

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 LEVITT, 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, Darryl Levitt, 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 sub-rule 37.12.1(1) because it is

in writing as an opposed motion under sub-rule 37.12.1(4);

orally.

THE MOTION IS FOR:

1. An Order dismissing the proceeding brought by the Plaintiffs as against the Defendant, Darryl Levitt, in accordance with section 137.1(3) of the *Courts of Justice Act*;
2. Costs of this motion and this proceeding on a full indemnity basis, in accordance with section 137.1(7) of the *Courts of Justice Act*; and
3. Such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE

The Parties

1. The Defendant, Darryl Levitt (“**Levitt**”) is a practising lawyer in Toronto, specialising in corporate finance and energy. Levitt is a self-represented defendant in this action brought by the Plaintiffs.
2. The Catalyst Capital Group Inc. (“Catalyst”) is a corporation that carries on business as an investor in distressed companies for control. Callidus Capital Limited (“Callidus”) is a related company to Catalyst, which carries on business as a sub-prime lender for distressed companies. Callidus is a publicly traded company on the Toronto Stock Exchange. Both are controlled by Newton Glassman (“Glassman”).

Levitt’s Involvement with the Plaintiffs

3. Levitt was an officer of Fortress Resources (“Fortress”) which previously obtained a loan from Callidus. As part of the loan terms, Levitt was required to sign a personal guarantee.

4. Callidus has sought to enforce the personal guarantee against Levitt in Toronto Commercial List File No. CV-17-11712-00CL. Levitt has counterclaimed in that proceeding, alleging that, among other things, Callidus acted in bad faith in connection with its loan to Fortress and its attempt to enforce its guarantee against Levitt. The claim and counterclaim in that proceeding remain outstanding.
5. In the course of investigating the plaintiffs' business practices in connection with the proceedings against Levitt, Levitt discovered loan misconduct in other cases involving Callidus which was similar to the misconduct in Callidus' dealings with Fortress.
6. Levitt's sources of information included, among other things:
 - (i) Financial disclosures and public filings;
 - (ii) Discussions with other borrowers of Callidus; and
 - (iii) Bankruptcy, receivership, and other court documents.
7. As a result of his research, Levitt formed the view that Catalyst and Callidus were engaging in a scheme to artificially inflate the value of their assets.
8. Levitt and other similarly situated individuals compiled substantial evidence demonstrating the plaintiffs' improper conduct. Levitt reported this conduct through whistleblower reports to the Toronto Police Services and to the Ontario Securities Commission ("OSC"). The existence of the whistleblower reports were subsequently reported on by the Wall Street Journal.

The Underlying Proceeding

9. The plaintiffs have brought this proceeding against Levitt, claiming that Levitt and others are liable to the plaintiffs for damages in the amount of \$450 million for defamation, injurious falsehood, intentional interference with economic relations and civil conspiracy. The plaintiffs' allegations are that Levitt is liable to them as a result of Levitt's whistleblower complaints to the Toronto Police Services and Ontario Securities Commission, as a result of the Wall Street Journal article, and as a result of Twitter posts that were critical of the plaintiffs which the plaintiffs allege may have been authored by Levitt. The plaintiffs' further allege that the actions of Levitt are part of a nebulous "wolfpack" conspiracy involving short-sellers.

10. Levitt has defended the proceeding, on the basis that (among other things):

- a. The whistleblower reports are privileged, and not capable of supporting a claim against him;
- b. The content of the whistleblower reports were nevertheless, true;
- c. Levitt was not the author of the Wall Street Journal report, and any information provided by Levitt to any journalist was truthful information obtained from publicly available reports;
- d. Levitt is not part of any alleged illegal short-selling conspiracy;

- e. The damages claimed by the plaintiffs relating to the loss of share value are the result of the poor financial performance of Callidus, rather than any conduct of Levitt; and
- f. The claim by the plaintiffs, along with other actions taken by the plaintiff, are an improper attempt to harass or intimidate Levitt.

The Proceeding is a Meritless Claim Arising from Expressions on a Matter of Public Interest

- 11. This proceeding arises from expressions made by Levitt on a matter of public interest, being misconduct in the operation of a publicly traded company and a private equity firm that has raised billions of dollars from public pension funds and university endowments, and breaches of the *Ontario Securities Act*. As a result, the claim against Levitt should be dismissed pursuant to s. 137.1 of the *Courts of Justice Act*.
- 12. There are no grounds to believe the underlying proceeding has substantial merit.
- 13. Levitt has multiple valid defences to this proceeding.
- 14. There has been little, or no harm suffered by the plaintiffs as a result of Levitt's expressions on matters of public interest, and any of the harm alleged arose from the plaintiffs' own actions. Any harm suffered by the plaintiffs is substantially outweighed by the public interest in protecting whistleblowers.
- 15. Section 137.1 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and Rule 37 of the *Rules of Civil Procedure*.
- 16. Such further and other grounds as Levitt may advise.

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

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

October 17, 2019

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-and- WEST FACE CAPITAL INC. et al.
Defendants

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

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PROCEEDING COMMENCED AT
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