

**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  
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 LIVESY and JOHN DOES #4-10**

**Defendants**

**FACTUM OF THE KEVIN BAUMANN  
(Motion Pursuant to s. 137.1 of the Courts of Justice Act)**

Date: May 5, 2021

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## PART I - OVERVIEW

1. Kevin Baumann (“Baumann”) has been sued by The Catalyst Capital Group Inc. and Callidus Capital Corporation (collectively, the “Catalyst Parties”). Although the Catalyst Parties have provided evidence showing that Baumann greatly dislikes them, and has spoken to others about that dislike, the Catalyst Parties have no evidence supporting any genuine actionable claim against Baumann, beyond simple conjecture.
2. Baumann therefore seeks to have this claim dismissed against him pursuant to s. 137.1 of the *Courts of Justice Act*.

## PART II – FACTS

### **A. Baumann’s Involvement with the Catalyst Parties**

3. Baumann was previously a director, officer and shareholder of a company called Alken Basin Drilling Ltd. (“Alken”). Alken was in the business of developing water wells in the Western Provinces of Canada.
4. In 2014, Alken obtained a loan from Callidus. Issues arose with Callidus shortly after closing the loan agreement. Callidus altered or denied requests for draws on the loan. Callidus imposed a \$1.25 million availability block on receivable drawings. Ultimately, Callidus took the position that no advances could be made unless approved by Scott Sinclair, an individual under the close control of Callidus, who had previously been sanctioned by the Ontario Securities Commission (the “OSC”).

5. Baumann was compelled to resign from Alken when it became clear that Callidus was unjustifiably blocking Alken's ability to pay its suppliers. After Baumann resigned, Scott Sinclair was appointed to operate Alken, in a non-arm's length capacity from Callidus. Once Sinclair was installed at Alken, he arranged for Alken to redirect Alken's incoming receivables to Callidus, rather than making them available to permit Alken to continue carrying on business.

*Baumann Supplementary Affidavit, paras 11-19*

6. Callidus and Baumann have been in hotly contested litigation since his resignation. Much of that litigation remains outstanding in Alberta.

*Baumann Supplementary Affidavit, paras 5*

7. Callidus has also sought, unsuccessfully, to have Baumann charged criminally for his actions while involved in Alken to make arrangements to pay trade creditors/suppliers. No charges were filed by the RCMP in response to these attempts by Callidus.

*Baumann Supplementary Affidavit, para 35-36*

**B. Baumann Reports the Catalyst Parties to the Appropriate Authorities**

8. Once the issues with Callidus became clear, Baumann began to investigate Callidus' business practices. His investigations, as well as his experience with Callidus, led Baumann to believe that Callidus' approach was to ensure that no borrower was to succeed under a Callidus loan, so that Callidus (or other non-arm's length parties) could force borrowers into receivership, enabling it to purchase the business at a substantial discount (and realize what Callidus referred to as a "yield enhancement").

*Baumann Supplementary Affidavit, paras 22-25*

9. Baumann disclosed the information he learned about Callidus to the Toronto Police Services, and corresponded with the OSC regarding his concerns about Callidus' business practices. Although the OSC took some steps against Callidus, such as taking steps to have Callidus cease artificially inflating its profitability through the use of "yield enhancements", Baumann ultimately became frustrated at the lack of action by the OSC, feeling that the OSC's lack of action in the face of obvious misconduct was enabling Callidus.

*Baumann Supplementary Affidavit, paras 20-21*  
*Riley Conspiracy Affidavit, Exhibit 113*

10. Following Baumann's discovery of Callidus' improper business practices, he spoke with a number of other similarly affected individuals who had been involved with Callidus, such as Darryl Levitt and Jeff McFarlane. They discussed their similar experiences with Callidus, as well as ways in which they could stop Callidus' misconduct. Baumann also offered litigation financing to other parties impacted by Callidus' conduct, although none of the other defendants in this action took him up on his offer.<sup>1</sup>

### **PART III – ISSUES & LAW**

11. The law regarding the test under s. 137.1 of the *Courts of Justice Act* is addressed in the joint factum of the defendants, which Baumann relies upon. Baumann provides these further brief submissions, related specifically to the claim against him in this proceeding, and whether it meets the Merits Based Hurdle (as defined in the joint factum).

12. Simply put, the claim against Baumann, however framed, is meritless.

13. The specific actions that the plaintiff alleges against Baumann, which purport to give rise to a claim against him, are that:

- a) Baumann made a complaint to the police about the Catalyst Parties' conduct.

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<sup>1</sup> Baumann did provide litigation financing to another person, who is not a party to this litigation and is not alleged to be party of the purported conspiracy

*Baumann Supplementary Affidavit, paras 20-21*

- b) Baumann sent a number of whistleblower emails to the OSC, seeking to have the OSC investigate the Catalyst Parties' business practices.

*Baumann Supplementary Affidavit, paras 20-21*

- c) Baumann spoke to other affected parties, to discuss coordinating their legal defences to claims brought against them by Callidus.

*Riley Conspiracy Affidavit, para 105*

- d) Baumann proposed a joint action with other affected parties against Callidus, which was never brought. Baumann offered some of the defendants in this action litigation funding in connection with their disputes with the Catalyst Parties. None of the defendants in this action took him up on the offer.

*Riley Conspiracy Affidavit, para 163*

- e) Baumann independently set up a website where he posted documents related to the Catalyst Parties.

*Riley Conspiracy Affidavit, para 139(b)*

- f) Baumann was contacted by Nathan Anderson to discuss his history with the Catalyst Parties.

*Riley Conspiracy Affidavit, para 163*

- g) Baumann was quoted criticizing Callidus in a Canadian Business article that was never published.

*Riley Conspiracy Affidavit, para 237*

14. None of this is illegal. None of this gives rise to any claim against Baumann. Baumann is entirely within his rights to speak to others about his experience with Callidus. There is simply no evidence of any conspiracy involving Baumann.

15. There is no doubt that there is significant animus between Baumann and the Catalyst Parties. The Catalyst Parties, in Baumann's view, caused his business to fail through the Catalyst Parties' improper business practices. This has led to much litigation, in both Ontario and Alberta, which is still ongoing. Baumann has made complaints to the police and the OSC about the Catalyst Parties' conduct. The Catalyst Parties have, in turn, made complaints to the police about Baumann's conduct.

16. Animus towards Baumann does not give rise to a claim against Baumann. This claim should be dismissed as wholly meritless.



**PART IV - ORDER REQUESTED**

17. Baumann therefore requests that this action be dismissed against him, pursuant to s. 137.1 of the *Courts of Justice Act*, with costs of the action on a full indemnity basis, and damages in a quantum to be determined pursuant to s. 137.1(9) of the *Courts of Justice Act*.

Dated at Toronto this 5th day of May, 2021

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**



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Mark Wiffen

Lawyer for Kevin Baumann

**SCHEDULE "A" - List of Authorities Referenced**

N/A

## **SCHEDULE "B" - Relevant Statutes, Regulations and By-Laws**

### **Prevention of Proceedings that Limit Freedom of Expression on Matters of Public Interest (Gag Proceedings)**

*Dismissal of proceeding that limits debate*

*Purposes*

**137.1** (1) The purposes of this section and sections 137.2 to 137.5 are,

- (a) to encourage individuals to express themselves on matters of public interest;
- (b) to promote broad participation in debates on matters of public interest;
- (c) to discourage the use of litigation as a means of unduly limiting expression on matters of public interest; and
- (d) to reduce the risk that participation by the public in debates on matters of public interest will be hampered by fear of legal action. 2015, c. 23, s. 3.

*Definition, "expression"*

(2) In this section,

"expression" means any communication, regardless of whether it is made verbally or non-verbally, whether it is made publicly or privately, and whether or not it is directed at a person or entity. 2015, c. 23, s. 3.

*Order to dismiss*

(3) On motion by a person against whom a proceeding is brought, a judge shall, subject to subsection (4), dismiss the proceeding against the person if the person satisfies the judge that the proceeding arises from an expression made by the person that relates to a matter of public interest. 2015, c. 23, s. 3.

*No dismissal*

(4) A judge shall not dismiss a proceeding under subsection (3) if the responding party satisfies the judge that,

- (a) there are grounds to believe that,
  - (i) the proceeding has substantial merit, and
  - (ii) the moving party has no valid defence in the proceeding; and

- (b) the harm likely to be or have been suffered by the responding party as a result of the moving party's expression is sufficiently serious that the public interest in permitting the proceeding to continue outweighs the public interest in protecting that expression. 2015, c. 23, s. 3.

*No further steps in proceeding*

- (5) Once a motion under this section is made, no further steps may be taken in the proceeding by any party until the motion, including any appeal of the motion, has been finally disposed of. 2015, c. 23, s. 3.

*No amendment to pleadings*

- (6) Unless a judge orders otherwise, the responding party shall not be permitted to amend his or her pleadings in the proceeding,
  - (a) in order to prevent or avoid an order under this section dismissing the proceeding; or
  - (b) if the proceeding is dismissed under this section, in order to continue the proceeding. 2015, c. 23, s. 3.

*Costs on dismissal*

- (7) If a judge dismisses a proceeding under this section, the moving party is entitled to costs on the motion and in the proceeding on a full indemnity basis, unless the judge determines that such an award is not appropriate in the circumstances. 2015, c. 23, s. 3.

*Costs if motion to dismiss denied*

- (8) If a judge does not dismiss a proceeding under this section, the responding party is not entitled to costs on the motion, unless the judge determines that such an award is appropriate in the circumstances. 2015, c. 23, s. 3.

*Damages*

- (9) If, in dismissing a proceeding under this section, the judge finds that the responding party brought the proceeding in bad faith or for an improper purpose, the judge may award the moving party such damages as the judge considers appropriate. 2015, c. 23, s. 3.

*Procedural matters*

*Commencement*

**137.2** (1) A motion to dismiss a proceeding under section 137.1 shall be made in accordance with the rules of court, subject to the rules set out in this section, and may be made at any time after the proceeding has commenced. 2015, c. 23, s. 3.

*Motion to be heard within 60 days*

(2) A motion under section 137.1 shall be heard no later than 60 days after notice of the motion is filed with the court. 2015, c. 23, s. 3.

*Hearing date to be obtained in advance*

(3) The moving party shall obtain the hearing date for the motion from the court before notice of the motion is served. 2015, c. 23, s. 3.

*Limit on cross-examinations*

(4) Subject to subsection (5), cross-examination on any documentary evidence filed by the parties shall not exceed a total of seven hours for all plaintiffs in the proceeding and seven hours for all defendants. 2015, c. 23, s. 3.

*Same, extension of time*

(5) A judge may extend the time permitted for cross-examination on documentary evidence if it is necessary to do so in the interests of justice.

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

**THE CATALYST CAPITAL GROUP INC. et al**

- and -

**WEST FACE CAPITAL INC. et al**

Plaintiffs

Defendants

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**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**  
Proceeding commenced at Toronto

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**FACTUM OF KEVIN BAUMANN**

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