that all of the legal issues arising out of the same factual matrix – the flooding – should have been brought forward at the same time: *Doering, supra*, at para 11, **JBOA, Vol. 3, Tab 31.**

[78] Motion Decision, para. 78, **JC, Vol. 1, Tab 5, p. 119.**

[79] Motion Decision, paras. 79 – 80, **JC, Vol. 1, Tab 5, pp. 119-120.**

[80] Moyse Decision, para. 72, **JC, Vol. 1, Tab 14, p. 243.**

from the same factual matrix as was before the Court in the Moyse Action and are also subject of the estoppel. The only relevant contracts – to which, as discussed below, Catalyst does not allege Globalive or Lacavera were parties – are the Exclusivity Agreement and the Confidentiality Agreement.[81] Justice Newbould heard extensive evidence about these contracts, and any potential breaches of them. Neither the inducing breach of contract claim nor the breach of contract claim could be brought "without reference to the issues" in the Moyse Action,[82] and Catalyst is therefore estopped from making these claims in this action.

iii. Globalive is West Face's Privy

59. Finally, the Motions Judge made no error in holding that Globalive can benefit from issue estoppel and cause of action estoppel because it is West Face's privy in interest in respect of the Moyse Action. Catalyst takes little issue with these findings, and on appeal only submits that privity does not apply where the issues in the actions are different.[83]

60. The Motions Judge's decision was based on two unassailable findings. First, he held that Globalive had a "meaningful voice" in the Moyse Action through Lockie's participation as a witness.[84] Lockie gave evidence in Plan of Arrangement and in the trial of the Moyse Action. In the Moyse Action, he was cross-examined extensively by counsel for Catalyst. Lockie gave evidence on Globalive's relationship with VimpelCom and the New Investors, Globalive's involvement in supporting VimpelCom's negotiations with Catalyst, the Consortium's bid for VimpelCom's interest in WIND, and the regulatory environment at the time.[85] This evidence was central to the factual matrix in the Moyse Action and Globalive would need to adduce the same

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[81] Globalive's Request to Inspect Documents dated December 23, 2016 ("Request to Inspect"), **JC, Vol. 1, Tab 2, p. 25.**
[82] *Las Vegas*, *supra*, at para 21, **JBOA, Vol. 4, Tab 57**
[83] Catalyst Factum, paras. 61 – 62.
[84] Motion Decision, para. 102, **JC, Vol. 1, Tab 5, pp. 124-125.**
[85] Lockie Cross-Examination, pp. 1194 – 1210, **JC, Vol. 5, Tab 78, p. 1111-1127.**

evidence in this action if it is allowed to proceed.

61. Witnesses in previous proceedings have frequently been found to be privies for the purpose of issue estoppel.[86] As the Motions Judge found, this case is analogous to *Machado.*[87] In that case, the plaintiff's employer dismissed him for cause. The employer claimed it dismissed him for sexual harassment of three other employees. The plaintiff made a claim with the Ministry of Labour, and the referee found that the employer had just cause to dismiss the plaintiff. The employees the plaintiff had harassed were witnesses in the proceeding before the referee. The plaintiff later sued the employer for unjust dismissal and the three employees for conspiracy and defamatory libel. The Court dismissed the action as against the employees on the basis of issue estoppel, finding that they were privies to the proceeding before the referee because they were witnesses in that proceeding, and their evidence was central to the employer's case.[88]

62. Second, the Motions Judge held that Globalive had a "community of interest" with West Face in defeating Catalyst's claims in the Moyse Action.[89] In the Moyse Action, Justice Newbould's findings of fact related to the entire Consortium, not just West Face.[90] The Moyse Decision identifies the "consortium" as the entity that acquired WIND on September 16, 2014.[91] Since Catalyst was asking the Court to draw an inference from West Face's actions that it had confidential information, the Court's findings could not be limited to whether West Face received

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[86] *Foreman*, *supra*, at para. 27, **JBOA, Vol. 3, Tab 37;** *Rasanen v. Rosemount Industries Ltd.* (1994), 17 O.R. (3d) 267, 1994 CarswellOnt 960 at para. 47 (C.A.), leave to appeal refused at [1994] S.C.C.A. No. 152, **JBOA, Vol. 6, Tab 84;** *Dableh*, *supra*, at para 13, **JBOA, Vol. 2, Tab 26.**; *Machado v. Pratt & Whitney Canada Inc.* (1995), 12 C.C.E.L. (2d) 132, 1995 CarswellOnt 283 (Gen. Div.) ("*Machado*") at paras. 37 – 38, additional reasons at (1995), 12 C.C.E.L. (2d) 132n, 1995 CarswellOnt 4500 (Gen. Div.), **JBOA, Vol. 5, Tab 60**; see also *Hurst v. Société Nationale de l'Amiante* (2006), [2006] O.J. No. 3998 (Sup. Ct. (Commercial List)) at para. 104, aff'd at 2008 ONCA 573, **JBOA, Vol. 4, Tab 48,** where the court held that a party that produced documents in an action concerning a transaction to which it was a party (and was not a witness at trial) was not a privy, but could nonetheless benefit from issue estoppel.
[87] Motion Decision, para. 103, **JC, Vol. 1, Tab 5, p. 126.**
[88] *Machado*, *supra*, at paras. 1 – 11, 38, **JBOA, Vol. 5, Tab 60.**
[89] Motion Decision, para. 102, **JC, Vol. 1, Tab 5, pp. 125-126.**
[90] Motion Decision, para. 101, **JC, Vol. 1, Tab 5, p. 125.**
[91] Moyse Decision, para. 3, **JC, Vol. 1, Tab 14, p. 224.**

information from Moyse. West Face's actions were, for the most part, actions taken by West Face jointly with the New Investors and, more latterly, the broader Consortium. After considering the evidence of all the parties involved, Justice Newbould made key findings about the actions of the entire "consortium", notably that: (i) "neither VimpelCom nor Globalive had any discussion with any of the consortium members before the exclusivity period with Catalyst expired on August 18, 2014"; and (ii) that "[e]ven had West Face or its consortium members been told of [Catalyst's regulatory] strategy by Mr. Moyse or anyone else, it played no part in the reasoning of West Face to bid as it did by itself and later with the consortium."[92]

63. These findings of mixed fact and law provide robust support for the Motions Judge's holding that Catalyst is estopped from bringing its current claims against Globalive, and the Motions Judge made no reviewable error in this regard.

D. Catalyst's Claim is an Abuse of Process

64. In any case, Globalive adopts West Face's submissions at paragraphs 60 to 69 of its factum that the Motions Judge made no reviewable error in finding Catalyst's entire action is an abuse of process. This finding is fatal to the action even if the Motions Judge erred in finding that both issue estoppel and cause of action estoppel apply. As discussed above, the Motions Judge is entitled to significant deference in respect of his finding of abuse of process.

65. Abuse of process is a flexible doctrine, which applies even if the technical requirements of estoppel do not apply.[93] The Motions Judge relied on the policy underpinning the doctrine of abuse

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[92] Moyse Decision, paras. 105, 122, **JC, Vol. 1, Tab 14, pp. 253, 259.**

[93] *Toronto (City) v. C.U.P.E.*, 2003 SCC 63 ("*Toronto*") at para. 37, 42, **JBOA, Vol. 7, Tab 91**; *Behn v. Moulton Contracting Ltd.*, 2013 SCC 26 at paras. 40–42, **JBOA, Vol. 1, Tab 12**; *Millwrights, supra*, at paras. 37 – 38, **JBOA, Vol. 7, Tab 92**; see also: *Free Trade Medical Network Inc. v. RBC Travel Insurance Co.*, 2005 CarswellOnt 4659 (Sup. Ct.) at para. 106, aff'd 2006 CarswellOnt 5503 (C.A.), leave to appeal refused at 2007 CarswellOnt 1353, **JBOA, Vol. 3, Tab 38.**

of process, which the Supreme Court has defined as protecting the administration of justice. It cannot be assumed further litigation will lead to a more accurate result, and if the same result is achieved, it is a waste of resources.[94] If the subsequent proceeding leads to an inconsistent result, any findings of fact that contradict findings of fact in the previous proceeding would "undermine the credibility of the entire judicial process, thereby diminishing its authority, its credibility and its aim of finality".[95] While issue estoppel is more focused on the issues decided as between parties, when considering abuse of process, the Court should consider the effect of inconsistent findings of fact on the proper functioning of the justice system broadly.[96]

66. The Motions Judge held that this action is an abuse of process because, for Catalyst's claim to succeed, the Court would need to make findings of fact that would directly contradict findings of fact Justice Newbould made in the Moyse Action.[97] First, Justice Newbould found that he could not infer from West Face and the Consortium's actions that they had received and misused Catalyst's confidential information.[98] Second, Justice Newbould found that Catalyst could not have suffered damages because it would never have closed a deal for WIND.[99] If Catalyst reasonably could have purchased WIND, given its insistence on regulatory concessions, it was incumbent on it to prove that before Justice Newbould, which it manifestly failed to do.[100]

67. Furthermore, the Motions Judge recognized that Catalyst's current action is litigation by installment.[101] Catalyst could have added Globalive as a party to the Moyse Action well before the trial of that action, but consciously chose not to do so and opted to "lie in the weeds" for almost

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[94] *Toronto*, *supra*, at para. 51, **JBOA, Vol. 7, Tab 91.**
[95] *Toronto*, *supra*, at para. 51, **JBOA, Vol. 7, Tab 91.**
[96] *Toronto*, *supra*, at para. 51, **JBOA, Vol. 7, Tab 91.**
[97] Motion Decision, para. 86, **JC, Vol. 1, Tab 5, p. 122.**
[98] Moyse Decision, paras. 72 – 73, 81, **JC, Vol. 1, Tab 14, pp. 243-244, 246.**
[99] Moyse Decision, paras. 126 – 131, **JC, Vol. 1, Tab 14, p. 260-262.**
[100] *Foreman*, *supra*, at para. 42, **JBOA, Vol. 3, Tab 37.**
[101] Motion Decision, para. 86, **JC, Vol. 1, Tab 5, p. 122.**

two years before finally bringing this proceeding.[102]

68. Catalyst was aware of the alleged facts underpinning its claim against Globalive well before the trial in the Moyse Action. As discussed above, Catalyst admitted to knowledge of its allegations of inducing breach of contract as early as October 2014.[103] Catalyst knew the essence of Globalive's evidence in respect of the factual issues in the Moyse Action and this action no later than December 2015, when Lockie gave evidence in the Plan of Arrangement.[104] Catalyst was asked whether it would be adding Globalive as a party to the Moyse Action on May 11, 2016.[105] Catalyst issued its claim in this action on May 31, 2016, four business days *before* the trial of the Moyse Action. It is clear that Catalyst knew of all the allegations it could make against Globalive long before the trial of the Moyse Action began, had the opportunity to add Globalive as a party to that action and assert therein the claims made against it in this action, but instead consciously chose to try to reserve to itself a second bite at the cherry.

69. Finally, Catalyst has not alleged that any of the instances where the Supreme Court has found it unfair to apply the doctrine of abuse of process apply in this case. Catalyst claims that the Motions Judge should have exercised his discretion not to dismiss this action because the Court has not yet heard certain witnesses' evidence (though, Catalyst fails to mention, it could have called those witnesses at trial in the Moyse Action, had it chosen to).[106] This is not one of the factors that the Supreme Court has enumerated that would preclude the operation of this doctrine. The factors the Supreme Court has endorsed are: (i) the stakes in the original proceeding were too

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[102] *Kenderry-Esprit (Receiver of) v. Burgess, MacDonald, Margin & Younger* (2001), 53 O.R. (3d) 208, 2001 CarswellOnt 682 (Sup. Ct.) at para. 35, **JBOA, Vol. 4, Tab 53**; *Martin v. Goldfarb*, 2006 CarswellOnt 4355 (Sup. Ct.) at paras. 78 – 81, additional reasons at 2006 CarswellOnt 7108 (Sup. Ct.), **JBOA, Vol. 5, Tab 61.**
[103] Carlson Affidavit, para. 21, **JC, Vol. 3, Tab 56, pp. 458-459.**
[104] Lockie Plan of Arrangement Affidavit, paras. 4, 39, **JC, Vol. 5, Tab 77A, pp. 1053, 1068.**
[105] De Alba Discovery Transcript, Q. 505, **JC, Vol. 3, Tab 60, p. 554;** Catalyst Undertakings, no. 34, **JC, Vol. 3, Tab 61, p. 561.**
[106] Catalyst Factum, paras. 83 – 85.

minor to generate a full and robust response; (ii) there was an inadequate incentive to defend the original proceeding; (iii) the party has discovered fresh, new evidence that was previously unavailable, which conclusively impeaches the original results; or (iv) the first proceeding was tainted by fraud or dishonesty.[107] Catalyst does not claim that any of these apply here.

70. Rather, as West Face submits at paragraphs 68 to 69 of its factum, far more sympathetic plaintiffs have had their claims dismissed as abuses of process. Catalyst, a sophisticated and serial litigant that cannot accept that it fairly lost the contest for WIND, deserves no sympathy.

E. The Breach of Contract Claim Was Properly Struck Without Leave to Amend

71. In the alternative, the Motions Judge correctly held that that it was plain and obvious that Catalyst's breach of contract claim should be struck as against Globalive. The Motions Judge held that Catalyst "has not pleaded any" of the elements of breach of contract as against Globalive.[108] Crucially, he found Globalive was not a party to any agreement with Catalyst, nor was there any privity of contract between them. Only a party to a contract can be sued on it, or a non-party that has accepted its obligations.[109]

72. Neither agreement on its face states Globalive is a party. Rather, the Exclusivity Agreement indicates that the parties turned their minds to whether Globalive would be bound by it, and agreed it would not be. The Exclusivity Agreement provides, in the definition of "Affiliates" that are

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[107] *Toronto*, *supra*, at paras. 52 – 53, **JBOA, Vol. 7, Tab 91**; *Gonzalez v. Gonzalez*, 2016 BCCA 376 at paras. 32 – 35, leave to appeal ref'd at 2017 CarswellBC 598 (S.C.C.), **JBOA, Vol. 3, Tab 40.**

[108] Motion Decision, para. 117, **JC, Vol. 1, Tab 5, p. 129**; *McCarthy Corp. PLC v. KPMG LLP* (2007), 154 A.C.W.S. (3d) 340, 2007 CarswellOnt 35 (Sup. Ct. [Commercial List]) ("*McCarthy*") at para. 26, **JBOA, Vol. 5, Tab 62**; *McDowell and Aversa v. Fortress Real Capital Inc.*, 2017 ONSC 4791 at para. 58, additional reasons at 2017 ONSC 5759, **JBOA, Vol. 2, Tab 64.**

[109] Motion Decision, para. 118, **JC, Vol. 1, Tab 5, p. 129**, quoting *Napev Construction Ltd. v. Lebedinsky* (1984), 25 A.C.W.S (2d) 149, 1984 CarswellOnt 725 (H. Ct.) at para. 21, **JBOA, Vol. 5, Tab 70**; see also, G.H.L. Fridman, *The Law of Contract in Canada*, 6th ed (Toronto: Carswell, 2011) at pp. 184, 186, **JBOA, Vol. 7, Tab 102**; *Greenwood Shopping Plaza Ltd. v. Neil J. Buchanan Ltd.*, [1980] 2 S.C.R. 228, 1980 CarswellNS 26 at para. 9, 11, **JBOA, Vol. 4, Tab 43**; *Bombardier Inc. v. A S Estonian Air*, 2013 ONSC 3039 at para. 33, additional reasons at 2013 ONSC 4209, aff'd 2014 ONCA 41, **JBOA, Vol. 2, Tab 17.**

bound by it:

> … AAL Telecom Holdings Incorporated [later known as Globalive], a company controlled by Anthony Lacavera, and its subsidiaries (which, for greater certainty do not include [WIND] and its subsidiaries) are not Affiliates of VimpelCom…[110]

73. Catalyst's only argument on appeal in support of its untenable claim is that Globalive is vicariously liable for Lacavera. Catalyst did not rely on this argument before the Motions Judge. Catalyst's only submission on this issue[111] points to paragraphs 47 and 82 of its statement of claim, which plead that: (i) "although not a party to the Exclusivity Agreement, Lacavera was obligated not to take any steps that undermined its purpose and intent", and (ii) Globalive was vicariously liable for Lacavera's conduct.[112] Catalyst does not plead that this alleged obligation on Lacavera was owed pursuant to any contract, nor does it plead any source for the obligation, contractual or otherwise. As with Globalive, Catalyst has not pleaded any of the elements of breach of contract as against Lacavera, so its vicarious liability argument cannot be sustained.[113]

74. Furthermore, the Motions Judge reasonably exercised his discretion to deny Catalyst leave to amend its claim for breach of contract. He held that in light of the number of opportunities Catalyst had to amend its claim, and that there is no contract between Catalyst and Globalive, an amendment could not produce a viable cause of action.[114] This decision is reasonable, particularly considering that, in the face of this finding, Catalyst does not on appeal argue there was either a contract between it and Globalive, or privity of contract.

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[110] Confidentiality Agreement, dated March 21, 2014, s. 16 and the Exclusivity Agreement, dated July 23, 2014, s. 1(a) (contained in the Request to Inspect), **JC, Vol. 1, Tab 2, p. 25**. The Confidentiality Agreement, at s. 16, also contemplates third parties have no rights under it. These documents were incorporated in Catalyst's pleading and produced pursuant to Rule 30.04(2), and are therefore may be referred to on a motion to strike: *McCreight v. Canada (Attorney General)*, 2013 ONCA 483 ("*McCreight*") at para. 32, **JBOA, Vol. 5, Tab 63.**
[111] Catalyst Factum, para. 89.
[112] Statement of Claim, paras. 47, 82, **JC, Vol. 1, Tab 4, pp. 80, 86.**
[113] *McCarthy*, *supra*, at para. 26, **JBOA, Vol. 5, Tab 62.**
[114] Motion Decision, para. 119, **JC, Vol. 1, Tab 5, p. 129.**

75. This Court has repeatedly upheld decisions refusing leave to amend a pleading that has been struck where parties have had multiple opportunities to articulate a viable claim, but have failed to do so.[115] This Court has recognized that "pleadings are not meant to be a moving target".[116] Where a party has not identified any further material facts that may make an amended claim tenable, it is reasonable to deny leave to amend a claim that has been struck.[117] In this case, Catalyst has never identified any material facts it could plead in an amended claim that would make its claim tenable, and there are none.

76. In these circumstances, it was reasonable for the Motions Judge to hold that, if Catalyst's claim is not dismissed in its entirety on the basis of *res judicata* or abuse of process, Catalyst should not be permitted to attempt to pursue a claim in breach of contract against Globalive.

PART IV ADDITIONAL ISSUES

77. Globalive does not raise any other issues on this appeal.

PART V ORDER REQUESTED

78. Globalive requests that the Court dismiss the appeal, and award Globalive its costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

October 31, 2018

James D.G. Douglas/Caitlin Sainsbury/Graham Splawski
Lawyers for Globalive Capital Inc.

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[115] *Sheridan v. Ontario*, 2015 ONCA 303 at paras. 29 – 30, **JBOA, Vol. 6, Tab 87**; *Abernethy v. Ontario*, 2017 ONCA 340 ("*Abernethy*") at para. 14, leave to appeal ref'd 2018 CarswellOnt (S.C.C.), **JBOA, Vol. 1, Tab 6**; *McCreight, supra*, at para. 72, **JBOA, Vol. 5, Tab 63**. Even where a party has not been given the opportunity to previously amend its pleadings, this Court has recognized that if a claim is untenable, it is reasonable for the Court to refuse to grant leave to amend: *RWDI, supra*, at para. 14, **JBOA, Vol. 6, Tab 86.**

[116] *Abernethy, supra*, at para. 14, **JBOA, Vol. 1, Tab 6**.

[117] *Cavanaugh v. Grenville Christian College*, 2013 ONCA 139 at paras. 82 – 83, additional reasons at 2013 ONCA 242, **JBOA, Vol. 2, Tab 23**.

Court of Appeal File No. C65431

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff (Appellant)

- and -

VIMPELCOM LTD., GLOBALIVE CAPITAL INC., UBS SECURITIES CANADA INC., TENNENBAUM CAPITAL PARTNERS LLC, 64NM HOLDINGS GP LLC, 64NM HOLDINGS LP, LG CAPITAL INVESTORS LLC, SERRUYA PRIVATE EQUITY INC., NOVUS WIRELESS COMMUNICATIONS INC., WEST FACE CAPITAL INC. and MID-BOWLINE GROUP CORP.

Defendants (Respondents)

CERTIFICATE

I, James D.G. Douglas, certify that:

1. an Order under subrule 61.09(2) (original record and exhibits) is not required; and
2. the time required for the Defendant (Respondent) Globalive Capital Inc.'s argument is approximately 1/3 of an hour.

October 31, 2018

for James D.G. Douglas

Schedule "A" – Authorities Cited

1. Donald J. Lange, *The Doctrine of Res Judicata in Canada*, 4th ed (Toronto: LexisNexis, 2015)

2. *Benhaim v. St. Germain*, 2016 SCC 48

3. *Hryniak v. Mauldin*, 2014 SCC 7

4. *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44

5. *Housen v. Nikolaisen*, 2002 SCC at para. 36.

6. *LAC Minerals Ltd. v. International Corona Resources Ltd.*, [1989] 2 S.C.R. 574, 1989 CarswellOnt 126

7. *Lysko v. Braley* (2006), 79 O.R. (3d) 721, 2006 CarswellOnt 1758 (C.A.), additional reasons at 2006 CarlswellOnt 3159

8. *Garland v. Consumers' Gas Co.*, 2004 SCC 25

9. *OBG Ltd. v. Allan*, [2007] U.K.H.L. 21

10. *Correia v. Canac Kitchens*, 2008 ONCA 506

11. *Canada Cement Lafarge Ltd. v. B.C. Lightweight Aggregate*, [1983] 1 S.C.R. 452, 1983 CarswellBC 812

12. *Agribrands Purina Canada Inc. v. Kasamekas*, 2011 ONCA 460, additional reasons at 2011 ONCA 581

13. *Foreman v. Niven*, 2009 BCSC 1476

14. *Trustees of the Millwright Regional Council of Ontario Pension Trust Fund v. Celestica Inc.*, 2016 ONSC 3235

15. *Mpampas v. Schwartz Levitsky Feldman Inc.*, 2007 CarswellOnt 5156 (Sup. Ct.), aff'd 2008 ONCA 581

16. *Las Vegas Strip Ltd. v. Toronto (City)* (1996), 30 O.R. (3d) 286, 1996 CarswellOnt 3426 (Sup. Ct.), aff'd (1997), 32 O.R. (3d) 651, 1997 CarswellOnt 1279 (C.A.)

17. *Grandview v. Doering*, [1976] 2 SCR 621

18. *Henderson v. Henderson* (1843), 67 E.R. 313 (Eng. V.-C)

19. *Rasanen v. Rosemount Industries Ltd.* (1994), 17 O.R. (3d) 267, 1994 CarswellOnt 960 at para. 47 (C.A.), leave to appeal refused at [1994] S.C.C.A. No. 152

20. *Dableh v. Ontario Hydro* (1994), 58 C.P.R. (3d) 237, 1994 CarswellOnt 175 (Gen. Div.), additional reasons at 1995 CarswellOnt 2275 (Gen. Div.), leave to appeal ref'd (1995), 60 C.P.R. (3d) 459, 1995 CarswellOnt 4546 (Gen. Div.)

21. *Machado v. Pratt & Whitney Canada Inc.* (1995), 12 C.C.E.L. (2d) 132, 1995 CarswellOnt 283 (Gen. Div.), additional reasons at (1995), 12 C.C.E.L. (2d) 132n, 1995 CarswellOnt 4500 (Gen. Div.)

22. *Hurst v. Société Nationale de l'Amiante* (2006), [2006] O.J. No. 3998 (Sup. Ct. (Commercial List)), aff'd at 2008 ONCA 573

23. *Toronto (City) v. C.U.P.E.*, 2003 SCC 63

24. *Behn v. Moulton Contracting Ltd.*, 2013 SCC 26

25. *Free Trade Medical Network Inc. v. RBC Travel Insurance Co.* (2005), 29 C.C.L.I. (4th) 244, 2005 CarswellOnt 4659 (Sup. Ct. J.), aff'd (2006), 215 O.A.C. 230, 2006 CarswellOnt 5503 (C.A.), leave to appeal ref'd 2007 CarswellOnt 1353

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27. *Martin v. Goldfarb*, 2006 CarswellOnt 4355 (Sup. Ct.), additional reasons at 2006 CarswellOnt 7108 (S.C.J.)

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29. *Napev Construction Ltd. v. Lebedinsky* (1984), 25 A.C.W.S (2d) 149, 1984 CarswellOnt 725 (H. Ct.)

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35. *McCreight v. Canada (Attorney General)*, 2013 ONCA 483

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38. *RWDI Air Inc. v. N-SCI Technologies Inc.*, 2015 ONCA 817

39. *Cavanaugh v. Grenville Christian College*, 2013 ONCA 139, additional reasons at 2013 ONCA 242

Schedule “B” – Legislation Cited

N/A

Court of Appeal File No.: C65431

THE CATALYST CAPITAL GROUP INC. - and - **VIMPELCOM LTD., et al**

Plaintiff (Appellant) Defendants (Respondents)

COURT OF APPEAL FOR ONTARIO

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