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September 9, 2019

DELIVERED VIA E-MAIL (Registry-Greffe@SCC-SCS.ca)

Registrar
Supreme Court of Canada
301 Wellington Street
Ottawa, ON K1A 0J1

Dear Registrar:

Re: ***The Catalyst Capital Group Inc. v. VimpelCom Ltd. et. al.***
S.C.C., Court File No. 38746

We act for the respondent, Serruya Private Equity Inc. ("Serruya") and make these submissions in response to the application by The Catalyst Capital Group Inc. ("Catalyst") for leave to appeal the order of the Court of Appeal, dated May 2, 2019. Serruya adopts and relies on the written submissions of the other respondents. This case raises no issue of national or public importance requiring guidance from this Court. Leave to appeal is not warranted and this application should be dismissed with costs.

This was the second action brought by Catalyst regarding its unsuccessful attempts in 2014 to acquire an interest in WIND Mobile Inc. ("WIND") from VimpelCom Ltd. ("VimpelCom"), and the subsequent acquisition of WIND by a consortium of firms (the "Consortium"), which included Serruya.

The first action was commenced by Catalyst in the Ontario Superior Court of Justice (the "Moyse Action") against one of the Consortium members, West Face Capital Inc. ("West Face"), and Brandon Moyse ("Moyse"), a junior analyst who left employment at Catalyst to accept a position at West Face. In that action, Catalyst alleged, *inter alia*, that West Face unlawfully obtained and used confidential information about Catalyst's attempts to acquire WIND.[1]

The trial of the Moyse Action was heard by Justice Newbould in June 2016. Justice Newbould dismissed the Moyse Action in its entirety. Justice Newbould found that Catalyst suffered no damages as a result of any misuse of its confidential information. Justice Newbould further found that Catalyst's failure to acquire WIND was caused by its insistence that any deal with VimpelCom be conditional on it

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[1] *The Catalyst Capital Group Inc. v. VimpelCom Ltd.*, 2018 ONSC 2471 at paras. 29-31 ("VimpelCom Motion Reasons"), Applicant's Application Record, Tab 2A, p. 13.

receiving regulatory concessions from the federal government and by its refusal to agree to a modest break fee requested by VimpelCom.[2]

This second action (the "VimpelCom Action") was commenced days before the commencement of the trial in the Moyse Action. West Face immediately informed Catalyst that the commencement of the VimpelCom Action constituted litigation by instalments and was an abuse of process.[3] Catalyst ignored that warning and charged ahead with the trial in the Moyse Action.

In dismissing the VimpelCom Action, the Motion Judge applied the well-established principles underlying the preclusion doctrines of estoppel and abuse of process to the specific factual circumstances of this case. Contrary to what is alleged by Catalyst, there is no tension between the application of these preclusion doctrines and this Court's discussion of proportionality in *Hryniak v. Maudlin*[4] ("*Hryniak*"). In fact, insofar as they prevent a party from re-litigating claims and issues, or from litigating in installments, the preclusion doctrines are entirely consistent with this Court's commentary in *Hryniak* on the desirability of proportionate, timely and affordable resolutions of disputes.

The second issue raised by Catalyst also is not an issue of public importance. Contrary to what is argued by Catalyst, there is no uncertainty as to whether detriment is a requirement of the tort of breach of confidence.[5] In any event, the question of whether proof of detriment is required would only be relevant if Catalyst had claimed equitable remedies in this action. Catalyst's claim is for damages, which requires proof of detriment or loss. Catalyst has not sought any alternative equitable remedies.[6]

As the proposed appeal raises no issues of national or public importance, this application for leave to appeal should be dismissed.

Respectfully yours,

per

Lucas E. Lung

c. John E. Callaghan, Benjamin Na, Matthew Karabus, David C. Moore and D. Lynn Watt for The Catalyst Capital Group Inc.
Orestes Pasparakis, Rahool Agarwal and Michael Bookman for VimpelCom Ltd.
James D. G. Douglas and Caitlin Sainsbury for Globalive Capital Inc.

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[2] *The Catalyst Capital Group Inc. v. Moyse*, 2016 ONSC 5271 at paras. 127-131 ("Moyse Trial Reasons"), Applicant's Application Record, Tab 4C, pp. 177-178.

[3] VimpelCom Motion Reasons, at para. 38, Applicant's Application Record, Tab 2A, pp. 14-15.

[4] *Hryniak v. Maudlin*, 2014 SCC 7.

[5] *Lac Minerals v. International Corona Resources*, [1989] 2 S.C.R. 574. See the responding submissions of VimpelCom Ltd.

[6] Amended Amended Amended Statement of Claim, amended May 30, 2017 at para. 1, Applicant's Application Record, Tab 4F at pp. 229-230.

David R. Byers and Daniel Murdoch for UBS Securities Canada Inc.
Michael Barrack and Kiran Patel for Tennenbaum Capital Partners LLC, 64NM Holdings GP LLC, 64NM Holdings LP and
Matthew Milne-Smith/Andrew Carlson, West Face Capital Inc.