

**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 MAST 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 Defendant, Rob Copeland, 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, 330 University
Avenue, 9th Floor, 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
- 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 Defendant, Rob Copeland, in accordance with section 137.1(3) of the *Courts of Justice Act*;
- (b) The cost 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 to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE

The Parties

- (a) The Defendant, Moving Party, Rob Copeland (“**Copeland**”) is an investigative journalist employed by Dow Jones & Company (“**Dow Jones**”);
- (b) Dow Jones is a corporation with its head office in New York, New York, and is the publisher of The Wall Street Journal (the “**WSJ**”). The WSJ reports on matters of public importance both online and in print;
- (c) The Plaintiffs, The Catalyst Capital Groups 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 WSJ Investigation

- (d) In and around January 2017, Copeland began researching alternative investments with a view to writing articles on that subject for the WSJ. Jacquie McNish (“**McNish**”), Copeland’s colleague and an investigative journalist employed by Dow Jones, assisted Copeland with this research. As a result of their newsgathering, Copeland and McNish learned of issues of public interest that were being raised relating to the Plaintiffs’ business and accounting practices;
- (e) Copeland and McNish diligently investigated the issues raised in the course of their newsgathering and took steps to verify the facts that came to their attention. This included, among other things:
 - (i) speaking to various confidential sources;
 - (ii) speaking to the Defendant, Jeffrey McFarlane (“**McFarlane**”);
 - (iii) speaking to a spokeswoman for the Toronto Police Service (“**TPS**”); and
 - (iv) reviewing whistleblower complaints made to the Ontario Securities Commission (“**OSC**”) about Catalyst;
- (f) In addition, Copeland and McNish offered the subjects of their investigation, including the Plaintiffs, multiple opportunities over several weeks to discuss the issues raised by their newsgathering, including the opportunity to respond to all allegations made against them. Legal counsel for the WSJ engaged in various communications with counsel for the Plaintiffs about these subjects. At all times

prior to the WSJ publications complained of in the Fresh as Amended Statement of Claim, the Plaintiffs declined to provide any comment for publication on the matters raised by Copeland and McNish's newsgathering;

The Online Article

- (g) Copeland co-authored the publication entitled "Canadian Private-Equity Giant Catalyst Accused of Fraud by Whistleblowers" (the "**Online Article**"), which was published on the WSJ's website at www.wsj.com on 9 August 2017;
- (h) The Online Article reported on matters of public interest arising from the results of Copeland and McNish's newsgathering and interviews, including the fact that four individuals had filed whistleblower complaints with Canadian securities regulators alleging fraud by Catalyst. It included statements about the Plaintiffs' business practices, and quotes from McFarlane about filing a whistleblower complaint;

The Print Article

- (i) Copeland co-authored the publication entitled "Top Buyout Firm Scrutinized on Loans" (the "**Print Article**"), which was published in the print edition of the WSJ on 10 August 2017;
- (j) The Print Article was very similar to the Online Article and, once again, reported on matters of public interest arising from the results of Copeland and McNish's newsgathering, including the fact that four individuals had filed whistleblower complaints with Canadian securities regulators alleging fraud by Catalyst. The Print

Article included statements about the Plaintiffs' business practices, and quotes from McFarlane about filing a whistleblower complaint;

The Plaintiffs Commence the Proceeding against Copeland

- (k) On 7 November 2017, the Plaintiffs commenced this action against Copeland and others (the "**Action**"). As against Copeland, the Plaintiffs seek damages arising from or related to the publication of the Online Article and the Print Article for:
 - (i) defamation;
 - (ii) civil conspiracy;
 - (iii) intentional interference with economic relations;
 - (iv) injurious falsehood; and
 - (v) breach of the *Securities Act*;
- (l) The Plaintiffs have commenced this Action at the same time as they have commenced a parallel action for defamation against Copeland, McNish and Dow Jones arising from the same set of facts in Court File No. CV-18-593156-00CL (the "**Parallel Action**");
- (m) The same allegations of defamation and conspiracy made against Copeland in this Action are duplicated as against Copeland, McNish and Dow Jones in the Parallel Action;

- (n) There is no genuine issue for trial with respect to any of the factual allegations made by the Plaintiffs against Copeland, McNish or Dow Jones in this Action or in the Parallel Action;

The Proceeding is a SLAPP

- (o) This Action constitutes and is being pursued as a strategic lawsuit against public participation (a “SLAPP”). The Action arises from an expression made by Copeland, namely, the Online Article and the Print Article, and is designed primarily to discourage public discourse on matters of public interest, and in particular
 - (i) to discourage individuals who make whistleblower complaints to the OSC and other Canadian securities regulators from speaking with journalists about their concerns; and
 - (ii) to discourage journalists and news media from contributing their expertise in investigative journalism to preparing and publishing in-depth news articles on matters of interest to the public;
- (p) The core allegation in the Action that Copeland acted in furtherance of a “conspiracy” with and among the Defendants, against the Plaintiffs, simply by acting as a journalist, and by investigating and reporting on a news story, is baseless and demonstrates the nature and purpose of this action as a SLAPP. This Action, and the Parallel Action, are both being pursued for the collateral purposes of uncovering Copeland’s confidential sources, and of exposing the WSJ’s

internationally acclaimed journalistic and investigative practices to frivolous, vexatious, abusive and completely unfounded allegations;

- (q) The Action is also designed to reinforce the Plaintiffs' reputation for engaging in aggressive litigation, as a means to discourage both the WSJ and other media in Canada and the US from reporting responsibly on the Plaintiffs' business and accounting practices;
- (r) Despite providing a Response to Demand for Particulars, amending the allegations in the Statement of Claim to add particulars, and providing a Response to Request to Inspect, the Plaintiffs have failed to particularize any viable claims against Copeland and have failed to provide any documentation that could implicate Copeland in the claims advanced against Copeland and other Defendants. This further demonstrates the nature and purpose of this action as a SLAPP;
- (s) The Action does not have substantial merit;
- (t) Copeland has valid defences to the Action;
- (u) The harm likely to be or have been suffered by the Plaintiffs as a result of Copeland's expression is not sufficiently serious that the public interest in permitting the Action to continue outweighs the public interest in protecting Copeland's expression;
- (v) Section 137.1 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43; and
- (w) Such further and other grounds as the lawyers may advise.

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

- (a) The Affidavit of Rob Copeland, to be sworn; and
- (b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

October 10, 2019

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

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PROCEEDING COMMENCED AT
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