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Court File No.: CV-16-11272-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**B E T W E E N:**

**THE CATALYST CAPITAL GROUP INC.**

Plaintiff

- and -

**BRANDON MOYSE and WEST FACE CAPITAL INC.**

Defendants

**STATEMENT OF DEFENCE  
OF BRANDON MOYSE**

1. The defendant, Brandon Moyse ("Moyse") admits the allegations contained in the first two sentences and the fourth sentence of paragraph 7, paragraph 11, the first sentence of paragraph 14, paragraphs 15 and 17, the first sentence of paragraph 18, paragraph 24, paragraph 34.1, the first sentence of paragraph 34.2, paragraphs 34.3-34.4, the first sentence of paragraph 34.5, paragraphs 34.17-34.19 of the amended amended statement of claim.

2. Moyse has no knowledge of the allegations contained in the first sentence of paragraph 6 (to the extent he has no knowledge of West Face Capital Inc.'s assets

under management), the second sentence of paragraph 34.2, and the second sentence of paragraph 34.5 of the amended amended amended statement of claim.

3. Moyse denies the allegations contained in paragraphs 2-5, the second sentence of paragraph 6, the third sentence of paragraph 7, paragraphs 12-13, the second and third sentences of paragraph 14, paragraph 16, the second sentence of paragraph 18, paragraphs 19-23, 25-34, 34.6-34.7, 34.13-34.16, 34.20 (on pg. 19), 34.21-34.22, 34.20 (on pg. 20), and 35-36 of the amended amended amended statement of claim, and puts the plaintiff to strict proof thereof.

#### **The parties**

4. The defendant, Moyse, is now 28 years old and lives in the City of Toronto.

5. The defendant, West Face Capital Inc. ("West Face"), is an investment manager based in Toronto, Ontario.

6. The plaintiff, The Catalyst Capital Group Inc. ("Catalyst"), is an independent investment firm based in Toronto, Ontario.

#### **Moyse's employment with Catalyst**

7. On or around November 1, 2012, Moyse commenced employment at Catalyst as an analyst, pursuant to a written employment agreement dated October 1, 2012 (the "Employment Agreement"). At the time, Mr. Moyse was 24 years old, and had graduated with an undergraduate degree in mathematics in 2010.

8. The Employment Agreement contained, *inter alia*, non-competition, non-solicitation, and confidentiality provisions. It provided that any controversy or claim

arising out of the Employment Agreement shall be settled by final and binding arbitration, but that Catalyst may seek injunctive relief in court for alleged breaches of the non-competition, non-solicitation, and confidentiality provisions.

9. Analysts are the lowest level professionals at Catalyst. As an analyst, Moyses performed financial and qualitative research both on potential investment opportunities, and on companies already owned by Catalyst. During the last six months of his tenure at Catalyst, Moyses's work focused on companies already owned by Catalyst rather than new opportunities. Given the nature of Moyses's position, he had very little knowledge of Catalyst's potential investments and its strategy for those investments.

10. Moyses resigned from Catalyst on May 24, 2014. He did not access Catalyst confidential information after that date.

#### **Moyes's access to Catalyst confidential information**

11. While employed at Catalyst, Moyses had access to certain Catalyst confidential information that Catalyst made available to a junior analyst in his position.

12. As part of his employment, Moyses worked on assignments for Catalyst outside of the physical office location, and outside of standard office hours. From time to time, Moyses forwarded Catalyst confidential information, and other information relevant to his Catalyst duties, to his personal Dropbox account and to his personal devices in order to work from outside the office more effectively. Moyses also accessed Box.com accounts established and controlled either by Catalyst or Catalyst portfolio companies outside the

office. Moyses understood that to be a common and accepted practice at Catalyst given the very slow and cumbersome remote computer access system used by Catalyst.

13. Moyses forwarded Catalyst confidential information to his accounts for the purpose of performing his Catalyst duties.

#### **Moyes's involvement in the Wind file**

14. At some point prior to Moyses's resignation, Catalyst began to explore the possibility of purchasing Wind Mobile ("Wind"). Moyses was involved in the Wind file for only a period of approximately three weeks prior to his resignation from Catalyst on May 24, 2014. For the last 10 days of Moyses's time on the Wind file, from May 16, 2014, to May 25, 2014, he was on vacation in Southeast Asia. During this period, he had almost no direct involvement in Catalyst's work on the file. Moyses continued to be copied on Catalyst emails regarding the Wind file. However, having decided to resign from Catalyst when he returned from vacation, he only reviewed and responded to a small number of such emails.

15. Moyses's work on the Wind file consisted of initial due diligence. Moyses was not involved in Catalyst's negotiations and strategy for the acquisition of Wind.

#### **Moyes's employment with West Face**

16. On or around March 14, 2014, Moyses contacted West Face inquiring as to whether West Face may have a position available.

17. On March 27, 2014, as part of the recruitment process, Moyse sent West Face writing samples which may have contained Catalyst confidential information. These writing samples were the only information Moyse provided to West Face which may have contained Catalyst confidential information.

18. Pursuant to a written offer of employment, dated May 26, 2014, West Face offered Moyse employment as an Associate. Moyse accepted the terms of West Face's offer on May 26, 2014.

19. West Face did not induce Moyse to breach the Employment Agreement.

20. Moyse was not aware that West Face was considering bidding to purchase Wind until after May 26, 2014. He first heard such information from a Catalyst executive.

21. The terms of Moyse's employment agreement with West Face prohibited him from using any property in the course of his employment with West Face that was the confidential or proprietary information of any other person, company, group, or organization.

22. Before Moyse began working at West Face, West Face's General Counsel and Secretary explained to Moyse the confidentiality terms of his agreement, and reminded him of his confidentiality obligations to Catalyst and the importance of respecting those obligations.

23. Moyse commenced employment at West Face as an Associate on June 23, 2014. Moyse was the most junior member of West Face's investment team. His duties included research and due diligence, financial modeling, deal structuring, and general

support. He did not receive portfolio summaries, participate in senior management meetings, or have authority to make decisions that affected the interests of West Face.

24. As a direct result of this litigation, and as described further below, Moyse was placed on leave and stopped working at West Face after just three and a half weeks, on July 16, 2014. He never returned to work at West Face.

### **Moyse's and West Face's responses to Catalyst's concerns**

25. On May 30, 2014, counsel for Catalyst wrote to West Face and Moyse expressing their concerns over West Face's decision to hire Moyse.

26. In response to Catalyst's concerns:

- (a) Moyse, through his counsel, confirmed to Catalyst that he fully intended to abide by his contractual obligations to Catalyst, including with respect to Catalyst confidential information.
- (b) West Face reminded Moyse not to disclose any confidential or proprietary information belonging to Catalyst before he commenced his employment.
- (c) West Face established a confidentiality wall under which Moyse was not permitted to discuss any information he had regarding Wind with others at West Face, or to take any active steps regarding Wind.

27. Moyse respected his confidentiality obligations with respect to Catalyst confidential information. Subsequent to accepting employment at West Face, Moyse did not communicate any Catalyst confidential information to West Face, including any

information with respect to Wind. Moyses had no involvement in West Face's work on a possible purchase of Wind.

28. West Face did not attempt to solicit Catalyst confidential information from Moyses, including information with respect to Wind.

### **The Firestone Order**

29. On June 25, 2014, following correspondence between the parties, Catalyst commenced this action against Moyses and West Face, and brought a motion seeking interlocutory injunctive relief.

30. On July 16, 2014, the parties attended before Mr. Justice Firestone on Catalyst's motion for interlocutory injunctive relief. The parties consented to an order, which was signed by Mr. Justice Firestone (the "Firestone Order"). The Firestone Order, among other things, required Moyses to:

- (a) preserve and maintain all relevant records in his power, possession, or control; and
- (b) turn over all his personal computer and electronic devices for the taking of a forensic image of the data served on his devices, to be conducted by a professional firm as agreed to between the parties.

### **Moyes's actions between the Firestone Order and turning over his personal devices**

31. The parties agreed that Moyses would turn over his personal devices to his counsel for imaging five days after the Firestone Order, on Monday, July 21, 2014.

32. Moyses used his personal devices for a wide variety of personal, private activities including banking, healthcare, and personal entertainment. Moyses's personal devices contained vast amounts of highly personal information that are irrelevant to this litigation, and not covered by the Firestone Order, including his personal Internet browser history, which would reveal intimate, personal information about his private life.

33. Moyses was concerned that Catalyst would have access to this irrelevant information, and that the irrelevant information would become part of the public record through this litigation.

34. Accordingly, prior to turning over his electronic devices for imaging, Moyses attempted to delete his Internet browsing history from his personal computer.

35. Moyses purchased and downloaded software called RegCleanPro onto his personal computer for the purpose of attempting to ensure a complete deletion of his Internet browser history. It was Moyses's understanding that he could ensure a complete deletion by cleaning his computer's registry following the deletion of the Internet browser history.

36. On or about July 20, 2014, Moyses deleted his Internet browser history. He then opened and ran RegCleanPro to clean up the computer registry.

37. Moyses did not, as alleged by Catalyst, use any "military-grade deletion software" or "scrubbing software", including but not limited to a program called "Secure Delete", prior to turning over his devices to counsel. Moyses purchased and installed a software



suite that included a "Secure Delete" program, but never used that function to delete any data.

### **Review of images of Moyse's devices**

38. On July 21, 2014, Moyse delivered his personal electronic devices to his counsel for imaging, as agreed. On or about July 21, 2014, a forensic expert imaged Moyse's devices, and created complete copies of Moyse's personal email accounts.

39. Moyse brought a motion seeking to stay Catalyst's claim against him for punitive damages. On October 7, 2014, Justice Spence ordered a stay of Catalyst's claims against Moyse for punitive damages in favour of the arbitration provision in the Employment Agreement.

40. Catalyst's motion for interlocutory injunctive relief was heard before Justice Lederer on October 27, 2014. The court issued reasons on November 10, 2014.

41. The court ordered, among other things, that an Independent Supervising Solicitor ("ISS") be appointed to review the images of Moyse's devices created on July 21, 2014.

42. The ISS reviewed the images of Moyse's devices and copies of his email accounts in January and February, 2015 to identify evidence of Moyse transmitting Catalyst confidential information to West Face. The ISS's review included the Dropbox folders contained on each of his devices. The ISS found no evidence of Moyse transmitting Catalyst confidential information to West Face, including by email, or by using his Dropbox or Box accounts.

**No spoliation**

43. Moyse did not delete or destroy evidence after he became aware of the pending or probable litigation involving Catalyst.

44. Moyse's Internet browser history did not include information relevant to this litigation.

45. Moyse did not intentionally delete evidence in order to defeat or disrupt Catalyst's case.

46. In the alternative, if he did, which is denied, Moyse's conduct did not affect Catalyst's ability to prove its case.

47. In any case, the damages claimed are excessive, remote, and were not caused by Moyse.

**Catalyst is not entitled to injunctive relief**

48. Catalyst is not entitled to any injunctive relief against Moyse. The restrictive covenants in the Employment Agreement are ambiguous and overly broad and, as such are unenforceable.

49. Catalyst does not require permanent injunctive relief to protect its rights.

50. In any event, the injunctive relief Catalyst seeks against Moyse is overbroad, and unduly restrictive of Moyse's rights.

**Relief requested**

51. Moyse asks that this action be dismissed with costs.

March 16, 2016

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**THE CATALYST CAPITAL GROUP INC.**  
Plaintiff

-and-

**BRANDON MOYSE et al.**  
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**PROCEEDING COMMENCED AT  
TORONTO**

**STATEMENT OF DEFENCE OF BRANDON MOYSE**

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