

**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

and

CANACCORD GENUITY CORP.

Third Party

A N D B E T W E E N:

WEST FACE CAPITAL INC. and GREGORY BOLAND

Plaintiffs by Counterclaim

and

THE CATALYST CAPITAL GROUP INC., CALLIDUS CAPITAL CORPORATION,
NEWTON GLASSMAN, GABRIEL DE ALBA, JAMES RILEY, VIRGINIA JAMIESON,
EMMANUEL ROSEN, B.C. STRATEGY LTD. D/B/A BLACK CUBE, B.C. STRATEGY
UK LTD. D/B/A BLACK CUBE and INVOP LTD. D/B/A PSY GROUP

Defendants to the Counterclaim

**STATEMENT OF DEFENCE
OF THE DEFENDANTS CLARITYSPRING INC.
AND NATHAN ANDERSON**

1. The Defendants, ClaritySpring Inc. ("ClaritySpring") and Nathan Anderson ("Anderson"), admit the allegations contained in paragraphs 6, 21, 27, 29-31, 41-42 of the Fresh as Amended Statement of Claim.

2. ClaritySpring and Anderson have no knowledge or insufficient knowledge with which to admit or deny the allegations contained in paragraphs 7, 10-18, 23-24, 32, 33, 43, 46-54 of the Fresh as Amended Statement of Claim.

3. Except as expressly admitted herein, ClaritySpring and Anderson deny the allegations contained in each and every other paragraph of the Fresh as Amended Statement of Claim.

Background – ClaritySpring and Anderson

4. Anderson is an individual residing in New York City, New York. He is a designated Chartered Financial Analyst and Chartered Alternative Investment Analyst. He also holds U.S. Series 7, 24, 63, 79, and 82 securities licenses.

5. ClaritySpring is a corporation incorporated pursuant to the laws of Delaware with a head office in New York City, New York. Anderson is a director, shareholder and the chief executive officer of ClaritySpring.

6. ClaritySpring was founded by Anderson in 2012, and was initially focused on delivering technology solutions to help aid in hedge fund and private equity fund due-diligence. Initially, Anderson worked on ClaritySpring part-time while maintaining full-time employment at a New York City boutique investment bank, where he was responsible for hedge fund due-diligence and capital-raising.

7. While in his role at the investment bank, Anderson encountered several hedge funds and private equity funds which he believed were engaging in fraudulent practices. In mid-2014, Anderson made his first whistleblower submission to the United States Securities and Exchange Commission (“SEC”), in an effort to expose practices that troubled him. That whistleblower submission resulted in the successful prosecution of the hedge fund that was the subject of Anderson’s submission.

8. In approximately March 2015, Anderson resigned from the investment bank to focus on ClaritySpring full-time, working to develop a hedge fund due-diligence technology platform. Anderson continued to learn through industry contacts about hedge funds that had engaged in what he believed to be fraudulent practices. Anderson, through ClaritySpring, made whistleblower submissions in relation to those funds.

9. Over time, Anderson learned how to prepare more detailed, research-backed whistleblower reports, which successfully attracted the attention of regulators and led to successful fraud charges by United States agencies.

10. Starting in approximately 2016, ClaritySpring began to shift its focus to whistleblower work. By late 2016, ClaritySpring had completed approximately 12 whistleblower cases.

11. Regulatory agencies like the SEC and the Ontario Securities Commission (“OSC”) have whistleblower programs that offer potentially lucrative whistleblower awards for persons who provide information that results in successful regulatory prosecutions. However, it may take years for a regulatory prosecution to conclude and there is a high degree of uncertainty as to outcome.

12. As a result, ClaritySpring adopted two approaches to fund its ongoing whistleblower activities. First, ClaritySpring sought investors to make immediate monetary investments and share in the risk of ClaritySpring’s whistleblower cases. Second, to the extent a whistleblower case involved a public security that was believed to be overvalued, ClaritySpring would short that security.

13. As part of ClaritySpring’s whistleblower work, Anderson often communicated with members of the media. Like whistleblowers, investigative reporters and the media often play an important role in the process of vetting and exposing fraud, given their generally increased access to sources as compared to private fraud researchers.

Introduction to Callidus and Catalyst

14. In 2016, Anderson discovered a Twitter account called “StopTheScandal”, which was posting about problems in The Catalyst Capital Group Inc. (“Catalyst”) and/or Callidus Capital Corporation (“Callidus”), both of which are managed by the same individual, Newton Glassman (“Glassman”). The Twitter postings included a level of detail that suggested that the allegations merited further investigation.

15. Anderson contacted the person behind the “StopTheScandal” account, whose identity is unknown to Anderson, seeking additional details. That person suggested that Anderson contact certain borrowers of Catalyst who believed that Catalyst was engaging in deceptive lending practices.

16. In approximately November or December 2016, Anderson contacted Darryl Levitt (“Levitt”), Jeffrey McFarlane (“McFarlane”), and Gerald Duhamel (“Duhamel”) to learn more information about Callidus. At their suggestion, Anderson attended a meeting in Canada on or about December 15, 2016, which was attended by borrowers including Levitt, McFarlane, Duhamel, and Richard Molyneux. These individuals’ accounts of their experiences as borrowers of Callidus suggested to Anderson that Callidus’ lending practices may be highly unethical.

Research and Preparation of Whistleblower Reports

17. The information Anderson reviewed about Catalyst and/or Callidus indicated to him that there was a disconnect between the information being disclosed to shareholders, and the positions being taken by Catalyst and/or Callidus in other contexts. In litigation with its borrowers, Catalyst and/or Callidus would take the position that their loans were severely impaired because the borrowing businesses were damaged. Meanwhile, their reports to their shareholders reported exemplary results, including limited loan losses and healthy collateral coverage.

18. Anderson conducted independent research to investigate the true state of affairs at Catalyst and Callidus. His sources of information included, among other things:

- (a) Bankruptcy, receivership, and court documents;
- (b) *Personal Property Security Act* and *Uniform Commercial Code* lien filings;
- (c) 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;
- (d) Internet search results; and
- (e) Financial disclosures and other public filings of Callidus and other relevant companies.

19. Through this research, Anderson reviewed thousands of documents and communicated with over 30 sources. He reviewed such diverse material as stories from former employees, investor letters, presentations, and various fund materials.

20. 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. Catalyst and Callidus would move their impaired assets forward into new funds as new money came in, essentially using new money to pay out old investors.

21. Anderson prepared two whistleblower submissions, which were submitted by ClaritySpring to the OSC in May 2017 (the "Whistleblower Submissions"). These submissions detailed and analyzed information uncovered by Anderson that indicated fraudulent conduct by Catalyst and Callidus. In particular, they included allegations that Catalyst and Callidus were playing a shell game with impaired assets to mislead investors as to the value of the companies in the enterprise. The submissions were extensively cited to documents and reports that Anderson had reviewed in his research.

22. In or around that time, versions of the Whistleblower Submissions were also delivered to the SEC.

23. As with other whistleblower cases, ClaritySpring funded its work on the Whistleblower Submissions by taking on investors. With the exception of Molyneux, all of the investors were third parties who, to the knowledge of Anderson and ClaritySpring, had no personal involvement in these matters. Molyneux invested \$20,000 in exchange for a 2% share of any whistleblower award. ClaritySpring also agreed to give Levitt a 10% share of any whistleblower award received by ClaritySpring for contributing information.

24. Contrary to what is alleged in the Fresh as Amended Statement of Claim, it is untrue that the motivation for filing the Whistleblower Submissions was to further some conspiracy to harm the plaintiffs. Rather, as professional whistleblowers, Anderson and ClaritySpring have a specific interest in bringing to light fraudulent practices by members of the investment industry. The Whistleblower Submissions were filed in furtherance of that interest. Anderson and ClaritySpring had no personal animus toward Catalyst, Callidus or Glassman.

Anderson and ClaritySpring Communicate with the Media

25. In or around January or February 2017, Anderson contacted Rob Copeland (“Copeland”), a reporter at the Wall Street Journal, to inform him about the information Anderson had uncovered about Callidus and Catalyst. Anderson later provided copies of the Whistleblower Submissions and some supporting documents to Copeland.

26. Contrary to what is alleged in paragraph 146 of the Fresh as Amended Statement of Claim, Anderson did not recruit Copeland to join any conspiracy. Copeland was a well-respected reporter at the Wall Street Journal, a mainstream business-focused newspaper that has won dozens of Pulitzer Prizes for its reporting. Anderson approached Copeland with information about Catalyst and Callidus because he believed the Wall Street Journal may have an interest in reporting on that information.

27. By approximately March 2017, Anderson had also contacted Lawrence Delevigne (“Delevigne”), a reporter at Reuters. Anderson also communicated with Bruce Livesey (“Livesey”), a reporter whom Anderson understood was working on an article relating to Callidus and Glassman.

28. According to the plaintiffs, neither Delevigne nor Livesey published articles on the matters raised in the Whistleblower Submissions.

29. An article written by Copeland was published in the Wall Street Journal on or about August 9, 2017. Anderson was nothing more than a source to Copeland. Anderson had no control over the content of Copeland’s article. Nor did he review the Copeland article prior to its publication. Anderson gave no instructions or suggestions as to the timing of the release of the Copeland article.

No Liability

30. ClaritySpring and Anderson deny, without limitation, any and all allegations of wrongdoing, howsoever arising, in the Fresh as Amended Statement of Claim.

31. Anderson and ClaritySpring deny any and all allegations of defamation in the Fresh as Amended Statement of Claim.

32. The delivery of the Whistleblower Submissions to the OSC and any related communications with OSC investigators are covered by absolute privilege and therefore are not actionable.

33. With respect to their communications with reporters like Copeland, Anderson and ClaritySpring rely on the defence of fair comment. The communications with the reporters were expressions of opinion, based on true facts and made in good faith and without malice. The communications were on a matter of public interest, and in particular, on the conduct and practices

of a prominent private equity firm that had accepted billions in investment capital, largely from public and prominent institutions, and a public company of which it was a majority shareholder.

34. The communications by Anderson and ClaritySpring to the reporters constitute responsible communication on a matter of public interest. They concerned the potentially fraudulent conduct and practices of a prominent private equity fund and a public company.

35. Anderson and ClaritySpring carried out a thorough investigation to prepare the Whistleblower Submissions which were the basis of the communications to the reporters. The investigation included gathering and reviewing a substantial volume of documentation. That documentation included, but was not limited to, the plaintiffs' public filings and other documents prepared by the plaintiffs or entities controlled by the plaintiffs for investors. The documentation also included, *inter alia*, publicly-available reports prepared by established ratings agencies. Anderson and ClaritySpring interviewed numerous individuals, including former employees of the plaintiffs and entities controlled by the plaintiffs. Anderson and ClaritySpring were diligent in verifying the accuracy of the information contained in the Whistleblower Submissions.

36. It was critically important to Anderson and ClaritySpring that the Whistleblower Submissions were accurate, and that the conclusions contained therein were reasonably supported by the information that was gathered through their investigation. A substantial part of ClaritySpring's business is making whistleblower submissions to regulators like the OSC and the SEC. Anderson and ClaritySpring knew that delivering a false and misleading whistleblower submission to regulators would impact the credibility of any submission Anderson and ClaritySpring made in the future.

37. The particular circumstances of this case did not require Anderson and ClaritySpring to provide the plaintiffs with an opportunity to comment on the allegations in the Whistleblower

Submissions prior to their delivery to the reporters. At all times, Anderson and ClaritySpring knew that the reporters would seek the plaintiffs' position prior to the publication of any article.

38. In the further alternative, Anderson and ClaritySpring rely on the defence of qualified privilege. The alleged defamatory communications to the reporters were made without malice on an occasion of privilege. As whistleblowers, Anderson and ClaritySpring had a legitimate interest in, and a duty to, communicate reliable information concerning the plaintiffs' potentially fraudulent conduct and practices to members of the media, like the reporters. The reporters had a corresponding interest in receiving the information contained in the Whistleblower Submissions.

39. Anderson and ClaritySpring deny the allegation that they participated in any conspiracy with the other defendants or any other person, either for the predominant purpose of causing injury to the plaintiffs or to commit any unlawful act.

40. Anderson and ClaritySpring deny that they committed any unlawful act.

41. Taking short positions on a security is a legitimate investment strategy and is not unlawful. ClaritySpring took short positions on Callidus' shares because Anderson believed the shares were overvalued as a result of Callidus inflating the value of its loan portfolio. The short positions taken by ClaritySpring were not material. At no time did Anderson or ClaritySpring coordinate with any other defendant in shorting Callidus' stock.

42. Anderson and ClaritySpring also deny the allegation that they breached ss. 126.1 or 126.2 of the Ontario *Securities Act*. Neither of those statutory provisions is capable of grounding civil liability. Section 126.2 in particular gives rise to a statutory right of action for damages only against certain categories of persons, in the context of misrepresentations alleged in certain core disclosure documents, which are not applicable to the allegations made by the plaintiffs. In any event, the provisions of the Ontario *Securities Act* are not applicable to the allegations against ClaritySpring and Anderson, which relate to conduct committed in the United States, by an

individual and company residing in the United States. Applying these statutory provisions in these circumstances would amount to an improper jurisdictional overreach.

43. Anderson and ClaritySpring further deny that they are liable for the tort of intentional interference with economic relations. Neither ClaritySpring nor Anderson committed any unlawful act against a third party with the intention of causing harm to the plaintiffs.

No Damages

44. Anderson and ClaritySpring deny that the plaintiffs have suffered any of the loss or damage claimed in the Fresh as Amended Statement of Claim.

45. In the alternative, to the extent the plaintiffs have suffered any loss or damage, which is denied, such loss or damage was caused by the plaintiffs' own conduct and business practices and not by any act or omission on the part of Anderson and ClaritySpring.

46. In the further alternative, the plaintiffs have failed to take appropriate steps to mitigate any loss or damage.

Strategic Lawsuit Against Public Participation

47. This action was brought by the plaintiffs to silence and/or intimidate whistleblowers, like Anderson and ClaritySpring, from bringing to the attention of securities regulators and the public potentially fraudulent and unethical conduct by a prominent private equity firm and a public company.

48. This action is a strategic lawsuit against public participation and should be dismissed on that basis. Anderson and ClaritySpring plead and rely on s. 137.1 of the *Courts of Justice Act*.

49. ClaritySpring and Anderson request that this action be dismissed with costs.

September 30, 2019

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THE CATALYST CAPITAL GROUP INC., et al.
Plaintiffs and

WEST FACE CAPITAL INC., et al
Defendants

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
- COMMERCIAL LIST**

Proceeding commenced at Toronto.

**STATEMENT OF DEFENCE OF THE
DEFENDANTS CLARITYSPRING INC. AND
NATHAN ANDERSON**

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