

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

THE CATALYST CAPITAL GROUP 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, KEVIN
BAUMANN, JEFFREY MCFARLANE, DARRYL LEVITT, RICHARD
MOLYNEUX, GERALD DUHAMEL, GEORGE WESLEY VOORHEIS,
BRUCE LIVESEY and JOHN DOES #4-10

Defendants

DEFENCE TO COUNTERCLAIM OF KEVIN BAUMANN

1. The defendants to the counterclaim, The Catalyst Capital Group Inc. ("**Catalyst**") and Callidus Capital Corporation ("**Callidus**"), deny all of the allegations contained in the Amended Statement of Defence and Counterclaim of Kevin Baumann ("**Baumann**") dated November 11, 2019, (the "**Counterclaim**") save and except those allegations expressly admitted herein.
2. Catalyst and Callidus each repeat and rely on the facts and matters generally set out in the Fresh as Amended Statement of Claim filed in this Action.

3. Catalyst and Callidus note that neither Scott Sinclair ("**Sinclair**") nor Sinclair Range Inc. are named Defendants in this Action and therefore are not properly named in the Counterclaim.
4. Callidus is a publicly traded, specialty debt fund that provides capital on a bridge basis to meet the financing requirements of companies that cannot access or maintain traditional lending sources, including those that are in financial distress.
5. Pursuant to various credit and security agreements dated on or about March 31, 2014, between Callidus and Baumann and 1711760 Alberta Ltd., Callidus granted various credit facilities to Alken Basin Drilling Ltd. ("**Alken**") having an aggregate credit limit of \$28,500,000, subject to the conditions contained therein (collectively, the "**Loan**").
6. Alken sought the Loan from Callidus for the express purpose of obtaining working capital; paying out existing credit facilities with Servus Credit Union, Royal Bank of Canada and 1208823 Alberta Ltd.; and to reduce its indebtedness to debenture holders.
7. In response to the Counterclaim as a whole, Callidus states that it made credit facilities available and advanced funds to Alken in accordance with the terms of the Credit Agreement.
8. Catalyst had no involvement whatsoever in the credit agreements provided to Alken as noted above. Callidus and Catalyst specifically deny that it was a condition of the loan to Alken that Newton Glassman meet with Baumann prior to

closing of the Alken loan facilities. Catalyst specifically pleads that it has no liability whatsoever to Baumann and puts Baumann to the strict proof thereof.

9. Callidus and Catalyst deny that any special relationship arose or existed at any time between it and Baumann, or that Callidus owed any duties, fiduciary or otherwise to Baumann arising out of the Callidus relationship, and puts Baumann to the strict proof thereof.
10. Further, and without limiting the generality of the foregoing, Callidus says and the fact is that at all material times the relationship between it and Baumann was a creditor/debtor relationship arising out of the guarantee provided by Baumann of Alken's debts.
11. In response to paragraphs 35 – 40 of the Counterclaim, by an engagement letter dated December 1, 2014, Range Corporate Advisors Inc. ("**Range Advisors**") was engaged by Alken as a corporate advisor to Alken. Range Advisors is a corporate advisory firm that specializes in the turnaround, restructuring, refinance, and sale of troubled businesses. Sinclair was the Range Advisors' Managing Director assigned to assist Alken.
12. Range Advisors' engagement was to assist Alken in connection with, amongst other things, considering, analyzing and pursuing various alternatives to:
 - (a) manage and improve Alken's short term liquidity;
 - (b) turnaround its financial and operating performance; and
 - (c) payout its indebtedness to Callidus.

13. As engaged to do so, Range Advisors attempted to initiate the turnaround plan devised by Sinclair for Alken which involved cutting expenses, selling excess and redundant capital assets to reduce debt, eliminating related party transactions and improving other internal control related issues, and ultimately refinancing or selling the right sized business for the benefit of all stakeholders.
14. The execution of the turnaround plan was frustrated by Baumann during the advisory period of the Range Advisors' mandate.
15. On April 21, 2015, Sinclair was appointed to act as President of Alken following the resignation of the Company's prior President and majority shareholder, Baumann. The appointment was executed by Baumann in his capacity as Director of Alken.
16. On June 2, 2015, Sinclair was appointed Director of Alken following the resignation of Baumann from the Board of Directors.
17. Since his appointment as President and Director, Sinclair commenced implementation of the turnaround plan.
18. Despite these efforts, on or about April 1, 2016, MNP Ltd. ("**MNP**") was appointed by Court Order as the Receiver of Alken, and thereafter acted in that capacity as a Court appointed Receiver and officer of the Court. As MNP was not an agent of Callidus, Sinclair, nor any other party, had authority over MNP in respect of the sales process. Rather, the fact is, that at all material times Sinclair provided the aid, assistance and cooperation as requested by the Receiver in completing the

duties being undertaken by it under and pursuant to the Court Order by which it was appointed, including in respect of the sales process.

19. The sale of Alken's assets was approved by the Court in the Receivership Proceedings.
20. As MNP was, by Court Order, given the authority to run the sales process, all decisions regarding the process were made by MNP. To the knowledge of Callidus, all opportunities and assets of any value whatsoever, including specifically the First MOA and Second MOA, and the MOU, were disclosed in the data room established by MNP and included in the assets tendered for sale, such that the market was able to speak as to their value, if any.
21. As to the steps taken in respect of the sale of the assets, and the providence of the sale itself, steps taken by MNP were in its capacity as a Court appointed Receiver, with the power to sell the assets as it did. The process was a Court supervised one, with the sale itself being subject to Court approval.
22. The Order approving sale was pronounced on notice to Baumann, and was not appealed by him.
23. The claims made in the Counterclaim as to the providence or improvidence of the sale of the asset, the process, or if they were fully and properly exposed to the market are an improper collateral attack on the order approving sale, as those issues are now *res judicata*.
24. Callidus and Catalyst specifically deny the allegation contained in paragraph 41 of the Counterclaim and puts Baumann to the strict proof thereof.

25. At all times Callidus acted under the terms of the Credit Agreement, and acted in a commercially reasonable manner both in its dealings with Baumann and Alken in enforcing the Credit Agreement.
26. Further and in the alternative, at all material times, Baumann was a shareholder of Alken and the wrongs complained of, although specifically denied, would be wrongs to the Company, such that the claims being raised by Baumann are derivative in nature, and contrary to the rule in *Foss & Harbottle*.
27. Callidus and Catalyst seek the dismissal of the Counterclaim, with costs on a solicitor and client cost basis.
- 28.

November 29, 2019

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TO: **SERVICE LIST**

THE CATALYST CAPITAL GROUP INC. et al
Plaintiffs

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

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PROCEEDING COMMENCED AT
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DEFENCE TO COUNTERCLAIM OF KEVIN BAUMANN

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