

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL
CORPORATION**

Plaintiffs

- and -

**WEST FACE CAPITAL INC., GREGORY BOLAND, M5V ADVISORS INC.
c.o.b. ANSON GROUP CANADA, ADMIRALTY ADVISORS LLC, FRIGATE
VENTURES LP, ANSON INVESTMENTS LP, ANSON CAPITAL LP, ANSON
INVESTMENTS MASTER FUND LP, AIMF GP, ANSON CATALYST
MASTER FUND LP, ACF GP, MOEZ KASSAM, ADAM SPEARS, SUNNY
PURI, CLARITYSPRING INC., NATHAN ANDERSON, BRUCE
LANGSTAFF, ROB COPELAND, KEVIN BAUMANN, JEFFREY
MCFARLANE, DARRYL LEVITT, RICHARD MOLYNEUX, GERALD DUHAMEL,
GEORGE WESLEY VOORHEIS, BRUCE LIVESEY AND JOHN DOES #4-10**

Defendants

STATEMENT OF DEFENCE

1. This Statement of Defence is delivered by the defendant, Gerald Duhamel, in response to the Fresh As Amended Statement of Claim, amended July 19, 2019 (the "SOC").

Naming Conventions

2. This Statement of Defence adopts the same naming conventions as used in the SOC, except as may otherwise be clarified herein.

Paragraph-by-Paragraph Position

3. The defendant admits the allegations contained in paragraphs, 29-32, and 183 of the SOC.
4. The defendant has no knowledge with respect to the allegations contained in paragraphs 2-28, 35-38, 40-44, 51-54, 57-58, 60-65, 67-68, 70, 73, 76, 78-81, 96-97, 126, 133, 135, 137, 151-155, 159-162, 164-166, 168-169, 171-172, 176-177, 190-191, and 204-206 of the SOC.
5. The defendant denies the allegations contained in paragraphs 1, 33-34, 39, 45-50, 55-56, 59, 66, 69, 71-72, 74-75, 77, 82-95, 98-125, 127-132, 134, 136, 138-150, 156-158, 163, 167, 170, 173-175, 178-182, 184-189, and 192-203 as drafted in the SOC.
6. The defendant qualifies his denial of paragraph 33 of the SOC by noting that his denial relates to the identification of Mr. Duhamel as having been “the person named as John Doe #3” as if associating him with the allegations throughout the SOC attributed to the “John Doe Defendants” (a term not otherwise defined). The defendant denies he did anything attributed to the John Doe Defendants.
7. The defendant qualifies his denial of paragraph 98 of the SOC by noting as follows: whereas that paragraph attributes the alleged OSC and SEC whistleblower Complaints, *inter alia*, to only the following Guarantor Conspirators, “Baumann, McFarlane, and Levitt (or Molyneux),” omitting Mr. Duhamel (who is defined in the SOC as a Guarantor

Conspirator), the defendant accepts the plaintiffs' assertion-by-omission that Mr. Duhamel took no part in the alleged whistleblower Complaints. The defendant otherwise denies that any alleged whistleblower Complaints made by anyone formed part of any larger Conspiracy, as alleged. And if there was any Conspiracy, the defendant denies he was a part of it.

Not Part of Any Conspiracy

8. There was no Conspiracy to cause economic harm to Callidus and Catalyst (as defined at paragraph 87 and later said, at para. 182(a), to have been "particularized" at para. 90 of the SOC – and as otherwise appears to be referred to at para. 39 of the SOC, though there described as a "conspiracy" with a small 'c.')
9. And, if there was a Conspiracy, the defendant was not a participant:
 - a. Mr. Duhamel never agreed with any of the Wolfpack Conspirators (or any others) to execute any plan of action;
 - b. Mr. Duhamel never "spread false information through the bay street rumour mill," whether as part of any plan of action or otherwise;
 - c. Mr. Duhamel never participated in the filing of whistleblower Complaints with the OSC and SEC, whether as part of any plan of action or otherwise;

- d. Mr. Duhamel never worked with others to “leak” the existence or substance of the Complaints to the media and police, whether as part of any plan of action or otherwise;
 - e. Mr. Duhamel never participated in “causing” any media report to be released near the end of a trading day, whether as part of any plan of action or otherwise; and
 - f. Mr. Duhamel never participated in or obtained any gain from the alleged short positions taken by the Wolfpack Conspirators in Callidus Shares, whether as part of any plan of action or otherwise.
10. Mr. Duhamel did not frequently communicate or meet with other defendants to “implement” the alleged Conspiracy (as alleged at para. 91 of the SOC) or “remain in close communication” with others regarding the alleged Conspiracy (as alleged at para. 77 of the SOC). He never entered into any agreement with anyone to injure the plaintiffs. Nor did he ever take any steps together with others the predominant purpose of which was to harm the plaintiffs. He held no common design with any other defendants, as alleged in the SOC, and he took no acts in combination, in concert, or by agreement with others:
- a. Mr. Duhamel did not “agree to join the Conspiracy” or “otherwise provide his support, information, and advice” to the Guarantors (as alleged at para. 45 and 66(c) of the SOC), nor did he “share information, advice, and strategies” in furtherance of an alleged Conspiracy (as alleged at para. 182(d) of the SOC);

- b. Mr. Duhamel did not coordinate his position in the CCAA Proceedings with those taken by Guarantors in other proceedings (as perhaps alleged at para. 46 of the SOC, though no explicit reference is made to Mr. Duhamel). Any similarities in the defendants' legal positions in other litigation are attributable to the similarities that exist in those defendants' respective dealings with the plaintiffs. The merits of any defendant's position in other ongoing litigation stands to be determined by the courts in each respective proceeding;
- c. Mr. Duhamel had no knowledge of, provided no approval for, and took no "direct involvement" in the alleged contact made by Levitt with Cameron Watson, Senior Litigation Counsel in the Enforcement Branch of the OSC (as alleged at para. 99 of the SOC). Likewise, Mr. Duhamel did not provide any agreement, assistance, or support; did not review, comment upon or approve; and did not participate in or consent to Levitt's presentation, communications, or Complaints made to the OSC (as alleged at paras. 107-108 of the SOC);
- d. Mr. Duhamel did not act in concert with anyone to "encourage or induce" WSJ reporters to publish a media article (as alleged at para. 110 of the SOC) nor "approve and direct" the disclosure of any information to the media (as alleged at para. 182 of the SOC). He did not relay any information to the media and held no common intention to do so with others (as alleged at para. 129 of the SOC).

11. Mr. Duhamel also denies the allegation that he used unlawful means to harm the plaintiffs (whether alone or in conjunction with others). Nothing Mr. Duhamel has ever done amounts to:

- a. actionable defamation;
- b. injurious falsehood;
- c. breaches of ss. 126.1 and 126.2 of the *Securities Act*; or
- d. unjust enrichment.

And he denies he had knowledge that others might use unlawful means to harm the plaintiffs or that he held any common design with them, as alleged.

Defamation and Injurious Falsehood

12. The defendant denies doing or saying anything which constitutes defamation, and he denies the plaintiffs' claim for damages on that basis (as claimed at para. 1(a) of the SOC). The defendant also denies that he participated in an alleged Conspiracy, one element of which is said to include acts of others which taken together allegedly constitute actionable defamation satisfying the unlawful means requirement of the tort of civil conspiracy.

13. *Deny Rumours*: The defendant did not re-tweet any tweets (as alleged at para. 59 of the SOC). Nor did he spread any false rumours about the plaintiffs (as alleged at paras. 90 and 115 of the SOC). Nor did he take any steps to "disparage" the plaintiffs (as alleged at para. 123(c) of the SOC). These things were neither done by Mr. Duhamel alone nor

done by others with his knowledge or by common design through any alleged Conspiracy.

14. *Deny Regulatory Complaints:* The defendant did not remain in close communication with others about filing OSC or SEC Complaints, did not “agree and decide” to file OSC or SEC Complaints, and did not “repeatedly” make “false allegations” to “whoever would listen” (as alleged at para. 77 of the SOC). Mr. Duhamel did not participate in filing any regulatory Complaints (as alleged at para. 130 and throughout the SOC), he held no common design, knowledge, intent, or agreement with others that such Complaints should be made, and he did not receive and exchange information with others about filing Complaints (as alleged at para. 118 of the SOC).
15. *Deny Police Reports:* The defendant did not “leak” the contents of the Complaints to the police (as alleged at para. 109 of the SOC), deliver “numerous documents” to JSOT (as alleged at para. 123(l) of the SOC), nor prepare and distribute written materials for “the SEC, JSOT, and the Toronto Police Service” (as alleged at para. 127 of the SOC). These things were neither done by Mr. Duhamel alone nor done by others with his knowledge or by common design through any alleged Conspiracy. In fact, contrary to the allegations made at para. 128 of the SOC, when Mr. Duhamel was once contacted by Gail Regan of the Toronto Police Service, he indicated to her that he did not wish to participate in any complaint against the plaintiffs.
16. *Deny Media Reports:* The defendant made no attempt to contact journalists (as alleged at para. 132 of the SOC). Nor did he attempt to promulgate a news story about Callidus being under investigation (as alleged at para. 136 of the SOC). Nor did he provide

Livesey with information to be used in any media story (as alleged at para. 133 of the SOC). Nor did he ever approach Lawrence Delevigne (as alleged at para. 138 of the SOC). Nor did he ever encourage Tilak and Delevigne to write a story or provide them with questions based on information in order to “push a disparaging story” (as alleged at para. 139 of the SOC). Nor did he make efforts to entice Reuters to publish a story (as alleged at para. 140 of the SOC) or any other “reputable news organizations” (as alleged at para. 143 of the SOC). Nor did he ever approach Copeland about writing a story (as alleged at para. 145 of the SOC). Nor did he ever have any conversations with Copeland (as alleged at paras. 149 and 156 of the SOC). These things were neither done by Mr. Duhamel alone nor done by others with his knowledge or by common design through any alleged Conspiracy. Accordingly, he did not publish the allegedly Defamatory Words (as alleged at paras. 180-184 of the SOC), having taken no part in the communication of the allegedly Defamatory Words to Copeland or in their ultimate publication in the media.

17. Accordingly, the defendant likewise denies that he is liable for any injurious falsehood. Moreover, he denies he entered into any agreement with others to injure the plaintiffs by communicating injurious falsehoods, denies he ever took any steps together with others the predominate purpose of which was to harm the plaintiffs through the communication of injurious falsehoods, and denies he ever held any common design with any other defendants to act in combination, in concert, or by agreement with them to maliciously communicate injurious falsehoods about the plaintiffs as part of an alleged Conspiracy.

Took No Part in The Short Attack

18. The defendant never participated in or obtained any gain from the alleged short positions taken by the Wolfpack Conspirators in Callidus Shares. He had no knowledge of any alleged short attack and held no common design with others to carry out the alleged short attack as part of the larger Conspiracy alleged.
19. As indicated above, the defendant played no role in the publication of the Article alleged to have precipitated the alleged short attack.
20. Accordingly, the defendant denies that he did anything that violates s. 126.1 and 126.2 of the *Securities Act*. And he denies that he had any knowledge that others might do such things or that he held any common design with others to do such things through the alleged Conspiracy.
21. Furthermore, having obtained no gain with respect to the alleged short attack in which he did not participate, the defendant denies he was unjustly enriched to the plaintiffs' detriment.

Intentional Interference with Economic Relations

22. In so far as the defendant denies that he participated in the Conspiracy or the publication of the Defamatory Words, it cannot be said that Mr. Duhamel "deceived third parties" (as alleged at para. 193 of the SOC).

23. The defendant committed no unlawful acts against any third parties and held no intention to cause economic harm to the plaintiff, whether alone or in common with others. The defendant denies any liability for the tort of intentional interference with economic relations.

No Confidential Documents, Information, or Communications

24. The defendant denies being in possession of any confidential documents or information of the plaintiffs.
25. The defendant denies that Baumann ever shared with him a copy of a “highly confidential list of all of Callidus’ borrowers and loan accounts and other private and confidential Callidus documents” and denies ever using such material for any purpose (as alleged at paras. 84-85 of the SOC). He also denies having done those things through others by way of the alleged Conspiracy.
26. The defendant denies he ever received “assistance” from Boland and West Face in any effort to harm Catalyst through delivery of any documents or otherwise.
27. The defendant denies there is any impropriety in having a copy of the Statement of Defence in the Veritas Action (as alleged at para. 103 of the SOC). Pleadings in court proceedings are public documents.
28. The defendant denies he received and used any information from Boland and West Face to file regulatory Complaints (as alleged at para. 105 of the SOC).

29. The defendant denies that he shared or circulated any non-public material information with anyone (as alleged at para. 124 of the SOC). He did not inappropriately disclose any PwC valuation of Bluberi to others. Materials and information regarding his CCAA Proceedings are publically available in court records and published online by the CCAA Monitor. The defendant has never shared any information which was not already open to the public.
30. The defendant denies that communications he had with any of the other defendants were ever directed towards any alleged Conspiracy. To the extent that he talked with any of the other defendants, his communications were benignly directed towards learning from others about their similar experiences dealing with the plaintiffs. He denies that he was in close or frequent contact with any of the defendants.

Other

31. The defendant denies the plaintiffs have identified any legal basis to claim the “investigation costs” claimed at paragraph 1(g) of the SOC.
32. The defendant denies the plaintiffs have identified any legal basis for the accounting and disgorgement claimed at paragraph 1(b) of the SOC.
33. The defendant denies the plaintiff is entitled to any punitive or aggravated damages as claimed at paragraph 1(h) of the SOC.

Disposition Sought

34. The defendant seeks the dismissal of the plaintiffs' claim against him with costs in his favour on a substantial indemnity basis.

Date: September 17, 2019

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TO: SERVICE LIST

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Plaintiffs

-and-

WEST FACE CAPITAL INC. et al.
Defendants

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

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PROCEEDING COMMENCED AT TORONTO

STATEMENT OF DEFENCE
(Of the defendant, Gerald Duhamel)

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