

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

**MOTION RECORD OF THE DEFENDANT BRANDON MOYSE
(Motion Returnable October 7, 2014)**

GROSMAN, GROSMAN & GALE LLP

1100 – 390 Bay Street
Toronto, ON M5H 2Y2

Jeff C. Hopkins / LSUC No. 48303F
Justin Tetreault / LSUC No. 60635N
Tel: 416-364-9599 / Fax: 416-364-2490

Lawyers for the Defendant Brandon Moyse

TO: LAX O'SULLIVAN SCOTT LISUS LLP
2750 – 145 King Street West
Toronto, ON M5H 1J8

Rocco Di Pucchio / LSUC No. 38185I
Tel: 416-598-2268 / Fax: 416-598-3730
Andrew Winton / LSUC No. 54473I
Tel: 416-644-5342 / Fax: 416-598-3730

Lawyers for the Plaintiff

AND TO: DENTONS CANADA LLP
400 – 77 King Street West, TD Centre
Toronto, ON M5K 0A1

Jeffrey Mitchell / LSUC No. 40577A
Tel: 416-863-4660 / Fax: 416-863-4592
Andy Pushalik / LSUC No. 544731
Tel: 416-862-3468 / Fax: 416-863-4592

Lawyers for the Defendant West Face Capital Inc.

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

TABLE OF CONTENTS

TAB NO.		PAGE NO.
1	Notice of Motion returnable October 7, 2014	1 - 5
2	Affidavit of Brandon Moyse sworn September 26, 2014	6 – 8
A	Exhibit 1: Employment Agreement dated October 1, 2012	9 – 18
B	Statement of Claim issued June 25, 2014	19 – 34

Tab 1

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

NOTICE OF MOTION

THE DEFENDANT, BRANDON MOYSE, will make a motion to the Court on Tuesday, October 7, 2014 at 10:00 a.m. or as soon after that time as the motion can be heard at 393 University Avenue, Toronto Ontario.

PROPOSED METHOD OF HEARING:

- ☐ in writing under subrule 37.12.1(1) because it is on consent;
- ☐ in writing as an opposed motion under subrule 37.12.1(4);
- ☒ orally.

THE MOTION IS FOR:

- (1) an Order staying the Statement of Claim as against the Defendant, Brandon Moyse ("Moyse"), pursuant to section 7(1) of the Ontario *Arbitration Act*;
- (2) an Order striking paragraph 1(e) of the Statement of Claim as it relates to Moyse;

- (3) costs payable to Moyse on a substantial indemnity basis; and
- (4) such further and other relief as this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

- (1) Pursuant to a written employment agreement dated October 1, 2012 (the "Employment Agreement") Moyse was hired as an Investment Analyst by the Plaintiff effective November 1, 2012.
- (2) On May 26, 2014 Moyse provided thirty (30) days' notice of resignation pursuant to the Employment Agreement.
- (3) By Statement of Claim issued June 25, 2014, the Plaintiff commenced legal proceedings against Moyse and his new employer West Face Capital Inc. ("West Face").
- (4) In its Statement of Claim, the Plaintiff claimed an interim interlocutory and/or permanent injunction with respect to sections 8, 9 and 10 of the Employment Agreement.
- (5) The Plaintiff also claimed punitive damages against Moyse in the amount of \$50,000.00.
- (6) However, the Employment Agreement contains an arbitration agreement at section 15, which expressly states that any dispute arising out of the Employment Agreement save and except the plaintiff seeking injunctive relief pursuant to sections 8, 9 and 10 shall be settled by arbitration.
- (7) Section 7(1) of the Ontario *Arbitration Act*.

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

- (1) Employment Agreement dated October 1, 2012.

July 30, 2014

GROSMAN, GROSMAN & GALE LLP
390 Bay Street, Suite 1100
Toronto, ON M5H 2Y2

Jeff C. Hopkins (LSUC No. 48303F)
Justin Tetreault (LSUC No. 60635N)
Telephone: 416.364.9599
Facsimile: 416.364.2490

Lawyers for the Defendant,
Brandon Moyse

TO: LAX O'SULLIVAN SCOTT LISUS LLP
Suite 2750, 145 King Street West
Toronto, ON M5H 1J8
Facsimile: 416.598.3730

Rocco DiPucchio (LSUC No. 38185I)
Telephone: 416.598.2268

Andrew Winton (LSUC No. 54473I)
Telephone: 416.644.5342

Lawyers for the Plaintiff

AND TO: DENTONS CANADA LLP
77 King Street West, Suite 400
TD Centre, Toronto, ON M5K 0A1
Facsimile: 416.598.3730

Jeff Mitchell
Telephone: 416.863.4660

Andy Pushalik
Telephone: 416.862.3468

Lawyers for the Defendant,
West Face Capital Inc.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

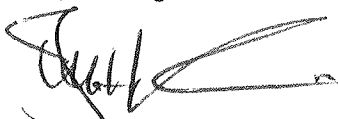
AFFIDAVIT OF SERVICE

I, **CLAUDIA TELLER**, of the City of Mississauga, in the Regional Municipality of Peel, **MAKE OATH AND SAY:**

1. I served the plaintiff, The Catalyst Capital Group Inc., with the attached notice of motion dated July 30, 2014 by sending a facsimile copy by telephone transmission to 416. 598.3730 on August 1, 2014 to Rocco Di Pucchio and Andrew Winton of Lax O'Sullivan Scott Lisus LLP, the lawyers for the plaintiff.


2. I also served the defendant, West Face Capital Inc., with the attached notice of motion dated July 30, 2014 by sending a facsimile copy by telephone transmission to 416.863.4592 on August 1, 2014 to Jeffrey Mitchell and Andy Pushalik of Dentons Canada LLP, the lawyers for the defendant, West Face Capital.

SWORN before me at the City of
Toronto, on August 1, 2014



Commissioner for Taking Affidavits, etc.

)
)
)
)


Claudia Teller

MODE = MEMORY TRANSMISSION

START=AUG-01 09:59

END=AUG-01 10:02

FILE NO.=311

STN NO.	COMM.	ONE-TOUCH/ ABBR NO.	STATION NAME/TEL NO.	PAGES	DURATION
001	OK	8	4165983730	006/006	00:00:45
002	OK	8	4168634592	006/006	00:01:48

-Grosman Grosman Gale LLP -

***** -416 364 2490 - ***** 416 364 2490- *****



GROSMAN, GROSMAN & GALE LLP
BARRISTERS & SOLICITORS

FAX COVER SHEET

OUR MATTER NO: 143745

DATE: August 1, 2014

TIME: 9:55 am

FROM: Jeff Hopkins

NO. OF PAGES BEING TRANSMITTED INCLUDING COVER: 6

PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

NAME	FIRM	FAX NO.
Rocco Di Pucchio Andrew Winton	Lax O'Sullivan Scott Lisus LLP	416-598-3730
Jeffrey Mitchell Andy Pushalik	Dentons Canada LLP	416-863-4592

**IF YOU EXPERIENCE ANY PROBLEMS RECEIVING THIS FAX PLEASE CONTACT:
RECEPTIONIST AT (416) 364-9599**

WARNING - CONFIDENTIAL:

This message is intended only for the use of the individual or entity to which it is addressed and contains information that is privileged and confidential. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us or have it destroyed.

Tab 2

Court File No. CV-14-507120

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN :

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

**AFFIDAVIT OF BRANDON MOYSE
SWORN OCTOBER 26, 2014**

I, **BRANDON MOYSE**, of the City of Toronto, in the Province of Ontario, **MAKE OATH
AND SAY:**

1. I am a Defendant in this action and as such have knowledge of the matters set out in this affidavit.
2. I swear this affidavit in support of a motion for:
 - (i) an Order staying the Statement of Claim as against myself pursuant to section 7(i) of the *Ontario Arbitration Act*; and
 - (ii) an Order striking paragraph 1(e) of the Statement of Claim as it relates to myself.

3. Pursuant to a written employment agreement dated October 1, 2012 (the "Employment Agreement") I was hired as an Investment Analyst by the Plaintiff effective November 1, 2012.

Attached as Exhibit 'A' is a true copy of the Employment Agreement.

4. On May 26, 2014 I provided 30 days' notice of resignation pursuant to the Employment Agreement.

5. By Statement of Claim issued June 25, 2014, the Plaintiff commenced legal proceedings against me and my new employer West Face Capital Inc. ("West Face"), and claimed an interim interlocutory and / or permanent injunction against me with respect to sections 8 (non-competition), 9 (non-solicitation) and 10 (confidentiality) of the Employment Agreement..

Attached as Exhibit 'B' is a true copy of the Statement of Claim.

6. The Plaintiff also claimed punitive damages against me in the amount of \$50,000.00.

7. The Parties are scheduled to argue the Plaintiff's motion for injunctive relief on October 10, 2014. I have been advised by my legal counsel, Jeff Hopkins, and I verily believe, that the punitive damage aspect of the Plaintiff's claim will not be heard on October 10th, but instead will be heard and adjudicated by the trial judge.

8. However, the Employment Agreement contains an arbitration clause at Section 15, which states that any dispute arising out of the Employment Agreement save and except the Plaintiff seeking injunctive relief pursuant to sections 8, 9 and 10 shall be settled by arbitration.

9. Specifically Section 15 states:

"Any controversy or claim arising out or relating to this Agreement shall be settled by arbitration which shall proceed in accordance with the Rules for the conduct of arbitrations of the Arbitrators' Institute of Canada Inc...."

The arbitrator shall have the right to determine all questions of law and jurisdiction including questions as to whether a claim is arbitral and shall have the right to grant final and interim damages awards and shall have the discretion toward costs...

The Parties agree that nothing in this arbitration provision precludes CCGI from seeking injunctive relief in the courts of any jurisdiction for a breach of Articles 8, 9 or 10 of this Agreement as set out in Article 11". [emphasis added]

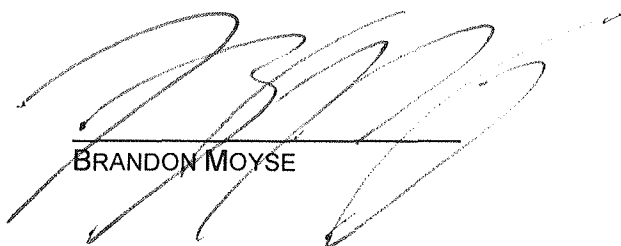
10. I believe that section 15 is very clear: all disputes arising out of the Employment Agreement shall be subject to arbitration, with the only exception being the Plaintiff having the right to seek injunctive relief through the court under sections 8, 9 or 10. Accordingly, the Plaintiff's punitive damage claim, to be heard and adjudicated by the trial judge, must be resolved pursuant to the arbitration clause.

11. I swear this affidavit in support of this motion for no other or improper purpose.

SWORN before me at the

City of Toronto
this 26th day of September, 2014

)
)
)
)
)



BRANDON MOYSE

Commissioner for Taking Affidavits, etc.

:tv

TAB A

This is Exhibit 'A' referred to in the
affidavit of Brandon Moyse

Sworn before me on this 26th day of September 2014



A Commissioner, etc.

10

The Catalyst Capital Group Inc.

October 1, 2012

Mr. Brandon Moyse
brandonmoyse@hotmail.com

77 King Street West
Royal Trust Tower
TD Bank Centre
Suite 4320, P.O. Box 212
Toronto, Ontario M5K 1J3
Telephone: 416.945.3000
Facsimile: 416.945.3060

Dear Brandon:

Re: Employment Agreement

On behalf of The Catalyst Capital Group Inc. ("CCGI"), we are pleased to confirm in writing your employment with us as an Analyst, with a start date of November 1, 2012. Set out below are the terms and conditions of your employment. To evidence your agreement with these terms and conditions, please sign the enclosed duplicate copy of this letter and return that duplicate to us, whereupon we will have a binding agreement on the terms set forth below. Your employment is with CCGI only, and you will have no contractual or other relationship with any limited partnership or other organization or corporation affiliated with CCGI.

1. Duties

In your capacity as our employee, you will perform all of your assigned duties in a diligent, faithful and honest manner and in accordance with all of our current and future rules and policies. You will report directly to either of Mr. Gabriel de Alba or Mr. Newton Glassman or to such persons as may be specified by Mr. Newton Glassman from time to time. It is also understood and agreed that we may change your duties from time to time, acting reasonably, without causing termination of this agreement.

2. Compensation

- (i) You will be paid an annual salary of CDN\$90,000. Your salary is payable in instalments (semi-monthly or as otherwise agreed) and subject to deductions such as income tax and any other deductions required by law. Any future salary increases, which will be granted solely at the discretion of CCGI, will be made available after an annual performance review on or around each calendar year-end.
- (ii) At the end of the 2012 calendar year, you should expect to receive an annualized discretionary bonus of CDN\$80,000 if you have performed satisfactorily, as determined by CCGI in its sole discretion acting reasonably. The amount paid at that time will be pro-rated to reflect the portion of the calendar year you have actually worked. The remainder of the first year bonus (relating to the rest of your full first year of employment after December 31, 2012) will be distributed to you when bonus

distributions relating to the 2013 calendar year are allocated. You will only receive this amount if you are employed by CCGI at the time of distribution.

In addition, you may be eligible to earn additional bonus amounts, based on your performance. As explained above regarding your first year's bonus, any bonuses awarded after the first year of employment will also be based on your performance and that of the firm during the period in question and will be determined by CCGI in its sole discretion, acting reasonably.

- (iii) In addition, you will be eligible to participate in CCGI's 60/40 Compensation Scheme (the "60/40 Scheme"), any replacement profit sharing plan and/or additional profit sharing mechanism introduced by the Company, and made available by the Company to investment professionals.
- (iv) In order to receive any discretionary bonus payment or any payment under the 60/40 Scheme, both described above, you must be actively employed as of the date any amounts are scheduled to be paid out under either of these plans, regardless of whether you were terminated without notice prior to this date and even if any applicable notice period (under contract, common law or statute) would extend beyond the payment date for that discretionary or incentive payment.

As further compensation you will be granted options on equity in CCGI ("Starting Equity") equivalent to an aggregate 0.15% of the equity in CCGI. These options are to have a strike price proportionately equal to the current value of the equity. In addition, you will be entitled to earn a greater equity interest in CCGI ("Additional Equity") based on your performance as determined by CCGI in its sole discretion, acting reasonably. This Additional Equity, if awarded, will be in the form of options or common shares and such greater interest to be available to be awarded annually. A proportionate amount of the Starting Equity shall be deemed to have been allocated annually to you on each anniversary date of Fund IV or five (5) years, whichever is longer. Any Additional Equity made available to you will be allocated on an equal straight line basis per year based on the maximum number of years remaining in the life of Fund IV from the time of award. Gabriel de Alba or Newton Glassman will meet with you periodically for purposes of discussing, among other things, staffing, compensation and general equity allocations.

All Starting Equity and Additional Equity will cliff vest at the later of (i) the end of the investment period of Fund IV or (ii) when the Firm's carried interest in Fund IV is deemed to have value, as determined by CCGI in its sole discretion acting reasonably. However, so long as such Starting or Additional Equity remains outstanding, they will only be capable of being voted by Newton Glassman. Accordingly, for such purpose, it is understood that either such shares, once vested, will be registered in his name subject to him signing a declaration of trust reflecting your beneficial ownership of such shares (subject to the provisions of this paragraph) or, if such shares are registered in your name, you will sign a power of attorney authorizing Newton Glassman to sign proxies and

shareholder resolutions on your behalf as your agent or you will enter into such form of voting trust with him as we may reasonably require to achieve the same result.

As a potential equity holder of CCGI, you will participate in Fund IV team co-investments. As a special consideration, you will also be eligible to participate in Fund III's co-investment if you so choose including the current embedded gain in Fund III. You must notify CCGI of your intention to participate in Fund III's co-investment on your first day of employment. Your total Fund III co-investment commitment would be US\$30,000. As 40% of Fund III's capital has been called, you will be required to make a payment in the amount of US\$12,000 by December 31, 2012. This amount will be adjusted for any additional capital calls between now and your start date. Once you start your employment, you will have to fund the co-investment capital calls for Fund III and Fund IV at the time when calls are made. Fund III has significant embedded gains and distributions are made in accordance with the Limited Partnership Agreements, typically on a quarterly basis. Additional capital calls will be made as required. Upon termination of your employment for any reason, you will no longer be entitled to participate in the team co-investment. Should you leave the Firm for any reason whatsoever, your capital, and/or any portion thereof remaining, will be returned to you at original cost (and you will lose the right to any gains thereof) upon you signing a release of all claims relating to your participation in or investment in these Funds.

Upon your employment ending, regardless of the reason, you will immediately lose all rights to any options or shares which have not vested as of the date your active employment with CCGI ends, regardless of whether you were terminated without notice and even if any applicable notice period (under contract, common law or statute) would extend beyond the date those options would otherwise have vested. Under no circumstances will any new options or shares vest after the end of active employment.

Within 180 days of your employment ending, other than if you are terminated for just cause, we will ensure that one of the related companies of CCGI buys back from you, and you agree to sell to it, all of your shares which are both allocated and vested as of the date your active employment with CCGI ends, at the shareholder's equity attributable to those shares, without regard to fair market value, to be determined as at the end of our fiscal quarter immediately preceding your employment ending (subject to first paying the above-noted strike price to exercise the options giving rise to these shares, if that strike price had not previously been paid). The shareholder's equity will be calculated in accordance with the most recent financial statements of CCGI (either annual audited financial statements or interim financial reports relating to the quarter). Once you hold vested shares or options, these statements will be made available to you at your request for the purpose of informing yourself as to the current value, if any, of your options or shares. To be clear, the repurchase value will be computed at the end of the quarter immediately preceding the end of your active employment, and no benefit will accrue to you from an increase in the shareholder's equity (i.e. book value) attributable to those shares beyond that date, regardless of whether you were terminated without notice and there may have been an increase in value during any applicable notice period (under

contract, common law or statute).

This repurchase is subject to CCGI receiving a release from you prior to such repurchase releasing all rights, direct or indirect, to any amounts related to either the equity in CCGI or any CCGI-managed fund.

If your employment is terminated for cause, all of your options (both vested and unvested) shall immediately expire and terminate without value and you will surrender any shares of CCGI as of the date your active employment with CCGI ends.

3. Benefits

You will be entitled to participate in all health, insurance and other benefit plans as are from time made available to other employees at your level, subject to our right to unilaterally amend or eliminate such plans. Benefits will be provided in accordance with the provisions of the various benefit plans and programs in effect from time to time.

4. Expenses

All reasonable expenses, such as entertainment and travel, actually incurred by you in connection with the performance of your duties will be reimbursed in accordance with our policy as amended from time to time and upon presentation of receipts.

5. Vacation

During each calendar year, you will be entitled to three (3) weeks paid vacation, to be taken at a mutually convenient time. You will be allowed to carry forward any unused vacation time into the next calendar year but not further.

6. Relocation Assistance

CCGI will provide you with a relocation assistance in the amount of CDN\$5,000 subject to receipt of expenses. These expenses will be subject to review and approval by us. If you leave before the completion of 24 months of service, you will be required to pay back 100% of the relocation assistance.

7. Probationary Period

You will be on probation during the first 90 days of your employment, expected to be from November 1, 2012 to January 29, 2013. At any time during this probationary period we may terminate your employment by providing you with two weeks notice or payment in lieu of notice at which point CCGI will have no further obligation to you.

8. Non-Competition

You agree that while you are employed by the Employer and for a period of six months thereafter, if you leave of your own volition or are dismissed for cause and three months under any other circumstances, you shall not, directly or indirectly within Ontario:

- (i) engage in or become a party with an economic interest in any business or undertaking of the type conducted by CCGI or the Fund or any direct Associate of CCGI within Canada, as the term Associate is defined in the *Ontario Business Corporations Act* (collectively the "protected entities"), or attempt to solicit any opportunities of the type for which the protected entities or any of them had a reasonable likelihood of completing an offering while you were under CCGI's employ; and
- (ii) render any services of the type outlined in subparagraph (i) above, unless such services are rendered as an employee of or consultant to CCGI;

9. Non-Solicitation

You agree that while you are employed by the Employer and for a period of one year after your employment ends, regardless of the reason, you shall not, directly or indirectly:

- (i)^p hire or attempt to hire or assist anyone else to hire employees of any of the protected entities who were so employed as at the date you cease to be an employee of CCGI or persons who were so employed during the 12 months prior to your ceasing to be an employee of CCGI or induce or attempt to induce any such employees of any of the protected entities to leave their employment; or
- (ii) solicit equity or other forms of capital for any partnership, investment fund, pooled fund or other form of investment vehicle managed, advised and/or sponsored by any of the protected entities as at the date you ceased to be an employee of CCGI or during the 12 months prior to your ceasing to be an employee of CCGI.

10. Confidential Information

You understand that, in your capacity as an equity holder and employee, you will acquire information about certain matters and things which are confidential to the protected entities, including, without limitation, (i) the identity of existing or prospective investors in the Fund and any such future partnership or fund, (ii) the structure of same, (iii) marketing strategies for securities or investments in the capital of or owned by the Fund or any such partnership or fund, (iv) investment strategies, (v) value realization strategies, (vi) negotiating positions, (vii) the portfolio of investments, (viii) prospective acquisitions to any such portfolio, (ix) prospective dispositions from any such portfolio, and (x) personal information about CCGI and employees of CCGI and

15

the like (collectively "Confidential Information"). Further, you understand that each of the protected entities' Confidential Information has been developed over a long period of time and at great expense to each of the protected entities. You agree that all Confidential Information is the exclusive property of each of the protected entities. For greater clarity, common knowledge or information that is in the public domain does not constitute "Confidential Information".

You also agree that you shall not, at any time during the term of your employment with us or thereafter reveal, divulge or make known to any person, other than to CCGI and our duly authorized employees or representatives or use for your own or any other's benefit, any Confidential Information, which during or as a result of your employment with us, has become known to you.

After your employment has ended, and for the following one year, you will not take advantage of, derive a benefit or otherwise profit from any opportunities belonging to the Fund to invest in particular businesses, such opportunities that you become aware of by reason of your employment with CCGI.

11. Remedies

You acknowledge that you have reviewed the provisions of Articles 8, 9, and 10 above and that you have addressed your mind to the reasonableness of the scope of these articles, and that you are satisfied that the provisions of those articles are necessary and reasonable and that they reflect the mutual desire and intent of yourself and CCGI that such provisions be upheld in their entirety and be given full force and effect.

You also acknowledge that if you violate the terms of Articles 8, 9, and 10 it will cause the protected entities to suffer irreparable harm for which damages will not be an adequate remedy and for which the protected entities shall be entitled to injunctive relief to prevent you from continuing with such violation or violations, in addition to any other available remedies and you hereby consent to the granting of an injunction to enforce the provisions of this Agreement.

12. Termination of Employment

- (i) You may, at any time, terminate your employment by providing a minimum of thirty (30) days written notice to CCGI, which notice may be waived or shortened at CCGI's sole discretion without further financial obligations to CCGI other than complying with our obligations under the Employment Standards Act.
- (ii) CCGI may terminate your employment at any time for just cause. For the purposes of this Agreement, "just cause" shall mean:
 - (a) any failure by you to observe and perform any of your covenants and obligations hereunder including, without limitation, the provisions of Articles 8, 9, and 10;

- 16
- (b) your insolvency or bankruptcy;
 - (c) fraud, wilful misconduct or gross negligence by you in connection with the performance of your duties hereunder;
 - (d) any commission of a crime by you including your conviction for (or your pleading guilty or no contest to) a felony;
 - (e) any use or abuse of alcohol or drugs or other controlled substances by you which adversely affects your ability to perform your duties hereunder; and
 - (f) any other grounds that amounts to just cause at common law.
- (iii) After the probation period we may also terminate your employment at any time without just cause by providing the working notice and severance entitlement under the *Employment Standards Act, 2000* or similar applicable employment standards legislation, as well as an additional lump sum payment of three months' base salary less applicable deductions and without regard to any past, current or future expected discretionary bonus amounts. In no event will your disability benefits continue beyond the statutory notice period. After the effective date of such termination, you shall be entitled to no further rights or benefits hereunder or in connection with your employment with us except with the respect to the repurchase of your Starting Equity and Additional Equity as outlined in Article 2, above.

The foregoing amounts represent our maximum termination and severance obligations to you. However, and as set out above, in no event will you receive less than your entitlements to notice and severance under the Ontario *Employment Standards Act, 2000* or applicable employment standards statutes as amended over time. In order to receive the amounts payable under the Article, other than your statutory entitlements, you will be required to execute a Release in favour of the protected entities, in a form acceptable to CCGI. This Article shall remain in full force and effect unamended notwithstanding any other alterations to your terms and conditions of employment or to this Agreement, whether fundamental or otherwise, unless amended or waived in writing.

13. Entire Agreement and Waiver

This agreement constitutes the entire agreement between us and sets out all employment terms and conditions. The agreement may only be amended by express written consent of both parties.

17

14. Severability

The invalidity or unenforceability of any particular provision of this Agreement shall not affect its other provisions and this Agreement shall be construed in all aspects as if such invalid or unenforceable provision had been omitted.

15. Governing Law and Arbitration

This agreement shall be construed, interpreted, performed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada. Any controversy or claim arising out of or relating to this Agreement shall be settled by arbitration which shall proceed in accordance with the Rules for the Conduct of Arbitrations of the Arbitrators' Institute of Canada Inc. (the "Rules") in effect at the date of commencement of such arbitration, by one (1) arbitrator (the "Arbitrator") appointed in accordance with the Rules.

The Arbitrator shall have the right to determine all questions of law and jurisdiction including questions as to whether a Claim is arbitrable and shall have the right to grant final and interim damages awards and shall have the discretion to award costs including reasonable legal fees and expenses, reasonable experts' fees and expenses, reasonable witnesses' fees and expenses, pre-award and post-award interest and costs of the arbitration.

The award of the Arbitrator shall be final and binding on the parties. There is no right of appeal from the Arbitrator's award.


The parties hereto shall be bound by any award granted by the Arbitrator and the parties hereto consent to judgment upon the award granted by the Arbitrator being entered in any Court of competent jurisdiction.

The parties agree that nothing in this Arbitration provision precludes CCGI from seeking injunctive relief in the courts of any jurisdiction for a breach of Articles 8, 9 or 10 of this Agreement as set out in Article 11.

We trust this offer is satisfactory to you and look forward to having you join our organization. Please indicate your acceptance of this Agreement by signing this Agreement in the space set out below and returning the executed copy to my attention.

Yours very truly,

THE CATALYST CAPITAL GROUP INC., on its own behalf and on behalf of its parent company



Gabriel de Alba, Managing Director and Partner

18
I, Brandon Moyse, have reviewed, understand and accept the terms of this offer, and acknowledge that I have had an adequate opportunity to seek and receive independent legal advice prior to signing this letter agreement.

Date: _____

Signature of Employee

TAB B

This is Exhibit 'B' referred to in the
affidavit of Brandon Moyse

Sworn before me on this 26th day of September 2014



A Commissioner, etc.

Court File No.

CV-14-507120

ONTARIO
SUPERIOR COURT OF JUSTICE



THE CATALYST CAPITAL GROUP INC.

Plaintiff

and

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

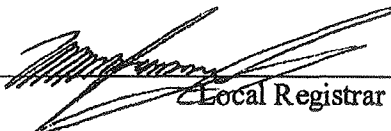
IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1,000.00 for costs, within the time for serving and filing your Statement of Defence, you may move to have this proceeding dismissed

by the Court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's Claim and \$400.00 for costs and have the costs assessed by the Court.

Date June 25, 2014

Issued by



Local Registrar

Address of

court office:

393 University Avenue

10th Floor

Toronto, Ontario

M5G 1E6

TO: Brandon Moyse
23 Brant Street, Apt. 509
Toronto ON M5V2L5

AND TO: West Face Capital Inc.
2 Bloor Street East, Suite 3000
Toronto, ON M4W 1A8

CLAIM

1. The Plaintiff claims:

- (a) An interim, interlocutory and/or permanent injunction restraining the defendant Brandon Moyse ("Moyse"), his agents or any persons acting on his direction or on his behalf, and the defendant West Face Capital Inc. ("West Face"), its officers, directors, employees, agents or any persons acting under its direction or on its behalf, and any other persons affected by the Order granted, from:

equity/capital
non-
solicit.

(i) Soliciting or attempting to solicit equity or other forms of capital for any partnership, investment fund, pooled fund or other form of investment vehicle managed, advised or sponsored by Catalyst or the Catalyst Fund Limited Partnership IV (the "Fund") as at June 25, 2014, until June 25, 2015;

TBD
on
Oct 10th

'ee non-
solicit

- (ii) Interfering with the Plaintiff's relationships with its employees which, without limiting the generality of the foregoing, shall include any attempt to induce employees of the Plaintiff to leave their employment with the Plaintiff; and

not in
dispute

non-
disclosure

- (iii) Using or disclosing the Plaintiff's confidential and proprietary information (including, without limitation, (i) the identity or contact information of existing or prospective investors in the Fund and any such future partnership or fund, (ii) the structure of the Fund, (iii) marketing strategies for securities or investments in the capital of or owned by the Fund (iv)

not in
dispute/
TBD on
Oct 10th

investment strategies, (v) value realization strategies, (vi) negotiating positions, (vii) the portfolio of investments, (viii) prospective acquisitions to any such portfolio, (ix) prospective dispositions from any such portfolio, and (x) personal information about Catalyst and employees of Catalyst (collectively, the "Confidential Information") in any way, including in relation to any present- and future-related business;

- (b) An order requiring the defendants to immediately return to Catalyst (or its counsel) all Confidential Information in their possession or control; TBD on Oct 10th
- (c) An order prohibiting any of the defendants from, in any way, deleting, modifying or in any way interfering with any of their electronic equipment, including computers, servers and mobile devices, until further Order of this Honourable Court; already dealt with
- (d) An interim, interlocutory and permanent injunction prohibiting the defendant Brandon Moyse ("Moyse") from commencing or continuing employment at the defendant West Face Capital Inc. ("West Face") until December 25, 2014; TBD on Oct 10th
- (e) Punitive damages in the amount of \$300,000, as against West Face, and \$50,000, as against Moyse;
- (f) Postjudgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (g) The plaintiff's costs of this action on a substantial indemnity basis, plus the applicable H.S.T.; and

Ⓟ

- (h) Such further and other relief as to this Honourable Court may seem just.

The Plaintiff – The Catalyst Capital Group Inc. (“Catalyst”)

2. Catalyst is a corporation with its head office located in Toronto, Ontario. Catalyst is widely recognized as the leading firm in the field of investments in distressed and undervalued Canadian situations for control or influence, known as “special situations investments for control”.
3. Catalyst uses a “flat” entrepreneurial staffing model whereby its analysts are given substantial training, autonomy and responsibility at a relatively early stage in their career as compared to its competitors in the special situations investments for control industry.
4. Moreover, Catalyst uses a unique compensation scheme to compensate its employees – in addition to their base salary and annual bonus, employees participate in a “60/40 Scheme” whereby the “carried interest” of each Fund is allocated sixty per cent to the deal team and forty per cent to Catalyst. The carried interest refers to the twenty per cent profit participation Catalyst may enjoy, subject to certain conditions.
5. Points in each deal that forms part of the sixty per cent are allocated on a deal-by-deal basis. At all material times, Catalyst employed only two investment analysts, and the deal teams on which Moyse participated involved only three or four Catalyst professionals. The 60/40 Scheme granted Catalyst’s employees a partner-like interest in the success of the company.

The Defendants

6. West Face is a Toronto-based private equity corporation with assets under management of approximately \$2.5 billion. In December 2013, West Face formed a credit fund for the

purpose of competing directly with Catalyst in the special situations investments for control industry.

7. Moyse is a resident of Toronto. Pursuant to an employment agreement dated October 1, 2012 (the "Employment Agreement"), Moyse was hired as an investment analyst by Catalyst effective November 1, 2012. Moyse had substantial autonomy and responsibility at Catalyst. He was primarily responsible for analysing new investment opportunities of distressed and/or undervalued situations where Catalyst could invest for control or influence.

The Special Situation Investment Market in Canada

8. The Canadian market for special situations investing is very competitive. A small number of Canadian firms seek opportunities to invest in situations where a corporation is distressed or undervalued, or face events that can have a significant effect on the company's operations, such as proxy battles, takeovers, executive changes and board shake-ups.

9. In these special situations, an investment firm's strategic plans and investment models are crucial to successfully executing an investment plan. Confidentiality is paramount: if a competitor has access to a firm's plans and modelling for a particular special situation, the competitor can "scoop" the opportunity, or it can take an adverse investment position which make the firm's plans either too costly to execute or, depending on the timing of the adverse action, can cause the plan to incur significant losses after it is past the point of no return.

10. Depending on how advanced a firm is in executing its investment strategy, a competitor's adverse position can have disastrous, immeasurable effects on the firm's goodwill and/or will cause a firm to incur large financial losses that are difficult to accurately quantify given the unpredictable range of possible outcomes for a given investment.

11. Within the special situations investment industry, "investment for control or influence" is a sub-industry with unique characteristics. "Investment for control or influence" refers to acquiring controlling or influential equity or debt positions in distressed companies in order to add value through operational involvement in an investment target by, among other things:

- (a) Appointing a representative as interim CEO and other senior management;
- (b) Replacing or augmenting management;
- (c) Providing strategic direction and industry contacts;
- (d) Establishing and executing turnaround plans;
- (e) Managing costs through a rigorous working capital approval process; and
- (f) Identifying potential add-on acquisitions.

12. The "investment for control or influence" sub-industry within the distressed investment industry has unique needs, including the need to ensure that employees are unable to resign and begin working for a competitor for a reasonable period of time in order to ensure that the competitor is unable to take advantage of the former employee's knowledge of the firm's strategic plans and models.

13. In the special situations for control industry, information is critical. The ability to collect and analyze information and to prepare confidential plans for complex investment opportunities is the difference between a plan's success or failure. For this reason, it is commonplace for firms specializing in the special situations for control or influence industry to require its employees to agree to a non-competition covenant prior to commencing employment. Likewise, when a

competitor hires directly from a firm within the industry, it is commonplace for the competitor to respect the other firm's non-competition covenant by not directly employing a lateral hire in the same market as they worked for the competitor during the term of the non-competition covenant.

The Employment Agreement

14. Under the Employment Agreement, Moyse was paid an initial salary of \$90,000 and an annual bonus of \$80,000. Moyse was also granted options on equity in Catalyst and participated in the 60/40 Scheme. Moyse's equity compensation (options and the 60/40 Scheme) was equal to or exceeded his base salary and annual bonus.

15. The Employment Agreement also included the following non-competition, non-solicitation and confidential information covenants (together, the "Restrictive Covenants"):

Non-Competition

You agree that while you are employed by the Employer and for a period of six months thereafter, if you leave of your own volition or are dismissed for cause and three months under any other circumstances, you shall not, directly or indirectly within Ontario:

(i) engage in or become a party with an economic interest in any business or undertaking of the type conducted by [Catalyst] or the Fund or any direct Associate of [Catalyst] within Canada, as the term Associate is defined in the *Ontario Business Corporations Act* (collectively the "protected entities"), or attempt to solicit any opportunities of the type for which the protected entities or any of them had a reasonable likelihood of completing an offering while you were under [Catalyst]'s employ; and

(ii) render any services of the type outlined in subparagraph (i) above, unless such services are rendered as an employee of or consultant to [Catalyst];

Non-Solicitation

You agree that while you are employed by the Employer and for a period of one year after your employment ends, regardless of the reason, you shall not, directly or indirectly:

(i) hire or attempt to hire or assist anyone else to hire employees of any of the protected entities who were so employed as at the date you cease to be an employee of [Catalyst] or persons who were so employed during the 12 months prior to your ceasing to be an employee of [Catalyst] or induce or attempt to induce any such employees of any of the protected entities to leave their employment; or

(ii) solicit equity or other forms of capital for any partnership, investment fund, pooled fund or other form of investment vehicle managed, advised and/or sponsored by any of the protected entities as at the date you ceased to be an employee of [Catalyst] or during the 12 months prior to your ceasing to be an employee of [Catalyst].

Confidential Information

You understand that, in your capacity as an equity holder and employee, you will acquire information about certain matters and things which are confidential to the protected entities, including, without limitation, (i) the identity of existing or prospective investors in the Fund and any such future partnership or fund, (ii) the structure of same, (iii) marketing strategies for securities or investments in the capital of or owned by the Fund or any such partnership of or any such partnership or fund, (iv) investment strategies, (v) value realization strategies, (vi) negotiating positions, (vii) the portfolio of investments, (viii) prospective acquisitions to any such portfolio, (ix) prospective dispositions from any such portfolio, and (x) personal information about [Catalyst] and employees of [Catalyst] and the like (collectively "Confidential Information"). Further, you understand that each of the protected entities' Confidential Information has been developed over a long period of time and at great expense to each of the protected entities. You agree that all Confidential Information is the exclusive property of each of the protected entities. For greater clarity, common knowledge or information that is in the public domain does not constitute "Confidential Information".

You also agree that you shall not, at any time during the term of your employment with us or thereafter reveal, divulge or make

known to any person, other than to [Catalyst] and our duly authorized employees or representatives or use for your own or any other's benefit, any Confidential Information, which during or as a result of your employment with us, has become known to you.

After your employment has ended, and for the following one year, you will not take advantage of, derive a benefit or otherwise profit from any opportunities belonging to the Fund to invest in particular' businesses, such opportunities that you become aware of by reason of your employment with [Catalyst].

16. Moyse agreed that the Restrictive Covenants were reasonable and necessary and reflected a mutual desire of Moyse and Catalyst that the Restrictive Covenants would be upheld in their entirety and be given full force and effect. In addition, Moyse acknowledged that if he breached the terms of the Restrictive Covenants, it would cause Catalyst irreparable harm and that Catalyst would be entitled to injunctive relief to prevent him from continuing to breach the Restrictive Covenants.

17. Under the Employment Agreement, Moyse was required to give Catalyst a minimum of thirty days' written notice of his intention to terminate his employment.

18. Moyse executed the Employment Agreement on October 3, 2012. In so doing, he acknowledged that he reviewed, understood and accepted the terms of the Employment Agreement, and that he had an adequate opportunity to seek and receive independent legal advice prior to executing the Employment Agreement.

Moyse Breaches the Employment Agreement

19. On May 26, 2014, Moyse informed Catalyst of his intention to resign from Catalyst and to begin working for West Face.

20. Through its counsel, Catalyst communicated its intention to enforce the Restrictive Covenants. Through their counsel, the Defendants responded by communicating their intention to breach the Restrictive Covenants, in particular the non-competition covenant.

21. Moreover, on or about June 18, 2014, Moyse's counsel communicated Moyse's intention to commence employment at West Face on June 23, 2014, prior to the expiry of the thirty-day notice period provided for in the Employment Agreement.

22. Catalyst continued to pay Moyse his salary until June 20, 2014, when it became clear to Catalyst that Moyse intended to breach the Employment Agreement.

The Misappropriation and Conversion of Catalyst's Confidential Information

23. As part of his deal screening/analysis responsibilities, Moyse performed valuations of companies using methodologies that are proprietary and unique to Catalyst in order to identify new investment opportunities for Catalyst.

24. Moyse received the Confidential Information in his capacity as an analyst at Catalyst, as acknowledged in the Employment Agreement.

25. In breach of his duty of confidence, Moyse forwarded the Confidential Information from his work email address – which is controlled by Catalyst – to his personal email address and to his personal Internet file storage accounts – which he alone controls – without Catalyst's knowledge or approval. The Confidential Information Moyse forwarded to his personal control includes information concerning projects Moyse was working on immediately prior to his resignation from Catalyst, including, but not limited to:

- (a) Catalyst Weekly Reports – this document contains a summary of all existing investments and contemplated investment opportunities;
- (b) Quarterly letters reporting on results of Catalyst's activities;
- (c) Internal research reports;
- (d) Internal presentations and supporting spreadsheets; and
- (e) Internal discussions regarding the operations of companies in which Catalyst has made investments.

26. There was no legitimate business reason for Moyse to deal with the Confidential Information in this manner.

27. Moyse has wrongfully and unlawfully taken Catalyst's Confidential Information to advance his own business interests, and the interests of West Face, to the detriment of Catalyst. The Confidential Information was imparted to Moyse in confidence during the course of his employment with Catalyst and the unauthorized use of such information by the Defendants constitutes a breach of confidence.

West Face Induced Moyse to Breach the Employment Agreement

28. West Face and Moyse engaged in prolonged discussions regarding Moyse's resignation from Catalyst and immediate employment at West Face thereafter. During the course of these discussions, the parties discussed Moyse's contractual obligations to Catalyst.

29. Prior to Moyse's resignation from Catalyst, West Face was aware of the terms of the Employment Agreement and Moyse's duties and obligations to Catalyst, including the

Restrictive Covenants. Nevertheless, West Face unlawfully induced Moyse to breach the Employment Agreement with, and his obligations owed to, Catalyst, including, but not limited to the Restrictive Covenants.

30. Moyse and West Face knew that Catalyst intended to promote Moyse to the position of "associate" in 2014. But for West Face's inducement to Moyse to resign from Catalyst and commence employment at West Face before the end of the six-month non-competition period, Moyse would still be employed at, and would continue to honour his contractual obligations to, Catalyst.

Catalyst Will Suffer Irreparable Harm

31. Catalyst will suffer irreparable harm as a result of West Face's unlawful inducement of Moyse to breach the Employment Agreement. In particular, without limiting the generality of the foregoing, Catalyst risks losing its strategic advantage with respect to distress for control investments it has been planning for several months of which Moyse, in his role as analyst at Catalyst, is aware.

32. If Moyse is permitted to commence employment at West Face, a direct competitor to Catalyst, before the expiry of the six-month non-competition period, West Face will gain an unfair advantage in the small distressed investing for control industry by learning about investment opportunities Catalyst was studying and Catalyst's plans for taking advantage of those opportunities.

33. These opportunities and strategies are unique to Catalyst and are crucial to its success – if those plans are compromised, Catalyst will suffer a loss that cannot be measured in mere

damages. The damage will include damage to Catalyst's reputation as a leading distress for control investor and to its ability to solicit additional investments in its funds.

34. Moreover, by using the Confidential Information for their personal benefit and to Catalyst's detriment, Moyse and West Face will cause Catalyst to incur large financial losses that are difficult to accurately quantify given the unpredictable range of possible outcomes for a given investment.

Punitive Damages

35. Catalyst claims that the Defendants' egregious actions, as pleaded above, were so high-handed, wilful, wanton, reckless, contemptuous and contumelious of Catalyst's rights and interests so as to entitle Excaire to a substantial award of punitive, aggravated and exemplary damages.

36. Accordingly, the Defendants are liable, on a joint and several basis, to the Plaintiff for punitive damages as described in subparagraph 1(e) above.

37. Catalyst proposes that this action be tried at Toronto.

-15-

June 25, 2014

LAX O'SULLIVAN SCOTT LISUS LLP

Counsel

Suite 2750, 145 King Street West

Toronto, Ontario M5H 1J8

Rocco Di Pucchio LSUC#: 38185I

Tel: (416) 598-2268

rdipucchio@counsel-toronto.com

Andrew Winton LSUC#: 54473I

Tel: (416) 644-5342

awinton@counsel-toronto.com

Fax: (416) 598-3730

Lawyers for the Plaintiff

Plaintiffs

Defendants

Francine Levine, a Commissioner etc.,
Province of Ontario, For Levine Legal Services,
and for process serving only.
Expires November 22, 2015

Plaintiffs

Defendants

Francine Levine, a Commissioner etc.,
Province of Ontario, For Levine Legal Services,
and for process serving only.
Expires November 22, 2015

THE CATALYST CAPITAL GROUP INC.

- and -

MOYSE ET AL.

Court File No. CV-14-507120

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

**MOTION RECORD OF THE DEFENDANT
BRANDON MOYSE**

GROSMAN, GROSMAN & GALE LLP
Barristers & Solicitors
1100 - 390 Bay Street
Toronto, ON M5H 2Y2

Jeff C. Hopkins / LSUC No. 48303F
Justin Tetreault / LSUC No. 60635N
Tel: 416-364-9599
Fax: 416-364-2490

Lawyers for the Defendant Brandon Moyse