

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

**AFFIDAVIT OF THOMAS DEA
(Sworn July 7, 2014)**

I, Thomas Dea, of the City of Toronto, in the Province of Ontario,
MAKE OATH AND SAY:

1. I am a Partner of the Defendant, West Face Capital Inc. ("West Face") and as such, I have knowledge of the matters to which I hereinafter depose. Where this Affidavit is based on information and belief, I have stated the source of that information or belief and verily believe it to be true.
2. In making this Affidavit, I have also had the opportunity to review the Affidavit sworn by James A. Riley, Chief Operating Officer for The Catalyst Capital Group Inc., ("Catalyst") on June 26, 2014 (the "Riley Affidavit") as well as the Affidavit sworn by Alexander Singh, General Counsel and Secretary of West Face, on July 7, 2014.

Nature of West Face's Business

3. West Face is an investment manager based in Toronto. West Face has been in business since 2006. West Face employs approximately 43 staff in Toronto who work in the following capacities: portfolio management, investor relations, administration and general office support.
4. 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.
5. West Face's strategies are not intended to be correlated to the general performance of the broader market indices; rather, West Face focuses on "event driven investment strategies". An "event driven investment strategy" is generally one in which West Face has identified a situation where securities are believed to be mispriced for one or two principal reasons.
6. West Face does not use a single approach for these types of investments, and in fact, it will often seek unusual circumstances where the factors that are expected to contribute to favourable investment performance are not correlated with other factors in the broader portfolio. Factors can include corporate reorganizations, business combinations, adverse external shocks, unhedged commodity exposures, management malfeasance or fraud, over-indebtedness, liquidity constraints, changes in regulatory or government policy, and litigation. In most

cases, in making such event driven investments, West Face does not seek to take either a controlling interest or a position of influence in the company. Moreover, it is not part of this strategy for West Face to become involved in the management of the company. Investments by West Face for outright control have been rare.

7. 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.
8. 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 statements made in the Riley Affidavit, 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.
9. Because the LTOF allows investors in the fund to request to redeem their investments on a quarterly basis, West Face must overwhelmingly pursue investments in the LTOF that can be liquidated fairly quickly if necessary. The ACF, by contrast, is a pool of committed capital which is drawn as required to

fund illiquid debt investments expected to be held to maturity, which can be up to 7 years. Again, investments in the ACF are not intended, primarily, to seek a controlling interest or a position of influence in a company.

Comparison of West Face and Catalyst

10. West Face's primary investment strategy has a different focus from Catalyst. As outlined in the Riley Affidavit, Catalyst is focused on control or influence-based "distressed investments" (i.e. investment opportunities where a company is considered to be under-managed, under-valued or poorly capitalized). Generally, this means that Catalyst seeks to control or influence the management of the companies it is investing in, to increase the value of the company by influencing/changing its management or operations.
11. This description is also found on Catalyst's website, a copy of which is attached as Exhibit "A" to my Affidavit.
12. During the aftermath of the credit crisis from 2008 to 2009, West Face made a number of "distressed investments" in public debt securities. However, since that time, credit availability has improved materially and, as a result, the number of opportunities that can be considered "distressed investments" has declined significantly, such that there are very few opportunities available to pursue this type of strategy. The relatively small number of investment opportunities in this field, particularly when confined to Canada, also has the result that the investment opportunities that are available are widely known in the industry.

13. As a result of these factors, over the last few years, West Face has focused less and less on making distressed investments, although it is not out of this market entirely.
14. Ultimately, West Face tends to focus on publicly traded securities while Catalyst is a private equity firm. This is an important distinction, since private equity firms like Catalyst that seek to make investments that either influence or control the company have very different arrangements with their investors. In those circumstances, capital is committed by investors but not funded until suitable investments are identified. The capital can also be retained, typically for very long periods of up to 10 years or more, which is often required because the companies are often not listed on public exchanges. When the private equity firm sells its investment, the capital is then typically returned to the investors.
15. By contrast, as I noted above, West Face's LTOF pursues much more liquid investments. Further, while it is common for private equity firms like Catalyst to become involved with a target company's management, West Face generally does not become involved with the management of target companies.
16. As such, while West Face and Catalyst do compete in certain respects, their primary business focuses are different, as they concentrate on different investment opportunities and seek to take different levels of control of the companies in which they seek to invest. Where West Face and Catalyst have been involved in the same investment target, Catalyst has been a very small participant, presumably because of its restricted investment mandate.

Brandon Applies for a Job at West Face

17. I first met Brandon Moyses in or around 2012. West Face had commenced a recruitment drive for a number of analyst positions and Brandon had submitted an application. Although West Face did not hire Brandon during this round of recruitment, we nonetheless stayed in touch.
18. On or about September 25, 2012, Brandon contacted me to tell me that he had accepted a position at Catalyst. Although I congratulated Brandon at that time, I did tell him that Catalyst had a reputation in the marketplace as a difficult place to work.
19. With the exception of a single email which I received from Brandon in December 2012 about a transaction that he had recently worked on which had been published in the news, I did not hear from Brandon again until March 2014.
20. On or about March 14, 2014, Brandon sent me an email in which he told me that he had seen that West Face had launched a new alternative credit fund. Brandon advised me that, if there was a position available, he would be interested in working with West Face on this new venture.
21. I subsequently met with Brandon on March 26, 2014. During our meeting, we discussed the financial industry generally and Brandon shared with me his goal of working in a role where his focus was on pursuing new investments rather than on existing portfolio investments, which was the focus of his position at Catalyst. As West Face was currently recruiting for analysts, I asked Brandon to

provide me with a copy of his resume so that I could circulate it to others at West Face.

22. Following our meeting, I arranged for Brandon to meet with several of my colleagues on or about April 11, 2014 and again on or about April 28, 2014. On or about May 9, 2014, I asked and obtained several references from Brandon, whom we contacted over the next several days.

Brandon's Employment Relationship with West Face

23. 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. A copy of the West Face Employment Contract is attached as Exhibit "B" to my Affidavit.
24. Brandon is 26 years old and only one of his four years of experience in the financial services industry has been spent working at a firm that makes investments as a principal as its primary function. Brandon was hired as an Associate to act 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.

25. Brandon is the most junior member of West Face's investment team. At 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 any strategic decisions. I estimate that there are hundreds of positions like Brandon's at banks and other financial institutions in Toronto. While these types of junior employees are capable of making a contribution to their employers, they are not able to work independently without significant supervision, especially in the context of an institutional money management firm like West Face.
26. Under the terms of the West Face Employment Contract, 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.
27. In addition, Brandon represented and warranted that his acceptance of West Face's offer of employment would not result in any breach of any non-solicitation and non-competition agreements. With respect to this particular representation, Brandon told us that he had a non-competition covenant with Catalyst. West Face subsequently asked Brandon to provide us with a copy of his employment contract with Catalyst redacting any confidential information. On May 28, 2014, Brandon provided us with a redacted copy of his employment contract with Catalyst (the "**Catalyst Employment Contract**"). A copy of the Catalyst Employment Contract is attached as Exhibit "C" to my Affidavit.

28. Upon reviewing the Catalyst Employment Contract, West Face concluded that the non-competition covenant was unenforceable for a number of different reasons. I will give just two examples here. First, given its breadth, it would prohibit Brandon from working for virtually any investment company in Ontario. In addition, the covenant restricted Brandon from working in any business of the type conducted by "any direct Associate" of Catalyst within Canada, which, given the nature and industry scope of Catalyst's investments and the broad definition of "Associate" under Ontario's *Business Corporations Act*, prohibited Brandon from participating in a wide variety of industries and sectors that are completely unrelated to Brandon's duties with West Face. There are certainly other reasons to challenge the clause in addition to these two. As such, we concluded that Brandon was not restricted from working for West Face by virtue of the non-competition clause, as it was not enforceable.
29. West Face also reviewed the non-solicitation clause in the Catalyst Employment Contract and concluded that it was similarly unenforceable. While there are a number of reasons for its unenforceability, for brevity, I will simply note that it is overbroad since it purports to prevent Brandon from soliciting equity or other forms of capital for any entity "...managed, advised and/or sponsored by any of the protected entities" regardless of whether Brandon actually had any contact or relationship with the particular entity during the course of his employment.
30. In any event, the nature of Brandon's position with West Face is such that he will not be soliciting equity or other forms of capital for West Face's funds, and

therefore the risk of a breach of this clause, notwithstanding its unenforceability, is low.

31. At the time that West Face first provided Brandon with a written offer of employment, I 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. I did so because I wanted to ensure that Brandon understood that although we did not feel the non-competition covenant was enforceable, Brandon still had obligations of confidentiality to Catalyst.
32. I am advised by Mr. Singh and verily believe that he immediately conveyed my concerns to Brandon, and that Brandon confirmed to Mr. Singh that he would not disclose or use any confidential or proprietary information belonging to Catalyst.

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

33. 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. At the time we received this letter, I had already been advised by Mr. Singh that he had spoken with Brandon about his confidentiality obligations. A copy of Mr. Di Pucchio's letter dated May 30, 2014 is attached as Exhibit "D" to my Affidavit.

34. 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. A copy of Mr. Miedema's letter dated June 3, 2014 is attached as Exhibit "E" to my Affidavit.
35. 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. A copy of Mr. Hopkins' letter dated June 5, 2014 is attached as Exhibit "F" to my Affidavit.
36. 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". A copy of Mr. Di Pucchio's letter dated June 13, 2014 is attached as Exhibit "G" to my Affidavit.
37. I am advised by Mr. Miedema and verily believe that on June 18, 2014, he 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").
38. 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. A copy of Mr. Hopkins' letter dated June 19, 2014 is attached as Exhibit "H" to my Affidavit.

39. 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 the rest of West Face with respect to the Transaction (the "Confidentiality Wall").
40. Under the terms of the Confidentiality Wall which has been in place since 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. Copies of the Confidentiality Wall Memorandum and the email from West Face's Chief Compliance Officer to Brandon enclosing the Confidentiality Wall Memorandum are attached as Exhibits "I" and "J" respectively to my Affidavit.
41. 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

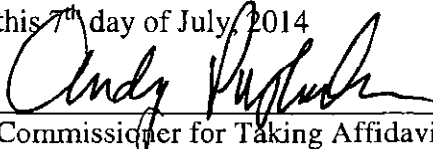
the Transaction at West Face. A copy of Mr. Miedema's letter dated June 19, 2014 is attached as Exhibit "K" to my Affidavit.

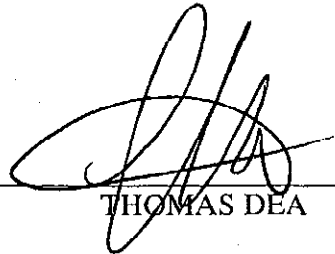
42. Since the commencement of this litigation, West Face has taken steps to preserve all documents relevant to the matters at issue. In addition, West Face has conducted a diligent search of its emails to determine whether there was any information of Catalyst disclosed by Brandon. West Face has found 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 me at the early stages of the recruitment process as a way of Brandon showing me his written communication skills and the types of work he was doing at Catalyst. A copy of the email from Brandon to me dated March 27, 2014 is attached as Exhibit "L" to my Affidavit.
43. West Face 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. Moreover, as I noted earlier, prior to Brandon commencing work, I am advised by Mr. Singh and verily believe that he conveyed to Brandon that West Face takes matters of confidentiality very seriously and that if he wished to work at West Face he was not to provide West Face with any information related to Catalyst's business. Brandon has not made any further disclosures of any of Catalyst's information.
44. Interim relief is not appropriate. There are legitimate grounds to believe that the non-competition and non-solicitation covenants are not enforceable. That said,

even if the covenants may be enforceable, which is not admitted but is expressly denied, interim relief is not justified, as monetary damages are calculable and will be sufficient to address any damage to Catalyst.

45. Moreover, West Face has taken significant efforts to ensure that no confidential information is disclosed by Brandon to West Face, West Face has done a comprehensive review of its emails respecting confidentiality and with one exception (which has been addressed) no such information has been disclosed, and with respect to the Transaction that Catalyst has raised as a concern, West Face has taken steps to ensure not only that no confidential information is disclosed, but has gone so far as to ensure that Brandon has no access to or involvement in the Transaction on behalf of West Face. In any event, West Face confirms that it will preserve all relevant documents to any matter in issue which West Face has in its power, possession or control for the duration of this proceeding.

46. I make this Affidavit in response to Catalyst's motion for an interim injunction and for no other purpose.

SWORN before me at the City of)
Toronto in the Province of Ontario)
this 7th day of July, 2014)
)
Commissioner for Taking Affidavits, etc)


THOMAS DEA

Court File No. CV-14-507120

THE CATALYST CAPITAL GROUP INC.
Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.
Defendants

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PROCEEDING COMMENCED AT
TORONTO**

**AFFIDAVIT OF THOMAS DEA
(Sworn July 7, 2014)**

DENTONS CANADA LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON M5K 0A1

Lawyer: Jeff Mitchell/Andy Pushalik
LSUC#: 40577A/54102P
Telephone: (416) 863-4660/(416) 862-3468
Facsimile: (416) 863-4592

Lawyers for the Defendant,
West Face Capital Inc.