

00-17-569065

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

(Court Seal)

CRAIG BOYER

Plaintiff

and

CALLIDUS CAPITAL CORPORATION

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date FEB 06 2017 Issued by Vanessa Fanelli
Registrar
Local Registrar
Address of court office: Superior Court of Justice
393 University Avenue, 10th Floor
Toronto, ON M5G 1E6

TO **CALLIDUS CAPITAL CORPORATION**
181 Bay Street
Suite 4620, P.O. Box 792
Bay Wellington Tower
Brookfield Place
Toronto, ON M5J 2T3

CLAIM

1. The plaintiff claims:

- (a) A mandatory order requiring the defendant to provide to him a Record of Employment reflecting that his employment was terminated by the defendant;
- (b) Payment of accrued and unused vacation pay equivalent to twenty-eight weeks' salary;
- (c) A declaration that all of the stock options of the defendant held by the plaintiff ("Stock Options") in the defendant are fully vested or will be fully vested at their respective vesting dates;
- (d) A mandatory order requiring the defendant to deliver up to the plaintiff his vested Stock Options;
- (e) Damages for loss of health and other benefits in the amount of \$100,000.00;
- (f) Pre-judgment interest on damages in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (g) His costs of this action, plus all applicable taxes; and,
- (h) Such further and other relief as to this Honourable Court may seem just.

Parties

2. The plaintiff is an executive who lives in the City of Windsor.

3. The defendant is a publicly listed asset backed lender loaning primarily into the distressed borrower marketplace.

Employment

4. The plaintiff joined the defendant as Vice President in July of 2008.

5. There was no written employment contract affecting the plaintiff's entitlement to:

(a) Vacation pay;

(b) Vesting of Stock Options,

in accordance with the usual practice of the defendant.

6. The plaintiff carried out his duties as Vice President effectively and efficiently and in the best interest of the defendant throughout his employment.

Management Style

7. The management style of the defendant is driven by the Chief Executive Officer of Catalyst Capital Corporation, Newton Glassman.

8. Unfortunately, that management style focuses on:

(a) Taking hyper-aggressive positions with third parties and employees;

(b) Berating and belittling employees by email and verbally; and

(c) On occasion, physical abuse.

9. As a result, the plaintiff has been exposed to all three on an unrelenting basis.

Constructive Dismissal in the Face of Planned Retirement

10. In the latter half of 2015, the plaintiff and the defendant agreed that he would retire from his employment by the end of 2016.

11. The abusive management conduct, however, peaked in 2016 with:

- (a) Abusive email and verbal treatment of the plaintiff by the CEO;
- (b) Participating in a meeting where a senior officer of the defendant's parent physically attacked the plaintiff's immediate superior; and
- (c) Unrelenting criticism of the plaintiff once his unwillingness to continue in his employment situation became obvious to the CEO.

12. As a result of this poisoned workplace, the employment of the plaintiff was constructively terminated, as he could no longer continue in his employment. The defendant announced that the plaintiff had retired.

13. The plaintiff left Callidus by August 31, 2016.

14. Despite considerable efforts to arrive at a fair resolution of the results of this conduct, the defendant has failed to, among other things:

- (a) Honour its commitments to pay vacation pay, contrary to the provisions of the *Employment Standards Act* and the additional amounts over and above the minimum statutory protection; and
- (b) In any way, treat him fairly with respect to his vested Stock Options.

Vacation Pay

15. It was the practice of the defendant to permit employees to carry unused vacation from year to year.

16. Given the demands placed upon him, as above, the plaintiff had accumulated thirty-two weeks' of unused vacation time as at the date of his departure of which he had used four weeks for a total of twenty-eight weeks' of unpaid vacation pay.

17. The defendant has refused to pay any of it, even the statutory minimum provided for by Part XI of the *Employment Standards Act, 2000*, S.O. 2000, c.41.

Record of Employment

18. Contrary to the provisions of Section 19 of the *Employment Insurance Act Regulations*, SOR 96/332, the defendant has not provided the plaintiff with a record of employment.

Stock Options

19. The plaintiff participated as part of his employment in the Stock Option program of the defendant.

20. Callidus awarded the plaintiff 75,000 Stock Options in December 2015 with the knowledge that he would be retiring at the end of 2016. Those Stock Options were to fully vest, one third at January 1, 2017, one third at January 1, 2018 and one third at January 1, 2019.

21. In any event, it was the practice of the defendant to allow vesting of all options upon departure.

22. If Callidus had honoured its obligations with respect to vacation pay, one third of the Stock Options would have vested as at January 1, 2017 and a further one third during a period of

reasonable notice, all in any event. Callidus intended the balance to vest respectively at January 1, 2018 and January 1, 2019.

23. Callidus presently holds approximately 80,000 vested Stock Options which have not been delivered up to the plaintiff.

24. Stock Options were an integral component of the plaintiff's compensation package and accordingly they should not be expropriated on his departure.

25. Accordingly, the plaintiff claims delivery up to him of all of his Stock Options in vested form.

Benefits

26. As part of his employment, the plaintiff was entitled to full health and other benefits. He claims the lost value of those at \$100,000.00.

Place of Trial

27. The plaintiff proposes that this action be tried in the City of Windsor.

(Date of issue) February 06, 2017

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Lawyers for the Plaintiff

CRAIG BOYER
Plaintiff

-and-
CALLIDUS CAPITAL CORPORATION
Defendant

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ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT TORONTO

STATEMENT OF CLAIM

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