

COURT OF APPEAL FOR ONTARIO

CITATION: Ontario Securities Commission v. Go-To Developments Holdings  
Inc., 2022 ONCA 328  
DATE: 20220428  
DOCKET: C70114

Gillese, Miller and Coroza JJ.A.

BETWEEN

Ontario Securities Commission

Applicant (Respondent)

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 (Appellants)

Gregory Azeff and Monica Faheim, for the appellants

R. Paul Steep, Erin Hault, Shane D'Souza and Braden Stapleton, for the  
respondent

Ian Aversa and Tamie Dolny, for KSV Restructuring Inc.

Heard: April 13, 2022

On appeal from the order of Justice Laurence A. Pattillo of the Superior Court of Justice, dated December 10, 2021, with reasons at 2021 ONSC 8133.

## REASONS FOR DECISION

### OVERVIEW

[1] The Ontario Securities Commission (the “Commission”) has been investigating the appellants for breaches of securities law. Oscar Furtado is the principal of Go-To Developments Holdings Inc. According to the Commission, Mr. Furtado is the directing mind of the other appellants, including Go-To Spadina Adelaide Square LP (“Adelaide LP”). The Commission investigation revealed, among other things, that undisclosed payments were made to Mr. Furtado resulting in misappropriation and improper use of Adelaide LP funds. Some of these funds had been transferred to Mr. Furtado’s personal RBC Direct Investing account (the “Account”).

[2] On December 6, 2021, the Commission issued two freeze directions under s. 126(1) of the *Securities Act*, R.S.O. 1990, c. S.5 (the “Act”). These directions require Mr. Furtado to maintain and refrain from imperiling assets derived from investor funds and require RBC Direct Investing to maintain the assets in the Account. That same day, the Commission served a notice of application to appoint a receiver and manager for Go-To Developments Holdings Inc. and other related companies under s. 129 of the Act and to continue the freeze directions. The notice

of application stated that Mr. Furtado appeared to have defrauded investors and engaged in undisclosed self-dealing.

[3] The hearing took place on December 9, 2021. At the hearing, Mr. Furtado was represented by counsel who had represented him throughout the Commission investigation. Counsel indicated that his appearance that day was for the limited purpose of seeking a short adjournment so that Mr. Furtado could retain new counsel and file responding material. In support of his adjournment request, Mr. Furtado offered terms including continuing the freeze directions (with some access for legal fees and living expenses), production of the investigation transcripts, and the appointment of a monitor, as opposed to a receiver. The Commission opposed the adjournment request.

[4] The application judge denied the adjournment. He explained that, based on the allegations in the Commission materials concerning Mr. Furtado's actions in his dealings with Go-To projects and specifically Adelaide LP, despite the length of time the Commission investigation had been ongoing, the interests of the investors made it necessary to deal with the application rather than adjourn it and leave Mr. Furtado in charge. He also said that it was his view that Mr. Furtado had sufficient notice to file material.

[5] The application judge granted the application, appointed KSV Restructuring Inc. as receiver and manager, and continued the freeze directions (the

“Receivership Order”). He said that the Commission’s evidence of Mr. Furtado’s dealings in respect of Adelaide LP satisfied him that it was in the best interests of the investors in the Go-To projects that a receiver be appointed to ensure those projects are properly administered and the investors’ interests are protected.

[6] The appellants appeal the Receivership Order. They also moved for a stay of that order. On December 29, 2021, Sossin J.A. dismissed the stay motion and reserved the cost consequences of the motion to the panel hearing the appeal.

[7] On appeal, the appellants submit that the application judge erred in:

1. denying their adjournment request; and
2. admitting the transcripts of Mr. Furtado’s examination in the Commission investigation.

[8] For the reasons that follow, the appeal is dismissed.

### **THE FRESH EVIDENCE**

[9] The Commission applies for the admission of fresh evidence. The fresh evidence consists of two reports of the receiver and further evidence of the appellants’ actions since the Receivership Order. Among other things, the fresh evidence shows that after Mr. Furtado was served with the application record – which included the freeze direction prohibiting him from dealing with properties derived from investor funds – Mr. Furtado entered into an agreement to sell the

largest asset of any of the Go-To entities, and his friends and family cancelled purchase contracts for pre-sale Go-To condominiums.

[10] The fresh evidence is admitted. It is credible, was not available when the application was heard, and is relevant.

## **ANALYSIS**

[11] The decision whether to grant an adjournment will be set aside only where the judge misdirected him or herself or was so clearly wrong as to amount to an injustice: *Bank of Montreal v. Cadogan*, 2021 ONCA 405, at para. 8; *Penner v. Niagara (Regional Police Services Board)*, 2013 SCC 19, [2013] 2 S.C.R. 125, at para. 27. The application judge did not misdirect himself.

[12] Far from being “clearly wrong”, the fresh evidence shows that the application judge’s concerns about Mr. Furtado’s conduct were justified. The fresh evidence also demonstrates that the Go-To entities are in financial distress. The application judge denied the adjournment and made the Receivership Order based on concerns about Mr. Furtado’s ability to operate Go-To in a manner compliant with securities laws and to protect the investors. The fresh evidence demonstrates further misconduct and self-dealing after Mr. Furtado was served with the application materials. It is also significant that the application judge was satisfied that Mr. Furtado had sufficient notice of the application and time to respond.

[13] The appellants also challenge the application judge's reliance on the transcripts of Mr. Furtado's examination in the Commission investigation, claiming that the transcripts were inadmissible. They raise this issue for the first time before this court. We decline to address it.

[14] The appellants did not raise this objection before the application judge. On the contrary, in support of their request for an adjournment, Mr. Furtado offered terms that included production of the investigation transcripts. And, on the stay motion, the appellants argued that the Commission ought to have provided them with complete copies of the investigation transcripts rather than excerpts.

[15] Because this issue was not raised below, there is no adequate record on which this court could consider and decide it. The Commission may well have adduced evidence on the matter; the parties would have had the opportunity to squarely argue the matter, in the context of an appropriately constructed record; and the application judge would have decided the matter and given reasons for that decision. The foundation of the appellants' argument on this matter is complex. It is a matter that must be decided on a proper record and with the benefit of full consideration at the lower court.

[16] For these reasons, we see no error in the application judge admitting the transcripts and relying on them.

**DISPOSITION**

[17] Accordingly, the appeal is dismissed. The parties advised the court that they had agreed on an order of no costs. Consequently, no costs are ordered in respect of the appeal or the stay motion.

*W. G. G. J. A.*

*W. G. G. J. A.*

S. COROZA J.A.