CITATION: Ontario Securities Commission v. Go-To Developments Holdings Inc., 2021 ONSC 8133
COURT FILE NO.: CV-21-00673521-00CL
DATE: 20211210

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
ONTARIO SECURITIES COMMISSION Applicant	*Erin Hoult and Braden Stapleton*, for the Applicant
– and –	
GO-TO DEVELOPMENTS HOLDINGS INC., OSCAR FURTADO, FURTADO HOLDINGS INC., GO-TO DEVELOPMENTS ACQUISITIONS INC., GO-TO GLENDALE AVENUE INC., GO-TO GLENDALE AVENUE LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK II INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK II LP, GO-TO NIAGARA FALLS CHIPPAWA INC., GO-TO NIAGARA FALLS CHIPPAWA LP, GO-TO NIAGARA FALLS EAGLE VALLEY INC., GO-TO NIAGARA FALLS EAGLE VALLEY LP, GO-TO SPADINA ADELAIDE SQUARE INC., GO-TO SPADINA ADELAIDE SQUARE LP, GO-TO STONEY CREEK ELFRIDA INC., GO-TO STONEY CREEK ELFRIDA LP, GO-TO ST. CATHARINES BEARD INC., GO-TO ST. CATHARINES BEARD LP, GO-TO VAUGHAN ISLINGTON AVENUE INC., GO-TO VAUGHAN ISLINGTON AVENUE LP, AURORA ROAD LIMITED PARTNERSHIP and 2506039 ONTARIO LIMITED Respondents	*Darryl Mann*, for the Respondents *Steven Graff and Ian Aversa*, for KSV Restructuring Inc., proposed Receiver and Manager **HEARD:** December 9, 2021

L. A. PATTILLO J

[1] On December 6, 2021, the Ontario Securities Commission (the "Commission") issued two freeze directions under s. 126(1) of the Securities Act, R.S.O. 1990 c.s.5 (the "Act") which require the respondent Oscar Furtado ("Furtado") to maintain and refrain from imperiling assets derived from investor funds and require RBC Direct Investing to maintain the assets in Furtado's RBC Direct Account.

[2] The Commission brings this application to continue those directions and for the appointment of KSV Restructuring Inc. as receiver and manager of the respondent Go-To entities.

[3] At the outset of the hearing, Furtado requested a short adjournment to permit him to retain new counsel (Mr. Mann appears on a limited retainer) and file responding material. He submitted, notwithstanding the Commission's Staff's investigation has been ongoing since March 2019, he was only advised of this proceeding on Monday and did not receive the Commission's material until Monday evening. He disagrees with the Commission's allegations, particularly that he misled Staff during the investigation and wants to respond. Nothing in the Commission's material indicates anything precipitous was about to happen.

[4] In support of his request, Furtado has offered terms including continuing the freeze directions (with some access for living expenses and legal fees), production of the investigation transcripts and the appointment of a monitor as opposed to a receiver at the Commission's expense.

[5] The Commission opposed the request. It submitted that a monitor would not be sufficient as it would leave Furtado in charge. Rather, in light of the record, a receiver was necessary to safeguard the interests of the investors. Further, while it could have proceeded *ex parte* under s. 129 of the Act, it gave Furtado notice and sufficient time to file material if required. In that regard, in the absence of material, many of Furtado's submissions were unsubstantiated.

[6] Based on the allegations concerning Furtado's actions in respect of his dealings with the Go-To projects and specifically the Go-To Spadina Adelaide Square Limited Partnership. ("Adelaide LP") as set out in the Commission's material and which I will address shortly, I was satisfied, despite the length of time the Commission's investigation has been ongoing, that it was necessary having regard to the interests of the investors to deal with the application rather than adjourn it to a future date and leave Furtado in charge. I also was of the view that Furtado had sufficient notice to file material.

[7] Accordingly, I dismissed Furtado's adjournment request.

[8] Furtado is the founder and directing mind of the Go-To entities which are limited partnerships. Between 2016 and 2020, Furtado and the respondent Go-To Developments Holdings Inc. (GTDH) raised almost $80 million from Ontario investors for nine Go-To real estate projects by selling limited partnership units. The projects are not complete, and the investors' funds remain outstanding.

[9] One of the projects is Adelaide LP, whose business is described as purchasing, holding an interest in, conducting pre-development planning with respect to development and construction of two properties, 355 Adelaide St. W. and 46 Charlotte Street in downtown Toronto (the

"Properties"). Beginning in February 2019, Furtado began to raise capital for Adelaide LP by selling units.

[10] The Adelaide LP agreement provides that investors would be paid returns pro-rata, after all investors received a return of their capital. It also provides no investor could require return of any capital contributions back until the dissolution, winding up or liquidation of the partnership.

[11] The purchase rights to the Properties were secured by Adelaide Square Developments Inc. (ASD) a company owned, in part, by AKM Holdings Corp. (AKM) which was in turn owned by the wife of Alfredo Malanca (Malanca). Furtado negotiated the Adelaide LP's acquisitions of the Properties with Malanca as a representative of ASD.

[12] In late March, early April 2019, Adelaide LP and ASD entered into agreements whereby ASD assigned the purchase and sale agreements for the properties to Adelaide LP (the purchase price for the Properties was $53.3 million plus a density bonus on one of the properties). They also entered into an Assignment Fee agreement which provided Adelaide LP would pay ASD an assignment fee of $20.95 million. Adelaide LP paid the assignment fee from investors monies.

[13] At the same time, Furtado pledged the assets of two other Go-To LP's to secure Adelaide LP obligations contrary to the LP agreements and without notice to any of the unit holders.

[14] On April 4, 2019, Adelaide LP entered into a demand loan agreement with ASD for $19.8 million. The proceeds were paid by ASD to an investor in Adelaide LP for its redemption of $16.8 million units and a $2.7 million flat fee return and $300,000 to Goldmount Financial Group Corp. (Goldmount), a mortgage brokerage in which Malanca is a director, as a referral fee for introducing the investor.

[15] On April 15, 2019, the respondent Furtado Holdings Inc. and AKM each received from ASD 11 shares of ASD and $388,087.33 paid by ASD out of the assignment fee.

[16] On September 19 to 30, 2019, Furtado raised $13.25 million for Adelaide LP from four investors. On October 1, 2019, Adelaide LP paid ASD $12 million on the demand loan although no payment was due or demand made. On the same day, ASD paid both Furtado Holdings and AKM a "dividend" of $6 million each. Furtado denied that he planned to profit on Adelaide LP's purchase of the Properties and said that ASD decided to give Furtado Holdings "a thank you".

[17] By August 2020, Furtado Holdings had used the bulk of the $6 million dividend to transfer $2.25 million to Furtado's personal bank account and loan or otherwise transfer approximately $3.265 million to every Go-To General Partner (GP), GTDH and Go-To Developments Acquisitions Inc. The Commission states it appears the transfers to the GPs were spent on operating costs and payments due to LP investors.

[18] Further, from Furtado's bank account, approximately $2.026 million was transferred to his RBC Direct Investing account in close proximity to the transfers received from Furtado Holdings.

[19] In addition to the above events involving Adelaide LP, Furtado and ASD, the Commission also submits that Furtado misled Staff during its investigation in respect of some of the answers

he gave. As noted, Furtado denies that allegation and submits that he co-operated with Staff and answered all of their questions.

[20] Section 129(1) and (2) of the Act gives the court the discretion, on application by the Commission, to appoint a receiver and manager of the property of any person or company where: (a) it is in the best interests of the creditors, security holders, or subscribers of such person or company; or (b) it is appropriate for the due administration of securities law.

[21] In *Ontario Securities Commission v. Sextant Strategic Opportunities Hedge Fund L.P.*, 2009 CanLII38503 (ONSC) at para. 54, Morawetz J. (as he then was) emphasized that the analysis of the "best interests" of the creditors and security holders in s. 129 is broader than the solvency test. Instead the court should consider "all the circumstances and whether, in the context of those circumstances, it is in the best interests of creditors that a receiver be appointed. The criteria should also take into account the interests of all stakeholders."

[22] In my view, having regard to all the circumstances, I am satisfied based on the Commission's evidence of Furtado's dealings in respect of Adelaide LP that it is in the best interests of the investors in the Go-To projects that a receiver be appointed to ensure that the Go-To projects are managed in a proper fashion to protect the investors' investments.

[23] The Commission's investigation has revealed evidence of undisclosed payments to Furtado arising from Adelaide LP's purchase of the Properties, resulting in misappropriation and improper use of Adelaide LP funds through his dealings with ASD.

[24] The Commission's evidence establishes Furtado:

a) Arranged to personally profit from Adelaide LP's purchase of the Properties;

b) Misused other Go-To LP assets to secure Adelaide LP's acquisition of the Properties; and

c) Gave false and/or misleading evidence to Staff about his dealings with ASD and Furtado Holdings' receipt of shares and moneys from ASD.

[25] While I acknowledge that Furtado disputes the Commission's allegation that he mislead Staff, in my view his dealings in respect of Adelaide LP and the cross-collateralization are of great concern by themselves.

[26] I agree with the Commission's submission that the gravity of the potential breaches of the Act indicated by the evidence raises significant concerns about Furtado's ability to operate in capital markets in a manner compliant with securities laws.

[27] Accordingly, I am satisfied the Commission has met the requirements of s. 126 of the Act. The appointment of a receiver will ensure that the investors' interests are protected and that the Go-To entities are properly administered.

[28] Furtado submits that the appointment of a receiver will be the "death knell" for the Go-To projects. It will result in defaults under the various Go-To LP loan agreements. The receivership

is not in respect of an insolvency. There is no reason that the various projects can not continue under the control of a receiver. Further, with a stay in place, none of the loan agreements can be placed in default.

[29] Section 126(5.1) of the Act permits the court to continue a freeze direction where it is satisfied that such order would be reasonable and expedient in the circumstances, having due regard to the public interest and either (a) the due administration of Ontario securities law; or (b) the regulation of capital markets in Ontario.

[30] In order to continue a freeze direction, the Commission must establish: (a) there is a serious issue to be tried in respect of the respondents' breaches of the Act; (b) there is a basis to suspect, suggest or prove a connection between the frozen assets and the conduct in issue; and (c) the freeze directions are necessary for the due administration of securities laws or the regulation of capital markets, in Ontario or elsewhere: *OSC v. Future Solar Developments*, 2015 ONSC 2334 at para. 31.

[31] In my view, the evidence establishes all three parts of the above test. There is at least a serious issue to be tried as to potential breaches of the act by Furtado and Furtado Holdings, including fraud; the directions freeze Furtado's RBC Direct Account and any other assets he derived from investor funds. The evidence of Furtado's uses of the $6 million dividend shows at least a basis to "suspect, suggest or prove" a connection between the assets frozen and the conduct in issue. Finally, continuation of the directions is necessary for the due administration of securities laws. They address inappropriate use of investor funds, dissipation of assets and preservation of assets.

[32] The application is allowed. KSV is appointed as receiver and manager without security of the respondent Go-To entities and the directions are continued until withdrawn or altered by the Commission or further order of the court.

[33] The Commission shall redact any personal information concerning any individual (excluding name, title, contact information or designation of business, profession or official capacity) contained in the exhibits to the affidavit filed in support of the application.

L. A. Pattillo J.

Released: December 10, 2021

CITATION: Ontario Securities Commission v. Go-To Developments Holdings Inc., 2021 ONSC 8133
COURT FILE NO.: CV-21-00673521-00CL
DATE: 20211210

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

ONTARIO SECURITIES COMMISSION

Applicant

– and –

GO-TO DEVELOPMENTS HOLDINGS INC., OSCAR FURTADO, FURTADO HOLDINGS INC., GO-TO DEVELOPMENTS ACQUISITIONS INC., GO-TO GLENDALE AVENUE INC., GO-TO GLENDALE AVENUE LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK II INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK II LP, GO-TO NIAGARA FALLS CHIPPAWA INC., GO-TO NIAGARA FALLS CHIPPAWA LP, GO-TO NIAGARA FALLS EAGLE VALLEY INC., GO-TO NIAGARA FALLS EAGLE VALLEY LP, GO-TO SPADINA ADELAIDE SQUARE INC., GO-TO SPADINA ADELAIDE SQUARE LP, GO-TO STONEY CREEK ELFRIDA INC., GO-TO STONEY CREEK ELFRIDA LP, GO-TO ST. CATHARINES BEARD INC., GO-TO ST. CATHARINES BEARD LP, GO-TO VAUGHAN ISLINGTON AVENUE INC., GO-TO VAUGHAN ISLINGTON AVENUE LP, AURORA ROAD LIMITED PARTNERSHIP and 2506039 ONTARIO LIMITED

Respondents

REASONS FOR JUDGMENT

Pattillo J.

Released: December 10, 2021