

**Catalyst Capital Group
Inc. v. Brandon Moyse and
West Face Capital Inc.**

Brandon Moyse
on Thursday, May 12, 2016

neelsons

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1 A. Yes, it does.

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 13 Q. And your initial affidavit that
12 was sworn in July of 2014 denied that you had
13 provided any confidential information to West Face,
14 correct?

15 A. I thought my initial affidavit
16 mentioned an email I sent to Tom Dea.

17 14 Q. Right, but in your affidavit you
18 denied that there was anything confidential about
19 those documents, right?

20 A. Yes.

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED] [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED] [REDACTED] [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED] [REDACTED]

9 17 [REDACTED] And can we

10 agree now that you were not accurate when you

11 initially gave your evidence that you hadn't

12 provided any confidential information to West Face?

13 A. I think I -- giving it a lot more

14 thought since then, that may have been inaccurate.

15 18 Q. May have been or was?

16 A. They did contain some confidential

17 information.

18 [REDACTED] [REDACTED] [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED] [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED]
2 20 Q. So can we agree now that the
3 documents you provided to West Face, those
4 investment memos that you spoke of in your original
5 affidavit did contain confidential information?

6 A. Some of them did.

7 21 Q. Okay. How many of them did of the
8 four that you provided? I think there were four,
9 right?

10 A. Yes. I would think maybe one.

11 22 Q. One, okay. So which memo?

12 A. Maybe two, but...

13 23 Q. So which of the four memos that
14 you provided can we now take off the table and
15 specifically agree contained confidential
16 information?

17 A. The Homberg memo probably.

18 24 Q. All right. What about the others?

19 A. Maybe the NSI memo.

20 25 Q. So you seem to hedge your answer
21 on both of those. Are you saying they contain
22 confidential information or are you saying they
23 don't?

24 A. I'm saying they did contain some
25 confidential information.

1 26 Q. All right. So the other two memos
2 that you provided in your view still, the position
3 is, just so I understand going into trial here, do
4 not contain confidential information?

5 A. I think the memos are proprietary,
6 I don't think there's any confidential information
7 in them.

8 27 Q. So that gets back into our initial
9 exchange when I first cross-examined you in July.
10 Are you suggesting that in your view the memos
11 themselves weren't confidential?

12 A. They may have been.

13 28 Q. "May have been" doesn't help us,
14 Mr. Moyse.

15 A. The memos themselves, yes, may --
16 were confidential, I would say.

17 29 Q. So it's a distinction you're
18 drawing, just so I understand, it's a distinction
19 you're drawing between the fact that the memos were
20 confidential but that they may not have contained
21 any confidential information in them; is that the
22 distinction you're trying to draw?

23 A. I'm not trying to draw that.
24 That's what I believe.

25 30 Q. Okay. So that's the distinction

1 you're making?

2 A. Yes.

3 31 Q. But there's no question in your
4 mind that you should not have provided those to a
5 third party?

6 A. I agree with that.

7 32 Q. And when you say you had done some
8 further reflection on the matter since you gave
9 your initial evidence, was that reflection that was
10 done between the period of your July affidavits and
11 your April 2015 affidavit?

12 A. It's been a continuous process.

13 33 Q. All right. Was the reflection
14 that you performed as a result of the decision that
15 was made on the injunction? Just trying to
16 understand how you formed a different view of what
17 may have been confidential at different points in
18 time.

19 A. Like I said, it was an evolution.

20 34 Q. All right. And was the injunction
21 decision something that informed the evolution?

22 A. It did. I don't know if that was
23 the turning point.

24 [REDACTED] [REDACTED] [REDACTED]

25 [REDACTED]

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10 134 Q. Right. Would part of your role
11 have involved attending what we've called Monday
12 morning meetings? I think you talked about that in
13 one of your affidavits as well.

14 A. Yes.

15 135 Q. All right. And tell me about
16 those meetings?

17 A. So the meetings were usually over
18 lunch, almost -- sorry, pretty much always over
19 lunch. They --

20 136 Q. That's not morning to me, but in
21 any event...

22 A. They start at 12:30.

23 137 Q. Pretty casual day if your morning
24 includes lunch.

25 A. They start at 12:30. So they

1 would -- so the, in Catalyst, call it investment
2 team would attend, so that would be Newt Glassman,
3 the head of Catalyst, Gabriel de Alba, partner, Jim
4 Riley, partner, and then whatever VPs, analysts,
5 associates were there. It also frequently included
6 Chester Dawes who is the CFO and treasurer of
7 Catalyst Capital Group, and they sometimes included
8 David Reese, who is the head of Callidus, a company
9 that Catalyst owns.

10 138 Q. Okay. And apart from having
11 lunch, apparently, what kinds of things would be
12 discussed at those Monday meetings?

13 A. The bulk of the meetings were
14 spent discussing, call it, macroeconomic and
15 geopolitical issues. At the tail end of the
16 meetings, less consistently but the portfolio
17 companies would be discussed, so Gabriel might give
18 an update on what was going on with specific
19 portfolio companies and we might also discuss deals
20 we were actively working on.

21 139 Q. How about potential deals or
22 investments?

23 A. That's what I meant by actively
24 working on.

25 140 Q. Okay. So not just deals that were

1 in the pipeline, but deals that you might want to
2 become involved in?

3 A. Certainly those came up but less
4 frequently than active deals or portfolio
5 companies.

6 141 Q. Was the Wind opportunity ever
7 discussed at a Monday meeting?

8 A. I'm sure it was, yeah.

9 142 Q. Do you have any recollection of
10 it?

11 A. Specifically, no, but it certainly
12 was.

13 143 Q. All right. And you would have
14 been at those meetings, you just have no
15 recollection of was discussed at this point?

16 A. I know it was discussed. I just
17 don't remember specifics.

18 144 Q. All right. You're familiar with a
19 gentleman by the name of Andrew Yeh, I think is the
20 way you pronounce his name?

21 A. That's right.

22 145 Q. Y-E-H.

23 A. Yes.

24 146 Q. And who is he?

25 A. He was an associate at Catalyst.

1 He started a few months after I did, so I think in
2 the summer of 2012, and he left Catalyst I believe
3 in late March of 2014.

4 147 Q. Do you recall when he gave notice
5 of his intention to leave?

6 A. I think it was, I want to say,
7 late January or early February.

8 148 Q. Of 2014, obviously?

9 A. Yeah.

10 149 Q. And was he working on Mobilicity
11 before he left Catalyst?

12 A. He was.

13 150 Q. You also had some involvement with
14 Mobilicity; is that correct?

15 A. Prior to his leaving?

16 151 Q. Well, I'm not -- I'm not actually
17 measuring it by when he left, but did you have any
18 involvement with Mobilicity?

19 A. I mean, the presentations to the
20 Canadian government did touch on Mobilicity and I
21 probably, you know, created a couple of tables or
22 graphs, but really I didn't do very much work on
23 Mobilicity, to my memory.

24 152 Q. All right. You understood that
25 Catalyst had certain debt in Mobilicity?

1 A. Yes.

2 153 Q. And you knew presumably that
3 Catalyst had an interest in pursuing further
4 opportunities in the telecommunications industry?

5 A. Yeah. Yes.

6 154 Q. At least by early 2014 you would
7 have known that, right?

8 A. Yes.

9 155 Q. And you were aware that Catalyst
10 was considering how to possibly build out a fourth
11 wireless carrier in Canada?

12 A. Yes.

13 156 Q. Was that a subject of discussion
14 at the Monday meetings from time to time?

15 A. From time to time probably, yeah.

16 157 Q. But you have no specific
17 recollection?

18 A. No.

19 158 Q. Was it a subject that you recall
20 Mr. de Alba discussing with you?

21 A. Me personally?

22 159 Q. Yes.

23 A. Just me and him?

24 160 Q. Not just you and him necessarily,
25 but do you recall Mr. de Alba discussing that

1 subject while you were present?

2 A. At the Monday morning meetings he
3 would have been involved in that discussion but I
4 don't remember him, you know, ever pulling the deal
5 team aside and explaining Catalyst's plans, no.

6 161 Q. As part of the discussions that
7 you say would have occurred in relation to building
8 out a fourth wireless carrier, is it fair to say
9 that it was important to understand the regulatory
10 environment?

11 A. From whose perspective?

12 162 Q. Well, from the Catalyst
13 perspective.

14 A. I agree it would have been
15 important from Catalyst's perspective to understand
16 the regulatory environment.

17 163 Q. And it would have been important
18 to understand the government's position on spectrum
19 transfers?

20 A. That makes sense.

21 164 Q. And who the government would
22 approve to receive spectrum?

23 A. That also makes sense.

24 165 Q. And that was certainly important
25 to Catalyst's investment in Mobilicity; you

1 A. I remember him saying that.

2 289 Q. And do you remember in your
3 cross-examination on May 11th that you disagreed
4 with Mr. Riley on that point?

5 A. I remember that.

6 290 Q. Your recollection was, I believe,
7 that it related exclusively to Mobilicity?

8 A. Correct.

9 291 Q. Was that recollection wrong?

10 A. I think it's a bit of both because
11 there were two presentations. One I think
12 certainly related very much more to Mobilicity; the
13 other I think did relate more to Wind, so I think
14 it's a bit of both.

15 292 Q. Right. So I think when you said
16 in your evidence that it related exclusively to
17 Mobilicity, that was not right?

18 A. Having seen it now, my
19 recollection was not correct, a hundred percent
20 correct.

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]