

Court File No. CV-14-507120

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

AMENDED AMENDED STATEMENT OF DEFENCE

1. The Defendant, West Face Capital Inc. ("West Face"), admits the allegations contained in paragraphs 11, 15, and 17, 34.2 (first sentence only), 34.5 (first sentence only), 34.8, 34.9 and 34.10 of the Amended Amended Statement of Claim.

2. West Face denies that the Plaintiff is entitled to any of the relief claimed in paragraph 1 of the Amended Amended Statement of Claim, and denies the allegations contained in paragraphs 2, 6 through 10 inclusive, 12, 13, 16, 18 through 21 inclusive, 23, and 25 through 34 inclusive, 34.3, 34.4, 34.6, 34.7, 34.12, 34.13, 34.14, 34.15, 34.16, 35 and 36 of the Amended Amended Statement of Claim.

3. West Face has no knowledge of the allegations contained in paragraphs 3, 4, 5, 14, 22, and 24, 34.1, 34.2 (second sentence only), 34.3, 34.5 (second sentence only) and 34.11 of the Amended Amended Statement of Claim.

The Parties

4. West Face is an investment manager based in Toronto that has been in business since 2006. It manages a number of funds and accounts covering a broad range of investments.
5. The Plaintiff, The Catalyst Capital Group Inc. (“**Catalyst**”), is an independent investment firm focused on making investments in distressed and undervalued Canadian entities for control or influence.
6. The Defendant, Brandon Moyse (“**Brandon**”), is a 26 year old resident of the City of Toronto. He was employed by Catalyst as an Analyst for less than two years, from October 2012 until June 2014.

The Nature of West Face’s Business

7. West Face manages a number of funds and accounts covering a broad range of investment strategies. Its investments, which are in publicly traded and privately negotiated securities, include “long positions” in common equities, bonds, convertible debentures and distressed debt situations as well as certain “short positions”. It has assets under management of over \$2.5 billion.

8. West Face has two principal groups of funds: the Long-Term Opportunities Fund (the “LTOF”) and the Alternative Credit Fund (the “ACF”). The LTOF, which is West Face’s principal and inaugural fund, has a broad investment mandate which is principally focused on making minority investments in public common equity strategies and publicly traded debt opportunities primarily related to companies located in North America.
9. The investment mandate of the ACF, which was launched in December 2013, is to make investments in illiquid private debt with terms greater than two years, with the expectation of holding each investment until its maturity. Contrary to the allegations contained in the Amended Amended Statement of Claim, this fund was not established to compete with Catalyst. The ACF was created in order to continue activities previously undertaken in the LTOF on a limited basis. The ACF allows West Face to better match assets’ liquidity characteristics with investor requirements.
10. Unlike Catalyst which is focused on control or influence-based “distressed investments”, West Face generally does not become involved with the management of target companies. Further, due to market conditions, West Face has focused less and less on making distressed investments, although it is not out of this market entirely. In any event, the relatively small number of investment opportunities in this field means that the investment opportunities that are available are widely known in the industry.

Brandon Applies for a Job at West Face

11. By e-mail dated March 14, 2014, Brandon advised Thomas Dea, a Partner at West Face (“**Dea**”) that, if there was a position available at West Face, he would be interested in working with West Face.
12. Dea subsequently met with Brandon on March 26, 2014. As West Face was currently recruiting for analysts, Dea asked Brandon to provide him with a copy of his resume and some writing samples, so that Dea could circulate it to others at West Face. Dea specifically advised Brandon that Brandon should redact any confidential information from the writing samples if required.
13. Following that initial meeting, Dea arranged for Brandon to meet with several other West Face employees on or about April 11, 2014 and again on or about April 28, 2014.

Brandon’s Employment Relationship with West Face

14. Pursuant to the terms of a written offer of employment dated May 26, 2014, West Face offered employment to Brandon as an Associate (the “**West Face Employment Contract**”). Brandon accepted the terms of West Face’s offer on May 26, 2014; he started working at West Face on June 23, 2014.
15. At the time that West Face provided Brandon with a written offer of employment, Dea asked Alexander Singh, West Face’s General Counsel and Secretary, to speak to Brandon and remind him that he was not under any circumstances to disclose or use any confidential or proprietary information belonging to Catalyst. Mr. Singh conveyed Dea’s concerns to Brandon, who confirmed to Mr. Singh that he

would not disclose or use any confidential or proprietary information belonging to Catalyst.

16. As an Associate with West Face, Brandon acts as a generalist working on a variety of investment strategies across a diverse set of industries. His duties include:
 - (a) Fundamental research and due diligence of investment opportunities, including equities and credits;
 - (b) Financial modeling;
 - (c) Deal structuring; and
 - (d) General support of West Face's Portfolio Managers.
17. Brandon is the most junior member of West Face's investment team. In his position, he does not receive portfolio summaries, is not a member of West Face's investment committee, does not participate in senior management meetings nor does he have the authority to make strategic decisions.
18. The terms of the West Face Employment Contract included a provision whereby Brandon 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.
19. In addition, the West Face Employment Contract included a representation and warranty on behalf of Brandon that his acceptance of West Face's offer of

employment would not result in any breach of any non-solicitation and non-competition agreements. Brandon advised West Face that he had a non-competition covenant with Catalyst, and he provided West Face with a redacted copy of his employment contract with Catalyst (the "**Catalyst Employment Contract**").

20. The Catalyst Employment Contract contained, *inter alia*, a non-competition provision (the "**Non-Competition Clause**") and a non-solicitation provision (the "**Non-Solicitation Clause**") which stated as follows:

8. 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 CCGI or the Fund or any direct Associate of CCGI 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 CCGI'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 CCGI;

9. 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 CCGI or persons who were so employed during the 12 months prior to your ceasing to be an employee of CCGI 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 CCGI or during the 12 months prior to your ceasing to be an employee of CCGI.

21. The Non-Competition Clause and Non-Solicitation Clause are ambiguous and overly broad and, as such, are unenforceable.

West Face Advises Catalyst that Brandon will Abide by His Confidentiality Obligations

22. On May 30, 2014, West Face received a letter from Catalyst's external counsel, Rocco Di Pucchio, expressing concerns over West Face's hire of Brandon. On June 3, 2014, West Face's external counsel, Adrian Miedema, responded to Catalyst's letter on West Face's behalf. In this letter, West Face confirmed that it had impressed upon Brandon that he was not to share or divulge any confidential information that he obtained during his employment with Catalyst.
23. By letter dated June 5, 2014, Brandon's counsel, Jeff Hopkins, advised Catalyst that in response to its concerns, Brandon was willing to confirm in writing that he understood and would abide by the confidentiality provision contained in the Catalyst Employment Contract.
24. In a letter dated June 13, 2014, Mr. Di Pucchio advised that the assurances of West Face and Brandon that Brandon would not share or divulge any of Catalyst's confidential information "did not go far enough".

25. On June 18, 2014, Mr. Miedema attended a conference call with Mr. Di Pucchio and Mr. Hopkins during which Mr. Di Pucchio advised that Catalyst was concerned about a specific transaction for which Catalyst and West Face had each submitted bids (the "**Transaction**").
26. In response to Catalyst's concerns, Mr. Hopkins sent a letter on June 19, 2014 in which Brandon again confirmed that he fully understood and intended to abide by his contractual obligations of confidentiality to Catalyst and further, that he would not divulge any information regarding the Transaction. The letter confirmed that Brandon was willing to confirm these legal obligations in writing, including references to specific areas of concern of Catalyst.
27. Later that afternoon, Mr. Miedema received an email from Mr. Di Pucchio advising that he had been instructed by Catalyst to commence proceedings against West Face and Brandon. Prior to receiving this communication, West Face was already in the process of implementing a confidentiality wall between Brandon and West Face's Investment Team with respect to the Transaction (the "**Confidentiality Wall**").
28. Under the terms of the Confidentiality Wall which was put in place before Brandon started working at West Face on June 23, 2014, Brandon is not permitted to discuss any information that he may have about the Transaction with anyone at West Face, nor can anyone at West Face inquire about or discuss the Transaction with Brandon. Further, West Face's information technology group restricted access to the network for files regarding the Transaction.

29. Mr. Miedema subsequently wrote, by letter dated June 19, 2014, to Mr. Di Pucchio advising that West Face had implemented the Confidentiality Wall and confirming that Brandon had not had, and would not have, any involvement with the Transaction at West Face.
30. Following the commencement of this litigation, West Face conducted a diligent search of its emails to determine whether there was any information of Catalyst disclosed by Brandon. West Face has found only one email from Brandon in which he provided West Face with documents related to Catalyst's business. The documents were provided by email from Brandon to Dea on March 27, 2014, which was at the early stages of the recruitment process, in response to Dea's request for writing samples, as a way of Brandon showing his written communication skills and the type of work he was doing at Catalyst.
31. West Face states that it has not used or relied on any of the documents attached to this email, nor has West Face done any significant review of the documents attached to this email. West Face further states that it was not involved in any of the transactions that were the subject of the documents attached to the email, and as such, had no use for the information contained therein.

Brandon is Placed on an Administrative Leave of Absence Pending the Determination of Catalyst's Motion for Injunctive Relief

- 31.1 In or around June 2014, Catalyst brought a motion for interim and interlocutory relief seeking, among other things, to block Brandon from continuing to work at West Face.**

31.2 On July 16, 2014, the Court heard Catalyst's motion for interim relief. On that date, the parties reached agreement on the terms of a consent Interim Order on an expressly without prejudice basis. Pursuant to the Interim Order, Brandon was to fully comply with the Non-Solicitation Clause and Non-Competition Clause until Catalyst's motion for interlocutory relief was heard or the Interim Order was otherwise varied by further Order of the Court. During this interim period, Catalyst was required to pay Brandon's West Face salary.

31.3 In accordance with the Interim Order, West Face placed Brandon on an administrative leave of absence effective July 16, 2014. As Catalyst's motion for interlocutory relief has not yet been heard, Brandon remains on a leave of absence as of the date of this Amended Amended Statement of Defence, and Catalyst continues to pay Brandon's West Face salary.

West Face has not Received Any Information of Catalyst Related to Wind Mobile or Mobilicity

31.4 West Face specifically denies the allegations contained in paragraphs 34.6, 34.7 and 34.12 of the Amended Amended Statement of Claim. West Face did not solicit, and Brandon did not provide to West Face, any of Catalyst's information in relation to Wind Mobile, Data & Audio-Visual Enterprises Holdings Inc. ("Holdings") or its wholly owned subsidiaries, Data & Audio-Visual Enterprises Wireless Inc. ("Wireless") and 84405522 Canada Inc. (collectively with Holdings and Wireless, "Mobilicity").

31.5 In fact, in the three (3) weeks during which he worked for West Face (June 23, 2014 to July 16, 2014), Brandon did not have any involvement in West Face's activities in relation to Wind Mobile or Mobicity.

Catalyst Has Not Suffered Any Damages

32. West Face states that Catalyst has not suffered any damages for which West Face is responsible in fact or in law. Further, and in any event, the damages claimed by Catalyst are excessive and remote.

Relief Requested

33. West Face requests that this action be dismissed with costs payable to West Face and Brandon, on a substantial indemnity basis.

~~August 5~~~~October 20, 2014~~December 24, 2014

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**AMENDED AMENDED STATEMENT OF
DEFENCE**

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