

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

CRAIG BOYER

Plaintiff

and

CALLIDUS CAPITAL CORPORATION

Defendant

REPLY AND DEFENCE TO COUNTERCLAIM

1. The plaintiff admits the first sentence of paragraph 3 and the first sentence of paragraph 6 in the Statement of Defence and Counterclaim.
2. The plaintiff denies the balance of the allegations in the Statement of Defence and Counterclaim and puts Callidus to the strict proof thereof.

The Plaintiff's Employment

3. The plaintiff commenced employment with Callidus in 2008, not 2009. He was never promoted from the position which he held as Vice President.
4. Initially, he was responsible for underwriting and portfolio duties and reported to the Chief Executive Officer of Callidus.
5. When the then Chief Executive Officer left, the plaintiff became responsible for all portfolio accounts at the time and began reporting to David Reese. As additional employees joined Callidus, portfolio accounts began to be transferred to them.

6. Beginning in 2015, analysis of the financial reporting and performance of portfolio accounts began to be performed by collateral analysts within Callidus.
7. To the knowledge of Callidus, the plaintiff's job responsibilities required him to be travelling to portfolio accounts for most of each week. Accordingly, Callidus knew of, and understood, the limited ability of the plaintiff to go behind the work of those collateral analysts.
8. The plaintiff:
 - (a) Performed his duties effectively;
 - (b) Had no direct reports at any time;
 - (c) Had no authority to direct others within the business;
 - (d) Received performance reviews throughout his employment, that included maximum bonuses in the years prior to the year of his departure.

The Plaintiff's Departure from Callidus

9. While it is correct that the plaintiff advised Callidus in mid-2015 that he intended to depart at the end of 2016, it was not expressed as being for health related reasons.
10. Various portfolio accounts managed by the plaintiff were transferred to other Callidus underwriters and portfolio managers over time.

11. Contrary to what is alleged in paragraph 11 of the Statement of Defence and Counterclaim, Callidus did not assert at the time of the plaintiff's departure that there were any issues with respect to his performance:

- (a) The plaintiff properly monitored loans in his portfolio. After their transfer (some beginning as early as 2014), it became evident that those who had taken over those portfolios had not properly monitored certain of them. Grey Aqua was the example of which the plaintiff became aware;
- (b) At no time, did the plaintiff cause any portfolio company for which he was responsible to artificially inflate EBITDTA shown on their financial forecasts;
- (c) At the request of one entity, the plaintiff executed a comfort letter to the knowledge of Callidus.

12. The complaints now made are raised with the plaintiff only after he had asserted his claim for compensation in a transparent attempt by Callidus to avoid its obligations to him.

13. After the need for a provision was identified for Grey Aqua by the financial function of Callidus, and discussed within Callidus, the plaintiff was in any event given an annual review and full bonus by Callidus. It raises the Grey Aqua investment now in bad faith and having waived any reliance upon it.

Work Environment

14. The allegations in paragraphs 17 through 20 are pure fiction.

15. The complaints respecting the work environment were open and notorious and well known to those who perpetrated them, including the most senior executives of Callidus.

16. That conduct includes verbal assaults, a physical assault and threats by the Chairman of Callidus to “kill” the plaintiff and “punish” him.

Compensation

17. There was no policy up to the departure of the plaintiff mandating that Callidus employees could not carry over unused vacation pay.

18. With respect to stock options, the most recent stock options were issued to the plaintiff in mid-2015 after he announced that he would be departing at the end of December 2016. That amounted to an express waiver and amendment of any provision that stock options would not ultimately vest.

19. The position taken by Callidus is simply opportunistic.

DEFENCE TO COUNTERCLAIM

20. The counterclaim is a vexatious claim contrary to Rule 2.1 of the *Rules of Civil Procedure*:
- (a) Its content was never raised with the plaintiff before his departure;
 - (b) It could never be within the reasonable contemplation of this employer-employee relationship that the employer would, or could, sue the plaintiff for matters surrounding his work duties for \$150 million in damages;
 - (c) The counterclaim is raised for ulterior purposes. Callidus is subject to multiple complaints and regulatory investigations with respect to its material non-disclosure to fund members and the public as to the status, and transfer, of its various investments. The Statement of Defence and Counterclaim was provided by Callidus, directly or indirectly, to the press, in order to deflect these complaints and investigations.
21. As to the allegations:
- (a) At no time did the plaintiff direct the management of Exchange Technology Group ("XTG") to inflate EBITDTA numbers. At no time did the plaintiff mislead Callidus' Credit Committee about XTG results. The XTG investment was transferred to Catalyst Capital Corporation in early 2016 based on external valuations into which the plaintiff had no input. Callidus was in event paid in full and has no claim;
 - (b) At the outset, Callidus fully understood that the Grey Aqua loan was to assist in restarting the business and that the assets of the business were farmed salmon

growing from smolt to mature salmon in a fish farm environment. The plaintiff transferred responsibility for this portfolio loan to another Callidus employee in 2014. By that point in time, the loan had been appropriately investigated, advanced and monitored. Subsequently, it developed that inadequate field supervision by others had led to loan losses for which the plaintiff had no responsibility. The loan liability had apparently increased by over \$30 million, and the value of the collateral decreased, while under the supervision of others;

(c) Support letters were appropriately provided by Callidus with its full knowledge.

22. When, after the plaintiff's departure, Callidus raised a question about the Horizontal support letter, the plaintiff promptly responded.

23. This counterclaim is spurious, vexatious and was delivered for other audiences.

24. It should be dismissed with costs.

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Plaintiff

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Defendant

Court File No. CV-17-569065

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PROCEEDING COMMENCED AT TORONTO

REPLY AND DEFENCE TO COUNTERCLAIM

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