

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

**AFFIDAVIT OF JAMES A. RILEY
(Sworn June 26, 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.

Nature of Our Firm and Our Industry

2. Catalyst is an independent investment firm that is considered a world leader in the field of investments in distressed and undervalued Canadian situations for control or influence. These are known in the investment industry as "special situations for control". Catalyst currently has in excess of \$3 billion dollars under management.

3. Within Canada, the “special situations” investment industry is fairly small. “Special situations,” also known as “distressed investments,” is the term used to describe investment opportunities where a company is considered to be under-managed, under-valued, or poorly capitalized. The term “special situation” is also used to refer to significant corporate events such as a proxy battle, take-over or board shake-up.

4. In these cases, “special situations” investors try to find ways to find value and profit in the situation to purchase the debt or equity of the target company with the hope of making a significant gain on the investment.

5. Within the special situations investment industry, there is a small sub-group of investors who invest for control or influence. This is known as investing in “special situations for control”. “Control” often refers to acquiring a sufficient amount of debt or equity to gain control or influence at the company in order to be able to provide direct operational and/or strategic guidance. “Influence” can include acquiring a tactical “blocking position” in order to force management and other creditors/investors to consider Catalyst’s views.

6. Once a firm acquires a control or influence position at a company, it seeks to add value through operational involvement in the targeted company by, among other things:

- (a) Appointing a representative as interim CEO and other senior management;
- (b) Replacing or augmenting management;
- (c) Providing strategic direction and industry contacts;
- (d) Establishing and executing operational turnaround plans;

- (e) Managing costs through a rigorous working capital approval process; and
- (f) Identifying potential add-on acquisitions.

7. In any situation, Catalyst's confidential information (described in detail below) is critical to the successful implementation of an investment plan to capitalize on a special situation. Catalyst does not invest for the "quick flip" – the average length of an investment is three to five years and can be substantially longer. Catalyst spends substantial time studying opportunities and planning its investment strategy before it decides to pursue a particular situation.

8. If a competitor learns of the opportunities Catalyst is considering or studying, the investment models it is using for a particular situation, the methodology Catalyst is considering for acquiring control or influence, or the turnaround plan Catalyst is considering once it acquires control, that competitor can use that information to acquire blocking positions to prevent Catalyst from implementing its plan or it can "scoop" the opportunity by acquiring the control position that Catalyst intended to acquire.

9. There is also the case when disclosure of such information leads to "front-running" on the situation, making it impossible or more expensive for Catalyst to execute on its investment strategy. Trading on this Confidential Information may also be a breach of the Ontario *Securities Act* or other regulations that govern the Ontario investment industry.

10. In these situations, the loss of confidential information can cause significant harm to Catalyst, as explained in greater detail below, and for these reasons the value and sensitivity of Confidential Information is clearly known by Catalysts employees.

11. Catalyst uses a very flat, entrepreneurial staffing model. We only employ two investment analysts, who are given a lot of training, autonomy and responsibility as compared to their peers in the industry. Our employees, including our analysts, participate in a “60/40 Scheme” whereby the “carried interest” of each of our funds is allocated sixty per cent to the “deal team” and forty per cent to Catalyst.

12. The carried interest refers to the twenty per cent profit participation in a Fund that Catalyst may enjoy, subject to certain conditions. Points in each deal that forms part of the sixty per cent are allocated on a deal-by-deal basis. Deal teams are comprised of three or four professionals, so there are a lot of points to be shared among the 60/40 Scheme participants.

13. The 60/40 Scheme is unique to Catalyst, and is its way of giving its professional employees a partner-like interest in the success of our firm.

Brandon Moyse and the Employment Agreement

14. On October 1, 2012, Catalyst and Moyse entered into an employment agreement (the “Employment Agreement”), pursuant to which Catalyst hired Moyse as an investment analyst effective November 1, 2012. The Employment Agreement is attached as Exhibit “A”.

15. As one of two investment analysts at Catalyst, Moyse had substantial autonomy and responsibility. He was primarily responsible for analysing new investment opportunities of distressed and/or under-valued situations where Catalyst could invest for control or influence.

16. Under the Employment Agreement, Moyse was paid an initial salary of \$90,000 and an annual bonus of \$80,000. Moyse was also granted options to acquire equity in Catalyst and

participated in the 60/40 Scheme. Møyse's equity compensation (options and participation in 60/40 Scheme) exceeded his base salary and annual bonus.

17. The Employment Agreement also included the following non-competition, non-solicitation and confidential information covenants (together, the "Restrictive Covenants"):

Non-Competition

You agree that while you are employed by the Employer and for a period of six months thereafter, if you leave of your own volition or are dismissed for cause and three months under any other circumstances, you shall not, directly or indirectly within Ontario:

(i) engage in or become a party with an economic interest in any business or undertaking of the type conducted by [Catalyst] or the Fund or any direct Associate of [Catalyst] within Canada, as the term Associate is defined in the *Ontario Business Corporations Act* (collectively the "protected entities"), or attempt to solicit any opportunities of the type for which the protected entities or any of them had a reasonable likelihood of completing an offering while you were under [Catalyst]'s employ; and

(ii) render any services of the type outlined in subparagraph (i) above, unless such services are rendered as an employee of or consultant to [Catalyst];

Non-Solicitation

You agree that while you are employed by the Employer and for a period of one year after your employment ends, regardless of the reason, you shall not, directly or indirectly:

(i) hire or attempt to hire or assist anyone else to hire employees of any of the protected entities who were so employed as at the date you cease to be an employee of [Catalyst] or persons who were so employed during the 12 months prior to your ceasing to be an employee of [Catalyst] or induce or attempt to induce any such employees of any of the protected entities to leave their employment; or

(ii) solicit equity or other forms of capital for any partnership, investment fund, pooled fund or other form of investment vehicle managed, advised and/or sponsored by any of the protected entities as at the date you ceased to be an employee of [Catalyst] or during

the 12 months prior to your ceasing to be an employee of [Catalyst].

Confidential Information

You understand that, in your capacity as an equity holder and employee, you will acquire information about certain matters and things which are confidential to the protected entities, including, without limitation, (i) the identity of existing or prospective investors in the Fund and any such future partnership or fund, (ii) the structure of same, (iii) marketing strategies for securities or investments in the capital of or owned by the Fund or any such partnership of or any such partnership or fund, (iv) investment strategies, (v) value realization strategies, (vi) negotiating positions, (vii) the portfolio of investments, (viii) prospective acquisitions to any such portfolio, (ix) prospective dispositions from any such portfolio, and (x) personal information about [Catalyst] and employees of [Catalyst] and the like (collectively "Confidential Information"). Further, you understand that each of the protected entities' Confidential Information has been developed over a long period of time and at great expense to each of the protected entities. You agree that all Confidential Information is the exclusive property of each of the protected entities. For greater clarity, common knowledge or information that is in the public domain does not constitute "Confidential Information".

You also agree that you shall not, at any time during the term of your employment with us or thereafter reveal, divulge or make known to any person, other than to [Catalyst] and our duly authorized employees or representatives or use for your own or any other's benefit, any Confidential Information, which during or as a result of your employment with us, has become known to you.

After your employment has ended, and for the following one year, you will not take advantage of, derive a benefit or otherwise profit from any opportunities belonging to the Fund to invest in particular' businesses, such opportunities that you become aware of by reason of your employment with [Catalyst].

18. Moyse agreed that the Restrictive Covenants were reasonable and necessary and reflected a mutual desire of Moyse and Catalyst that the Restrictive Covenants would be upheld in their entirety and be given full force and effect.

19. Moyses was obligated pursuant to the Employment Agreement to give Catalyst a minimum of thirty days' written notice of his intention to terminate his employment.

20. By signing the Employment Agreement, Moyses acknowledged that he reviewed, understood and accepted the terms of the Employment Agreement, and that he had an adequate opportunity to seek and receive independent legal advice prior to executing the Employment Agreement.

Moyse Resigns, Communicates His Intention to Breach of Employment Agreement

21. There are very few investment firms in Canada that invest in special situations for control or influence. It is a difficult market with high barriers to entry. One of Catalyst's few competitors in Canada is the defendant West Face Capital Inc. ("West Face").

22. Attached as Exhibit "B" is a copy of a newspaper article dated January 9, 2014, which reports on West Face's creation of a \$600 million special situations fund. The article recounts how in 2011, Greg Boland, the CEO of West Face ("Boland"), won a seat on the board of Maple Leaf Foods Inc. as part of an overhaul initiated by West Face. The Maple Leaf Foods situation is an example of a "special situations for control" type of investment.

23. Attached as Exhibit "C" is a copy of an email Moyses sent to a colleague on March 27, 2014 in which Moyses wrote that he had an "interesting conversation" with Tom Dea, a partner at West Face ("Dea"), over coffee. I believe, based on my review of this email, that it was around this time that Moyses began to plan to move from Catalyst to West Face.

24. I believe that Moyses knew that West Face competed directly with Catalyst, based on multiple internal discussions that occurred at Catalyst in Moyses's presence and based on my

review of an email Moyse wrote in February 2013. Attached as Exhibit “D” is a copy of an email Moyse wrote in response to a colleague who sent him a *Globe and Mail* article about West Face:

They’re very Ackman-like in their high-profile hits and misses. They’ve been hammered on one activist play we’re looking at (though we don’t like) – never good when we’re looking at something you bought – **and we’re fighting with them on a different distressed name right now.** [Emphasis added.]

25. I believe that the emphasized text in the quotation above refers to the telecom situation referred to in paragraph 30 below.

26. Based on a forensic review of Moyse’s work computer, as described in greater detail below and in the affidavit of Martin Musters, a forensic IT expert in computer forensics retained by Catalyst (“Musters”), I believe that between March 27, 2014, and May 15, 2014, Moyse met and exchanged emails with Dea and others at West Face to Moyse’s move from Catalyst to West Face.

27. By May 15, 2014, Moyse was aware that West Face was about to formally offer him a job. Attached as Exhibits “E” and “F” are copies of emails exchanged between Moyse and two people whom Dea had contacted on May 15, 2014, to conduct reference checks on Moyse. In my experience, by the time a company is performing these reference checks, they intend to offer the subject of the reference checks a position unless the checks reveal something unexpected, which almost never happens.

28. Attached as Exhibit “G” is an email from Moyse to a colleague dated May 19, 2014, in which Moyse stated that he had been offered a job by Dea and would likely take it.

29. Four days later, while he was away from the office on vacation, Moyse informed Catalyst by email that he was resigning from Catalyst. Attached as Exhibit "H" is a copy of Moyse's resignation email dated May 24, 2014. Moyse later orally informed Catalyst that he had resigned to go work at West Face.

30. Before he gave notice, Moyse had been working extensively on a particular opportunity in the telecommunications industry that Catalyst had been considering for several years. The unique plans Catalyst is considering to execute are highly confidential and cannot be disclosed. It is sufficient for the purposes of this motion to say that if these plans are disclosed to West Face, West Face would be able to interfere with Catalyst's plans by either creating a blocking position or by scooping the opportunity, thereby causing immeasurable damage to Catalyst's good will and investment losses that will be almost impossible to quantify given the many possible outcomes of any given investment.

31. Moyse also participated in Catalyst's Monday morning meetings, which are usually held weekly and where materials are distributed and there is a review of current and prospective opportunities. If the information discussed at these meetings was shared with West Face, it would be devastating for Catalyst, as it would give West Face a tremendous advantage in its deployment of its investors' equity to the detriment of Catalyst's investment funds.

32. Under the terms of the Restrictive Covenants included in the Employment Agreement, Moyse had agreed not to work at a competitor's firm located in Toronto for a period of six months following a termination of employment initiated by him (the "Non-Compete").

33. The Non-Compete is a crucial component of the Employment Agreement. It is designed to restrict an analyst's ability to directly compete against Catalyst within the limited geographic

area of Toronto for the minimum amount of time that is necessary to protect Catalyst from unfair competition. The Non-Compete is designed to protect Catalyst's vital interests with minimal restrictions on its investment analysts, in three ways:

- (a) The Non-Compete is narrowly restricted to firms that engage in the same undertaking as Catalyst, namely investing in special situations for control or influence. If an investment analyst were to lateral to a less specialized investment firm such as RBC Dominion Securities or Canaccord Genuity, the Non-Compete would not prevent the investment analyst from commencing employment as soon as their notice period ended;
- (b) After six months, the analyst's knowledge of Catalyst's plans would be "stale" and of little use to a competitor; and
- (c) Catalyst's market focus is in Canada and its immediate competitors are primarily based in Toronto, so if an analyst were to move to New York, Hong Kong or London, it would most likely not interfere with Catalyst's plans or cause any harm to Catalyst.

34. By choosing to leave Catalyst for West Face, which is located in Toronto, Moyse chose to transfer to one of the few investment firms in Canada that fall within the scope of the Non-Compete, and left Catalyst with no choice but to insist on strict enforcement of the Non-Compete in order to protect its interests.

35. Although we reminded Moyse of his obligations under the Employment Agreement (as set out in greater detail below), Moyse gave us no assurance that he intended to adhere to his contractual obligations.

36. Since Moyse was contractually required to continue working for Catalyst for another thirty days, I immediately arranged for Moyse to work from home so as not to create a negative influence at Catalyst's office and to keep him isolated from any future discussions regarding upcoming investment opportunities.

The Defendants Refuse to Respect the Non-Compete

37. By letter dated May 30, 2014, Catalyst's outside counsel, Rocco Di Pucchio ("Di Pucchio"), wrote to Jeff Hopkins, Moyse's counsel ("Hopkins"), and to Boland to warn them that Moyse's and West Face's actions amounted to a breach of the Employment Agreement. Di Pucchio informed Hopkins and Boland that Catalyst would seek injunctive relief if necessary and invited them to make a proposal as to how the situation could be remedied to Catalyst's satisfaction. Di Pucchio's letter to Hopkins and Boland dated May 30, 2014, is attached as Exhibit "I".

38. By letter dated June 3, 2014, Adrian Miedema ("Miedema"), outside counsel for West Face, responded to Di Pucchio. On behalf of West Face, Miedema challenged the enforceability of the Non-Compete. Miedema also wrote that West Face "has impressed upon Mr. Moyse that he is not to share or divulge any confidential information that he obtained during his employment with [Catalyst]." Attached as Exhibit "J" is a copy of Miedema's June 3, 2014 letter.

39. By letter dated June 5, 2014, Hopkins responded to Di Pucchio's letter. In his response,⁴ Hopkins acknowledged that Moyse was aware of up to five prospective investments by Catalyst but indicated that Moyse had no intention of disclosing Catalyst's Confidential Information. Hopkins also adopted Miedema's position that the Non-Compete is unenforceable. Attached as Exhibit "K" is a copy of Hopkins' letter dated June 5, 2014.

40. "Five prospective investments" represents a significant portion (more than twenty-five per cent) of the investments Catalyst would make over the life of any of its funds.

41. By letter dated June 13, 2014, Di Pucchio responded to Miedema and Hopkins to inform them that their "assurances" that Moyse would not share Catalyst's Confidential Information with West Face were insufficient. Di Pucchio suggested a conference call between counsel to discuss what assurances Catalyst would require from Moyse and West Face to avoid litigation. Attached as Exhibit "L" is a copy Di Pucchio's letter dated June 13, 2014.

42. I am informed by Di Pucchio that on June 18, 2014, the parties' counsel participated in a conference call that did not end with a resolution of the situation.

43. Then, by letter dated June 19, 2014, Hopkins informed Di Pucchio that Moyse intended to commence employment at West Face on June 23, 2014. Attached as Exhibit "M" is a copy of Hopkins' letter to Di Pucchio dated June 19, 2014. In his letter, Hopkins informs Di Pucchio that he was advised by Moyse that Moyse's knowledge of Catalyst's "deals" is not nearly as detailed as Catalyst believes.

44. As I have personal knowledge of meetings Moyse attended, I know that this statement is inaccurate. Moyse attended meetings with management teams and advisors about investments.

Moreover, along with the other professionals at Catalyst, he participated in our Monday morning meetings where all of our existing and potential deals were discussed. We are a small shop where everyone knows what everyone else is working on – Moyse has knowledge of every deal that Catalyst has made or considered since he commenced employment at Catalyst.

45. By email dated June 19, 2014 (attached as Exhibit “N”), Di Pucchio informed Hopkins and Miedema that Catalyst had instructed him to commence legal proceedings against West Face and Moyse, which would include seeking injunctive relief to enforce the Restrictive Covenants. Di Pucchio wrote,

I will try to get our materials to you and to Mr. Miedema forthwith, but in the event that we cannot get the matter heard before next Monday, we trust that no steps will be taken by each of your clients to alter the existing status quo prior to the matter being heard by the Court.

46. By letter dated June 19, 2014, Miedema responded to Di Pucchio’s email. Miedema wrote that Moyse has contractually agreed with West Face to maintain “strict confidentiality” over all confidential information obtained by him in the course of his employment with Catalyst, and that both Moyse and West Face take that obligation seriously. Miedema also wrote, “Your client has not provided any evidence that Mr. Moyse has breached any of his confidentiality obligations to Catalyst.” Attached as Exhibit “O” is a copy of Miedema’s letter to Di Pucchio dated June 19, 2014.

47. On June 24, 2014, Catalyst confirmed by reviewing Moyse’s LinkedIn profile (attached as Exhibit “P”) that Moyse had commenced employment at West Face. Catalyst attempted to resolve this impasse by negotiating directly with West Face. West Face rebuffed these efforts,

leaving Catalyst with no choice but to commence an action and to seek injunctive relief to protect its interests.

Catalyst Learns Moyse Removed its Confidential Information

48. In addition to the conduct described above, Catalyst recently learned, contrary to all of the assurances Moyse's and West Face's counsel were making about Catalyst's Confidential Information, that prior to his resignation Moyse accessed and was capable of transferring Catalyst's Confidential Information to his personal possession. This belief is based on information Catalyst received from Musters, whom Catalyst retained shortly after learning on June 19 that Moyse intended to commence employment at West Face before the parties could negotiate a resolution to their dispute.

49. The information set out below is derived from the report and affidavit of Musters, which I have reviewed prior to swearing this affidavit. Musters' affidavit explains Moyse's activity. The purpose of this section of my affidavit is to describe how the Confidential Information accessed by Moyse (as explained in Musters' affidavit) could be used by Moyse and West Face to unfairly compete with Catalyst.

50. I understand from Musters' report that Moyse's conduct between March 27 and May 26, 2014, is consistent with uploading confidential Catalyst documents from Catalyst's server (which Catalyst controls and can access) to Moyse's personal accounts with two Internet-based file storage services, "Dropbox" and "Box", which Catalyst does not control and cannot access.

51. As detailed below, the breadth and depth of Moyse's conduct is alarming. I am informed by Jonathan Moore, the team lead at Catalyst's external IT services supplier, that Moyse had no

reason to use Dropbox or Box for work purposes. Catalyst has remote access to its files and Moyse knew how to use these remote access services.

52. Based on a review of Moyse's file-access activity after March 27, 2014, I believe that shortly after Moyse met with Dea, he began to review Catalyst materials that had nothing to do with his immediate assignments, for the purpose of gaining as much knowledge of Catalyst's methods as he could before crossing the street to start working at West Face and possibly to transfer Catalyst's Confidential Information to his Dropbox and Box accounts.

53. Attached as Exhibit "Q" is a list of web addresses ("URLs") for Moyse's Box account. I note that according to this record, Moyse had a "Catalyst Capital" folder in his Box account on May 26, 2014, two days after he gave Catalyst notice of his intention to resign and begin working for West Face.

54. The following are some examples of the Confidential Information that Moyse reviewed after he met with Dea on March 27, 2014. The documents themselves, which are highly confidential and would prejudice Catalyst if publicly revealed, are not attached to my affidavit but the records of Moyse's conduct are attached as indicated.

Investment Letters

55. On March 28, 2014, one day after Moyse met with Dea, Moyse reviewed Catalyst's letters to investors in the Catalyst Fund Limited Partnership II ("Fund II") sent between 2006 and 2011 (the "Investor Letters"). Attached as Exhibit "R" is an excerpt from a summary of Moyse's file activity on March 28, 2014. This exhibit records Moyse accessing the Investor Letters, which have nothing to do with his duties and responsibilities at Catalyst.

56. In the Investor Letters, Catalyst reported to our investors on events that transpired with respect to Fund II's investments. The Investor Letters also contained forward-looking statements. The time period for which Moyse was reviewing the Investor Letters relates to activity on Catalyst's Stelco investment, which was no longer active and in which Catalyst and West Face were in direct competition.

57. Catalyst's records reveal that Moyse accessed these files between 6:28 p.m. and 6:39 p.m., outside of regular office hours at Catalyst. Moreover, eleven minutes is insufficient time to read these letters.

Stelco Files

58. On April 25, 2014, Moyse reviewed dozens of files related to Catalyst's investment in Stelco. Attached as Exhibit "S" is an excerpt from a summary of Moyse's file activity on April 25, 2014. I am aware of no legitimate business reason why Moyse would review these documents.

59. Catalyst's records reveal that Moyse accessed its Stelco material over an approximately 75-minute period on that day. That is an insufficient amount of time to read all of the material Moyse was accessing.

Masonite Files

60. On the evening of May 13, 2014, less than 48 hours before Dea started checking Moyse's personal references, and just before Moyse went on a one-week vacation, Moyse apparently accessed files related to Masonite International that were stored on his Dropbox account. These files are related to an opportunity Catalyst has been studying, but which Moyse was not working

on, in May 2014. I am aware of no legitimate reason why Moyse would copy these files to his Dropbox account in May 2014. Attached as Exhibit "T" is an excerpt from a summary of Moyse's file activity on May 13, 2014.

Telecom Files

61. As discussed above, Catalyst is working on a very sensitive and confidential opportunity in the telecommunications industry. This opportunity is referred to in general terms in the correspondence between counsel attached to this affidavit. As this is a situation that Catalyst is actively investigating and that I believe West Face is also investigating, Catalyst does not intend to disclose details about the situation, other than to say it is a significant opportunity which requires a lot of advance complex planning.

62. On the evening of May 13, 2014, shortly after he reviewed or transferred the Masonite International files referred to above, Moyse accessed several files related to this situation. Attached as Exhibit "U" is a redacted excerpt from a summary of Moyse's file activity on May 13, 2014.

63. This exhibit records Moyse accessing Catalyst files that are all related to this sensitive opportunity between 8:39 p.m. and 9:03 p.m. As on the other occasions described above, this is an insufficient amount of time for Moyse to read these documents.

Monday Meeting Notes

64. Two days after Moyse gave notice, Moyse apparently created a file containing his notes from our Monday morning meeting held on May 26, 2014. According to the record from

Moyse's hard drive, an excerpt of which is attached as Exhibit "V", Moyse accessed these notes at 12:30 p.m., which appears to be after the meeting ended.

65. The Monday morning meeting at Catalyst is where the firm reviews its existing investments and situations that Catalyst is studying on an ongoing basis, with updates and details of Catalyst's future plans. I am unaware of any legitimate reason why Moyse would be making notes of a meeting he attended after he had resigned.

Catalyst's Vulnerability to the Defendants' Unfair Competition

66. In light of, among other things, (a) Moyse's level of responsibility at Catalyst; (b) Moyse's suspicious accessing of Catalyst's Confidential Information for no apparent legitimate reason; (c) the fact that Moyse maintained personal Internet file storage accounts where he stored, and possibly continues to store, Catalyst's Confidential Information; (d) the fact that Catalyst and West Face are competitors in an industry where a small number of firms compete over the same investment opportunities; and (e) the fact that West Face and Catalyst are currently investigating the same opportunity in the telecommunications industry, Catalyst is extremely vulnerable to unfair competition by Moyse and West Face.

67. Unless Moyse is forced to comply with the Non-Compete and to return all of the Confidential Information to Catalyst, Catalyst is at risk of losing the telecommunications opportunity and possibly other special situations it is currently studying. It will also be at risk of having its secret methods for valuing and analyzing opportunities disclosed to a competitor, which may lead to further losses of future opportunities. West Face will have an unfair advantage if Moyse and other employees at West Face are able to use Catalyst's confidential methods and

investment models, which it developed through hard work and experience over several years, to compete with Catalyst in future special situations.

68. Allowing West Face and Moyse to violate Catalyst's rights will cause incalculable harm to Catalyst's business for which monetary damages will not give Catalyst an appropriate or adequate remedy.

69. The harm Catalyst will suffer if Moyse is not stopped from continuing to breach the Restrictive Covenants and to return our Confidential Information is incalculable. Mere damages cannot compensate for the inability to capitalize on a specific situation, as any losses Catalyst will suffer will be impossible to quantify given the unpredictable range of possible outcomes for a given investment.

70. Moreover, the ripple effect of losing out on a given special situation due to unfair competition is impossible to quantify – that is, it is impossible to determine what other special situations Catalyst will be unable to capitalize on because the initial special situation did not succeed. It is impossible to quantify in damages how misuse of Catalyst's Confidential Information will damage Catalyst's business in the long term.

71. Further, it is important to realize that it is impossible for Catalyst to know precisely why it was unable to successfully execute on a special situation. In most circumstances, the parties to a special situation will not want to become involved in a dispute between competitor investment firms and will offer Catalyst no assistance in disclosing how it is that Catalyst's plans failed or that West Face was able to successfully implement its investment in the situation.

72. Simply, it is impossible to accurately quantify how Moyses's immediate employment at West Face and possible misuse of Catalyst's Confidential Information will damage Catalyst in the long term. However, I believe that if Moyses is able to ignore the Restrictive Covenants in the Employment Agreement, Catalyst's long-term viability is at risk.

The Need to Conduct a Forensic Review of Moyses's Computers and Electronic Devices

73. A forensic review of any computers or personal electronic devices, such as an iPad, owned by Moyses or any computer used by Moyses at West Face may reveal whether Moyses in fact took Catalyst's Confidential Information and what use he made of such information. Catalyst has no other means of ascertaining this information.

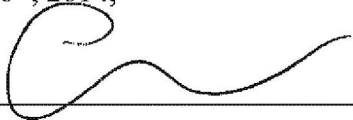
74. In light of (a) the suspicious nature of his actions to date, which only came to light because of Catalyst's forensic review of Moyses's hard drive; and (b) the fact that on June 19, the Defendants refused to agree to maintain the *status quo* pending the determination of Catalyst's motion for injunctive relief because Catalyst had not provided evidence that Moyses had breached his confidentiality undertakings to Catalyst, I have no confidence that Moyses will disclose this information honestly and forthrightly.

Undertaking as to Damages

75. I hereby undertake, on behalf of Catalyst, that if an injunction is granted the company will comply with any order regarding damages the Court may make in the future, if it ultimately appears that the injunction requested by the plaintiff ought not to have been granted, and that the granting of the injunction has caused damage to the defendants for which the plaintiff should compensate them.

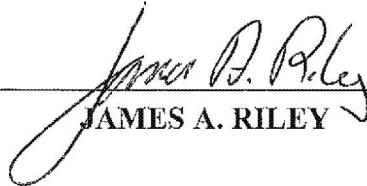
76. I swear this affidavit in support of Catalyst's motion for an injunction and for no other purpose.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on June 26th, 2014,



Commissioner for Taking Affidavits, etc.

ANDREW WINTON



JAMES A. RILEY

THE CATALYST CAPITAL GROUP INC.
Plaintiff

-and- BRANDON MOYSE and WEST FACE CAPITAL INC.
Defendants

Court File No. CV-14-507120

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

**AFFIDAVIT OF JAMES A. RILEY
(SWORN JUNE 26, 2014)**

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