

Court File No. CV-14-507120

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

and

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

**SUPPLEMENTARY AFFIDAVIT OF JAMES A. RILEY
(Sworn May 1, 2015)**

I, JAMES A. RILEY, of the City of Toronto, MAKE OATH AND SAY:

1. I am the Chief Operating Officer of The Catalyst Capital Group Inc. (“Catalyst”), the plaintiff in this proceeding, and, as such, have knowledge of the matters set out in this affidavit. To the extent my knowledge is based on information and belief, I identify the source of such information and believe the information to be true.
2. I have previously sworn four affidavits in this proceeding – on June 26, July 14, July 28, 2014 and February 18, 2015. Those affidavits are not attached to this affidavit but I adopt and re-state the facts and defined terms set out in those affidavits in this affidavit.
3. This affidavit is sworn in reply to the affidavit of Anthony Griffin (“Griffin”), sworn March 7, 2015 (the “Griffin Affidavit”), which was sworn in response to my February 18, 2015 affidavit, and the affidavit of Brandon Moyse, affirmed April 2, 2015 (the “Moyse Affidavit”).

West Face's Questionable Motivation to Sell Callidus Shares Short

4. Attached as Exhibit "A" is a copy of a report that sets out the total short sale interest in Callidus' shares and the daily closing share price (the "Callidus Short-Sale Analysis"). Short interest information is only updated twice a month, so the information concerning the current short position is based on the share balance as of April 15, 2015.

5. The Callidus Short-Sale Analysis suggests that prior to October 16, 2014, there were no short sales of Callidus shares. Then, between October 16 and November 15, 2014, a short interest of approximately 600,000 shares was accumulated. Based on the limited information disclosed in the Griffin Affidavit regarding West Face's trading activity, I believe that West Face, acting alone or in concert with other entities, was building up its short position over this period of time.

6. The Short-Sale Analysis also indicates that the short position in Callidus essentially peaked before December 15, 2014, which is around the same time that rumours began circulating on Bay Street that West Face was selling short Callidus shares. Immediately after these rumours started circulating, Callidus' share price dropped significantly, to the benefit of whoever had accumulated the short position in Callidus' shares before the rumours were circulated.

7. The Short-Sale Analysis also indicates that the short position was reduced by approximately 25 per cent between March 30 and April 14, 2015. This partial closing out of the short position is consistent with a market participant taking some profits shortly after West Face's attack on Callidus received widespread public attention, as shown in an article dated March 30, 2015, published on the Business News Network's website (attached as Exhibit "B").

8. Griffin's sworn evidence is that West Face had been monitoring Callidus since its IPO in April 2014 (the "IPO"). He claims that West Face "questioned" the premium trading value of Callidus' shares following the IPO, and that in October 2014, West Face made the decision to begin short selling Callidus' share price *before* West Face pursued any "detailed research" into Callidus.

9. It is my belief that Griffin's explanation lacks credibility. Rather, it is my belief that West Face's short attack on Callidus' stock was intended to open up another "front" in the pre-existing litigation between Catalyst and West Face in order to cause harm to Catalyst.

10. Moreover, I believe that West Face did not begin selling Callidus stock short on a "hunch", as suggested by Griffin in his affidavit, but on material, non-public confidential information about Callidus disclosed to it by Moyse that it believed supported a short-selling strategy.

11. My beliefs are based on the following facts:

(a) West Face began accumulating its short position in mid-October 2014, a few days after Catalyst amended its statement of claim in this action to plead that West Face had misused Catalyst's confidential information to acquire its interest in Wind Mobile. Attached as Exhibit "C" is a copy of Catalyst's amended statement of claim dated October 9, 2014, and the related affidavit of service dated October 10, 2014.

(b) In our industry, funds are often managed as limited partnerships, and fund managers such as West Face owe fiduciary obligations to their investors. In my

experience, it is virtually unheard of for an experienced and qualified investment fund manager to use its investors' funds to sell a stock short on the basis of a "hunch", as suggested by Griffin in his affidavit.

- (c) In my experience, it would be bordering on negligent and possibly a breach of one's fiduciary obligations for a fund manager such as West Face to invest other people's money without conducting proper research and analysis beforehand.

West Face's "Research" is Deficient and Misstates Material Facts about Callidus

12. In his affidavit, Griffin sets out a detailed description of the research purportedly conducted by West Face in 2014 as part of its campaign to sell short the stock of Callidus, a company that is controlled by Catalyst. Griffin also implicitly admits, without giving details, that West Face circulated to third parties its "research" with respect to Callidus.

13. As it concerns Callidus, the Griffin Affidavit is replete with material misrepresentations of fact concerning the quality of Callidus' loan portfolio. Those misrepresentations are repeated in the "Callidus Analysis" attached as Exhibit 46 to the Griffin Affidavit. My affidavit will not list all of these misrepresentations, but Catalyst cannot allow the most egregious misrepresentations to pass without comment.

Misleading Excerpt from Callidus Conference Call

14. In his affidavit, Griffin included a short quotation from a conference call with Callidus investors held November 7, 2014. Although the full transcript is attached as Exhibit "42" to the Griffin Affidavit, the quotation is potentially misleading as to the statement made by Newton Glassman on that call. During the conference call, Mr. Glassman stated:

So IFRS is a bit annoying. Technically, under IFRS, you have to allocate the provision on a loan-by-loan basis. So and I think we went through this in the IPO, but just to remind people, we set out a separate watch list, which is the stock that although performing, because we don't have a single loan in the portfolio that's not performing, and just to remind again everybody, performing means current in interest and all obligations.

So we don't have a single loan in our book that is non-performing, but we do have loans that we are worried about, and put on what we call our watch list, which triggers a change in how we monitor those loans internally, they become much more actively reviewed daily. And then weekly, it's reviewed by everybody, especially the committee at least once, sometimes twice a week. Once it's on the watch list, we do something what we call VAR, which isn't really technically correct. VAR standing for value at risk and we analyze what we think the recovery will be, it: we had to sell the loan immediately or liquidate it.

And in most cases, except for two currently that VAR is actually positive. In other words, we have excess collateral and we would actually yield more than what is necessary under the loans. In two cases, the VAR is slightly negative and it's actually not a meaningful number relative to the entire portfolio, it's quite, quite small. And in those two cases, where the VAR is negative, we actually attribute the provision against those loans specifically.

[...]

And in both cases, **those two loans that have negative VAR, actually have a guarantee from Catalyst. So although we do have the provisions, the actual exposure for Callidus is zero, because they were loans that were purchased as part of the IPO and therefore, come with the guarantee. So the actual dollars at risk for Callidus is zero,** notwithstanding the fact that on the face of our financial statements, we actually have a dollar provision amount. [Emphasis added.]

15. The Griffin Affidavit reproduced a portion of the first paragraph of this quotation. By omitting the references to “value at risk” and the guarantee from Catalyst, which shortly follows the quotation in the Griffin Affidavit, the Griffin Affidavit provides a potentially misleading summary of Mr. Glassman’s statements during the conference call and the risk to Callidus.

West Face Omitted Material Facts Concerning Callidus' Loans

16. The Griffin Affidavit included detailed analyses of certain loans made by Callidus. Those analyses are faulty and misrepresent the facts concerning the loans that a qualified analyst ought to know would potentially mislead investors. In this affidavit, I deal only with West Face's analysis of Arthon Industries ("Arthon"), which is indicative of the seemingly deliberate omission of relevant facts that permeates the other analyses.

17. Arthon was a construction holding company that owned, among other things, mining equipment, a coal mine and an aggregates (gravel) deposit. These assets were owned in separately owned subsidiaries commonly referred to as "Contractors", "Equipment", "Coalmont" and "Sandhill".

18. In November 2013, Arthon, Equipment and Coalmont, among others, applied for CCAA protection to restructure secured debt owed to HSBC. Sandhill was liable for the debts to HSBC and other Arthon creditors, but it did not seek or require CCAA protection.

19. In December 2013, Callidus assumed the position of HSBC ultimately at a substantial discount to the book value of the secured debt, thus assuming the position of the senior secured lender and debtor-in-possession ("DIP") lender.

20. Throughout 2014, Arthon engaged in restructuring activities. The ultimate outcome of the restructuring is that Equipment sold all of its assets to Arthon, and Arthon and Sandhill assumed joint responsibility for the secured debt owed to Callidus. After the assets were transferred out of Equipment and Coalmont, those corporations were assigned into bankruptcy.

21. Thus, in a little over a year, Callidus purchased approximately \$50 million of senior secured debt and transferred the assets of an insolvent borrower to a related solvent company, which assumed responsibility for the full amount of the secured debt.

22. Arthon is the furthest thing from an “impaired” loan – it was a very successful workout situation where Callidus was able to use its unique expertise to identify and profit from a lending opportunity that traditional lenders could not take advantage of.

23. In its analysis, West Face selectively refers to facts that portray Arthon as a worthless company and all but accuses Callidus of throwing good money after bad. That portrayal is inconsistent with publicly known facts about Arthon and is the exact opposite of what actually happened.

24. By ignoring publicly available information and attempting to portray a fully secured CCAA workout situation as an impaired loan, West Face has either misapprehended facts that most analysts would be able to understand or it deliberately painted a misleading picture to support the short position it had already taken out.

West Face Improperly Compares Callidus to BDCs

25. In his affidavit and in the West Face analysis of Callidus, Griffin states that Callidus is trading at too high a multiple as compared to U.S. business development corporations (“BDCs”), which Griffin states are the appropriate comparable businesses to Callidus.

26. As with the Arthon analysis, this statement is either negligently or deliberately misleading. As anyone involved in distressed lending is aware, BDCs have several characteristics that are not shared with Callidus:

- (a) BDCs tend to have external management, whereas Callidus is managed internally;
- (b) BDCs are close-ended funds and are required to return cash to investors with a payout ratio of at least 90 per cent, whereas Callidus has publicly stated that it will not distribute dividends and re-invests its income for future growth;
- (c) BDCs tend to finance subordinate debt and unsecured positions, including equity, whereas Callidus focuses almost exclusively on senior secured debt;
- (d) BDCs are not taxable at the corporate level – they are taxed at the personal level because of the high distribution ratio.

27. For these reasons, it is misleading to refer to the gross yields commonly achieved by BDCs (in the 10-12% range) and suggest that that is the yield level that one can expect from Callidus in the future. Callidus has repeatedly publicly disclosed information that demonstrates that it is nothing like a BDC.

28. A less sophisticated investor may not be able to recognize the false comparison to a BDC in West Face's analysis, which may lead that investor to think that Callidus' stock is over-valued, as stated by West Face. In a hypothetical situation where an investor decides to sell his or her Callidus shares as a result of reviewing West Face's analysis, the stock price would decline, thus creating a profit for whomever sold the stock short.

West Face May Have Mis-stated Material Facts as Part of its Trading Strategy

29. Leaving aside other deficiencies in West Face's "analysis" of Callidus' loan portfolio, the obvious deficiencies in West Face's analysis of Callidus lead me to believe that West Face was

not conducting *bona fide* research into the quality of Callidus' loan portfolio, because any reasonably qualified analyst would avoid making these errors

30. These errors, West Face's conduct of selling Callidus' stock short *before* it began sharing its "research" with other market participants, and other facts about West Face and Moyses learned through the course of this litigation, lead me to believe that West Face may have engaged in a trading strategy with respect to Callidus' stock price that caused it to spread misleading information about Callidus *after* it had taken a short position on the stock.

31. If this is the case, then West Face profited from the selling activity of other market participants who relied on West Face's thesis to sell the shares *after* West Face had already placed a "bet" that Callidus' share price would decline. In this scenario, as the purveyor of information it knew or reasonably ought to have known was misleading, West Face induced other market participants to sell their shares based on misleading information, to the profit of West Face, which profited from the drop in Callidus' share price in November 2014.

32. My belief that West Face was not motivated by a good faith effort to profit from a market anomaly is re-enforced by West Face's refusal to share its report with Callidus despite Callidus' repeated requests that it do so in December 2014 and January 2015. Instead, the first time any "report" was shared with Catalyst was when the Griffin Affidavit was served on Catalyst. Had West Face shared its "research" with Callidus before it shared its findings with third parties, Callidus would have been able to show West Face its obvious error, which would have prevented the market from being misinformed about the quality of Callidus' loan portfolio.

33. Moreover, I note that the "report" attached to the Griffin Affidavit is dated March 2015 and recites facts about Callidus' loan book that post-date the period when West Face was

shorting the stock and sharing its “research” with other market participants in November and December 2014.

34. After the Griffin Affidavit was sworn but before it was filed, Catalyst’s outside counsel attempted to engage with West Face’s outside counsel to persuade West Face not to file the Griffin Affidavit in open court so as to avoid potentially misleading the market with its faulty analysis. Attached as Exhibit “D” is a copy of email correspondence between Catalyst’s outside counsel and West Face’s outside counsel between March 9 and 13, 2015. As shown in this correspondence, Catalyst’s efforts were firmly rebuffed by West Face, which insisted on publicly filing the Griffin Affidavit even after it was warned that the affidavit contained material misstatements of fact about Callidus.

Moyse’s Involvement with the Wind File was Much More than “Minimal”

35. In his affidavit, Moyse attempts to downplay his involvement in the Wind situation at Catalyst by describing his role as “minimal”. This is simply untrue.

36. For example, Moyse refers at paragraph 19 of his affidavit to a PowerPoint presentation he helped create for Catalyst to show representatives of Industry Canada in early 2014. What he does not disclose is that the PowerPoint presentation primarily concerned Catalyst’s plans for Wind and outlined regulatory concessions Catalyst needed in order to carry out a Wind transaction.

37. Through his assistance with this presentation and participation in other discussions concerning Wind, Moyse knew not only that regulatory risk was a major sticking point for Catalyst, but also what types of regulatory concerns Catalyst had with respect to Wind.

38. Moyse was a member of Catalyst's Wind and Mobilicity team up until May 26, 2014, when he informed us that he had resigned from Catalyst to take a job at West Face, whom Moyse knew was also working on the Wind situation. Up until that date, Moyse participated as an involved member of Catalyst's due diligence and financial analysis team and received dozens of emails relating to the Wind situation, many of which attached confidential documents concerning Catalyst's negotiation strategy for Wind and Mobilicity.

39. For example, on May 24, 2014, two days before Moyse was put on "garden leave", he received an email that was distributed to the entire Wind team at Catalyst. The email attached a draft share purchase agreement ("SPA") and a blackline to a previous draft of the SPA. That email and its attachments are attached as Exhibit "E".

40. As shown in the SPA, even at this early stage of the proposed transaction, Catalyst was concerned with regulatory risk and the SPA was conditional on Catalyst receiving Industry Canada's approval to acquire Wind.

41. I am informed by Gabriel de Alba ("de Alba"), a partner at Catalyst, that in early August 2014, de Alba and representatives of Vimpelcom participated in a conference call with representatives of Industry Canada. The purpose of the call was to inform Industry Canada that Catalyst had final, but unsigned, paperwork for a transaction to acquire Wind and that there were no significant gaps between the parties. The call was intended as a courtesy prior to Catalyst formally seeking Industry Canada's approval to acquire Wind.

42. At the time, the anticipated deal with Vimpelcom was conditional on Industry Canada approval and the granting of certain regulatory concessions to a Catalyst-owned Wind that in Catalyst's mind would make it easier for a fourth national carrier to succeed. These concessions

were essentially the same regulatory concessions summarized in the PowerPoint presentation Moyses helped create in early 2014.

43. I am informed by de Alba that shortly after the call with Industry Canada, Vimpelcom changed its negotiating strategy and began insisting that Catalyst yield on regulatory risk issues that had previously been agreed to by the parties.

44. As explained above, Moyses was an involved member of the Wind team and had full access to all of the relevant confidential information concerning Catalyst's due diligence, financial analysis, and regulatory drivers in the Wind situation. This involvement included knowledge of the precise regulatory concerns articulated by Catalyst to Industry Canada while it was negotiating to purchase Wind.

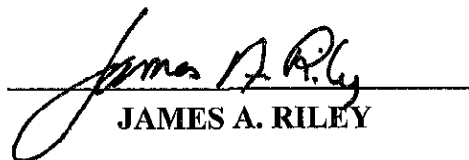
45. It is my belief that Vimpelcom changed its strategy after it received the unsolicited offer from West Face referred to at paragraph 77 of the Griffin Affidavit. I believe that West Face may have obtained confidential information from Moyses relating to Catalyst's confidential regulatory concerns and used that information to develop its Wind strategy, which ultimately led to West Face successfully purchasing Wind.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario on
May 1st, 2015.



Commissioner for Taking
Affidavits, etc.

ANDREW WINTON


JAMES A. RILEY