

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

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, ANDREW LEVY, GEORGE WESLEY VOORHEISS, BRUCE
LIVESEY, CANNACCORD GENUITY CORP. AND JOHN DOES #6-10

DEFENDANTS

NOTICE OF MOTION

The Defendant, Bruce Livesey, 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 action brought by the Plaintiffs against the Defendant, Bruce Livesey, 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 deems just.

THE GROUNDS FOR THE MOTION ARE:

The Parties

- (a) The Defendant, Bruce Livesey (the “**Defendant**”), is a freelance journalist residing in Toronto. He has more than 35 years of experience as a journalist and is the author of numerous articles on business-related subjects that have been published in prominent Canadian publications. He is also an award-winning writer, director and producer of TV and radio documentaries on business and financial topics.
- (b) The Plaintiffs, The Catalyst Capital Groups Inc. (“**Catalyst**”) and Callidus Capital Corporation (“**Callidus**”) are related corporations controlled by Newton Glassman (“**Glassman**”). The Plaintiffs are in the business of making investments in distressed and undervalued Canadian and American situations, including the provision of capital on a bridge basis to companies that cannot access traditional lending sources.

The Defendant's Investigation

- (c) In or about August 2016, the Defendant began investigating a long-running and highly publicized feud between Glassman and the Defendant, Gregory Boland (“**Boland**”), who was a business rival of Glassman.
- (d) The Defendant undertook this investigation strictly for journalistic purposes and after it was assigned to him by Joe Castaldo, Managing Editor for features at *Canadian Business* magazine.
- (e) Eventually, after months of inquiry, the Defendant broadened his investigation to examine the business practices of the Plaintiffs.
- (f) In the course of his investigation, the Defendant drew upon a broad range of sources, including, but not limited to, Catalyst and Callidus disclosure documents, borrowers of Callidus and those engaged in disputes with the company, Boland’s business acquaintances, and court documents and testimony related to legal disputes involving Glassman and Boland. The Defendant did what he and other journalists generally do when researching a magazine feature – speak to as many knowledgeable people as possible about the various players and disputes.
- (g) In addition, the Defendant offered to Glassman and the Plaintiffs numerous opportunities to respond to allegations against them. Glassman and the Plaintiffs failed to avail themselves of most of these opportunities.

The Articles

- (h) The Defendant's investigation ultimately resulted in him co-authoring two articles relating to Glassman and the Plaintiffs. Both articles were published by the Southern Investigative Reporting Foundation ("SIRF").
- (i) SIRF was formed in 2012 with the goal of providing in-depth financial investigative reporting to ensure corporate accountability for the common good. SIRF is funded solely through the tax-deductible contributions of individual donors and foundations, none of whom derive any professional or economic benefit from their support for SIRF.
- (j) The Defendant co-authored the two articles with Roderick Boyd, a distinguished financial investigative reporter. Mr. Boyd is a board member of SIRF and teaches investigative reporting at the University of North Carolina (Chapel Hill).
- (k) The first of the two articles was entitled "Newton Glassman's Legacy of Ashes" and was published by SIRF on April 11, 2018.
- (l) The second of the articles was entitled "Newton Glassman and Other Peoples' Money" and was published by SIRF on November 27, 2018 (together with the article described in paragraph (k), the "**Articles**").
- (m) The Articles reported on matters of public interest arising from the Defendant's months-long investigation into Glassman and the Plaintiffs.

This Proceeding

- (n) The Plaintiffs commenced this action against the Defendant on July 18, 2019.

(o) As against the Defendant, the Plaintiffs allege: (1) defamation; (2) civil conspiracy; (3) injurious falsehood; (4) intentional interference with economic relations; and (5) breaches of s. 126.1 and s. 126.2 of the *Securities Act* (Ontario), RSO 1990, c. S.5.

This Action is a Strategic Lawsuit Against Public Participation

(p) At all times, the Defendant has acted in good faith with respect to his reporting on the Plaintiffs, and has reasonably believed that the Articles, which concern matters of public interest, are true and accurate.

(q) The Plaintiffs' allegations against the Defendant, and particularly their core allegation that the Defendant's reporting on the Plaintiffs was done in furtherance of a conspiracy, are frivolous and are designed to punish the Defendant for exposing the Plaintiffs' unethical business practices, to silence the Defendant and to deter the Defendant and other journalists from writing reports that are critical of the Plaintiffs.

(r) This action lacks substantial merit.

(s) The Defendant has valid defences to the action.

(t) The harm likely to be or have been suffered by the Plaintiffs as a result of the Defendant's expressions is not sufficiently serious that the public interest in permitting the action to continue outweighs the public interest in protecting the Defendant's expressions.

(u) The Defendant asks that the action against him be dismissed, with costs on a full indemnity basis, pursuant to s. 137.1 of the *Courts of Justice Act*, RSO 1990, c. C.43.

(v) The Defendant relies on such further and other grounds as his counsel may advise.

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

- (a) The Affidavit of Bruce Livesey, to be sworn; and
- (b) Such further and other evidence as the Defendant's counsel may advise and this Honourable Court may permit.

Dated: October 16, 2019

Dimitri Lascaris Law Professional Corporation
360, Rue St. Jacques, Suite G101
Montreal, QC H2Y1P5

A Dimitri Lascaris
LSUC No.: 50074A
Tel.: (514) 941-5991
Fax: (514) 941-5991

Lawyer for the Defendant Bruce Livesey

TO: THE SERVICE LIST

THE CATALYST CAPITAL GROUP INC. et al. v. WEST FACE CAPITAL INC. et al.

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

Plaintiffs

Defendants

ONTARIO

SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION

**A. Dimitri Lascaris Law
Professional Corporation**
360, Rue St. Jacques, Suite G101
Montreal, QC H2Y1P5

A Dimitri Lascaris
LSUC No.: 50074A
Tel.: (514) 941-5991
Fax: (514) 941-5991

Lawyer for the Defendant Bruce
Livesey