

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL
CORPORATION

Plaintiffs
(Moving Parties)

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 and JOHN DOES #1-10

Defendants
(Responding Parties)

REPLY FACTUM OF THE MOVING PARTIES

INTRODUCTION

1. This Reply Factum is being filed in answer to the Factum delivered by the West Face Parties herein (all capitalized terms have the same meanings as in the Moving Parties' Factum dated February 24, 2021).

2. That Factum (the “WF Factum”) contains many allegations which are factually inaccurate, as well as much invective which maligns the bona fides of the Moving Parties and their arguments.

ISSUES DEALT WITH IN THIS REPLY FACTUM

3. These are not addressed in this Reply Factum, the contents of which is limited by Rule 61.03.1 (11):

61.03.1

Moving Party’s Reply Factum

(11) If the responding party’s factum raises an issue on which the moving party has not taken a position in the moving party’s factum, that party may serve a reply factum. [Underlining added.]

4. First, the WF Factum alleges that the Catalyst Parties’ leave to appeal application (i) tries to convince this Court that there is some kind of “unfortunate coincidence” between the decisions of Justice Boswell and Justice McEwen (para. 4, WF Factum) and (ii) seeks to “manufacture a controversy” and “impugn” Justice McEwen’s decision (paras. 41 and 55, WF Factum).

5. The Moving Parties do not take the above positions. They do not seek to raise any innuendo, manufacture a controversy or impugn the decisions of Justice Boswell or Justice McEwen. Rather, the Catalyst Parties have respectfully submitted that there are errors in these decisions that raise legitimate issues for an appeal, and that warrant consideration by the Divisional Court. They have done so *bona fide*, on an expedited basis, and in accordance with the applicable rules.

6. Second, paragraph 9 of the WF Factum accuses the Catalyst Parties of refusing to allow any cross-examination regarding the privilege issues which came before Justice Boswell and Justice McEwen. In fact:

(1) Brian Greenspan and Newton Glassman signed detailed affidavits regarding the privilege issues decided by Justice Boswell. They were available to be cross-examined, but the West Face Parties decided not to do so.

(2) Jim Riley and Patrick Dalton signed detailed affidavits regarding the privilege issues decided by Justice McEwen. They were cross-examined by the West Face Parties and the Anderson Parties on January 5, 2021. Roel Campos also delivered a declaration. Campos and a former Callidus director (David Sutin) were available to be questioned on January 5, 2021. No one did so.

7. Third, paragraphs 62–63 of the WF Factum accuse the Catalyst Parties of making submissions which are inconsistent with the arguments made by Callidus in the case of [*Callidus v. Opes Resources Inc., 2019 ONSC 1288 \(S.C.J.\)*](#). This accusation is groundless. The circumstances of that decision are totally different from the case at bar.

8. Fourth, paragraph 16 of the WF Factum attacks the validity/credibility of the contents of the Vincent Hanna email (this email is reproduced in paragraph 10 of the Catalyst Parties’ Factum):

“The allegations in the email are obviously scandalous and far-fetched. (They are also untrue in fact, as West Face will prove at the return of the Anti-SLAPP Motions).”

9. Contrary to the above conclusion, the recent decision of Justice McEwen on another privilege motion in this proceeding shows that the contents of the Vincent Hanna email were indeed well-founded and identified matters of very serious concern. See *The Catalyst Capital*

Group Inc. et al. v. West Face Capital Inc. et al., 2021 ONSC 1454), at paragraphs 10, 19, 27, 29, 30, 37-38, 56-57, 59-61, 64 and 69-73.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 4th day of March, 2021.



David C. Moore



Matthew Karabus



Kenneth G. Jones

MOORE BARRISTERS

Professional Corporation
393 University Avenue, Suite 1600,
Toronto ON M5G 1E6
Tel: 416.581.1818 x.222
Fax: 416.581.1279

David C. Moore (#16996U)
david@moorebarristers.ca

Kenneth G. Jones (#29918I)
ken.jones@moorbarristers.ca

GOWLING WLG (CANADA) LLP

Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto ON M5X 1G5
Tel: 416-862-7525
Fax: 416-862-7661

Matthew Karabus (LSO#61892D)
matthew.karabus@gowlingwlg.com

**Lawyers for the Plaintiffs/Moving
Parties, The Catalyst Capital
Group Inc. and Callidus Capital
Corporation**

SCHEDULE A - LIST OF AUTHORITIES

Caselaw

1. *Callidus v. Opes Resources Inc.*, 2019 ONSC 1288 (S.C.J.)
2. *The Catalyst Capital Group Inc. et al. v. West Face Capital Inc. et al.*, 2021 ONSC 1454 (S.C.J.) [not yet available on CanLII]

SCHEDULE B - RELEVANT STATUTES, REGULATIONS AND BY-LAWS

Rules of Civil Procedure

R.R.O. 1990, Reg. 194, under the *Courts of Justice Act*, R.S.O. 1990, c. C.43

61.03.1

Moving Party's Reply Factum

(11) If the responding party's factum raises an issue on which the moving party has not taken a position in the moving party's factum, that party may serve a reply factum.

Note: the foregoing is applicable to motions made to the Divisional Court for leave to appeal from an interlocutory order made by a judge of the Superior Court of Justice by Rule 62.02 (5):

MOTION FOR LEAVE TO APPEAL

62.02

Procedures

(5) Subrules 61.03.1 (4) to (19) (motion for leave to appeal to Court of Appeal) apply, with the following and any other necessary modifications, to the motion for leave to appeal:

1. References in those subrules to the Court of Appeal shall be read as references to the Divisional Court.
2. For the purposes of subrule 61.03.1 (4),
 - i. the moving party's factum shall be limited to those facts, issues, statements of law and authorities that are relevant to a ground on which leave to appeal may be granted, and
 - ii. the motion record served by the moving party shall include a document or portion of a document, including a transcript of evidence, only if the document or portion of a document is relevant to a ground on which leave to appeal may be granted and is referred to in the moving party's factum.
3. For the purposes of subrules 61.03.1 (7) and (8),
 - i. the responding party's factum shall be limited to those facts, issues, statements of law and authorities that are relevant to a ground on which leave to appeal may be granted, and
 - ii. any motion record served by the responding party shall include a document or portion of a document, including a transcript of evidence, only if the document or portion of a document is relevant to a ground on which leave to appeal may be granted and is referred to in the responding party's factum. O. Reg. 455/19, s. 1.

Divisional Court File No.

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

THE CATALYST CAPITAL GROUP et al.

- and - WEST FACE CAPITAL INC. et al.

Plaintiffs

Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

REPLY FACTUM OF THE MOVING PARTIES

MOORE BARRISTERS

Professional Corporation
393 University Avenue, Suite
1600,
Toronto ON M5G 1E6

David C. Moore (#16996U)
david@moorebarristers.com

Ken Jones (#29918I)
kenjones@moorebarristers.ca

Tel: 416.581.1818 x.222
Fax: 416.581.1279

**GOWLING WLG (CANADA)
LLP**

Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto ON M5X 1G5

Matthew Karabus (#61892D)
matthew.karabus@gowlingwlg.com

Tel: 416-862-7525
Fax: 416-862-7661

Lawyers for the Plaintiffs/Moving Parties, The Catalyst Capital Group
Inc. and Callidus Capital Corporation