

ENDORSEMENT

MCEWEN, J.

[1] This is the fourth in a series of endorsements that I will be releasing in advance of the anti-SLAPP motions scheduled for the week of May 17, 2021.

[2] The defendant Kevin Baumann (“Baumann”) brings this motion to require the Catalyst Capital Group Inc. and Callidus Capital Corporation (the “Catalyst Parties”) to answer questions that were refused or taken under advisement during the cross-examination of James Riley (“Riley”), on behalf of the Catalyst Parties, with respect to the upcoming anti-SLAPP motions.

[3] As noted in my earlier endorsements, I do not propose to review the background facts concerning this litigation which are well set out in the decision of Boswell J.: see *The Catalyst Capital Group Inc. v. The West Face Capital Inc.*, 2021 ONSC 125.

[4] Baumann is one of the many defendants that the Catalyst Parties have commenced this action against. Amongst other things, it is alleged that the defendants, including Baumann, conspired to “short and distort” the shares of Callidus.

[5] As has been further noted in the previous endorsements, all of the interlocutory motions before me relate only to the anti-SLAPP motions since s. 137.1 (5) of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43 (“CJA”), specifically states that no further steps may be taken in a proceeding until the anti-SLAPP motion has been disposed of.

[6] It is in this context that I am dealing with issues of relevance with respect to Baumann’s motion related to his anti-SLAPP motion.

[7] In advance of the motion, Baumann and the Catalyst Parties provided me with useful charts to assist in determining the disputes surrounding the Catalyst Parties’ refusals.

[8] I have attached Baumann’s chart as Exhibit A to this Endorsement. There were a few disputes as to whether Baumann had accurately set out the questions. Where there was a dispute, I have reviewed the transcript to obtain clarity. I have, however, attached Baumann’s chart since the parties followed its format in arguing the refusal motion.

[9] I will now deal with each question in turn, following the format of Schedule A.

Question #1

[10] I am satisfied that, in advance of the motion, the question was properly addressed by the written answer provided by the Catalyst Parties, which was reproduced in the Catalyst Parties’ own chart as set out in the motion. Baumann now seeks further information with respect to assets that remained in Callidus. This information is irrelevant for the purposes of the anti-SLAPP motion.

Question #2

[11] This question involves five separate questions that were put to the Catalyst Parties by Baumann by way of an email dated October 23, 2020. The Catalyst Parties thereafter, at Riley's cross-examination, refused to answer the questions.

[12] I will deal with each in turn.

- Question #2 (1): This question related to communications between the Catalyst Parties and Scott Sinclair ("Sinclair"), who was the Chief Restructuring Officer ("CRO") appointed by the Catalyst Parties to operate Baumann's company, Alken Basin. In my view, this question is not relevant to the anti-SLAPP motion but, rather, is only potentially relevant with respect to the action itself and need not be answered at this time.
- Question #2 (2): This question concerns police reports allegedly filed by the Catalyst Parties against Baumann to the RCMP. In my view, these documents ought to be produced. I agree with Baumann that, given the allegations against him by the Catalyst Parties, the police reports are relevant to the anti-SLAPP motion. In this regard, I reiterate the comments made in my previous endorsements and the comments of Boswell J., at para. 339 of his decision: the trend in civil litigation is towards full disclosure. This is particularly germane to the within case which involves acrimonious, high stakes litigation with significant allegations of conspiracy and defamation, amongst others. In the circumstances, it is fair to lean towards full disclosure which I am doing here. The relationship between Baumann and the Catalyst Parties will be relevant to Baumann's anti-SLAPP motion; therefore, so are the police reports that relate to that relationship.
- Question #2 (3): This question relates to Baumann's attempt to obtain copies of yield enhancement agreements between the Catalyst Parties and others. I do not see how this documentation is relevant to the anti-SLAPP motion. Rather, the documentation deals with the issues in the action themselves, particularly Baumann's counterclaim. Further, the Catalyst Parties have already provided Baumann with specific documents and evidence which show that the yield enhancement agreement that Baumann was particularly curious about does not relate to Alken Basin.
- Question #2 (4): This was not pursued by Baumann at the motion.
- Question #2 (5): Again, in my view, this question is not relevant to the anti-SLAPP motion but, rather, deals with Baumann's counterclaim against the Catalyst Parties. As I understand it, Baumann believes that the Catalyst Parties and Craig Boyer ("Boyer") conspired against him although there are no allegations against Boyer in Baumann's pleading. I fail to see how communications between Callidus and Boyer are relevant to Baumann's anti-SLAPP motion.

Question 3:

[13] This question involves the issue as to whether Sinclair signed a Code of Conduct or Ethics document. I do not see any relevance here with respect to Baumann's anti-SLAPP motion.

Question #4

[14] This question involves the issue as to whether Riley was aware that Sinclair had an issue with the Ontario Securities Commission prior to Sinclair being nominated by the Catalyst Parties to act as CRO for Alken Basin. I am ordering the Catalyst Parties to answer this question. Given the broad ranging allegations that the Catalyst Parties have made against Baumann, I am of the view that this information is relevant for Baumann's anti-SLAPP motion; it enhances the factual matrix between Baumann and the Catalyst Parties and enables a more thorough consideration of the factors set out in s. 137.1 of the CJA.

Question #5

[15] The question involves whether there was a confidentiality clause in the main operating agreement between Alken Basin and the Catalyst Parties. This is not relevant to the anti-SLAPP motion. In any event, both parties have a copy of the agreement and it can be easily read by either of them.

Question #6

[16] This question was not pursued by Baumann at the motion.

Question #7

[17] This question involves the issue as to whether Riley signed a Code of Conduct. The Catalyst Parties do not have to again answer this question. The Catalyst Parties have previously answered the question by advising Baumann that Riley does not recall whether he signed the Code of Conduct, but he was aware of it and abided by its contents.

Question #8

[18] Baumann did not pursue this question at the motion.

Question #9

[19] This question involves Mr. Baumann's pursuit of the National Bank valuations of the yield enhancements. This question is not relevant to Baumann's anti-SLAPP motion. The National Bank documents, if they exist, are outside the scope of the anti-SLAPP motion. In any event, it appears as though the National Bank report was filed with SEDAR. Baumann seeks "granular" documentation which in my view, once again, is outside the scope of the anti-SLAPP motion he has brought.

Questions #10, #11 and #12

[20] Baumann did not pursue these questions at the motion.

Question #13

[21] This question involves whether the Catalyst Parties should answer questions with respect to how the names of individuals who were under consideration to oversee Alken Basin were provided to Baumann, *i.e.* in print or email. I am not ordering the Catalyst Parties to answer these questions. Although I have ordered some disclosure with respect to Sinclair, I fail to see how this generalized type of information will have any relevance at the anti-SLAPP motion.

DISPOSITION

[22] Based on the above, the Catalyst Parties shall provide Baumann answers to questions #2 (2) and #4. The remainder of the motion is dismissed.

[23] As with my other endorsements, I recognize that either party may seek to appeal this ruling. I similarly order that this Endorsement not be disseminated or published in any way, beyond Baumann, counsel and their clients for a period of 30 days. If any party moves for leave to appeal within the 30-day period, then this publication ban will continue until the motion for leave to appeal has been determined by the Divisional Court. The publication ban will expire if no party moves for leave to appeal within the 30 days.

[24] If the parties cannot agree on the issue of costs, I can be spoken to in a 30-minute case conference concerning further steps with respect to the delivery of written submissions.

A handwritten signature in black ink, appearing to read 'McEwen', written over a horizontal line.

McEwen, J.

Exhibit A

**UNDERTAKINGS, QUESTIONS TAKEN UNDER ADVISEMENT, AND REFUSALS
given at the Cross-Examination of James Riley held on October 27, 2020
(cross-examination by Kevin Baumann)**

Table 1: From the Cross-Examination of James Riley held on Tuesday, October 27, 2020

No.	Issues and Their Relevance to the Motion or Affidavits	Page(s)	Question(s)	Specific Question and Records Requested	Answer or Precise Basis for Refusal	Disposition by the Court
Refusal given on the examination of James Riley, held October 27, 2020 380-4, 383-10, 397-2, 436-15						
1	Mr Moore's refusal was on the basis that he didn't believe Mr Riley said Callidus was winding down. And Mr. Riley said he couldn't remember what he said.	380	1184	Okay, can you give me an undertaking as to what has transpired relating to the privatizing -- or sorry, the winding down of Callidus? What assets remain in Callidus? The wind down and new entity Prontwell partners is further confirmed in the questioning of Mr. Riley by Nathan Anderson's counsel Mr. Lucas lung on this same days transcript Oct 27 page 269 line 11,12, 13.		
2	We are here to have a cross-examination on the SI,APP motions. I am not going to go through all of these points because it will just take up too much time and debate on this cross-examination, and I don't want to interfere with your ability to ask relevant questions, but I	383	1187	So this is information that relates directly to my case, and I believe all the cases, and can I get an undertaking from you, Mr. Riley, to produce the information referenced in the five different topics? To utilize the time Baumann put a previous email dated October 23, 2020 to Riley and Callidus counsel requesting records and information relating to 5 topics.		

<p>will just make this observation as an example. The first document referred to involves in CRO Sinclair and other parties, and he is one of the parties who you wanted to enjoin in your amended counterclaim that Justice Hailey said could not be brought forward at this time. And so we don't agree that all these records are relevant or material to the SLAPP motions, and so we are not going to give that undertaking.</p>			<p>1. There is not one record relating to the conduct and communications between the plaintiffs and their CRO Sinclair and other parties, this is blatantly relevant as Sinclair's conduct resulted in Callidus' unsuccessful summary attempt and appeal in Alberta.</p> <p>2. There is no disclosure relating to your clients false police report against me to the Blackfalds RCMP. This mischievous move was brought two years after your client oppressed Alkon by denying its own substantial receivables funds being held by your client without even an explanation.</p> <p>3. As demanded before, Mr Glassman bragged in his own public in print earnings transcript documents of at least 14 loans with yield enhancement on, that and other statements within the transcripts flow to 14 yield enhancement agreements, 14 third party reports and 14 requests from Callidus to its auditor KPMG to evaluate and include the values within Callidus' financials or at the least review as Glassman stated.</p> <p>4. From the limited disclosure received there are some email communications between Callidus and the OSC. There is obvious selective disclosure being played as there is no disclosure between the plaintiffs and the OSC which resulted in sanctions against Callidus, which Glassman refers to as recommendations.</p> <p>5. Considering Mr Boyer was an account manager for most of the</p>		
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				borrowers which are named in the action , and Callidus has sued Mr Boyer for fraud or misrepresentation, communications between the plaintiffs and Boyer relating to borrowers is relevant and required .		
3	<p>R/F MR. MOORE: No, we are not going to make that inquiry.</p> <p>MR. BAUMANN: Well, he was a contractor. Why not?</p> <p>MR. MOORE: Well, if you sought to add him in the counterclaim and – again, I don't want to clutter up the record unduly, but no, we are not going to make that inquiry</p>	397	1212	<p>And also can you find out if Scott Sinclair signed one on behalf of him and his company Sinclair Range?</p> <hr/> <p>Baumann is seeking confirmation whether CRO Sinclair or his Company did or did not sign a Code of Conduct and Ethics document.</p>		
4	<p>R/F MR. MOORE: Don't answer the question. I believe you raised that in the Alberta proceedings somewhere, and in any event, it is connected to the counterclaim that was up on the screen before that you wanted to amend but hasn't been amended.</p>	436	1295	<p>Okay. Relating to Sinclair, were you aware that he had a securities conviction basically for I guess you could call it misrepresentation, fraud or whatever, were you aware that he had that issue with the OSC prior to him being advanced to my company by Boyer?</p>		

Under Advisement given on the examination of James Riley, held October 27, 2020 388:15, 393:17, 396:21, 402:01, 409:10, 411:24, 413:5, 426:18, 436:6					
5	<p>U/A MR. MOORE: We'll take that question under advisement. As I said - and I don't want to keep repeating myself, I want to let you get on with your questions, that is what I am inviting you to do - my understanding and recollection is that, in common with many of the loan arrangements involving Callidus, there is more than one document that borrowers or prospective borrowers signed.</p>	388	1190	<p>Okny, well, anyways, this document is the basis for all other documents, which would have been the share hypothecation and everything else that went behind it, so we'll leave it at that. This document is what led to any other 2 agreements, i.e., share hypothecation agreements, powers of attorney and any other agreements with Callidus, so this is the main document. So for the record, contrary to what Mr. Riley said this morning, there is no confidentiality relating to this agreement, at least this agreement. Would you agree with that, Mr. Riley, or no?</p> <hr/> <p>Baumann requested Riley to respond whether there was or was not a confidentiality agreement within the credit agreement.</p>	
6	<p>U/A MR. MOORE: We'll take that under advisement. I mean, aren't these types of questions matters that all arose in the Alberta proceedings?</p>	393	1204	<p>Yes, did you ever ask or did anyone within Callidus ever ask Alken to top up its loan? Because Callidus did chop the appraisal down on a Friday afternoon, seeing half the equipment come up with an appraisal for half the price and debited my account for \$50,000. Did you ever -- do you have any records that Alken was ever asked to top up the loan? A. It is not a top-up. You have to 10 pay down principal.</p>	

				<p>1205 Q. Yeah, pay down. Pay down, top up, the same thing, yeah.</p> <p>A. But I wouldn't have that record here.</p> <p>1206 Q. Okay, can you undertake to try and find that?</p>		
7	<p>U/A MR. MOORE: We'll take that under advisement.</p>	396	1208	<p>Okay. So within here, all management, all representatives of the company, all subcontractors have to sign these code of conducts...[inaudible.]</p> <p>A. [inaudible]...I don't think it was signed. I think it was...[inaudible.]</p> <p>BY MR. BAUMANN:</p> <p>1209 Q. Yes, near the bottom of it, there is a spot for every party to sign within this document, right down there.</p> <p>A. Yes, I see that.</p> <p>1210 Q. So that basically it is a sign-off that everybody that represents Callidus works for them, and in essence, the document says you are supposed to act ethical and treat parties honestly and fairly and everyone is to sign it. Did you sign one of them on behalf of yourself or for Callidus?</p> <p>A. I do not recall.</p> <p>1211 Q. Can you undertake to find out if you did sign it?</p> <p>Baumann is seeking confirmation whether Riley did or did not sign a Code of Conduct and Ethics document.</p>		
8	<p>MR. MOORE: Well, the premise of your question is that there was some departure from what you say was undertaken in the prospectus. Now, I</p>	402	1218	<p>Okay, good, so anyways, I reached out in October or November. Actually, it was in November, I believe, or the last few days of October, 15, just basically saying, Hey, where is the code of conduct? No return from them, no communication other than a few days</p>		

	<p>am not sure that that is correct, but assuming the prospectus did contain an undertaking to file a code of conduct, one was filed. So I --</p> <p>MR. BAUMANN: So --</p> <p>U/A MR. MOORE: I have a problem with the underlying premise of your question, so I'll take the request -- and I'll do this generally so that we can avoid debates. I'll take that request for an undertaking under advisement. We likely won't agree to it, but I'll take that under advisement. And when you ask for undertakings, I'll do the same thing to try and cut down on the back and forth on the transcript.</p> <p>BY MR. BAUMANN: 1220 Q. Okay. I don't expect I would be getting much more from you guys, but we are going to continue going.</p>			<p>later Callidus filed a Code of Conduct and Ethics. So when I read the Code of Conduct and Ethics, it contradicts all of the treatment I have received from Callidus and Catalyst. That is my opinion. I guess that will be proven in Court. But why was the Code of Conduct and Ethics not filed at CEDAR, as promised within the prospectus?</p> <p>A. I do not know.</p> <p>1219 Q. Can I receive an undertaking for you to do some digging as to find out why?</p> <hr/> <p>Baumann is seeking, was not filed with SEDAR as purported within Callidus prospectus.</p>		
9	<p>U/A MR. MOORE: As I said before, I am not going to debate that with you. We'll take that request for an undertaking under advisement.</p>	409	1235	<p>It is a little more interesting in the second transcript. Let me just finish up on the first one. My apologies, I didn't think I would be jumping on today.</p> <p>On the National Bank, while we are on that topic, before I finish off on the National Bank, would you be able to provide, as they are relevant and they</p>		

				relate right to this case, would you be able to provide the National Bank reports relating to the 50 cent to \$1.00 value of the yield enhancements?		
10	U/A MR. MOORE: Let me finish, sir, and I will let you put your questions on the record. I am simply not going to engage in a debate with you every time. I will take that request for an undertaking under advisement, and it will be much quicker if we just do that every time rather than clutter up the record with these debates. So let's move on.	411	1237	<p>Q1, page 10, the second paragraph, Mr. Glassman is boasting that we have got seven loans in this quarter and we have three more in the process. That is 10. And then when you read further in this agreement, it turns into 13 to 14 loans that they have yield enhancements on. Would you be able to -- can you provide the independent reports that Mr. Glassman talks about relating to the yield enhancements? Would you disclose them? Because they are not in your Schedule A, B or C. There is some 2017 stuff referenced in your Schedule B, but there is nothing relating -- cleverly, there is nothing related to '16 in your Schedule B. So basically you are withholding information and I think you know it, so I want it and I am going to be asking for it.</p> <p>So I want all 14 independent reports from the third party, the third party evaluators relating to the 14 yield enhancements?</p> <p>A. So --</p> <p>MR. MOORE: Mr. Baumann, I am not going to take you up on those loaded comments and self-serving comments.</p> <p>MR. BAUMANN: They are not loaded and they are not self-serving.</p> <p>MR. MOORE: We'll take that request --</p> <p>MR. BAUMANN: You can't bring a claim of this nature and then expect</p>		

				<p>nobody to ask you a question. We are trying to hold -- at least attempt to hold you accountable.</p> <p>MR. MOORE: Well, Mr. Baumann, okay, I am not going to debate with you every time you make some accusation about my client or about counsel or --</p> <p>MR. BAUMANN: It is not an accusation.</p> <hr/> <p>Baumann is seeking the independent reports Glassman spoke of within Callidus' public earnings call transcripts.</p>		
11	<p>U/A MR. MOORE: Okay, let's not debate that, sir. I have your undertaking request. I am not going to get into line by line accusation after accusation. You have requested the undertaking, and we have taken that under advisement. And let's move on to your next question. And I would just request that you --</p>	413	1238	<p>Okay, as I finish off on this, Mr. Riley, I want the 14 independent reports and I want the reports from the National Bank relating to all of the yield enhancements and I want Callidus's material that went over to its auditor confirming what they wanted them to evaluate for yield enhancements. We know what Mr. Moore's response to that is, so --</p> <p>A. And just so -- and I am not quite sure I understand the question anymore, but what is referred to there is a quarter of our portfolio is getting yield enhancements above and beyond normal term sheet. Some of those would be -- I believe all of those yield enhancements would be referenced in the MD&A for the relevant period, so for the Q1 2016 MD&A.</p> <p>1239 I can't match your MD&A with your press releases and your PR. None of it makes</p>		

				<p>sense. None of it matches up. So I asked, I want the 14 independent reports – A. I am surprised. 1240 Q. You know what I asked for.</p> <p>Baumann is seeking this information as it is not clear in Callidus' MD&A.</p>		
12	<p>U/A MR. MOORE: We'll take that under advisement</p>	426	1271	<p>Okay, did you receive any comeback from the RCMP relating to that? A. Not that I am currently aware of. 1272 Q. Did your investigator out of Edmonton receive anything that he informed you of or not? A. I would have to go back and confirm with him what the state of affairs were. 1273 Q. Can you do that, please, and provide me a copy of the file?</p>		
13	<p>U/A MR. MOORE: We'll take that under advisement.</p>	436	1286	<p>A few items, Mr. Riley, and we'll finish up so you can get out of there. Scott Sinclair, when did you first meet Scott Sinclair? A. He was acting for a borrower, Beresford Box. He was acting for them in arranging for a sale of Beresford Box that was to pay us out. So he was on the other side as it were. 1287 Q. Okay, and what year would that have been, roughly? A. 2014, 2015, somewhere in that vicinity. 1288 Q. Okay, so he would have been involved in how many companies that Callidus financed?</p>		

CITATION: The Catalyst Capital Group Inc. and Callidus Capital Corporation v.
West Face Capital Inc. et al., 2021 ONSC 1752
COURT FILE NO.: CV-17-587463-00CL
DATE: 20210318

ONTARIO

SUPERIOR COURT OF JUSTICE

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, 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, GEORGE
WESLEY VOORHEIS, BRUCE LIVESEY and JOHN
DOES #4-10

Defendants

ENDORSEMENT

McEwen J.

Released: March 18, 2021