

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL
CORPORATION

Plaintiffs

and

WEST FACE CAPITAL INC., GREGORY BOLAND, M5V ADVISORS INC.
C.O.B. 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

NOTICE OF MOTION

The Defendants, ClaritySpring Inc. and Nathan Anderson, will make a motion to a judge presiding over the Commercial List, on a date and time to be set by the Court at the court house, at 330 University Avenue, Toronto, Ontario, M5G 1R7.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- in writing under subrule 37.12.1(1) because it is on consent or unopposed or made without notice;
- in writing as an opposed motion under subrule 37.12.1(4);
- orally.

THE MOTION IS FOR:

- (a) An Order dismissing the proceeding brought by the Plaintiffs as against the Defendants, ClaritySpring Inc. and Nathan Anderson, in accordance with section 137.1(3) of the *Courts of Justice Act*;
- (b) The costs of this proceeding on a full indemnity basis, in accordance with section 137.1(7) of the *Courts of Justice Act*; and
- (c) Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

The Parties

- (a) The Defendant, ClaritySpring Inc. (“ClaritySpring”), is a hedge fund research company and a professional whistleblower. It has completed over a dozen whistleblower cases, several of which have successfully attracted the attention of securities regulators.
- (b) The Defendant, Nathan Anderson, is the co-founder and Chief Executive Officer of ClaritySpring.
- (c) The Plaintiffs, The Catalyst Capital Group Inc. (“Catalyst”) and Callidus Capital Corporation (“Callidus”), are related corporations controlled by Newton Glassman (“Glassman”), that are in the business of making investments in distressed and undervalued Canadian situations in return for control, including the provision capital on a bridge basis to companies that cannot access traditional lending sources.

The Whistleblower Submissions

- (d) In 2016, Anderson learned of information suggesting that Catalyst and/or Callidus were engaging in deceptive lending practices.

- (e) Anderson subsequently began an intensive, independent investigation into the business and accounting practices of Catalyst and Callidus. His sources of information included, among other things:
 - (i) Bankruptcy, receivership, and court documents;
 - (ii) *Personal Property Security Act* and *Uniform Commercial Code* lien filings;
 - (iii) Discussions with numerous individuals, including former employees of Catalyst and Callidus, Catalyst investors, Catalyst counterparties, and members of Canada's financial services sector with knowledge of Catalyst, Glassman and other principals of Glassman-controlled entities;
 - (iv) Internet search results; and
 - (v) Financial disclosures and other public filings of Callidus and other relevant companies.
- (f) As a result of his research, Anderson formed the view that Catalyst and Callidus were engaging in a scheme to artificially inflate the value of their assets.
- (g) Anderson prepared two whistleblower submissions, which were submitted by ClaritySpring to the Ontario Securities Commission ("OSC") in May 2017 (the "Whistleblower Submissions"). The submissions were extensively cited to documents and reports that Anderson had reviewed in his research.
- (h) Versions of the Whistleblower Submissions were also delivered to the United States Securities and Exchange Commission.
- (i) The Whistleblower Submissions were submitted in furtherance of Anderson and ClaritySpring's specific interest, as professional

whistleblowers, in bringing to light fraudulent practices by members of the investment industry.

Communication with Investigative Journalists

- (j) As part of ClaritySpring's whistleblower work, Anderson often communicated with members of the media.
- (k) In early 2017, Anderson communicated with several investigative journalists that he understood were in the process of, or might be interested in, reporting on Catalyst and/or Callidus and the information Anderson had obtained.
- (l) An article on Catalyst was ultimately published in the Wall Street Journal on or about August 9, 2017. Anderson was nothing more than a source in respect of that article.

The Nature of this Proceeding

- (m) On November 7, 2017, the Plaintiffs commenced this action against Anderson, ClaritySpring and others. As against Anderson and ClaritySpring, the Plaintiffs seek damages arising from or related to the submission of the Whistleblower Submissions, and related communications with investigative journalists, for:
 - (i) defamation;
 - (ii) civil conspiracy;
 - (iii) intentional interference with economic relations;
 - (iv) injurious falsehood; and
 - (v) breach of the *Securities Act*.

This Proceeding is a SLAPP

- (n) This action constitutes and is being pursued as a strategic lawsuit against public participation (a “SLAPP”). The action arises from expressions made by Anderson – namely, two whistleblower submissions submitted to the OSC and related communications with investigative journalists – and is designed primarily to discourage public discourse on matters of public interest, and in particular:
 - (i) to discourage the investigation of suspected securities fraud; and
 - (ii) to discourage individuals from making whistleblower complaints to the OSC and other securities regulators where they honestly and reasonably believe that a regulated entity is engaging in fraudulent activity in the capital markets.
- (o) The core allegations in the action that ClaritySpring and Anderson acted in furtherance of a “conspiracy” with and among the Defendants, against the Plaintiffs, simply by preparing and submitting research-backed whistleblower reports and discussing that research with members of the media, is baseless and demonstrates the nature and purpose of this action as a SLAPP.
- (p) This action is designed to reinforce the Plaintiffs’ reputation for engaging in aggressive litigation, as a means to discourage individuals from investigating the Plaintiffs’ business and accounting practices.
- (q) The action does not have substantial merit.
- (r) ClaritySpring and Anderson have valid defences to the action.
- (s) The harm likely to be or have been suffered by the Plaintiffs as a result of ClaritySpring and Anderson’s expression is not sufficiently serious that the public interest in permitting the action to continue outweighs the public interest in protecting ClaritySpring and Anderson’s expression.

- (t) Section 137.1 of the *Courts of Justice Act*, RSO 1990, c C.43.
- (u) Such further and other grounds as counsel may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) The Affidavit of Nathan Anderson, to be sworn; and
- (b) Such further and other evidence as counsel may advise and this Honourable Court may permit.

October 16, 2019

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Plaintiffs

and

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

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Proceeding commenced at Toronto

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