

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 MARTIN MUSTERS
(sworn June 26, 2012)**

I, MARTIN MUSTERS, of the City of Oakville, in the Regional Municipality of Halton, MAKE OATH AND SAY:

1. I am the Director of Forensics at Computer Forensics Inc. ("CFI"), a computer security consulting firm based in Oakville, Ontario. In this capacity, I am responsible for all aspects of CFI's computer forensic services.

Expertise

2. CFI specializes in the preservation and analysis of digital evidence to assist in criminal, civil, or labour relations investigations. In particular, CFI specializes in the retrieval of data from hard drives, servers, laptops, cell phones, PDA's and other devices, even when the user has deleted or otherwise removed (or attempted to remove) the data.

3. As the Director of Forensics at CFI, I have overseen and conducted computer forensic investigations regarding litigation, including forensic searches for confidential information. I have also been involved with law enforcement investigations, corporate investigations and data and password recovery projects.

4. I have extensive experience in information technology and computer forensics and have been involved in the field since 1979. I have received numerous professional certifications in the field of computer and electronic forensics. I am:

- (a) a Certified Information Systems Security Professional (CISSP);
- (b) a Certified Fraud Examiner (CFE);
- (c) a Certified Information Systems Auditor (CISA);
- (d) a Certified Protection Professional (CPP);
- (e) a Certified Stenographic Examiner;
- (f) trained in the use of Encase Forensic Software; and
- (g) certified in Advanced Cell Phone Forensics.

5. I have written numerous articles and spoken at numerous conferences in the field of computer forensics. I have also been certified as an expert witness in the field of electronic forensics by the Ontario Superior Court of Justice and the Ontario Court of Justice. A copy of my detailed *curriculum vitae* is attached as Exhibit "A" to my affidavit.

Investigation

6. On June 20, 2014, CFI was retained by Lax O'Sullivan Scott Lisus LLP, lawyers for the plaintiff, Catalyst Capital Group Inc. ("Catalyst"), to conduct a forensic analysis of a desktop computer that I was advised had previously been used by Brandon Moyse, a former employee of Catalyst, while Moyse was employed by Catalyst (the "Desktop Computer"). On June 21, 2014, CFI created a forensic image of the Desktop Computer and then conducted an analysis of the image.

7. As the investigator assigned to this matter, I conducted the examination of the Desktop Computer. As such, I have knowledge of the matters contained in this affidavit, which I am swearing to provide information to the Court, and for no other purpose.

8. I was able to determine from my review of the forensic image that Moyse had personal accounts with “Box” and “Dropbox”, two Internet-based file-storage services (together, the “Cloud Services”), and that he accessed the Cloud Services using the Desktop Computer. Attached as Exhibit “B” is a list of the Internet Uniform Resource Locators (“URLs”) for the Cloud Services that Moyse accessed from the Desktop Computer.

9. The Cloud Services are file-hosting services that offer cloud storage, file synchronization, personal cloud, and client software. They allow users to create a special folder on each of their computers, which they then synchronize so that it appears to be the same folder (with the same contents) regardless of which computer is used to view it. Files placed in this folder also are accessible through a website and mobile phone applications.

10. It is difficult to trace the use of Cloud Services to copy information from a hard drive. Unlike the copying of a file to a USB drive, which leaves a record of the file transfer activity on the hard drive, uploading documents to a Cloud Service such as Dropbox does not leave a similar record. Cloud Services can be used as a sophisticated way to copy large amounts of data in a relatively brief period of time.

11. I was also able to determine from my analysis of the Desktop Computer that Moyse accessed specific files on specific dates.

12. On March 28, 2014, over an eleven-minute period, Moyse accessed a series of files from an “Investors Letters” directory. Attached as Exhibit “C” is a table listing the files accessed by Moyse between 6:28 and 6:39 p.m. on March 28, 2014.

13. On April 25, 2014, over a seventy-minute period, Moyse accessed several files which contain the word “Stelco” in the file directory or in the filename. Attached as Exhibit “D” is a table listing the files accessed by Moyse between 2:36 and 3:47 on April 25, 2014.

14. On May 13, 2014, over a sixty-one-minute period, Moyse accessed several files through his Dropbox account which had the name “Masonite” in the filename. Attached as Exhibit “E” is a table listing the files accessed by Moyse from his Dropbox account between 6:59 and 8:00 p.m. on May 13, 2014.

15. Also on May 13, 2014, over a twenty-four-minute period, Moyse accessed several files from a "2014 Potential Investment" directory. Attached as Exhibit "F" is a redacted table listing the files accessed by Moyse between 8:39 and 9:03 p.m. on May 13, 2014. I am informed by James Riley, Catalyst's Chief Operating Officer, that the redactions to this table are necessary in order to maintain confidentiality concerning a potential investment that Catalyst is studying.


16. On May 26, 2014, at 12:31 p.m., Moyse accessed a document entitled "14-05-26 Notes" from a directory entitled "Monday Meeting", as shown on the table attached as Exhibit "G".

17. In my experience, Moyse's conduct of accessing several files from the same directory over brief period of time, as described above, is consistent with transferring files to a Cloud Service. It is my opinion that, based on the pattern of conduct described above, Moyse was very likely transferring the documents he reviewed on March 28, April 25 and May 13 from Catalyst's computers to his Dropbox or Box accounts, although I cannot say so definitively at this time.

18. I cannot conclusively determine whether Catalyst's files were transferred by Moyse to the Cloud Services and then from the Cloud Services onto any other computer or electronic device, such as an iPad, without access to those computers and/or devices that potentially had the files transferred to them.

19. Attached as Exhibit "H" is a signed Acknowledgment of Expert's Duty form, which I signed prior to swearing this affidavit.

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


 Commissioner for Taking Affidavits, etc.


 MARTIN MUSTERS

THE CATALYST CONSULTING GROUP INC. -and-
Plaintiff

BRANDON MOYSE and WEST FACE CAPITAL INC.
Defendants

Court File No. CV-14-507129

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF MARTIN MUSTERS
(sworn June 26, 2014)

LAX O'SULLIVAN SCOTT LISUS LLP
Counsel
Suite 2750, 145 King Street West
Toronto, ON M5H 1J8

Rocco Di Pucchio LSUC#: 38185I
rdipucchio@counsel-toronto.com
Tel: (416) 598-2268

Andrew Winton LSUC#: 54473I
Tel: (416) 644-5342
awinton@counsel-toronto.com

Fax: (416) 598-3730

Lawyers for the Plaintiff