

Court of Appeal File No.: C60799/M45387
Superior Court File No.: CV-14-507120

COURT OF APPEAL FOR ONTARIO

BETWEEN:

THE CATALYST CAPITAL GROUP INC.

Plaintiff
(Appellant/Responding Party)

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants
(Respondents/Moving Parties)

MOTION RECORD OF THE MOVING PARTY DEFENDANT (RESPONDENT)
WEST FACE CAPITAL INC.
(MOTION TO QUASH APPEAL)

September 11, 2015

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TAB 1

Court of Appeal File No.: C60799
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COURT OF APPEAL FOR ONTARIO

B E T W E E N :

THE CATALYST CAPITAL GROUP INC.

Plaintiff (Appellant)

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants (Respondents)

**NOTICE OF MOTION
(MOTION TO QUASH APPEAL)**

The Defendant (Respondent) West Face Capital Inc. will make a motion to a panel of the Court of Appeal on a date and at a time to be fixed by the Registrar, at 130 Queen Street West, Toronto.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

- (a) an Order quashing the Plaintiff's appeal from the Order of Justice Glustein dated July 7, 2015 dismissing the Plaintiff's motion heard July 2, 2015, on the basis that the Court of Appeal lacks jurisdiction to hear the appeal;
- (b) the costs of this motion; and
- (c) such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

- (a) the Plaintiff, The Catalyst Capital Group Inc., brought a motion for three exceptional remedies against the Defendants:
 - (i) first, an interlocutory injunction prohibiting West Face from voting its 35% share interest in WIND Mobile pending a determination of the issues raised in the action (the **"Voting Injunction"**);
 - (ii) second, an interlocutory Order authorizing an Independent Supervising Solicitor (an **"ISS"**) to create and review forensic images of West Face's servers and the electronic devices used by five individuals at West Face, at the expense of Mr. Moyse and West Face, to take place before discovery (the **"Imaging Order"**);
and
 - (i) third, an Order that Mr. Moyse was in contempt of the interim consent Order of Justice Firestone dated July 16, 2014 (the **"Contempt Order"**).
- (b) Catalyst's motion was heard by Justice Glustein on July 2, 2015;
- (c) on July 7, 2015, Justice Glustein released reasons dismissing Catalyst's motion in its entirety;
- (d) Catalyst served its Notice of Appeal and Appellant's Certificate on July 22, 2015, purporting to appeal the Order of Justice Glustein to the Court of Appeal, on the basis of sections 6(1)(b) and 6(2) of the *Courts of Justice Act*;

- (e) Catalyst's Notice of Appeal recognizes that Justice Glustein's dismissal of the relief sought against West Face was an interlocutory order for the purposes of determining appeal routes;
- (f) contrary to Catalyst's Notice of Appeal, Justice Glustein's dismissal of Catalyst's motion for contempt against Mr. Moyse was also interlocutory;
- (g) therefore, no appeal of Justice Glustein's Order lies to the Court of Appeal, and section 6(2) of the *Courts of Justice Act* has no application to the appeal of the relief sought against West Face;
- (h) rather, any appeal of Justice Glustein's Order lay to the Divisional Court, with leave, pursuant to section 19(1)(b) of the *Courts of Justice Act* and Rule 62.02 of the *Rules of Civil Procedure*;
- (i) pursuant to the Practice Direction Concerning Civil Appeals in the Court of Appeal, motions to quash appeals are heard by a panel of the Court; and where the basis for the motion to quash is that the Court lacks jurisdiction to hear the appeal, the motion will be scheduled at an early date;
- (j) sections 6(1), 6(2), 7(3), 19(1), and 134(3) of the *Courts of Justice Act*, R.S.O. 1990, c C.43;
- (k) Rules 37, 61.16 and 62.02 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg 194;
- (l) the Practice Direction Concerning Civil Appeals in the Court of Appeal;
and

- (m) such further and other grounds as counsel may advise and this Honourable Court may permit.

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

- (n) the Order of Honourable Justice Glustein dated July 7, 2015, and His Honour's reasons for decision; and
- (o) such further and other evidence as counsel may advise and this Honourable Court may permit.

August 5, 2015

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THE CATALYST CAPITAL GROUP INC.
Plaintiff

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BRANDON MOYSE and WEST FACE
CAPITAL INC.
Defendants

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COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Toronto

**NOTICE OF MOTION
(MOTION TO QUASH APPEAL)**

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West Face Capital Inc.

TAB 2

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COURT OF APPEAL FOR ONTARIO

B E T W E E N :

THE CATALYST CAPITAL GROUP INC.

Plaintiff (Appellant)

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants (Respondents)

AMENDED NOTICE OF MOTION
(MOTION TO QUASH APPEAL)

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- (b) the costs of this motion; and
- (c) such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

- (a) the Plaintiff, The Catalyst Capital Group Inc., brought a motion for three exceptional remedies against the Defendants:
 - (i) first, an interlocutory injunction prohibiting West Face from voting its 35% share interest in WIND Mobile pending a determination of the issues raised in the action (the "**Voting Injunction**");
 - (ii) second, an interlocutory Order authorizing an Independent Supervising Solicitor (an "**ISS**") to create and review forensic images of West Face's servers and the electronic devices used by five individuals at West Face, at the expense of Mr. Moyse and West Face, to take place before discovery (the "**Imaging Order**"); and
 - (i) third, an Order that Mr. Moyse was in contempt of the interim consent Order of Justice Firestone dated July 16, 2014 (the "**Contempt Order**").
- (b) Catalyst's motion was heard by Justice Glustein on July 2, 2015;
- (c) on July 7, 2015, Justice Glustein released reasons dismissing Catalyst's motion in its entirety;
- (d) Catalyst served its Notice of Appeal and Appellant's Certificate on July 22, 2015, purporting to appeal the Order of Justice Glustein to the Court of Appeal, on the basis of sections 6(1)(b) and 6(2) of the *Courts of Justice Act*;

- (e) Catalyst's Notice of Appeal recognizes that Justice Glustein's dismissal of the relief sought against West Face was an interlocutory order for the purposes of determining appeal routes;
- (f) contrary to Catalyst's Notice of Appeal, Justice Glustein's dismissal of Catalyst's motion for contempt against Mr. Moyse was also interlocutory;
- (g) therefore, no appeal of Justice Glustein's Order lies to the Court of Appeal, and section 6(2) of the *Courts of Justice Act* has no application to the appeal of the relief sought against West Face;
- (h) rather, any appeal of Justice Glustein's Order lay to the Divisional Court, with leave, pursuant to section 19(1)(b) of the *Courts of Justice Act* and Rule 62.02 of the *Rules of Civil Procedure*;
- (h.1) even if Justice Glustein's dismissal of Catalyst's motion for contempt against Mr. Moyse were final, Catalyst was still required to obtain leave to appeal the dismissal of its motion for relief against West Face before relying on section 6(2) of the *Courts of Justice Act*;
- (h.2) in the alternative, the Court of Appeal should exercise its discretion under section 6(2) of the *Courts of Justice Act* to not hear the appeal of the dismissal of the relief sought against West Face;
- (i) pursuant to the Practice Direction Concerning Civil Appeals in the Court of Appeal, motions to quash appeals are heard by a panel of the Court; and where the basis for the motion to quash is that the Court lacks jurisdiction to hear the appeal, the motion will be scheduled at an early date;

- (j) sections 6(1), 6(2), 7(3), 19(1), and 134(3) of the *Courts of Justice Act*, R.S.O. 1990, c C.43;
- (k) Rules 37, 61.16 and 62.02 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg 194;
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and
- (m) such further and other grounds as counsel may advise and this Honourable Court may permit.

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- (a) the Order of Honourable Justice Glustein dated July 7, 2015, and His Honour's reasons for decision; and
- (b) such further and other evidence as counsel may advise and this Honourable Court may permit.

August 5, September 10, 2015

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**MOTION RECORD OF
THE MOVING PARTY,
WEST FACE CAPITAL INC.
(MOTION TO QUASH)**

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