

Court File No. CV-14-507120

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

and

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

**REPLY AFFIDAVIT OF JAMES A. RILEY
(SWORN JULY 14, 2014)**

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 previously swore an affidavit in support of Catalyst's motion for interim relief on June 26, 2014. Since then, the defendants Brandon Moyse ("Moyse") and West Face Capital Inc. ("West Face") have served responding affidavits, which I have reviewed. The purpose of this affidavit is to briefly reply to matters raised in those responding affidavits.

Catalyst and West Face are Competitors

3. I note that both Moyse and Thomas Dea, a partner at West Face (“Dea”), attempt to describe West Face in a manner that suggests it is not a competitor to Catalyst. This suggestion is incorrect.

4. Dea’s description of the Alternative Credit Fund that West Face launched in December 2013 is very similar to the investment approach that Catalyst takes in its investment funds: to commit capital to long-term investments that are immune to short-term vagaries of the market.

5. Notably, while Dea states that West Face’s Alternative Credit Fund is not intended “primarily” to see a controlling interest or position of influence in a company, he indicates that this is a possible form of investment for this fund. Dea also confirms that West Face is active in the distressed investments industry.

6. While Dea attempts to contrast West Face’s Long-Term Opportunities Fund with Catalyst’s business model, he does not make the same distinction with the Alternative Credit Fund, which West Face expressly describes as a special situations and private credit fund and which competes directly with Catalyst.

Moyse’s Comments Regarding Catalyst’s Work Environment are Irrelevant to this Dispute

7. Paragraphs 23-26 of Moyse’s affidavit refer to an alleged “toxic work environment” at Catalyst. I do not intend to dignify those comments with a response, other than to point out that when Moyse resigned from Catalyst, he told me that the reason he was leaving was because he was not interested in reviewing the operations of companies Catalyst had invested in, and that he wanted to devote more time to the “deal-making” side of the business. Moyse said nothing to me about an alleged “toxic work environment”.

8. In any event, Moyses's alleged reasons for leaving Catalyst are irrelevant to the matters in dispute in this litigation.

Moyse had Accrued Significant Interest under the 60/40 Scheme

9. Moyses's statements in his affidavit about his compensation, and in particular about the 60/40 Scheme, are inaccurate. As of the date of his resignation, Moyses had accrued over \$500,000 in profit-sharing interest as compensation for his contribution to the deals he had worked on. This information would have been made available to Moyses had he asked.

10. It is true that Catalyst's employees only receive their 60/40 Scheme payments after a fund returns its capital and an eight per cent return to investors. This is consistent with Catalyst's "investors-first" approach to managing its funds. The 60/40 Scheme is potentially very lucrative, but Catalyst ensures that its investors receive a minimum rate of return before it begins to accrue profits for the firm, which are then shared on a 60/40 basis between employees and the firm, respectively.

11. Catalyst deliberately designed the 60/40 Scheme to function as a long-term incentive plan for its employees to align their interests with the interests of its investors and the firm. If Moyses had remained at Catalyst for the long-term, his 60/40 Scheme entitlement would likely have increased significantly by the time he was entitled to receive payment of his 60/40 Scheme interest. In this way, our employees accrue a partner-like interest in the performance of Catalyst's funds.

Moyse's and West Face's Treatment of Catalyst's Confidential Information

12. Apparently, in March 2014, Moyses intentionally sent Catalyst's confidential information to West Face as part of his efforts to secure employment there. Moyses's statement that these

documents did not contain any confidential information is incorrect. Moyse's analyses of active and potential investments contain highly confidential information belonging to Catalyst which Moyse should not have shared with a competitor such as West Face under any circumstances.

13. Prior to receiving this affidavit, West Face did not inform us that it received this confidential information or that it intended to file Catalyst's confidential information as part of its responding motion record.

Moyse Wiped his Blackberry

14. I recently learned from Martin Musters, Catalyst's forensic IT expert, that Moyse wiped his company-issued Blackberry before he returned it to Catalyst. Attached as Exhibit "A" to my affidavit is a report from Mr. Musters regarding a forensic examination of the Blackberry smartphone Catalyst provided Moyse (the "Blackberry"). According to Musters' report, the Blackberry was "wiped" of all data sometime after June 17, 2014, thereby destroying evidence of, among other things, Moyse's communications with West Face.

15. I have made inquiries at Catalyst – no one at Catalyst wiped the Blackberry. I am certain that the Blackberry was wiped by Moyse before he returned it to Catalyst.

Moyse Emailed Catalyst Documents to his Personal Email Accounts

16. After Moyse's departure from Catalyst, Catalyst learned that Moyse operated personal "Hotmail" and "Gmail" accounts to which he often forwarded Catalyst documents. Attached as Exhibit "B" are just a few of the dozens of emails that Moyse sent to personal email accounts from his work email account, to which he attached Catalyst documents. These documents include:

- (a) A March 2014 presentation relating to an internal review of potential financing for a Catalyst investment;
- (b) A draft asset purchase agreement sent to Catalyst by U.S. counsel for internal review;
- (c) A document entitled "Weekly Report – w 8 2014 v 10CM"; and
- (d) A December 2013 Catalyst presentation to the U.S. Federal Trade Commission relating to Catalyst's efforts to purchase Advantage Rent A Car.

17. Moyses did not disclose this activity in his affidavit.

Catalyst's Former Employees Honoured their Non-Competition Covenants

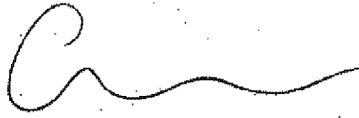
18. In my original affidavit, I explained how Catalyst learned that Moyses was reviewing Catalyst's confidential documents in circumstances that Musters concluded are consistent with copying documents to an online file storage account. Moyses's reasons as to why he was reviewing these documents are illogical.

19. In particular, Moyses's suggestion that he was reviewing Catalyst's letters to its investors to look for comments about former Catalyst employees makes no sense. To the best of my knowledge, Catalyst has never "denigrated" a former employee in its investment letters.

20. Quite the contrary: I am unaware of any situation where another employee who resigned from Catalyst to work for a competitor did not comply with the non-competition covenant in his employment contract. In those situations, Catalyst and the former employees have remained on satisfactory terms.

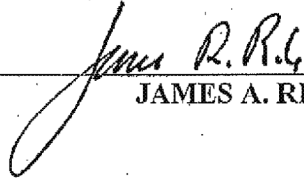
21. Moreover, to the best of my knowledge, Moyse is the only former Catalyst employee who has refused to comply with the non-competition covenant in his employment contract.

SWORN BEFORE ME at the City of Toronto,
in the Province of Ontario on July 14, 2014



Commissioner for Taking Affidavits
(or as may be)

ANDREW WINTON



JAMES A. RILEY