

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

BETWEEN:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

**AFFIDAVIT OF THOMAS DEA
(Sworn June 3, 2016)**

I, THOMAS DEA, of the City of Toronto, in the Province of Ontario, MAKE
OATH AND SAY:

1. I am a Partner of the Defendant, West Face Capital Inc., along with Greg Boland, Peter Fraser, and Anthony Griffin. I had primary responsibility for, and was most directly involved in, the hiring by West Face of the Defendant Brandon Moyse as a junior associate in Spring 2014. As such, I have personal knowledge of the matters set out in this Affidavit.

2. I previously swore an Affidavit in this proceeding on July 7, 2014, and was cross-examined on that Affidavit on July 31, 2014. That evidence was given in the context of a motion by the Plaintiff, The Catalyst Capital Group Inc., for, among other

things, an interim and interlocutory injunction preventing Mr. Moyse from working at West Face for the six-month duration of the non-competition covenant in his employment contract with Catalyst. After I gave that evidence, Catalyst amended its June 25, 2014 Statement of Claim (on October 9, 2014) to add allegations of misuse of confidential information by West Face concerning the WIND opportunity. This Affidavit consolidates and updates the relevant evidence I have given in this proceeding so far to date, and also sets out my evidence on matters that have become relevant since July 2014.

3. To provide a high-level summary of my evidence below:
 - (a) Mr. Moyse's hiring by West Face had absolutely nothing to do with Mr. Moyse's involvement in or knowledge of Catalyst's plans, strategies or negotiations for WIND or any other company. In fact, West Face had no reason to suspect that Mr. Moyse had been a part of Catalyst's WIND deal team until after Mr. Moyse had accepted a job offer from West Face and given notice of his resignation to Catalyst, at which point Catalyst's counsel told West Face's counsel that Catalyst was concerned about Mr. Moyse's involvement in an active "telecom file";
 - (b) in response to Catalyst's stated concerns, and before Mr. Moyse had even begun working at West Face, West Face took precautions to ensure that Mr. Moyse was "walled off" from West Face's WIND deal team; and

- 3 -

- (c) these precautions were successful, in that Mr. Moyses never disclosed, and West Face never misused, any confidential information belonging to Catalyst concerning WIND.

About Me and West Face

4. I joined West Face in 2006. Prior to joining West Face, from 2003 to 2006, I worked with Mr. Boland in his capacity as a manager of a Canadian portfolio for Paloma Partners. I was previously a Managing Director at Onex Corporation (Canada's largest private equity firm) where I worked from 1995 to 2003. At Onex, I was involved in the execution and oversight of a number of investments in consumer goods, business services, energy infrastructure, and health care. I also worked in the merchant banking group of CIBC and the mid-market acquisition financing unit of GE Capital. I obtained a Bachelor of Arts from Yale University (in 1987) and an MBA from Harvard University Graduate School of Business (in 1993).

Mr. Moyses Reaches Out to Me Looking for a Job at West Face

5. I first met Mr. Moyses in or around 2012. West Face had commenced a recruitment drive for a number of analyst positions and Mr. Moyses had submitted an application. Although West Face did not hire Mr. Moyses during that round of recruitment, Mr. Moyses and I stayed in touch.

6. On September 25, 2012, Mr. Moyses emailed me to tell me that he had been offered a position at Catalyst. Although I congratulated Mr. Moyses at that time, I did tell him that Catalyst had a reputation in the marketplace as a difficult place to work.

7. With the exception of a single email which I received from Mr. Moyse in December 2013 about a transaction that he had recently worked on which had been published in the news, I did not hear from (or communicate at all with) Mr. Moyse again until March 2014.¹ I did not respond to Mr. Moyse's December 2013 email.

8. On March 14, 2014, Mr. Moyse sent me an email in which he told me that he had seen that West Face had launched a new fund a couple of months before (West Face had, in fact, launched its Alternative Credit Fund in January 2014, and this fact had been reported in the press). In his email, Mr. Moyse advised me that he had started exploring other job opportunities and expressed interest in working at West Face on this new venture. Each of the above referenced emails is a part of the email chain attached as Exhibit "1" to this Affidavit.²

9. As is clear from the face of Mr. Moyse's March 14 email, this communication was initiated by Mr. Moyse and not by West Face. West Face happened to need a junior analyst/associate at the time because a previous potential hire had chosen to pursue a different opportunity.

10. I was away from Toronto at the time I received Mr. Moyse's March 14 email, but agreed to speak with Mr. Moyse when I returned the following week. After a few back-and-forth emails trying to schedule a meeting, we ultimately met over a coffee

¹ In preparing this Affidavit, my counsel noted a minor, inadvertent mistake in paragraph 39 of the Affidavit of Anthony Griffin sworn March 7, 2014. That paragraph states that I informed Mr. Griffin that "Mr. Moyse contacted West Face in January 2014 seeking employment in response to a West Face press release announcing the launch of its Alternative Credit Fund." That is not accurate. As set out in the body of this Affidavit and in my July 7, 2014 Affidavit, Mr. Moyse contacted me on March 14, 2014 seeking employment in response to West Face's launch of its Alternative Credit Fund in January 2014.

² WFC0031084.

on March 26, 2014. Based on my review of the relevant emails, I believe we met up around 1:45 p.m. (Again, these facts are reflected by the email chain attached as Exhibit "1" to this Affidavit). I believe we spoke for about 30 minutes.

11. At no point during this brief preliminary interview did we discuss the WIND opportunity. Rather, we discussed the financial industry generally and Mr. Moyses shared with me his goal of working in a role where his focus was on pursuing new investments rather than monitoring existing portfolio investments, which he told me was the focus of his position at Catalyst. I asked Mr. Moyses run-of-the-mill interview questions to get a sense of what kind of experience he had gained at Catalyst and at his other previous employers, RBC and Credit Suisse. The conversation was generic in nature and I do not recall Mr. Moyses mentioning any specific investment opportunities he had worked on, let alone WIND.

12. I asked Mr. Moyses to provide me with a copy of his resume, a deal sheet, and some writing samples to demonstrate his written communication skills. With respect to the writing samples, I did not specify the type of sample required, as I simply wanted to assess his writing proficiency. To the extent that the writing samples included any confidential information, I instructed him to redact the confidential information as necessary, and assumed that he would not breach any confidentiality obligations. My request for writing samples was consistent with West Face's standard hiring practices. In fact, in my experience, it is a standard practice at many firms.

13. I summarized Mr. Moyses as a candidate for the analyst position in an email to Messrs. Boland, Griffin, and Fraser later that afternoon, in an email attached as

Exhibit "2".³ My email did not mention any specific deals on which Mr. Moyses was working or had worked on for Catalyst because I did not know and frankly did not care about that issue. Our focus was on his skill set, experience, and character. I advised the Partners that Mr. Moyses would send me his "updated c.v., deal sheet, sample internal output". This latter reference was to the writing samples, which as explained above I had instructed Mr. Moyses to redact as necessary.

14. The next day – March 27, 2014 – Mr. Moyses sent me an email (the "**March 27 Email**") attaching his resume, a deal sheet, and four investment memos as writing samples. These memos were marked "Confidential" and "For Internal Discussion Purposes Only". I circulated Mr. Moyses's March 27 Email to the other Partners and West Face's Vice-President, Yu-Jia Zhu, who had been involved in prior recruitments of analysts and associates. In hindsight, it was a mistake for me not to ensure that the emails did not contain confidential information before I did so. I simply did not pay much attention to the contents of the writing samples. I do not recall if I read them when I originally received the March 27 Email. When I did read them, I did not read them intently. Rather, I scanned them quickly but did not find them noteworthy. Three of the samples were analyses using publicly available information only. The fourth was a summary of a prior transaction that had been completed.

15. In any event, my intent in forwarding the March 27 Email to my colleagues was not to disseminate internal Catalyst documents, but to simply inform my colleagues about Mr. Moyses as a potential candidate for employment. I was simply forwarding the

³ WFC0079574.

"package" of information relevant to that candidate - the more important attachments to the March 27 Email being Mr. Moyses's resume and deal sheet. A copy of the email I sent forwarding the March 27 Email is attached as Exhibit "3" to this Affidavit.⁴

16. I disclosed the existence of the March 27 Email to Catalyst in my July 7, 2014 Affidavit, six business days after Catalyst commenced this proceeding. As I indicated in my July 7, 2014 Affidavit, the March 27 Email is the one and only instance of Mr. Moyses providing West Face with any confidential information of Catalyst (and it has nothing to do with WIND). To my knowledge, this statement is as true today as it was almost two years ago.

17. As is evident on their face, none of the four attachments to the March 27 Email has anything to do with WIND, and I understand that Catalyst has not claimed any loss or damage as a result of their disclosure to West Face by Mr. Moyses. I further understand that Catalyst stopped treating the March 27 Email as confidential over 16 months ago, when it instructed its counsel to unseal the Court File where a copy of the email and its attachment had been filed.

18. Moreover, West Face did not use or rely on any of the writing samples attached to the March 27 Email other than to evaluate Mr. Moyses's job application. In fact, as set out in more detail below, the writing samples did not even play a material role in West Face's decision to hire Mr. Moyses.

⁴ WFC0075126.

West Face Interviews Mr. Moyses and Checks His References

19. Following my meeting with Mr. Moyses over coffee on March 26, 2014, I arranged for him to attend at West Face's offices to meet with my colleagues. Mr. Moyses came to West Face's office for two rounds of interviews: the first on April 15 (when he met with Messrs. Griffin, Fraser, and Zhu), and the second on April 28 (when he met with Mr. Boland). I understand that in the course of this proceeding, West Face produced all documents relating to these interviews, including, among other documents:

- (a) its emails with Mr. Moyses scheduling these interviews;
- (b) its internal emails relating to these interviews;
- (c) Mr. Zhu's notes of his interview of Mr. Moyses (the other Partners did not have any notes of their interviews of Mr. Moyses);
- (d) electronic calendar invitations and appointments for these interviews; and
- (e) Mr. Moyses's emails to the Partners following the interviews thanking them for their time and expressing his interest in working at West Face.

20. To the best of my knowledge, at no point during Mr. Moyses's hiring process did West Face have any inkling that Mr. Moyses was in any way involved in working on the WIND opportunity for Catalyst. Our continued interest in Mr. Moyses as a prospective analyst was based on his academic background in advanced mathematics, the skills he had developed as an analyst at his then-current and former employers, positive interviews at West Face, and his stated ambition and work ethic. On that note, in an email dated April 30, 2014 to my Partners, I referred to Mr. Moyses as "someone

mostly dedicated to grinding out possible debt deals". This reflected both our need to have someone support the Alternative Credit Fund, and Mr. Moyses's expressed interest in working on prospective deals. In other words, we were not interested in Mr. Moyses because of any information or knowledge he had concerning Catalyst's plans, strategies or negotiations for any specific Catalyst opportunity. A copy of my email dated April 30, 2014 is attached as Exhibit "4" to this Affidavit.⁵

21. In early to mid-May, I contacted some of Mr. Moyses's references. The references I contacted had only positive things to say about Mr. Moyses, including Andrew Yeh, another former junior employee of Catalyst who had very recently left Catalyst. Mr. Yeh confirmed the concerns I had expressed in 2012 to Mr. Moyses about the Catalyst work environment, but had only positive things to say about Mr. Moyses. Another important reference was from one of my personal friends in the financial industry, Thomas Mercein, Global Head of Debt Capital Markets at Credit Suisse. Mr. Moyses had worked as an analyst at Credit Suisse for almost two years prior to joining Catalyst in October 2012. Mr. Mercein described Mr. Moyses as follows:

Great kid, very smart and hard working. He was the guy that did all my stuff when he was in my group. I was consistently impressed with his work.

22. A copy of my email exchange with Mr. Mercein in which he made these statements is attached as Exhibit "5" to this Affidavit.⁶

⁵ WFC0109161.

⁶ WFC0109171.

23. Another reference of Mr. Moyse's from Credit Suisse described him as follows:

Nothing negative at all to say about Brandon – quite the opposite. He was among the very best analysts we've had and was given the lead on several high profile internal projects with senior management focus.

24. A copy of this email is attached as Exhibit "6" to this Affidavit.⁷

25. I summarized the overall "gist" of what Mr. Moyse's references had to say about him in an email to my Partners on May 16, 2014, a copy of which is attached to this Affidavit as Exhibit "7".⁸ As set out in therein, Mr. Moyse's references described him as: "very hard working", "driven", as someone able to "get in the weeds" and "take a position / develop a view", and who "had the capacity to develop into more than a processor".

26. In short, West Face had very good reasons for hiring Mr. Moyse. Those reasons had nothing to do with whatever his involvement may have been on the WIND deal at Catalyst as of May 16, 2014, which we were not aware of in any event. We therefore decided to make a job offer to Mr. Moyse.

West Face Offers Mr. Moyse a Job Without Any Knowledge of His Involvement in WIND

27. I understand from discussions with counsel that some of the evidence to date in this case suggests that West Face verbally offered Mr. Moyse a position as a junior associate at some point between May 16 and May 19, 2014 – while Mr. Moyse

⁷ WFC0109186.

⁸ WFC0109181.

was on vacation in South-East Asia. I accept that it could have been me who spoke to Mr. Moyle on this occasion, but I have no specific recollection of doing so. I further understand that West Face produced emails and phone records regarding a telephone conversation I had with Mr. Moyle for approximately 16 minutes on May 23, 2014 (see, for example, Exhibits "8" and "9" to this Affidavit).⁹ Again, I do not recall the specifics of this conversation, but can say with absolute certainty that this phone call (or the one on or around May 16, assuming that it occurred) had nothing to do with WIND, because Mr. Moyle and I never spoke about WIND.

28. West Face made Mr. Moyle a written offer of employment on May 22, 2014. I understand Mr. Moyle notified Catalyst that he was resigning on or around March 24, 2014. He accepted the terms of West Face's written employment offer on May 26, 2014 (the "**West Face Employment Agreement**"). As Mr. Moyle had previously advised that he was subject to a 30-day notice period under his employment agreement with Catalyst, Mr. Moyle's employment with West Face was scheduled to begin on June 23, 2014. A copy of the West Face Employment Agreement with Mr. Moyle is attached as Exhibit "**10**" to this Affidavit.¹⁰

29. Pursuant to section 1.05(d) of the West Face Employment Agreement, Mr. Moyle agreed that he would not use 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. To the best of my knowledge, he never breached that prohibition.

⁹ WFC0031203 and WFC0109530.

¹⁰ WFC0075090.

30. Moreover, at or around the time that West Face first provided Mr. Moyse with a written offer of employment, I asked Alex Singh, West Face's General Counsel and Secretary at the time, to speak with Mr. Moyse and remind him that he was not under any circumstances to disclose or use any confidential or proprietary information belonging to Catalyst while at West Face. I believe my request to Mr. Singh followed from Mr. Griffin having raised with me his concern about Mr. Moyse's potential lack of judgment in sending the March 27 Email (a copy of an email from Mr. Griffin to me expressing this concern is attached as Exhibit "11" to this Affidavit).¹¹ At some point prior to the swearing of my July 7, 2014 Affidavit, I was advised by Mr. Singh (and believed) that he had conveyed my message to Mr. Moyse, and that Mr. Moyse had confirmed to Mr. Singh that he would not disclose or use any confidential or proprietary information belonging to Catalyst.

Catalyst Expresses Concerns Over West Face's Hiring of Mr. Moyse

31. On May 30, 2014, West Face received a letter from Catalyst's external counsel (Rocco DiPucchio of Lax O'Sullivan) expressing concerns over West Face's hiring of Mr. Moyse. In the flurry of correspondence between counsel that followed, both West Face's external employment counsel (Adrian Miedema of Dentons LLP) and Mr. Moyse's counsel at the time (Jeff Hopkins of Grosman, Grosman Gale LLP) gave assurances to Catalyst that Mr. Moyse would not share or divulge any of Catalyst's confidential information to West Face. According to Catalyst's counsel, these assurances were not enough.

¹¹ WFC0109149.

- 13 -

32. In the context of swearing my July 7, 2014 Affidavit, I was advised by Mr. Miedema (and believed) that on June 18, 2014, Mr. Miedema participated in a conference call with Mr. DiPucchio and Mr. Hopkins during which Mr. DiPucchio advised that Catalyst was particularly concerned about a specific transaction for which Catalyst and West Face had each submitted bids. I understand Mr. DiPucchio identified this as a "telecom file".

33. I do not know how Catalyst could have known that West Face was in negotiations with VimpelCom for WIND at the time, let alone that we had already submitted a proposal. This information was confidential to West Face.

34. I also note that Mobilicity was in CCAA proceedings at the time, and that West Face had divested itself of its debt interest in Mobilicity a number of months earlier (Mobilicity was the only other possible "telecom file").

35. In any event, in response to Catalyst's stated concerns about a "telecom file", West Face took additional precautions to ensure that Mr. Moyse was "walled off" from West Face's WIND deal team.

36. First, on June 19, West Face implemented a confidentiality wall pursuant to which: (1) Mr. Moyse was forbidden from communicating with anyone at West Face about the ongoing WIND negotiations, and vice versa; and (2) West Face's IT group restricted access to West Face's WIND files so that Mr. Moyse could not access them. A copy of an email from West Face's Chief Compliance Officer, Supriya Kapoor, to Mr.

Moyse enclosing the confidentiality wall memo is attached as Exhibit "12".¹² A copy of an email from West Face's Head of Technology, Chap Chau, dated June 20, 2014, confirming that Mr. Moyse had been excluded from the computer directory containing the WIND-related documents is attached as Exhibit "13".¹³

37. As evidenced by Ms. Kapoor's email, the confidentiality wall memo was circulated to Mr. Moyse, everyone at West Face who was working on the WIND transaction (being the four Partners and Mr. Zhu), West Face analysts Peter Brimm, Aland Wang, Nandeep Bamrah, and Graeme McLellan, as well as Nora Nestor (our Tax Controller) and Mr. Chau.

38. In addition to implementing the confidentiality wall, I verbally informed the entire investment team at West Face that they were not to discuss anything about the WIND transaction with Mr. Moyse.

39. Finally, once Mr. Moyse began working at West Face on June 23, the West Face WIND deal team only met in private, behind closed doors, and away from the trading floor area where Mr. Moyse sat.

40. I understand that at some point in this proceeding, Catalyst took issue with the scope of West Face's confidentiality wall, insinuating that it should have also restricted West Face's WIND deal team members (namely, the four Partners and Mr. Zhu) from accessing any documents created by Mr. Moyse while at West Face. There was no need to restrict West Face's WIND deal team members from accessing any

¹² WFC0000049 and attachment WFC0000050.

¹³ WFC0000054.

documents created by Mr. Moyses because he was to have no involvement with WIND-related matters and would thus not be creating any WIND-related documents. Moreover, such a broad restriction would have prevented West Face's Partners and Mr. Zhu (the very people assigning Mr. Moyses his work) from accessing work done by Mr. Moyses on subjects entirely unrelated to WIND. Such a far-reaching confidentiality wall would have been entirely unnecessary and unworkable.

41. Moreover, during the course of this proceeding, West Face offered (twice) to produce all documents created, modified, or accessed by Mr. Moyses during his three and a half week period at West Face, so that Catalyst could verify for itself that Mr. Moyses had not worked on anything related to WIND. Copies of the letters from West Face's litigation counsel (Davies) making these offers are attached as Exhibits "14" and "15". Catalyst never responded to either of these offers.¹⁴

42. We took the prohibition on speaking to Mr. Moyses about WIND seriously. We felt we had a good understanding of the WIND opportunity, and had no need for Mr. Moyses's input. We also understood that Catalyst would carefully scrutinize every aspect of our efforts to acquire WIND should we be successful in doing so. Based on my conversations with the other Partners, I am confident that no one at West Face had any discussions with Mr. Moyses about WIND before, during, or after his three and a half week tenure at West Face.

¹⁴ CCG0018715 and WFC0075855.

Mr. Moyses's Work at West Face

43. During his brief three and a half week tenure at West Face, Mr. Moyses was the most junior member of West Face's investment team (other than a summer intern). He did not receive portfolio summaries, was not a member of West Face's investment committee, did not participate in senior management meetings, and did not have the authority to make any strategic decisions.

44. I have reviewed paragraphs 58 to 63 and Appendix "A" of the Affidavit of Anthony Griffin sworn March 7, 2015 containing Mr. Griffin's evidence of the work Mr. Moyses was engaged in during his brief period of employment at West Face. Those paragraphs are consistent with my own recollection. In particular, I agree that Mr. Moyses did not work on anything related to WIND (which was subject to the confidentiality wall described above).

Summary of West Face's Hiring of Mr. Moyses

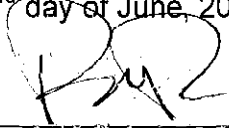
45. In summary, Mr. Moyses's hiring by West Face had absolutely nothing to do with Mr. Moyses's involvement in or knowledge of Catalyst's plans, strategies or negotiations for WIND. Rather, we relied on his academic background in advanced mathematics, his generic and well-rounded experiences as an analyst at his then-current and former employers, positive interviews at West Face, his stated ambition and work ethic, and extremely strong references, including from a former employer of Mr. Moyses's who was a personal friend of mine.

A Note Regarding My Involvement in the WIND Negotiations

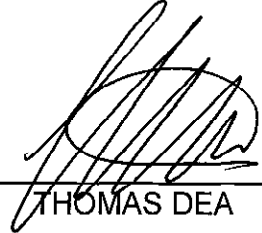
46. I was personally involved in exploring possible West Face investment in debt securities of WIND in 2009. At this time, West Face met with the principals of WIND and their investment bankers, Genuity Capital, entered into a non-disclosure agreement, received a management presentation, and presented a term sheet to WIND's ownership. Ultimately, West Face's offer was not acceptable. WIND solicited West Face's interest in alternative financing, but West Face was not interested and discussions went no further.

47. While I was personally involved in West Face's deliberations and negotiations regarding WIND in the first half of 2014, I was less directly involved in those negotiations than my fellow Partners and Mr. Zhu, and had less and less involvement as the matter progressed. A personal matter arose and from June through September, I was frequently away from the office and had little involvement in the WIND file. As I recall, Mr. Griffin was the Partner who initially had primary carriage over the WIND deal from early November 2013, and remained involved through to closing of the transaction. Both Messrs. Boland and Fraser also became progressively more involved and took on greater roles as the matter progressed through late-July, August, and ultimately culminated in an agreement in September. I therefore defer to the evidence of Mr. Griffin with respect to the WIND negotiations.

SWORN BEFORE ME at)
the City of Toronto, in the)
Province of Ontario, this)
3rd day of June, 2016)



_____)
A Commissioner, etc.



THOMAS DEA

THE CATALYST CAPITAL GROUP INC. BRANDON MOYSE ET AL
Plaintiff and Defendants

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
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Proceeding commenced at Toronto

**AFFIDAVIT OF THOMAS DEA
(SWORN JUNE 3, 2016)**

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