

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

**AFFIDAVIT OF MARTIN MUSTERS
(sworn February 15, 2015)**

I, MARTIN MUSTERS, of the City of Oakville, in the Regional Municipality of Halton, MAKE OATH AND SAY:

1. I am the Director of Forensics at Computer Forensics Inc. ("CFI"), a computer security consulting firm based in Oakville, Ontario. In this capacity, I am responsible for all aspects of CFI's computer forensic services.
2. I previously swore an affidavit in this proceeding on June 26, 2014. That affidavit, without exhibits, is attached hereto as Exhibit "A" and I incorporate the evidence therein into this affidavit.

Expertise

3. My expertise as a forensic investigator is set out in my June 26, 2014 affidavit. A copy of my detailed *curriculum vitae* is attached hereto as Exhibit "B".

Review of Independent Supervising Solicitor's Draft Report

4. As explained in detail in my June 26, 2014, affidavit, on June 20, 2014, CFI was retained by Lax O'Sullivan Scott Lisus LLP, lawyers for the plaintiff, Catalyst Capital Group Inc. ("Catalyst"), to conduct a forensic analysis of a desktop computer that I was advised had

previously been used by Brandon Moyse ("Moyse"), a former employee of Catalyst, while Moyse was employed by Catalyst (the "Desktop Computer"). On June 21, 2014, CFI created a forensic image of the Desktop Computer and then conducted an analysis of the image. The results of that analysis are described in my June 26, 2014 affidavit.

5. Prior to swearing this affidavit I have reviewed the Order of Justice Firestone dated July 16, 2014 and the Order of Justice Lederer dated November 10, 2014. I understand from my review of those documents that:

- (a) On July 16, 2014, Moyse was ordered to preserve and maintain all records in his possession, power or control, whether electronic or otherwise, that relate to Catalyst, and/or relate to his activities since March 27, 2014, and/or relate to or are relevant to any of the matters raised in this proceeding, except as otherwise agreed to by Catalyst;
- (b) On July 16, 2014, Moyse was ordered to turn over any personal and electronic devices owned by him or within his power or control to his legal counsel for the taking of a forensic image of the data stored on those devices; and
- (c) On November 10, 2014, Justice Lederer ordered that the forensic images created in compliance with the July 16, 2014 Order of Justice Firestone be reviewed by an independent supervising solicitor ("ISS") identified pursuant to a protocol to be jointly agreed to by counsel for the parties to this action, or, failing such agreement, by way of further direction of the Court.

6. Attached as Exhibit "C" to my affidavit is a copy of the document review protocol ("DRP") agreed to by the parties in December 2014. Pursuant to the DRP, after the ISS delivers a draft report to Catalyst and Moyse, Moyse has ten business days to object to the inclusion of a document or documents referred to in the draft report.

7. Now produced and shown to me and marked as Exhibit "D" to my affidavit is a redacted copy of the ISS's draft report dated February 1, 2015 (the "Draft ISS Report"). I am informed by Andrew Winton, counsel for Catalyst, and I believe, that on February 13, 2015, ten business days after the ISS delivered the Draft ISS Report to Catalyst and Moyse,

Moyse's counsel communicated Moyse's objection to the inclusion of dozens of documents referred to in the Draft ISS Report.

8. For the purposes of this affidavit, those objections are not relevant, as this affidavit only relates to information in the Draft ISS Report that does not concern the listing of specific documents referred to therein.

9. Rather, this affidavit concerns information set out in paragraphs 44 to 48 of the Draft ISS Report. According to the information set out in those paragraphs:

- (a) On Wednesday, July 16, 2014, an email message was sent to Moyse's Hotmail account. The email constituted a receipt and license key for a software product entitled "Advanced System Optimizier 3 [Special Edition]";
- (b) Based on the creation date of associated folders, the forensic IT expert assisting the ISS was able to determine that Advanced System Optimizer 3 was installed on Moyse's personal computer on July 16, 2014 at 8:53 a.m.; and
- (c) On July 20, 2014, at 8:09 p.m., a folder entitled "Secure Delete" was created on Moyse's personal computer.

10. Attached to my affidavit as Exhibit "E" is a copy of the promotional information for Advanced System Optimizer 3. Advanced System Optimizer 3 includes a "Secure Delete" tool, which is described in the promotional information as being capable of deleting files or folder from a computer in a manner that prevents recovery of the deleted data by forensic recovery tools:

Did you know that whenever you delete a file or folder from your system using the 'Delete' key or Recycle Bin, that item isn't permanently removed? In fact, it's quite an easy process to recover deleted files and folders using widely available data recovery utilities, leaving you open to identity theft, and loss of confidential information and trade secrets.

Secure Delete keeps the privacy and security of your system intact. By implementing a secure deletion method developed by the United States Department of Defense, Secure Delete ensures that no tool can ever recover your deleted files and folders! By

using Secure Delete to securely remove your sensitive files, deleted items are permanently removed from your system.

11. After I reviewed the Draft ISS Report, I downloaded the Advanced System Optimizer 3 software and installed it on my own personal computer to investigate how the software works.

12. In my own experience using the Secure Delete feature, merely downloading and installing the software on one's computer does not lead to the creation of a folder entitled "Secure Delete". That folder is only created when a user runs the Secure Delete feature to delete a file or folder from his computer.

13. Based on my own experience using the software, it is my opinion that someone using Moyse's computer on July 20, 2014 deleted one or more files or folders beginning at 8:09 p.m. Based on my experience using the software, there is no other explanation as to why a "Secure Delete" folder would be created on Moyse's personal computer on that date.

14. Because of the random data generated by Secure Delete to overwrite the data it is deleting, it is impossible for any forensic investigator to determine the extent to which the tool was used to delete individual files or folders. The software generates a random pattern of data to overwrite the deleted files, which leaves no trace of its use, other than the "Secure Delete" folder that is created when the tool is used.

15. As a result, it is impossible to tell what documents Moyse, or someone using his personal computer on Sunday, July 20, 2014 at 8:09 p.m., deleted on that date.

16. In my experience, in situations involving the departure of an employee to a competitor, when I encounter evidence that someone used a secure delete tool to delete data in such a way as to make it impossible to review through forensic analysis, the deletion was committed to hide evidence that the person took confidential information from a former employer and communicated it to their new employer.

17. Attached as Exhibit "F" is a signed Acknowledgment of Expert's Duty form, which I signed prior to swearing this affidavit.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario on
February 15, 2015



Commissioner for Taking
Affidavits, etc.



MARTIN MUSTERS

THE CATALYST CONSULTING GROUP INC. -and-
Plaintiff

BRANDON MOYSE and WEST FACE CAPITAL INC.
Defendants

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PROCEEDING COMMENCED AT
TORONTO

**AFFIDAVIT OF MARTIN MUSTERS
(sworn February 15, 2015)**

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