

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 28, 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 two affidavits in support of Catalyst's motion for interim relief, on June 26 and July 14, 2014. Since then, pursuant to a Court Order, the defendant Brandon Moyses ("Moyses") served an affidavit of documents dated July 22, 2014, in which Moyses disclosed all of the documents in his power, possession or control that relate to his employment at Catalyst (the "Disclosure Affidavit"). I have reviewed the Disclosure Affidavit and discussed its contents with Zach Michaud, a vice president at Catalyst ("Michaud"). Michaud also reviewed the Disclosure Affidavit.

3. Attached as Exhibit "A" is a copy of the Disclosure Affidavit dated July 22, 2014. Attached as Exhibit "B" is a copy of the cover letter of Jeff Hopkins, Moyses's counsel ("Hopkins"), dated July 22, 2014, which accompanied the Disclosure Affidavit.

4. In his cover letter, Hopkins wrote:

Many (and possibly most) of the enclosed documents are public documents (publicly available financials/presentations/research, etc.) with many being duplicates and various versions of the same document.

5. This statement is incorrect. The Disclosure Affidavit listed 819 documents that were in Moyses's power, possession or control and which related to his employment at Catalyst. As explained below, just by reviewing the document titles, Catalyst has identified at least 245 confidential documents that were in Moyses's possession on July 22, 2014.

At Least 245 Documents in the Disclosure Affidavit are Confidential Documents

6. Prior to swearing this affidavit, I asked Michaud to review the Disclosure Affidavit. Neither Michaud nor I have had sufficient time to comprehensively review the USB key that accompanied the affidavit, so we have not reviewed the contents of these documents. However, through a review of the document titles alone, Michaud and I have identified 245 documents that contain Catalyst's confidential information. A list of those documents is attached as Exhibit "C".

7. For example, document 27 in the Disclosure Affidavit is a spreadsheet created by Catalyst to analyze the debt structure and asset valuation of the Homburg prospective situation, which Catalyst used to decide whether and how to invest in the situation and at what price.

8. Document 82 in the Disclosure Affidavit is a presentation Catalyst gave to potential investment bankers it was interviewing to walk them through a situation's concept, strategy and

results in order to explore the potential for debt and equity financing. Document 88 is related to this presentation – it is a spreadsheet containing full details of the company’s operating model, including projections on a granular, store-by-store basis.

9. In addition to documents that contain Catalyst’s confidential information, there are many documents listed in the Disclosure Affidavit that contain Catalyst’s analyses of information it received pursuant to non-disclosure agreements. Document 163 is one such document.

10. The confidential documents identified by Michaud and I contain information that is not publicly available. In many cases, the documents disclose Catalyst’s confidential financial modelling and/or analyses of situations and investments it is either considering or that it has invested in. In other cases, the documents shed insight into Catalyst’s management of its investments, including its associates, which if shared with a competitor would give that competitor an insight into Catalyst’s confidential operations.

11. In all cases, the documents contain information that Moyses, as a former employee of Catalyst, should not have retained in his power, possession or control when he resigned from Catalyst, especially when he intended to immediately begin working for a competitor to Catalyst in the special situations investment industry.

12. It is my belief that, after Catalyst is able to review the content of all 819 documents listed in Schedule “A” to the Disclosure Document, it will identify more of its confidential documents that were in Moyses’s power, possession or control as of July 22, 2014.

The Number and Scope of Catalyst “Associates” is Modest

13. The non-competition covenant in Moyses’s employment agreement with Catalyst is intended to prevent Moyses from working for a competitor to an “associate” of Catalyst located

within Canada. It has been suggested by Moyses and West Face that this term unduly broadens the scope of the non-competition covenant. That is not the case.

14. Catalyst currently has only seven associates, as that term is defined under the Ontario *Business Corporations Act*:

- (a) Geneba Properties N. V., a European real estate company;
- (b) Advantage Rent a Car ("Advantage"), a car rental business;
- (c) Sonar Entertainment Inc., a television series, mini-series, and made-for-TV movie production company;
- (d) Natural Markets Restaurant Corporation ("NMRC"), a retail food and restaurant company;
- (e) Callidus Capital Corporation, a specialty asset-based lender;
- (f) Therapure Biopharma Inc., a contract manufacturer and developer of biological drugs; and
- (g) Gateway Casinos & Entertainment Inc., a gambling company.

15. These associates operate in distinct industries. Moreover, three of these associates, Geneba Properties N.V., Advantage and Sonar Entertainment Inc., are not located in Canada and therefore lie outside the scope of the non-competition covenant in Moyses's employment contract.

16. As an analyst at an "ordinary" investment firm, Moyses would have no reason to engage in business in these industries. The only situation in which an investment analyst such as Moyses

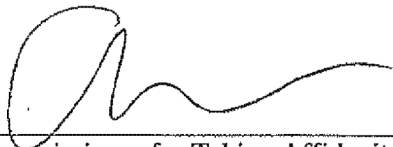
would engage in business in these industries is if he were to work at a "special situations" investment fund that competes with Catalyst.

17. By reason of its investment in these companies, Catalyst has access to extremely confidential information about them. It has a legitimate interest to prevent a Catalyst employee from resigning and immediately beginning to work for a competitor to a company that Catalyst is so heavily invested in.

18. For example, Moyses was involved in Catalyst's investment in NMRC and had access to confidential information about NMRC's operations. Catalyst has a proprietary interest in ensuring that Moyses could not resign from Catalyst and immediately begin working for a competitor to NMRC for a period of time.

19. Thus, the rationale behind the inclusion of Catalyst's "associates" is intrinsically linked to the rationale for protecting Catalyst's interests through a non-competition covenant – to ensure for a period of time after an employee leaves Catalyst, he is unable to use Catalyst's confidential information to harm Catalyst's investments in its associates.

SWORN BEFORE ME at the City of Toronto,
in the Province of Ontario on July 28, 2014



Commissioner for Taking Affidavits
(or as may be)

ANDREW WINTON



JAMES A. RILEY