

Court File No.: _____

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM COURT OF APPEAL FOR ONTARIO)**

BETWEEN:

**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**

Applicants (Respondents)

- and -

ONTARIO SECURITIES COMMISSION

Respondent (Appellant)

APPLICATION FOR LEAVE TO APPEAL OF THE APPLICANTS
(Pursuant to s. 40(1) of the Supreme Court Act, RSC, 1985, c S-26 and
Rule 25 of the Rules of the Supreme Court of Canada)

<p>MILLER THOMSON LLP 40 King Street West, Suite 5800 Toronto ON M5H 3S1</p> <p>Gregory Azeff Tel: 416.595.2660 Email: gazeff@millerthomson.com</p> <p>Monica Faheim Tel: 416.597.6087 Email: mfaheim@millerthomson.com</p> <p>-and-</p> <p>CRAWLEY MACKEWN BRUSH LLP Suite 800 179 John Street Toronto, ON M5T 1X4</p> <p>Alistair Crawley Phone: 416.217.0806 Email: acrawley@cmblaw.com</p> <p>Melissa Mackewn Tel: 416.217.0220 Email: mmackewn@cmblaw.ca</p> <p>Dana Carson Phone: 416.217.0855 Fax: 416.217.0220 Email: DCarson@cmblaw.ca</p> <p>Counsel for the Applicants</p>	<p>GOLDBLATT PARTNERS LLP 30 Metcalfe Street, Suite 500 Ottawa, Ontario, K1P 5L4</p> <p>Colleen Bauman Phone: 613.482.2463 Fax: 613.235.3041 Email: cbauman@goldblattpartners.com</p> <p>Ottawa Agent for Counsel for the Applicants</p>
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ORIGINAL TO: THE REGISTRAR
301 Wellington Street
Ottawa, ON K1A 0J1

ONTARIO SECURITIES COMMISSION

20 Queen Street West, 22nd Floor
Toronto, ON M5H 3S8

Erin Hault

Tel: 416.593.8290

Email: ehault@osc.gov.on.ca

Braden Stapleton

Tel: 416.595.8903

Email: bstapleton@osc.gov.on.ca

Counsel for the Respondent**AIRD & BERLIS LLP**

Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven L. Graff

Tel: 416.865.7726

Email: sgraff@airdberlis.com

Ian Aversa

Tel: 416.865.3082

Email: iaversa@airdberlis.com

Jeremy Nemers

Tel: 416.865.7724

Email: jnemers@airdberlis.com

Tamie Dolny

Tel: 647.426.2306

Email: tdolny@airdberlis.com

Counsel for the Receiver, KSV Restructuring
Inc.

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Court File No.: _____

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM COURT OF APPEAL FOR ONTARIO)**

BETWEEN:

**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,
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INC., GO-TO VAUGHAN ISLINGTON AVENUE LP,
AURORA ROAD LIMITED PARTNERSHIP AND 2506039 ONTARIO LIMITED**

Applicants (Respondents)

- and -

ONTARIO SECURITIES COMMISSION

Respondent (Appellant)

NOTICE OF APPLICATION FOR LEAVE TO APPEAL
(Pursuant to s. 40(1) of the *Supreme Court Act*, RSC, 1985, c S-26 and
Rule 25 of the *Rules of the Supreme Court of Canada*)

TAKE NOTICE that the Applicants, 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 apply for leave to appeal to the Court, pursuant to section 40(1) of the *Supreme Court Act*, R.S.C. 1985, c. S-26, as amended (the “***Supreme Court Act***”), and Rule 25 of the *Rules of the Supreme Court of Canada*, SOR/2002-156 from the judgment of the Court of Appeal for Ontario, File No. C70114, made on April 28, 2022, and for an order granting the application for leave to appeal or any further or other order that the Court may deem appropriate.

AND FURTHER TAKE NOTICE that this application for leave to appeal is made on the following grounds:

1. As discussed in the Memorandum of Argument, the proposed appeal raises the following issues of national and public importance within the meaning of section 40(1) of the *Supreme Court Act*:
 - a. Is it consistent with principles of natural justice and procedural fairness for the Ontario Securities Commission (the “**Commission**”) to be permitted to move on short notice for a final order from the court for the appointment of a receiver, contrary to the statutory scheme under s. 129 of the *Securities Act*, R.S.O. 1990, c. S.5, thereby denying the respondents an opportunity to respond to the case against them?

- b. Should Staff of the Commission be permitted to circumvent the effect of a decision of their own Tribunal by arguing against it in an unrelated court proceeding?

DATED AT Toronto, Ontario this 27th day of June, 2022.



MILLER THOMSON LLP

40 King Street West, Suite 5800
Toronto ON M5H 3S1

Gregory Azeff

Tel: 416.595.2660

Email: gazeff@millerthomson.com

Monica Faheim

Tel: 416.597.6087

Email: mfaheim@millerthomson.com

-and-

CRAWLEY MACKEWN BRUSH LLP

Suite 800

179 John Street

Toronto, ON M5T 1X4

Alistair Crawley

Phone: 416.217.0806

Email: acrawley@cmblaw.com

Melissa Mackewn

Tel: 416.217.0220

Email: mmackewn@cmblaw.ca

Dana Carson

Phone: 416.217.0855

Fax: 416.217.0220

Email: DCarson@cmblaw.ca

Counsel for the Applicants

GOLDBLATT PARTNERS LLP

30 Metcalfe Street, Suite 500

Ottawa, Ontario, K1P 5L4

Colleen Bauman

Phone: 613.482.2463

Fax: 613.235.3041

Email: cbauman@goldblattpartners.com

Ottawa Agent for Counsel for the Applicants

ORIGINAL TO: THE REGISTRAR
301 Wellington Street
Ottawa, ON K1A 0J1

ONTARIO SECURITIES COMMISSION

20 Queen Street West, 22nd Floor
Toronto, ON M5H 3S8

Erin Hoult

Tel: 416.593.8290

Email: ehoult@osc.gov.on.ca

Braden Stapleton

Tel: 416.595.8903

Email: bstapleton@osc.gov.on.ca

Counsel for the Respondent

-and-

AIRD & BERLIS LLP

Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven L. Graff

Tel: 416.865.7726

Email: sgraff@airdberlis.com

Ian Aversa

Tel: 416.865.3082

Email: iaversa@airdberlis.com

Jeremy Nemers

Tel: 416.865.7724

Email: jnemers@airdberlis.com

Tamie Dolny

Tel: 647.426.2306

Email: tdolny@airdberlis.com

Counsel for the Receiver, KSV Restructuring
Inc.

NOTICE TO THE RESPONDENT OR INTERVENER: A respondent or intervener may serve and file a memorandum in response to this application for leave to appeal within 30 days after the day on which a file is opened by the Court following the filing of this application for leave to appeal or, if a file has already been opened, within 30 days after the service of this application for leave to appeal. If no response is filed within that time, the Registrar will submit this application for leave to appeal to the Court for consideration under section 43 of the *Supreme Court Act*.

SCHEDULE “A”

List of all reasons for judgment and orders from courts below:

- A. Order of the Honourable Justice Pattillo dated December 10, 2021
- B. Endorsement of Honourable Justice Pattillo dated December 10, 2021
- C. Order of the Honourable Justices Gillese, Miller and Coroza, Court of Appeal for Ontario, dated April 28, 2022 (C70114)
- D. Reasons for Decision of the Honourable Justices Gillese, Miller and Coroza, Court of Appeal for Ontario, dated April 28, 2022 (C70114), 2022 ONCA 328

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
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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

*Erin Hoult and Braden Stapleton, for the
Applicant*

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.

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.

Court File No. CV-21-00673521-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE
JUSTICE L. PATTILLO

)
)
)

FRIDAY, THE 10th
DAY OF DECEMBER, 2021



ONTARIO SECURITIES COMMISSION

- and -

Applicant

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

APPLICATION UNDER SECTIONS 126 AND 129 OF THE *SECURITIES ACT*, R.S.O. 1990, c. S.5, AS AMENDED

**ORDER
(appointing Receiver)**

THIS APPLICATION, made by the Ontario Securities Commission ("**OSC**") for an Order pursuant to sections 126 and 129 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the

"Act"), appointing KSV Restructuring Inc. ("**KSV**") as receiver and manager (in such capacity, the "**Receiver**") without security, of the real property listed on **Schedule "A"** hereto (the "**Real Property**") and all the other assets, undertakings and properties of each of the parties listed on **Schedule "B"** hereto (the "**Receivership Respondents**"), was heard this day by judicial videoconference via Zoom due to the COVID-19 emergency.

ON READING the affidavit of Stephanie Collins sworn December 6, 2021 and the exhibits thereto (the "**Collins Affidavit**"), and on hearing the submissions of counsel for the OSC and counsel for the Respondents, and on reading the consent of KSV to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the notice of application and the application record is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

FREEZE DIRECTIONS

2. **THIS COURT ORDERS** that the Freeze Directions issued by the OSC to Oscar Furtado and RBC Direct Investing on December 6, 2021, copies of which are attached at **Schedule "C"** hereto, shall continue until further order of this Court or until the OSC revokes the Freeze Directions or consents to release funds, securities or property from the Freeze Directions.

APPOINTMENT

3. **THIS COURT ORDERS** that pursuant to section 129 of the Act, KSV is hereby appointed Receiver, without security, of the Real Property and all the other assets, undertakings and properties of each of the Receivership Respondents, including all of the assets held in trust or required to be held in trust by or for any of the Receivership Respondents, or by their lawyers, agents and/or any other Person (as defined below), and all proceeds thereof (together with the Real Property, the "**Property**").

RECEIVER'S POWERS

4. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate and carry on the business of any of the Receivership Respondents, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business or cease to perform any contracts of any of the Receivership Respondents;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of any of the Receivership Respondents or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to any of the Receivership Respondents and to exercise all remedies of any

of the Receivership Respondents in collecting such monies, including, without limitation, to enforce any security held by any of the Receivership Respondents;

- (g) to settle, extend or compromise any indebtedness owing to any of the Receivership Respondents;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of any of the Receivership Respondents, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to any of the Receivership Respondents, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) with the approval of this Court, to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, and, in each such case, notice under subsection 63(4) of the Ontario *Personal Property Security Act* or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;
- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental or regulatory authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of any of the Receivership Respondents;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of any of the Receivership Respondents, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by any of the Receivership Respondents;
- (q) to exercise any shareholder, partnership, joint venture or other rights which any of the Receivership Respondents may have;
- (r) to examine under oath any person the Receiver reasonably considers to have knowledge of the affairs of the Receivership Respondents, including, without limitation, any present or former director, officer, employee or any other person registered or previously registered with the OSC or subject to or formerly subject to the jurisdiction of the OSC or any other regulatory body respecting or having jurisdiction over any of the Property and the affairs of any of the Receivership Respondents; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Receivership Respondents, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. **THIS COURT ORDERS** that (i) each of the Receivership Respondents, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

6. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not required, to take possession and control of any monies, funds, deposit instruments, securities, or other Property held by or in the name of any of the Receivership Respondents, or by any third party for the benefit of any of the Receivership Respondents.

7. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of any of the Receivership Respondents, or the Property, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 7 or in paragraph 8 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

8. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

9. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days' notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

10. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST ANY OF THE RECEIVERSHIP RESPONDENTS OR THE PROPERTY

11. **THIS COURT ORDERS** that no Proceeding against or in respect of any of the Receivership Respondents or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of any of the Receivership Respondents or the Property are hereby stayed and suspended pending further Order of this Court, provided that nothing herein shall prevent the commencement or continuation of any investigation or proceedings in respect of the Receivership Respondents, or any of them, by or before the OSC and its enforcement staff.

NO EXERCISE OF RIGHTS OR REMEDIES

12. **THIS COURT ORDERS** that all rights and remedies against any of the Receivership Respondents, the Receiver or affecting the Property are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), and further provided that nothing in this paragraph shall (i) empower the Receiver or the Receivership Respondents to carry on any business which the Receivership Respondents are not lawfully entitled to carry on, (ii) exempt the Receiver or the Receivership Respondents from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

13. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by any of the Receivership Respondents, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

14. **THIS COURT ORDERS** that all Persons having oral or written agreements with any of the Receivership Respondents or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data

services, centralized banking services, payroll services, insurance, transportation services, utility or other services to any of the Receivership Respondents are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Receivership Respondents' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Receivership Respondents or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

15. **THIS COURT ORDERS** that all funds, monies, cheques, instruments and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including, without limitation, the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

16. **THIS COURT ORDERS** that all employees of the Receivership Respondents, if any, shall remain the employees of the Receivership Respondents until such time as the Receiver, on the Receivership Respondents' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA AND ANTI-SPAM LEGISLATION

17. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Receivership Respondents, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

18. **THIS COURT ORDERS** that any and all interested stakeholders in this proceeding and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in this proceeding, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to such other interested stakeholders in this proceeding and their counsel and advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

LIMITATION ON ENVIRONMENTAL LIABILITIES

19. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste

or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act* or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

20. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

21. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

23. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

24. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

25. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

26. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "D"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

27. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SEALING

28. **THIS COURT ORDERS** that the OSC is authorized to redact any Personal Information (as defined below) contained in the exhibits to the Collins Affidavit (as so redacted, the “**Redacted Exhibits**”) and file with the Court the Collins Affidavit with the Redacted Exhibits. “Personal Information” means information about an identifiable individual, including, but not limited to, the following: (i) social insurance number; (ii) driver’s license number; (iii) passport number; (iv) license plate number; (v) health plan number; (vi) date of birth; (vii) address (not including city or province); (viii) telephone number; and (ix) bank or trading account number (including a joint account). For greater certainty, “Personal Information” does not include an individual’s name or the title, contact information, or designation of an individual in a business, professional, or official capacity.

29. **THIS COURT ORDERS** that the OSC shall file with the Court the Collins Affidavit without exhibits pending filing of the Redacted Exhibits with the Court. The OSC shall file the Redacted Exhibits with the Court as soon as reasonably practicable.

30. **THIS COURT ORDERS** that the OSC is authorized to deliver the Collins Affidavit containing the unredacted exhibits to each of the following parties and its respective lawyers: the Receiver and the Respondents (each such party, a “**Recipient**”). Each Recipient shall keep the unredacted exhibits to the Collins Affidavit confidential and shall not disclose the unredacted exhibits to the Collins Affidavit to any other party without further order of the Court.

31. **THIS COURT ORDERS** that the unredacted exhibits to the Collins Affidavit shall be sealed, kept confidential and shall not form part of the public record pending further Order of the Court.

SERVICE AND NOTICE

32. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil*

Procedure (the "**Rules**") this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <https://www.ksvadvisory.com/experience/case/go-to>.

33. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding a notice with a link to the Case Website by email, ordinary mail, courier, personal delivery or facsimile transmission to the Receivership Respondents' creditors or other interested parties at their respective addresses as last shown on the records of the Receivership Respondents and that any such service or distribution by email, courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

34. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

35. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of any of the Receivership Respondents.

36. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

37. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located,

for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

38. **THIS COURT ORDERS** that the Receiver may engage as its legal counsel Aird & Berlis LLP, notwithstanding that Aird & Berlis LLP has had an advisory role with respect to the OSC in connection with this proceeding.

39. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

40. **THIS COURT ORDERS** that this Order is effective from the date on which it is made, and is enforceable without any need for entry and filing.



SCHEDULE "A"
REAL PROPERTY

1. 527 Glendale Avenue
St. Catharines, ON
PIN: 46415-0949
2. 185 Major MacKenzie Drive East
Richmond Hill, ON
PIN: 03139-0047
3. 197 Major MacKenzie Drive East
Richmond Hill, ON
PIN: 03139-0049
4. 209 Major MacKenzie Drive East
Richmond Hill, ON
PIN: 03139-0051
5. 191 Major MacKenzie Drive East
Richmond Hill, ON
PIN: 03139-0048
6. 203 Major MacKenzie Drive East
Richmond Hill, ON
PIN: 03139-0050
7. 215 Major MacKenzie Drive East
Richmond Hill, ON
PIN: 03139-0052
8. 4210 Lyons Creek Road
Niagara Falls, ON
PIN: 64258-0110
9. 4248 Lyons Creek Road
Niagara Falls, ON
PIN: 64258-0713
10. 2334 St. Paul Avenue
Niagara Falls, ON
PIN: 64269-0559
11. 355 Adelaide Street West
Toronto, ON
PIN: 21412-0150

12. 46 Charlotte Street
Toronto, ON
PIN: 21412-0151
13. Highland Road
Hamilton, ON
PIN: 17376-0025
14. Upper Centennial Parkway
Hamilton, ON
PIN: 17376-0111
15. 19 Beard Place
St. Catharines, ON
PIN: 46265-0022
16. 7386 Islington Avenue
Vaughan, ON
PIN: 03222-0909
17. 4951 Aurora Road
Stouffville, ON
PIN: 03691-0193

SCHEDULE "B"
RECEIVERSHIP RESPONDENTS

1. GO-TO DEVELOPMENTS HOLDINGS INC.
2. FURTADO HOLDINGS INC.
3. GO-TO DEVELOPMENTS ACQUISITIONS INC.
4. GO-TO GLENDALE AVENUE INC.
5. GO-TO GLENDALE AVENUE LP
6. GO-TO MAJOR MACKENZIE SOUTH BLOCK INC.
7. GO-TO MAJOR MACKENZIE SOUTH BLOCK LP
8. GO-TO MAJOR MACKENZIE SOUTH BLOCK II INC.
9. GO-TO MAJOR MACKENZIE SOUTH BLOCK II LP
10. GO-TO NIAGARA FALLS CHIPPAWA INC.
11. GO-TO NIAGARA FALLS CHIPPAWA LP
12. GO-TO NIAGARA FALLS EAGLE VALLEY INC.
13. GO-TO NIAGARA FALLS EAGLE VALLEY LP
14. GO-TO SPADINA ADELAIDE SQUARE INC.
15. GO-TO SPADINA ADELAIDE SQUARE LP
16. GO-TO STONEY CREEK ELFRIDA INC.
17. GO-TO STONEY CREEK ELFRIDA LP
18. GO-TO ST. CATHARINES BEARD INC.
19. GO-TO ST. CATHARINES BEARD LP
20. GO-TO VAUGHAN ISLINGTON AVENUE INC.
21. GO-TO VAUGHAN ISLINGTON AVENUE LP
22. AURORA ROAD LIMITED PARTNERSHIP
23. 2506039 ONTARIO LIMITED

SCHEDULE "C"
FREEZE DIRECTIONS

See attached.



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

22nd Floor
20 Queen Street West
Toronto ON M5H 3S8

22^e étage
20, rue queen ouest
Toronto ON M5H 3S8

**IN THE MATTER OF THE *SECURITIES ACT*
R.S.O. 1990, c. S.5, AS AMENDED**

- AND -

**IN THE MATTER OF GO-TO DEVELOPMENTS HOLDINGS INC.,
OSCAR FURTADO, and FURTADO HOLDINGS INC.**

**FREEZE DIRECTION
(Sections 126(1)(b) and 126(1)(c))**

TO: Oscar Furtado (DOB: July 15, 1962)
2354 Salcome Drive
Oakville, Ontario
L6H 7N3

RE: Proceeds of sale of units of Go-To limited partnerships

TAKE NOTICE THAT pursuant to paragraph 126(1)(b) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), you are directed to refrain from withdrawing any funds, securities or property: that constitute or are derived from the proceeds of, or are otherwise related to the sale of units in any limited partnership related to Go-To Developments Holdings Inc. ("GTDH"), from another person or company who has them on deposit, under control or for safekeeping; and, without limiting the generality of the foregoing, in RBC Direct Investing account no. 685-92809-2-4 ("RBC Direct Account"); and to hold these funds, securities or property until the Ontario Securities Commission in writing revokes or varies this Direction or consents to release a particular fund, securities or property from this Direction or until the Ontario Superior Court of Justice orders otherwise.

AND TAKE FURTHER NOTICE that pursuant to paragraph 126(1)(c) of the Act, you are directed to maintain funds, securities or property: that constitute or are derived from the proceeds of, or are otherwise related to the sale of units in any limited partnership related to GTDH; and, without limiting the generality of the foregoing, in the RBC Direct Account; and you are directed to refrain from disposing of, transferring, dissipating or otherwise dealing with or diminishing the value

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of those funds, securities or property until the Ontario Securities Commission in writing revokes or varies this Direction or consents to release a particular fund, security or property from this Direction or until the Ontario Superior Court of Justice orders otherwise, except that you may dispose of securities or derivatives already held in the RBC Direct Account provided that any disposition occurs through the facilities of a recognized exchange and all proceeds of such sales are maintained in the RBC Direct Account.

DATED at Toronto, Ontario this 6th day of December, 2021.

"Timothy Moseley"



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

22nd Floor
20 Queen Street West
Toronto ON M5H 3S8

22^e étage
20, rue queen ouest
Toronto ON M5H 3S8

**IN THE MATTER OF THE *SECURITIES ACT*
R.S.O. 1990, c. S.5, AS AMENDED**

- AND -

**IN THE MATTER OF GO-TO DEVELOPMENTS HOLDINGS INC.,
OSCAR FURTADO, and FURTADO HOLDINGS INC.**

**FREEZE DIRECTION
(Section 126(1)(a))**

TO: The Manager
RBC Direct Investing Inc.
200 Bay Street
P.O. Box 75
Toronto, ON M5J 2Z5

RE: FURTADO, Oscar
Account No. 685-92809-2-4
(CAD and USD)

TAKE NOTICE that pursuant to paragraph 126(1)(a) of the *Securities Act*, R.S.O. 1990, c. S. 5, as amended (the "Act"), RBC Direct Investing Inc. ("RBC Direct") is directed to retain any funds, securities or property that it has on deposit or under its control or for safekeeping in the name of or otherwise under the control of Oscar Furtado, including any funds, securities or property on deposit in account no. 685-92809-2-4 (the "Account"), and hold the funds, securities or property until the Ontario Securities Commission in writing revokes or varies this Direction or consents to release a particular fund, securities or property from this Direction or until the Ontario Superior Court of Justice orders otherwise, with the exception that securities or derivatives already held in the Account may be sold provided that any disposition occurs through the facilities of a recognized exchange and all proceeds of such sales are maintained in the Account.

AND TAKE FURTHER NOTICE THAT this Direction applies to any and all funds, securities or property in a recognized clearing agency and to any and all securities in the process of transfer by a transfer agent.

AND TAKE FURTHER NOTICE THAT this Direction may be served by e-mail, fax or courier to the above-noted address for and the last known address of the parties named in this Direction in the records of RBC Direct.

DATED at Toronto, Ontario this 6th day of December, 2021.

Timothy Moseley

SCHEDULE "D"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that KSV Restructuring Inc., the receiver and manager (the "**Receiver**") of the real property listed on Schedule "A" of the Receivership Order (as defined below) (the "**Real Property**") and all the other assets, undertakings and properties of each of the parties listed on Schedule "B" of the Receivership Order (the "**Receivership Respondents**"), including all of the assets held in trust or required to be held in trust by or for any of the Receivership Respondents, or by their lawyers, agents and/or any other Person (as defined in the Receivership Order), and all proceeds thereof (together with the Real Property, the "**Property**"), appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 9th day of December, 2021 (the "**Receivership Order**") made in an application having Court file number CV-21-00673521-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$_____, being part of the total principal sum of \$250,000.00 which the Receiver is authorized to borrow under and pursuant to the Receivership Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the_____day of each month] after the date hereof at a notional rate per annum equal to the rate of_____per cent above the prime commercial lending rate of Bank of_____from time to time.

3. Such principal sum with interest thereon is, by the terms of the Receivership Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Receivership Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Receivership Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Receivership Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Receivership Order.

DATED the _____ day of _____, 20_.

KSV Restructuring Inc., solely in its capacity as
Receiver of the Property, and not in its personal
capacity

Per: _____

Name:

Title:

ONTARIO SECURITIES COMMISSION

Applicant

GO-TO DEVELOPMENTS HOLDINGS INC., ET AL.

Respondents

Court File No. CV-21-00673521-00CL

	<p><i>ONTARIO</i> SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)</p> <p>Proceedings commenced at Toronto</p>
	<p>ORDER (appointing Receiver)</p>
	<p>Ontario Securities Commission 20 Queen Street West, 22nd Floor Toronto, ON M5H 3S8</p> <p>Erin Hault (LSO No. 54002C) Tel.: (416) 593-8290 Email: ehault@osc.gov.on.ca</p> <p><i>Lawyers for the Ontario Securities Commission</i></p>

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 Hoult, 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.

J. A. Corroza

J. A.

S. Corroza J.A.

COURT OF APPEAL FOR ONTARIO

THE HONOURABLE JUSTICE GILLESE)

THURSDAY, THE 28th

THE HONOURABLE JUSTICE MILLER)


DAY OF APRIL, 2022

THE HONOURABLE JUSTICE COROZA)

BETWEEN:

ONTARIO SECURITIES COMMISSIONApplicant
(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)**ORDER**

THIS APPEAL, brought by the Appellants, 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, from the Order of the Honourable Justice Pattillo of the Ontario Superior Court of Justice (*Commercial List*), dated December 10, 2021, and Motion brought by the Respondent, the Ontario Securities Commission, to introduce fresh evidence (the “**Motion**”) were heard on April 13, 2022 at 130 Queen Street West, Toronto, Ontario.

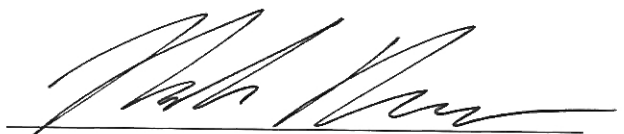
ON READING the Notice of Appeal dated December 14, 2021, Appeal Book and Compendium, Factum and Book of Authorities of the Appellants, each dated January 13, 2022, Certificate of Perfection filed January 14, 2022, Supplementary Book of Authorities of the Appellants dated April 8, 2022, Respondent’s Compendium and Factum of the Ontario Securities Commission, both dated March 14, 2022, Motion Record and Factum of the Ontario Securities Commission, both dated March 10, 2022, Responding Motion Record and Factum of the Appellants, both dated April 4, 2022, and Respondent’s Oral Argument Compendium dated April 7, 2022, and on hearing submissions from counsel to the Appellants and the Respondent,

1. THIS COURT ORDERS that the Motion is hereby granted.
2. THIS COURT ORDERS that the Appeal is hereby dismissed, without costs.

ENTERED AT / INSCRIPT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

June 23, 2022

PER / PAR: *MD*


Registrar Court of Appeal for Ontario

ONTARIO SECURITIES COMMISSION -and- GO-TO DEVELOPMENTS HOLDINGS INC., et al.	
Applicant	Respondents
(Respondent)	(Appellants)

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Toronto

ORDER

MILLER THOMSON LLP

Scotiabank Plaza
40 King Street West, Suite 5800
Toronto Ontario
PO Box 1011
M5H 3S1

Gregory Azeff LSO#: 45324C

Tel: 416.595.2660

Email: gazeff@millerthomson.com

Monica Faheim, LSO#: 82213R

Tel: 416.597.6087

Email: mfaheim@millerthomson.com

Lawyers for the Appellants

MEMORANDUM OF ARGUMENT

PART I – OVERVIEW OF POSITION AND STATEMENT OF FACTS

Overview

1. The lack of procedural fairness afforded to the Applicants, Oscar Furtado and the related Go-To limited partnerships (together, “**Furtado**” or the “**Applicants**”), in this case would offend most people and undermine their confidence in the independence of the courts when reviewing the actions of the Ontario Securities Commission (the “**Commission**”). Furtado has lost his business and had his reputation irreparably impugned without ever having had an opportunity to be heard.
2. Furtado’s property development business was put into receivership at the request of the Commission. The Commission moved on short (less than 3 days, versus the usual 10 days) notice, despite the fact that Commission Staff (“**Staff**”) had been investigating the matter for two years and no immediate urgency was identified. Furtado’s counsel determined that he could not act in the receivership proceeding, except for the limited purpose of seeking an adjournment, given his law firm’s role in the underlying real estate transactions. Furtado made it clear that he wished to defend the proceeding and that the appointment of a receiver would be detrimental to investors.
3. An adjournment was sought (so that counsel could be retained) and denied. The application judge, Pattillo J., made highly prejudicial findings of fact based on the Commission’s one-sided record while Furtado was not afforded the opportunity to cross-examine on Staff’s affidavit or to file evidence or argument of his own. Justice Pattillo issued a final order appointing a receiver (the “**Receivership Order**”). Such orders are extraordinary and, once made, set into play a chain of events that are the “death knell” for the entities supplanted by the receiver.
4. The Ontario *Securities Act*, R.S.O. 1990, c. S.5 (the “**Securities Act**”) provides that the Commission can apply for the appointment of a receiver on an *ex parte* basis, in which case an

interim 15-day order is made with a comeback clause. The onus at the comeback attendance remains with the Commission. Or, the Commission can move on 10 days' notice in accordance with the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 (the “**Rules**”). There is no other option.

5. Yet, in this case, the Commission did neither. It moved on short notice for a final order and, thereafter, successfully opposed Furtado's reasonable adjournment request which included an agreement to have a monitor appointed and a consent continuation of the Commission's asset freeze direction.

6. The Court of Appeal has previously made it clear that, where findings on the merits are made, respondents must be afforded a meaningful opportunity to respond. Furtado was given no such opportunity. The Court of Appeal's refusal to intervene in this case, and failure to insist that Furtado be afforded the rights of procedural fairness and natural justice, raises concerns of broad implication – the conduct was engaged in by Canada's largest securities regulator.

7. Further, in support of its application to appoint a receiver, the Commission publicly filed a record which included extensive excerpts from compelled testimony (the “**Transcripts**”) without first obtaining authorization from the Commission's adjudicative Tribunal (the “**Tribunal**”).¹ Commission Staff did so knowing that the legality of such conduct was to be determined in only one week's time in the *Sharpe* case. The Commission chose not to advise Pattillo J. that the matter was live before its own Tribunal, nor did it raise the issue with Furtado. Rather, Commission Staff assumed they would prevail in *Sharpe* and conducted themselves accordingly. They were wrong.

¹The Tribunal is now the Capital Markets Tribunal, an independent adjudicative body established by the [Securities Commission Act](#), 2021, S.O. 2021, c. 8, Sched. 9.

8. Between the issuance of the Receivership Order and the hearing of the appeal in this case, the Tribunal found, in *Sharpe*, that the Commission had breached the confidentiality provisions in the *Securities Act*. The *Sharpe* decision is squarely applicable to this case – it involves the exact same unlawful conduct in the context of a receivership application by the Commission.

9. Accordingly, the Receivership Order issued by Pattillo J. was grounded in evidence that was unlawfully filed with the Court by the Commission. Extraordinarily and impermissibly, Commission Staff, through newly retained outside counsel, argued in the Appeal that their own adjudicative Tribunal got it wrong in *Sharpe*. The Court of Appeal was again untroubled by this conduct and “declined” to address the issue on the basis that Furtado had not raised it before the Application Judge. The Court’s refusal to address the issue permitted Staff to engage in a collateral attack on the decision of its own Tribunal.

10. This was an egregious error evidencing the consistently deferential approach afforded to the Commission by the courts. It is a matter of broad public and national importance that this Court make it clear that regulators are expected to comply with the terms of the legislation they are, by statute, authorized to administer and that private litigants are entitled to expect that they will be afforded basic rights of procedural fairness and natural justice by our courts, even when regulators are the moving parties.

11. Equally, it is of broad public and national importance that Commission Staff be required to follow the decisions of their own Tribunal in interpreting its home statute. The Court of Appeal permitted the Commission to take a contrary position to the statutory Tribunal and tacitly endorsed the Commission’s non-disclosure of the Transcripts issue to the Application Judge.

Statement of Facts

The Receivership Order

12. Prior to the issuance of the Receivership Order, Furtado and the Go-To Entities operated a property development business.² Beginning in April 2019, Staff of the Commission commenced an investigation into Furtado and certain Go-To Entities under section 11 of the *Securities Act* (the “**Investigation**”). During the Investigation, Staff compelled Furtado to attend three separate interviews to provide evidence between September 2020 and July 2021 (together, the “**Compelled Interviews**”).³

13. Nearly six months after the last of the Compelled Interviews, without any warning or articulated urgency, Staff gave Furtado notice on December 6, 2021 of the Commission’s application seeking the appointment of a receiver and manager over the Go-To Entities pursuant to s. 129 of the *Securities Act*. The application was returnable less than three days later.⁴ The same day, Staff obtained two *ex parte* freeze directions from the Chair of the Commission (acting in his executive capacity) freezing funds associated with the Go-To Entities and those held in Furtado’s investment account (the “**Freeze Directions**”).⁵

14. In support of the receivership application, Commission Staff filed a 30 page affidavit that was over 1,900 pages long with exhibits (the “**Collins Affidavit**”), and appended 206 pages from the Transcripts from Furtado’s confidential Compelled Interviews and excerpts from transcripts

² Affidavit of Oscar Furtado sworn December 14, 2021 (“**Furtado Affidavit**”) at paras. 4-5, Application for Leave to Appeal Record (“**AR**”) Tab 6.

³ Furtado Affidavit at para. 12, AR Tab 6.

⁴ Notice of Application dated December 6, 2021, AR Tab 3.

⁵ Freeze Directions dated December 6, 2021 (“**Freeze Directions**”), AR Tab 4.

from the compelled interview of one other individual.⁶ Shortly thereafter, counsel for Furtado, acting on a limited scope retainer for the sole purpose of seeking an adjournment of the application hearing (due to his firm’s involvement in the impugned transactions), attempted to negotiate a short adjournment with Commission Staff to permit Furtado time to retain counsel to substantively respond to Staff’s very serious allegations.

15. In an effort to alleviate any perceived urgency of the application, Furtado proposed that the Freeze Directions would continue and that he would consent to an appointment of a monitor over the Go-To Entities pending the hearing of the application.⁷ However, Staff would not agree and the hearing proceeded in the afternoon of December 9, 2021, less than 72 hours after Furtado received notice of it.

16. In his decision dated December 10, 2021 (the “**Pattillo Decision**”), Justice Pattillo noted that Furtado “*disagrees with the Commission’s allegations, particularly that he misled Staff during the investigation and wants to respond.*”⁸ Nonetheless, he dismissed Furtado’s adjournment request, finding, with no factual foundation, that Furtado had “sufficient notice to file material.”⁹ Plainly, Furtado did not have such an opportunity.

17. Relying on the uncontested evidence contained in the Collins Affidavit, including the Transcripts, Justice Pattillo made a number of findings of fact that were of significant prejudice to

⁶ Collins Affidavit pp. 1 – 30 and Exhibits 7, 8, 26, 39, 54, 55, 58, 59, 60, 63, 71, 72, 73, 74, 75, 80, 81, 83, 88, 89, 90 and 91, pp. 61 – 93 and 136 – 167, 760 – 775, 974 – 996, 1111 – 1121, 1160 – 1173, 1185 – 1189, 1259 – 1285, 1324 – 1340, 1344 – 1347, 1365 – 1449, AR Tab 5.

⁷ Furtado Affidavit at para. 26, AR Tab 6.

⁸ Decision of Justice Pattillo dated December 10, 2021 at para. 3 (“**Pattillo Decision**”), AR Tab 1A.

⁹ Pattillo Decision at paras. 5-6, AR Tab 1A.

Furtado.¹⁰ Based on these findings, Justice Pattillo granted the Receivership Order¹¹, which was final, and Furtado was effectively precluded from challenging or otherwise reopening the decision to appoint a receiver by the doctrine of *res judicata*.¹²

18. Importantly, the Receivership Order was also not subject to the requirement that Staff make any further motion to the court to continue it after an initial 15 day period, as would have been the case if the application had been brought *ex parte*.¹³ In the latter circumstance, the onus would have been on Staff to demonstrate the appropriateness of the order, not on Furtado to demonstrate why it should not stand.

The Sharpe Decision – Released on March 30, 2022

19. The *Sharpe* application was heard by the adjudicative Tribunal of the Commission on December 16, 2021, one week after the receivership hearing in this case. The key issue before the Tribunal was whether the Commission, through Staff, had unlawfully publicly disclosed transcripts from Mr. Sharpe’s compelled investigative interviews in the court record in support of an application for the appointment of a receiver pursuant to s. 129 of the *Securities Act*. As conceded by Staff, the issue raised in the application was novel.¹⁴

¹⁰ Pattillo Decision at para. 24, AR Tab 1A.

¹¹ Shortly after the issuance of the Receivership Order, Furtado brought an urgent motion for a stay before the Court of Appeal for Ontario heard on December 24, 2021. The motion was dismissed by Sossin J.A. on December 29, 2021: Endorsement of Sossin J.A. dated December 29, 2021, AR Tab 7.

¹² *Danyluk v. Ainsworth Technologies Inc.*, [2001 SCC 44](#).

¹³ [Securities Act](#), R.S.O. 1990, c.S.5, as amended (“*Securities Act*”) / *Valeurs Mobilières (Loi sur les)*, L.R.O. 1990, chap. S.5 (“*Loi sur les Valeurs Mobilières*”) at s. 129(3) and (4).

¹⁴ *Sharpe (Re)*, [2022 ONSC 3](#) at para. 114 [*Sharpe*].

20. In its decision released on March 30, 2022, the Tribunal found that the Commission had breached the *Securities Act* by publicly disclosing compelled evidence, without first obtaining a s. 17 order and rejected outright Staff’s suggestion that the prohibitions on public disclosure contained in the *Securities Act* do not apply to the Commission itself.¹⁵

21. In considering the competing interests at stake in determining whether compelled testimony can be disclosed, the Tribunal described the Commission’s powers of compulsion as “extraordinary” and held that the Commission was obligated to maintain all compelled evidence “in the highest degree of confidence” as the “*quid pro quo* in return for” such powers.¹⁶

22. The Tribunal’s decision in *Sharpe* relied heavily on jurisprudence of this Court addressing the privacy rights afforded to compelled witnesses, including *Deloitte & Touche LLP v. Ontario (Securities Commission)*.¹⁷ The Tribunal affirmed this Court’s directive in *Deloitte* that the Commission is “obligated to order disclosure *only to the extent necessary to carry out its mandate under the Act* (emphasis in the original)”¹⁸ and held that Staff’s attempt to bypass the mechanisms set out in s. 17 of the *Securities Act* improperly deprived the Tribunal of the ability to exercise control over the extent of the disclosure and to ensure that it was minimized.¹⁹ Further, the Tribunal categorially rejected Staff’s submission that the Commission, through Staff, was entitled

¹⁵ [Sharpe](#), *supra* at paras. 5 and 35.

¹⁶ [Sharpe](#), *supra* at paras. 50-51 and 54, citing *Black (Re)*, [\(2007\) 31 OSCB 10397](#) [*Black*].

¹⁷ *Deloitte & Touche LLP v. Ontario (Securities Commission)*, [2003 SCC 61](#) [*Deloitte*].

¹⁸ [Sharpe](#), *supra* at para. 59, citing [Deloitte](#) at para. 29.

¹⁹ [Sharpe](#), *supra* at para. 68.

to, itself, determine the appropriate use and disclosure of compelled testimony in “furthering its public interest mandate.”²⁰

The Appeal Decision

23. The appeal of the Receivership Order was heard by Gillese, Miller and Coroza JJ.A. on April 13, 2022.

24. In Furtado’s factum dated January 13, 2022, in addition to raising arguments more broadly regarding the lack of procedural fairness afforded in this case, Furtado submitted that Pattillo J. erred at law in admitting and considering the Transcripts because they were protected by the confidentiality provisions set out at s. 16 of the *Securities Act* and that Staff had filed them improperly without having first obtained a s. 17 order from the Commission.²¹

25. In its responding factum dated March 14, 2022, Commission Staff argued, as they had in *Sharpe*, that they were not subject to s. 16 of the *Securities Act* and could use compelled evidence as they saw fit, based on their own conception of the public interest.²²

26. In his factum dated April 4, 2022 responding to the Commission’s fresh evidence motion before the Court of Appeal, Furtado, relying on the recently-decided *Sharpe* case, again raised the fact that the Receivership Order had been granted based on a record replete with compelled evidence (the Transcripts) which was unlawfully before Justice Pattillo.²³ Remarkably, on the

²⁰ *Sharpe*, *supra* at para. 62, citing *A. v. Ontario (Securities Commission)*, [2006 CanLII 14414](#) (ON SC) at paras. 44, 57.

²¹ Factum of the Appellants dated January 13, 2022 at paras. 49–63, AR Tab 8.

²² Factum of the Respondent Ontario Securities Commission dated March 14, 2022 at paras. 38 – 51, AR Tab 10.

²³ Responding Factum of the Appellants dated April 4, 2022 at paras. 9 and 20–29, AR Tab 11.

appeal, the Commission retained outside counsel to re-argue the positions rejected by the Tribunal in *Sharpe* on the basis that the Tribunal got it wrong.

27. On April 28, 2022, the Court of Appeal released its Reasons for Decision dismissing Furtado’s appeal (the “**Reasons**”).²⁴ In the Reasons, the Court of Appeal failed to address the glaring lack of procedural fairness and natural justice at first instance, wherein Furtado was unable to mount a full answer and defence due the Commission’s short service of the Receivership Application.

28. Further, the Court of Appeal declined to address the issue of the unlawful filing of the Transcripts on the basis that Furtado did not object before Justice Pattillo.²⁵ Ironically, the Court of Appeal observed that if the Transcripts issue had been raised, the “Commission may well have adduced evidence on the matter; the parties would have had the opportunity to squarely argue the matter ...”²⁶ The double standard applied by the Court of Appeal is palpable. The Court of Appeal could just as easily have granted Furtado’s appeal on the same basis.

29. The inconsistent approach taken by the Court of Appeal to the Commission on the one hand, the country’s largest securities regulator, and Furtado, a private citizen, on the other, is a matter of very serious concern and has profound legal implications in Canada.

²⁴ Court of Appeal for Ontario Reasons for Decision dated April 28, 2022 (“**ONCA Reasons**”), AR Tab 1C

²⁵ ONCA Reasons at para. 13, AR Tab 1C.

²⁶ ONCA Reasons at para. 15, AR Tab 1C.

PART II – QUESTIONS IN ISSUE

30. This case raises the following issues of national and public importance warranting guidance by this Court:

Issue One: Is it consistent with principles of natural justice and procedural fairness for the Commission to be permitted to move on short notice for a final order from the court for the appointment of a receiver, contrary to the statutory scheme under s. 129 of the *Securities Act*, thereby denying the respondents an opportunity to respond to the case against them?

Issue Two: Should Staff of the Commission be permitted to circumvent the effect of a decision of their own Tribunal by arguing against it in an unrelated court proceeding?

31. If leave is granted, the Supreme Court of Canada will be asked to order that the Receivership Application be directed to a new hearing on notice, based upon a record that complies with the confidentiality provisions of the *Securities Act*.²⁷ Furtado would consent to an interim order in the interests of investors on acceptable terms pending the disposition of the new hearing.

PART III – STATEMENT OF ARGUMENT

Issue One

Short Notice is Inconsistent with the Statutory Scheme

32. It is a fundamental precept of natural justice and due process in the Canadian judicial system that litigants receive adequate notice of the case against them.²⁸ This is particularly so in applications for the appointment of a receiver which is “extraordinary relief that should be granted

²⁷ The Court’s jurisdiction to hear this appeal is founded in sections 40(1) and 45 of the [Supreme Court Act](#), R.S.C. 1985, c. S-26, as amended.

²⁸ *I.W.A., Local 2-69 v. Consolidated Bathurst Packaging Ltd.*, [1990] 1 S.C.R. 282 at para. 23.

cautiously and sparingly.”²⁹ Notably, receivers appointed under the *Securities Act* are specifically empowered to liquidate, wind up or sell companies.³⁰ For these reasons, the “potentially devastating effects of granting a receivership order must always be considered, and, if possible, a remedy short of receivership should be used.”³¹

33. Despite this, there has been a rise in applications for receiverships and similar remedies brought by regulators on short or no notice. The courts have trended towards granting regulators undue deference and subjected their submissions to insufficient scrutiny. Notably, Staff has never been unsuccessful in seeking a receivership under s. 129 of the *Securities Act*.

34. Section 129 of the *Securities Act* affords the Commission the following options: (i) provide respondents with no notice in situations of true urgency in which case such respondents can avail themselves of the opportunity to respond to the case against them at the comeback hearing contemplated by s. 129(4), or (ii) require that adequate notice be provided in the regular course, being at least 10 days prior to the hearing of the application under the *Rules*.³²

35. There can be no justification for a third option of providing inadequate notice, leaving no opportunity to respond. That is contrary to the statutory scheme and principles of natural justice and procedural fairness. It is also fraught with risk for the Court to make a decision about whether

²⁹ *Romspen Investment Corp. v. 1514904 Ontario Ltd.*, [2010 ONSC 832](#) [*Romspen*] at para. 2; *Fisher Investments Ltd. v. Nusbaum* (1988), [31 C.P.C. \(2d\) 158 \(Ont. H.C.\)](#) [*Fisher*] at para. 8; *Cascade Divide Enterprises Inc. v. Laliberte*, [2013 BCSC 263](#) at para. 81.

³⁰ *Securities Act*, at s. 129(5) / *Loi sur les Valeurs Mobilières*, at s. 129(5).

³¹ *MTM Commercial Trust v. Statesman Riverside Quays Ltd.*, [2010 ABQB 647](#) at para 9.

³² [Rule 38.06\(3\)](#), *Rules of Civil Procedure*, RRO 1990, Reg 194.

a receivership is in the “best interests of investors” without receiving evidence and submissions from the party who is to be supplanted by the receiver.

36. A peculiarity of this case is that the Commission’s decision to proceed on short notice put Furtado in a worse position than if the Commission had proceeded *ex parte*. Had Staff moved *ex parte*, Furtado would have had an opportunity to respond to the case against him. Instead, the Commission engineered a scenario in which it was able to take advantage of its short service to obtain an uncontested final order based on unlawful evidence.

Final Orders Under s. 129 Require a Consideration of Both Sides of the Story

37. Unquestionably, a receivership is an extraordinary remedy with irreversible impact.³³ In an application for the appointment of a receiver under the *Securities Act*, the court is essentially being asked to grant a permanent remedy. In most cases, the company put into receivership is sold or wound up even before any enforcement proceedings before the Commission are concluded. The concerns raised by Furtado at the application hearing that appointing a receiver over the Go-To Entities would effectively be a “death-knell” are on track to be borne out in this case.³⁴

38. In general, in considering the appropriate length of notice, courts are required to look at relevant considerations in balancing competing interests, including, as a fundamental matter of procedural fairness, whether the responding party had a true and meaningful opportunity to respond.³⁵

³³ *Anderson v. Hunking*, [2010 ONSC 4008](#) at para. 15; *Fisher* [31 C.P.C. \(2d\) 158 \(Ont. H.C.\)](#), *supra* at paras. 7–8.

³⁴ Pattillo Decision at para. 28, AR Tab 1A.

³⁵ *Bank of Montreal v. Cadogan*, [2021 ONCA 405](#) at para. 8.

39. With respect to private litigants, there is voluminous jurisprudence admonishing the practice of short service. For example, in *Porter v. Anytime Custom Mechanical Ltd.*, the appellant received short notice (less than 24 hours) of an interlocutory injunction and was represented by counsel at the hearing who sought an adjournment to permit the appellant time to cross-examine on the respondent’s affidavit and file evidence of his own.³⁶ The court of first instance granted the adjournment but put a standstill order in place until the matter could be heard on the merits.

40. The Alberta Court of Appeal held that although the standstill order had “maybe [been] granted on some kind of notice, and not *ex parte* ... we must note the shortness of the notice. For all practical purposes, the order under appeal was in effect given *ex parte*.”³⁷ The Court of Appeal reasoned that “[t]he proper opportunity to respond refers to evidence too, not just a chance to make argument. Arguing against one-sided incomplete evidence is often a hopeless task.”³⁸

41. Similarly, in *Romspen*, the Ontario Superior Court of Justice granted the respondents’ request for an adjournment of an application brought on short notice to appoint a receiver pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, to permit them time to file materials and conduct cross-examinations, finding:

The appointment of a receiver/manager is a serious matter. A hasty appointment made without proper foundation could cause serious financial harm and prejudice to innocent investors and third parties – *Fisher Investments Ltd. v. Nusbaum* (1988), 31 C.P.C. (2d) 158 (Ont. H.C.).³⁹

³⁶ *Porter v. Anytime Custom Mechanical Ltd.*, [2007 ABCA 208](#) [*Porter*] at para. 4.

³⁷ *Porter*, *supra* at para. 18.

³⁸ *Porter*, *supra* at para. 22.

³⁹ *Romspen*, *supra* at para. 2.

42. Notably, the Court of Appeal for Ontario has criticized the overly “casual” manner in which the Commercial List has granted receivership orders in the civil context which, in one case, was found to have resulted in a “trampling” of procedural rights:⁴⁰

It bears noting, however, that if the matter had not proceeded through the numerous steps on an *ex parte* basis, as it did, it would have been less likely to have gone astray, as it did. The same may be said of the somewhat relaxed procedural approach taken to the proceedings. **Had the normally salutary processes of the Commercial List** -- carefully designed to permit the parties to get to the merits of a dispute and resolve them in “real time” without trampling their procedural rights -- **not been permitted to become overly casual, [page424] as they did**, the galloping nature of the receivership may well have been reined in.⁴¹ [emphasis added]

43. In this case, Pattillo J.’s determination that Furtado had an adequate opportunity to respond to the Receivership Application is devoid of any analysis and plainly indefensible. Further, the Pattillo Decision and the Court of Appeal’s refusal to engage in any meaningful analysis of Furtado’s ability to respond are particularly unfair given the numerous findings of fact made by Justice Pattillo. As held by the Court of Appeal for Ontario in *Qin v. Ontario Securities Commission*, a final decision requiring assessment of the ultimate merits requires explanations offered by the defence.⁴²

44. *Qin* also demonstrates the dangers of lowering the standard for granting orders sought by Staff. In that case, Justice Pattillo granted Staff’s application to continue freeze directions without granting the respondents an opportunity to adduce evidence to contradict Staff’s allegations.⁴³ However, following a hearing of the case on the merits, where both sides were heard, the

⁴⁰ *Akagi v. Synergy Group*, [2015 ONCA 368](#) [*Akagi*] at para. 94.

⁴¹ *Akagi*, *supra* at para. 94.

⁴² *Qin v. Ontario Securities Commission*, [2021 ONCA 165](#) [*Qin*] at para. 24.

⁴³ *OSC v. Future Solar*, [2015 ONSC 2334](#).

Commission Tribunal dismissed the case against the respondents.⁴⁴ The respondents then sued the Commission for malicious prosecution. The motions judge held that the respondents’ action was barred by the doctrine of issue estoppel as a result of the findings made by Justice Pattillo.⁴⁵

45. On appeal, Justice Doherty, delivering reasons for the Court of Appeal, held that issue estoppel did not apply because the findings made by Justice Pattillo were limited to satisfying a lower standard of establishing a “serious issue to be tried”, which justified not assessing exculpatory evidence. Crucially, to have made findings sufficient to satisfy the higher standard of “reasonable and probable grounds”, Justice Doherty reasoned that Justice Pattillo would have had to consider any exculpatory material tendered by the respondents/appellants.⁴⁶

46. The reasoning of the Court of Appeal in *Qin* is directly contrary to the decisions of Justice Pattillo and the Court of Appeal in this case. Justice Pattillo made unqualified findings against Furtado and ordered an extraordinary remedy with irreversible consequences, without even giving him an opportunity to file any exculpatory evidence, let alone consider and assess such evidence. The Court of Appeal has now approved that approach.

47. It is imperative that this Court intervene and direct that, as the statutory scheme prescribes, in receivership applications, respondents should either be provided with a “come back” date, as required for *ex parte* applications, or receive proper notice that allows them a realistic opportunity to respond. This direction would restore confidence in the courts as a neutral arbiter of the actions of the Commission and other administrative agencies.

⁴⁴ *Qin*, *supra* at para. 10.

⁴⁵ *Qin*, *supra* at para. 13.

⁴⁶ *Qin*, *supra* at para. 26.

Issue Two

Was the Commission Required to Follow its Own Tribunal's Interpretation of its Home Statute?

48. The Tribunal decided in *Sharpe* that the Commission had breached the *Securities Act* by publicly filing compelled evidence without prior authorization. The Commission had engaged in the exact same conduct vis-à-vis Furtado. On appeal, rather than concede the issue that had been decided by the Tribunal, the Commission retained outside counsel to attempt to re-argue the issue.

49. As a matter of law, the Commission was not permitted to challenge the validity of the Tribunal's decision in *Sharpe* in an unrelated proceeding. As recognized by this Court, parties must be prevented from circumventing the effect of decisions rendered against them by courts or administrative tribunals by challenging them in the wrong forum. Permitting Staff to do so resulted in an abuse of process.⁴⁷

50. Instead of addressing this serious issue, the Court of Appeal placed the onus on Furtado to have raised the matter with the Application Judge. This approach stands in troubling and direct contrast to the Tribunal's own expectation of Commission Staff and their duties under the *Securities Act*.⁴⁸

51. Additionally, Staff counsel, like all lawyers, are bound by professional obligations to raise relevant authorities with the court.⁴⁹ Lawyers' duties of candour have been specifically held to apply to the obligation to inform the court of relevant contradictory authorities, even where they

⁴⁷ *Toronto (City) v. C.U.P.E., Local 79*, [2003 SCC 63](#) at paras. 33-34 and 47; *Garland v. Consumers' Gas Co.*, [2004 SCC 25](#) at para. 71.

⁴⁸ *Sharpe*, *supra* at paras. 67 and 126-127.

⁴⁹ [Ontario Rules of Professional Conduct](#) s. 5.1-2; see also *Blake v. Blake*, [2019 ONSC 4062](#).

are non-binding.⁵⁰ These obligations apply to Staff given their authority – and duty – to administer the *Securities Act* in accordance with its provisions.⁵¹

52. Moreover, the Tribunal in *Sharpe* specifically confirmed Staff’s responsibility to raise the issue of the lawfulness of the public disclosure of compelled evidence with the court prior to its filing in circumstances where it is the only party in a position to raise the issue.⁵² Although the receivership application in *Sharpe* proceeded *ex parte*, this standard should apply in all cases as making lawful use of evidence compelled under the *Securities Act* is a statutory duty of Staff.

53. Only Staff was in a position to raise the issue with the court in the circumstances. Staff was well aware that the Commission’s disclosure of compelled testimony was a live issue in *Sharpe*. Then Vice-Chair, now Chief Adjudicator, Moseley had ordered that the legal question of whether “the Commission can publicly disclose compelled evidence obtained under a s. 11 order when it brings an application for the appointment of a receiver under s. 129 of the *Securities Act* without first obtaining a s. 17 order” was to be heard by the Tribunal on December 16, 2021.⁵³ The issue was notorious within the securities litigation bar and publicized widely.⁵⁴

54. Nonetheless, the Commission did not advise Justice Pattillo of the fact that the *Sharpe* application was pending before the Tribunal. Instead, it publicly filed and relied upon a record which included compelled evidence assuming that it would prevail in *Sharpe*, which it did not.

⁵⁰ *Kapoor v. The Law Society of Saskatchewan*, [2019 SKCA 85](#) at para. 29.

⁵¹ *Securities Act*, s. 3.2(2) / [Loi sur les Valeurs Mobilières](#), at s. 3.2(2).

⁵² *Sharpe*, *supra* at para. 67.

⁵³ *Sharpe*, *supra* at para. 3.

⁵⁴ The Globe and Mail, *Former Bridging Finance CEO seeks to quash OSC investigation* (July 2021), AR Tab 12.

The Receivership Order was Granted Based on an Unlawful Record and the Commission's Arguments on Appeal Foreshadow Future Unlawful Conduct

55. It is apparent that Justice Pattillo relied on the Transcripts in coming to his decision to grant the Receivership Order. By way of example, Justice Pattillo specifically found that: “The Commission’s evidence establishes Furtado ... Gave false and/or misleading evidence to Staff about his dealings with ASD and Furtado Holdings’ receipt of shares and money from ASD.”⁵⁵

56. A reasonable person informed of these facts would be concerned that the Court of Appeal on the one hand decided to shield the conduct of the Commission from review, notwithstanding the seriousness of the issue of the lawful use of compelled evidence, while on the other hand, was entirely dismissive of Furtado’s complaint that short service had deprived him of the opportunity to respond to the Commission’s allegations.

57. The Court of Appeal decision animates a double standard. It will give a license to the Commission and potentially other regulators who oversee the capital markets and financial services industry to bend the rules. Further, it is unclear whether the Commission intends to respect the Tribunal’s decision in *Sharpe*. Accordingly, evidentiary challenges will continue to be considerations for respondents in receivership applications brought by the Commission (and other securities regulators across the country).

58. It is matter of broad public importance for this Court to make clear that principles of procedural fairness and natural justice must be complied with when such applications are brought

⁵⁵ Pattillo Decision at para. 24(c), AR Tab 1A.

to the courts by regulators.⁵⁶ Such rights are not subject to deference and should not be compromised simply because the applicant is the Ontario Securities Commission as opposed to a private litigant.

Summary

59. Given the position of privilege and power imbalance enjoyed by Canadian regulatory authorities engaged in litigation, they ought to be held to at least the same standard of conduct as private litigants. There was absolutely no legitimate reason for the Commission to have proceeded as it did and deprive Furtado of his procedural and substantive rights, and less reason for the Superior Court and Court of Appeal for Ontario to allow this to happen.

60. In short, the Commission ambushed Furtado with incredibly voluminous materials and deprived him of his ability (and right) to effectively respond (including, in particular, through cross-examination). This is not the way the justice system is intended to function.

⁵⁶ Each of the provincial securities statutes have an equivalent to s. 129 in the Ontario [Securities Act / Loi sur les Valeurs Mobilières](#), at s. 129; [Securities Act](#), RSBC 1996, c 418 at s. 179.1; [Securities Act](#), RSA 2000, c S-4 at s. 48; [Securities Act](#), CCSM, c. S50 at s. 27(1) / [Loi sur les Valeurs Mobilières](#), C.P.L.M. c. S50; [Securities Act](#), SNB 2004, c S-5.5 at s. 188(1) / [Loi sur les Valeurs Mobilières](#), LN-B 2004, c S-5.5; [Securities Act](#), RSNL 1990, ch S-13. at s. 128.2; [Securities Act](#), ch 418, 1989 at a. 29D; [Securities Act – SPEI](#) 2007, c 17 at s. 37(1); [The Securities Act, 1988](#), SS 1988-89, c S-42.2 at s. 135.5; [Act Respecting the Regulation of the Financial Sector](#), E-6.1 at s. 19.1 / [Loi Sur L'encadrement Du Secteur Financier](#), chapitre E-3.1. Accordingly, this Court has an opportunity in this case to provide guidance to regulators across the country to discharge their duties to administer securities laws in a manner that is consistent with the principles of procedural fairness and natural justice.

61. Further, the result of Staff’s short service was to constrain the court’s supervisory function contemplated by the *Securities Act* – Staff’s election to proceed on insufficient notice meant that the court would only ever hear one side of a story that has two sides. Yet the importance of the court’s supervision is more important now than ever, given the recent grants of increasing powers to securities commissions across the country.⁵⁷

62. Furtado respectfully submits that this case raises key issues of: (i) such national and public importance, and (ii) such significance to the Applicants that leave to appeal to the Supreme Court of Canada should be granted.

PART IV – COSTS SUBMISSIONS

63. The Applicants seek their costs of this application for leave, and ultimately of the appeal here and throughout the courts below.

PART V – ORDER SOUGHT

64. For all of the above reasons, the Applicants seek an Order granting them leave to appeal to the Supreme Court of Canada from the Reasons for Decision of the Court of Appeal dated April 28, 2022, with costs.

⁵⁷ <https://www.bsc.bc.ca/about/media-room/news-releases/2020/19-landmark-changes-to-the-securities-act-set-to-take-effect>; see also recommendations of the Ontario Capital Markets Modernization Taskforce, calling for increase enforcement powers for the OSC: <https://files.ontario.ca/books/mof-capital-markets-modernization-taskforce-final-report-en-2021-01-22-v2.pdf>. The Ontario Government seeks to implement those recommendations in the proposed Capital Markets Act: <https://www.ontariocanada.com/registry/view.do?postingId=38527&language=en>. The draft act has been criticized for creating “sweeping new open-ended powers of enforcement” given to the new securities regulator: https://www.dwpv.com/-/media/Files/PDF_EN/2022/2022-02-18-Davies-Capital-Markets-Act-Comment-Letter.ashx]

All of which is respectfully submitted this 27th day of June, 2022.



Gregory R. Azeff / Monica Faheim
Miller Thomson LLP



Alistair Crawley / Melissa MacKewn / Dana Carson
Crawley MacKewn Brush LLP

Lawyers for the Applicants,

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Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N :

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

**APPLICATION UNDER
Sections 126 and 129 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended**

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following pages.

THIS APPLICATION will come on for a hearing

☒ By video conference

at the following location:

via Zoom meeting to be arranged by the Court, details of which will be provided when available;

on Thursday, December 9, 2021 at 2 p.m., or as soon after that time as the matter can be heard.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: December 6, 2021

Issued by

Local Registrar

Address of Court Office:

Commercial List Office,
9th Floor, 330 University Avenue,
Toronto, Ontario
M5G 1R7

**TO: Oscar Furtado
Furtado Holdings Inc.**

2354 Salcome Drive
Oakville, ON
L6H 7N3

**AND TO: Go-To Developments 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
2506039 Ontario Limited**

1267 Cornwall Road
Suite 301
Oakville, ON
L6J 7T5

APPLICATION

1. **THE APPLICANT MAKES APPLICATION FOR:**

- (a) Orders pursuant to section 129 of the *Securities Act*, R.S.O. 1990, c. S. 5, as amended (the **Act**), substantially in the form attached at Tab 5 of the application record, appointing KSV Restructuring Inc. (**KSV**) as receiver and manager (in such capacities, the **Receiver**), without security, of all of the assets, undertakings and properties (collectively, the **Property**) of each of the Respondents except Oscar Furtado (collectively, the **Go-To Respondents**), and all proceeds thereof;
- (b) Orders pursuant to section 126 of the Act continuing two freeze directions issued by the Ontario Securities Commission on December 6, 2021 (the **Directions**) in relation to assets held by Furtado, until further order of this Honourable Court or until the Commission revokes the Directions or consents to the release of assets from the Directions;
- (c) Orders, if necessary, abridging the time for service and filing of this Application or, alternatively, validating service of same, such that this Application is properly returnable on the date it is heard;
- (d) An order, if necessary, appointing KSV as interim Receiver of all the Property of the Go- To Respondents; and
- (e) Such further and other relief as counsel may advise and this Honourable Court permit.

2. THE GROUNDS FOR THE APPLICATION ARE:

Overview

- (a) This application arises from an investigation into a principal of a property development group (Furtado) who appears to have used his position to defraud investors and engage in undisclosed self-dealing to enrich himself. The Ontario Securities Commission (**Commission**) thus seeks the: (i) immediate appointment of the Receiver; and (ii) continuation of the Directions to preserve assets in Furtado's hands; to safeguard the best interests of stakeholders, and in the interests of the the due administration of Ontario securities law, and/or the regulation of the capital markets;
- (b) Furtado is the founder and directing mind of all the Go-To Respondents. He is an Ontario resident. Each of the Go-To Respondents are Ontario entities, whether corporations or limited partnerships (**LPs**), involved in real estate development;
- (c) Between 2016 and 2020, Furtado and Go-To Developments Holdings Inc. (**GTDH**) raised almost \$80 million from approximately 85 Ontario investors for nine projects, by selling LP units;
- (d) For each Go-To project, Furtado and GTDH set up an LP and a wholly-owned subsidiary of GTDH to act as the general partner (**GP**) (for one project, they set up two LPs and GPs). The projects contemplate development of land and/or of a variety of buildings, including condos, townhouses and single-family homes. No project has begun construction yet, although it appears one has begun site servicing;

- (e) Staff of the Enforcement Branch of the Commission (**Staff**) have been investigating the Go-To business, Furtado and others (the **Investigation**). The Investigation has uncovered evidence indicating that Furtado has engaged some of the Go-To Respondents in transactions to improperly divert partnership funds to his personal benefit, failed to act in the best interests of the Go-To Respondents or their stakeholders, and breached the Act in several ways, including by misleading Staff during the Investigation;

The Investigation & Breaches of the *Securities Act*

- (f) The Investigation has focused on, among other things, the Go-To business and potential breaches of the Act, including fraud, misleading statements to investors, and misleading Staff;
- (g) The Investigation has uncovered evidence that, among other things:
- (i) From February to October 2019, Furtado raised capital from investors for the Go-To Spadina Adelaide Square LP (**Adelaide LP**);
 - (ii) Commencing in or before April 2019, Furtado caused the Adelaide LP to undertake a number of transactions with Adelaide Square Developments Inc. (**ASD**) and others, which ultimately resulted in his personal holding company, Furtado Holdings Inc. (**Furtado Holdings**), receiving ASD shares and undisclosed payments of \$388,087.33 and \$6 million from ASD;
 - (iii) The transactions with ASD relate to the Adelaide LP's acquisition of two properties in downtown Toronto in April 2019, for which ASD had the purchase rights. As part of the acquisition, the Adelaide LP paid ASD a

\$20.95 million assignment fee. Less than 2 weeks later, Furtado Holdings received ASD shares and a \$388,087.33 payment from ASD, which were not disclosed to investors.

- (iv) Within a day of the property acquisitions, the Adelaide LP received a purported \$19.8 million loan from ASD (**Demand Loan**). The majority of the loan proceeds were paid to redeem the units of one Adelaide LP investor together with a significant return;
- (v) Furtado raised additional investor funds for the Adelaide LP in September and October 2019. On October 1, 2019, he used investor funds to pay \$12 million on the Demand Loan, even though no payment was due or demanded. The same day, ASD paid Furtado Holdings a \$6 million dividend. This payment was not disclosed to investors;
- (vi) Furtado's key contact for ASD was Alfredo Malanca. A holding company belonging to Malanca's spouse (AKM Holdings Inc. (**AKM**)) received the same quantum of shares and payments from ASD that Furtado Holdings received, on the same dates;
- (vii) Furtado continues to allow Malanca to be involved with the Adelaide LP project, and to further his, Malanca's and/or ASD's interests by:
 - (1) giving Malanca a Go-To email account under a different last name;

- (2) causing the Adelaide LP to accrue \$1.5 million in fees in 2020 for “development management services”, which are payable, in equal amounts, to GTDH and to AKM; and
 - (3) allowing the registration of a \$19.8 million charge for ASD on the Adelaide LP’s properties in June 2021;
- (viii) Furtado used the \$6 million Furtado Holdings received to, among other things:
 - (1) make investments in his personal investment account;
 - (2) pay personal expenses, including credit card bills; and
 - (3) provide funds to Go-To entities, which they then used to fund operating expenses and make payments to investors;
- (ix) Further, as part of the Adelaide LP’s acquisition of properties in April 2019, Furtado pledged the assets of two other Go-To LPs to secure obligations of the Adelaide LP, which was prohibited by the applicable LP agreements. He did not disclose this misuse of partnership assets to investors for more than a year, and only after he was questioned by Staff; and
- (x) Furtado has provided shifting, misleading evidence to Staff during examinations under oath, including about his contacts at ASD and the payments received by Furtado Holdings;

- (h) Fraud is among the most egregious violations of the Act. The Investigation has revealed evidence of misappropriation, undisclosed payments to Furtado, improper use and intermingling of partnership assets, and deception to conceal transactions from investors and from Staff of the Commission. Furtado's conduct has jeopardized the assets of the Go-To LPs and investors' interests;
- (i) Furtado also failed to provide complete and accurate information to Staff during the Investigation, including during examinations under oath;
- (j) The requirements to deal honestly with investors and to provide full and accurate information to the Commission are cornerstones of the Act's regulatory regime;

Need for a Receiver

- (k) Given Furtado's conduct and its effect on the Go-To Respondents and their assets, the appointment of the Receiver is in the best interests of investors and other stakeholders;
- (l) By his actions, Furtado has demonstrated that he lacks the necessary integrity to continue to control projects involving investor funds. The most effective way to safeguard the best interests of stakeholders and the integrity of Ontario's capital markets is to appoint the Receiver and remove Furtado from the positions of trust he occupies with the Go-To Respondents. This is especially so given that:
 - (i) The primary vehicle via which Furtado Holdings was improperly enriched, the Demand Loan payable to ASD, has an outstanding balance of several million dollars; and

- (ii) Furtado has allowed Malanca to remain involved in the Adelaide LP project;
- (m) Appointment of the Receiver is needed to ensure the Go-To business is in the hands of an honest, competent, and responsible custodian, and is appropriate for the due administration of Ontario securities law;

Continuation of the Directions is Reasonable and Expedient

- (n) As some of the \$6 million received by Furtado Holdings from ASD was used by Furtado to make investments in his personal investment account, Staff sought and on December 6, 2021, the Commission issued, the Directions;
- (o) Subject to the terms therein, the Directions essentially require:
 - (i) RBC Direct Investing Inc. to retain all funds, securities and property on deposit in investment accounts belonging to Furtado; and,
 - (ii) Furtado to maintain any funds, securities or property derived from Go-To investor funds, (collectively, the **Assets**);
- (p) Continuation of the Directions would be reasonable and expedient in the circumstances, having due regard to the public interest and,
 - (i) the due administration of Ontario securities law; and/or
 - (ii) the regulation of the capital markets in Ontario;
- (q) There is a serious issue to be tried with respect to possible contraventions of the Act by Furtado and others, including potential fraud;

- (r) The Assets subject to the Directions were obtained by Furtado using proceeds obtained from the conduct at issue. Alternatively, there is at least a basis to suspect that the Assets are connected to the conduct at issue;
- (s) The Directions are necessary for the due administration of Ontario securities law. The Directions preserve assets connected to the conduct in issue for the benefit of investors and prevent dissipation of those assets by Furtado, to ensure such assets are available in the event that enforcement proceedings are brought before the Commission;

Legislative provisions, etc.

- (t) Sections 1.1, 2.1(2), 44(2), 122, 126, 126.1, 129, and 129.2 of the Act;
- (u) Sections 135 and 137 of the *Courts of Justice Act*;
- (v) Rules 1.04, 2.03, 3.02, 14.05(2), 16.08 and 38 of the *Rules of Civil Procedure*; and
- (w) Such further and other grounds as counsel may advise and this Court may permit.

3. THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE APPLICATION:

- (a) the Affidavit of Stephanie Collins sworn December 6, 2021;
- (b) the Directions;
- (c) the Consent of KSV to act as Receiver; and
- (d) such further and other evidence as counsel may advise and this Honorable Court permit.

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December 6, 2021

ONTARIO SECURITIES COMMISSION

20 Queen Street West, 22nd Floor
Toronto, ON M5H 3S8

Erin Hault

LSO No. 54002C

Tel.: (416) 593-8290

Email: ehault@osc.gov.on.ca

Lawyers for the Ontario Securities Commission

ONTARIO SECURITIES COMMISSION
Applicant

- and -

GO-TO DEVELOPMENTS HOLDINGS INC. *et al.*
Respondents

<p>ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)</p> <p>Proceeding commenced at Toronto</p>	
<p>NOTICE OF APPLICATION (Application under sections 126 and 129 of the <i>Securities Act</i>)</p>	
<p>Ontario Securities Commission 20 Queen Street West, 22nd Floor Toronto, ON M5H 3S8</p> <p>Erin Hault (LSO No. 54002C) Tel.: (416) 593-8290 Email: ehault@osc.gov.on.ca</p> <p>Lawyers for the Ontario Securities Commission</p>	



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

22nd Floor
20 Queen Street West
Toronto ON M5H 3B8

22^e étage
20, rue queen ouest
Toronto ON M5H 3B8

**IN THE MATTER OF THE *SECURITIES ACT*
 R.S.O. 1990, c. S.5, AS AMENDED**

- AND -

**IN THE MATTER OF GO-TO DEVELOPMENTS HOLDINGS INC.,
 OSCAR FURTADO, and FURTADO HOLDINGS INC.**

**FREEZE DIRECTION
 (Sections 126(1)(b) and 126(1)(c))**

TO: Oscar Furtado (DOB: July 15, 1962)
 2354 Salcome Drive
 Oakville, Ontario
 L6H 7N3

RE: Proceeds of sale of units of Go-To limited partnerships

TAKE NOTICE THAT pursuant to paragraph 126(1)(b) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), you are directed to refrain from withdrawing any funds, securities or property that constitute or are derived from the proceeds of, or are otherwise related to the sale of units in any limited partnership related to Go-To Developments Holdings Inc. ("GTDH"), from another person or company who has them on deposit, under control or for safekeeping; and, without limiting the generality of the foregoing, in RBC Direct Investing account no. 685-92809-2-4 ("RBC Direct Account"); and to hold these funds, securities or property until the Ontario Securities Commission in writing revokes or varies this Direction or consents to release a particular fund, securities or property from this Direction or until the Ontario Superior Court of Justice orders otherwise.

AND TAKE FURTHER NOTICE that pursuant to paragraph 126(1)(c) of the Act, you are directed to maintain funds, securities or property that constitute or are derived from the proceeds of, or are otherwise related to the sale of units in any limited partnership related to GTDH; and, without limiting the generality of the foregoing, in the RBC Direct Account; and you are directed to refrain from disposing of, transferring, dissipating or otherwise dealing with or diminishing the value

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of those funds, securities or property until the Ontario Securities Commission in writing revokes or varies this Direction or consents to release a particular fund, security or property from this Direction or until the Ontario Superior Court of Justice orders otherwise, except that you may dispose of securities or derivatives already held in the RBC Direct Account provided that any disposition occurs through the facilities of a recognized exchange and all proceeds of such sales are maintained in the RBC Direct Account.

DATED at Toronto, Ontario this 6th day of December, 2021.

Timothy Moseley



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

22nd Floor
20 Queen Street West
Toronto ON M5H 3B8

22^e étage
20, rue queen ouest
Toronto ON M5H 3B8

**IN THE MATTER OF THE *SECURITIES ACT*
 R.S.O. 1990, c. S.5, AS AMENDED**

- AND -

**IN THE MATTER OF GO-TO DEVELOPMENTS HOLDINGS INC.,
 OSCAR FURTADO, and FURTADO HOLDINGS INC.**

**FREEZE DIRECTION
 (Section 126(1)(a))**

TO: The Manager
 RBC Direct Investing Inc.
 200 Bay Street
 P.O. Box 75
 Toronto, ON M5J 2Z5

RE: FURTADO, Oscar
 Account No. 685-92809-2-4
 (CAD and USD)

TAKE NOTICE that pursuant to paragraph 126(1)(a) of the *Securities Act*, R.S.O. 1990, c. S. 5, as amended (the "Act"), RBC Direct Investing Inc. ("RBC Direct") is directed to retain any funds, securities or property that it has on deposit or under its control or for safekeeping in the name of or otherwise under the control of Oscar Furtado, including any funds, securities or property on deposit in account no. 685-92809-2-4 (the "Account"), and hold the funds, securities or property until the Ontario Securities Commission in writing revokes or varies this Direction or consents to release a particular fund, securities or property from this Direction or until the Ontario Superior Court of Justice orders otherwise, with the exception that securities or derivatives already held in the Account may be sold provided that any disposition occurs through the facilities of a recognized exchange and all proceeds of such sales are maintained in the Account.

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AND TAKE FURTHER NOTICE THAT this Direction applies to any and all funds, securities or property in a recognized clearing agency and to any and all securities in the process of transfer by a transfer agent.

AND TAKE FURTHER NOTICE THAT this Direction may be served by e-mail, fax or courier to the above-noted address for and the last known address of the parties named in this Direction in the records of RBC Direct.

DATED at Toronto, Ontario this 6th day of December, 2021.

Timothy Moseley

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N :

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

APPLICATION UNDER
Sections 126 and 129 of the *Securities Act*, R.S.O. 1990 c. s.5, as amended

AFFIDAVIT OF STEPHANIE COLLINS
(Sworn via Videoconference December 6, 2021)

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Account in the Dividend Period

AFFIDAVIT OF STEPHANIE COLLINS
(Sworn via Videoconference December 6, 2021)

I, Stephanie Collins, of the City of Toronto, in the Province of Ontario, MAKE OATH
 AND SAY:

1. This affidavit is sworn in relation to the application by the Ontario Securities Commission (the **Commission**) for the appointment of a receiver and manager and other relief.

2. I am a Senior Forensic Accountant in the Enforcement Branch (**Staff**) of the Commission. I joined the Commission in February 1998 as a Forensic Accountant. I am a member of the Chartered Professional Accountants of Ontario, Certified in Financial Forensics. I am also a member of the Institute of Chartered Accountants in England and Wales and a Certified Fraud Examiner.

3. Staff have been conducting an investigation into Go-To Developments Holdings Inc. (**GTDH**) and its principal, Oscar Furtado (**Furtado**), among others (the **Investigation**). I am the forensic accountant assigned to the Investigation. As such, I have personal knowledge of the matters set out in this affidavit, except where I have been informed by others and I believe that information to be true. The Investigation has focused on potential contraventions of the *Securities Act*, including fraud. In this affidavit, I summarize Staff's findings and concerns identified to date that are relevant to this application.

A. OVERVIEW

4. GTDH operates a property development business. Furtado is a Chartered Professional Accountant, the founder of GTDH, and the directing mind of all of the other respondents, including Go-To Spadina Adelaide Square LP (**Adelaide LP**).

2.

5. As briefly summarized in this Overview and described in this affidavit, it appears that Furtado received benefits, via his holding company, that were not disclosed to the unitholders of the Adelaide LP as a result of the Adelaide LP's acquisition of properties.

6. Since 2016, Furtado has raised almost \$80 million from approximately 85 Ontario investors by selling limited partnership units in respect of nine real estate projects (the **Go-To Projects**). For each Go-To Project, investors were told, among other things, that their funds would be used to buy properties and fund soft costs. A summary of the Go-To limited partnerships' properties is attached at **Appendix "A"**.

7. In or before the fall of 2018, Alfredo Malanca (**Malanca**) contacted Furtado to see if he was interested in acquiring property in downtown Toronto, including 355 Adelaide St. West and 46 Charlotte Street (collectively, the **Properties**). Prior to contacting Furtado, Malanca, through certain entities, had obtained agreements of purchase and sale for each of the Properties.

8. Malanca is the sole officer and director of Goldmount Financial Group Corporation. His wife, Katarzyna Pikula is the sole officer and director of Goldmount Capital Inc. (collectively **Goldmount**) and of AKM Holdings Inc. (**AKM**). Goldmount has assisted with the mortgage financing for at least five Go-To Projects, including the Adelaide LP. For the most part, Furtado's communications with any of these three companies take place with Malanca. Copies of the corporation profile reports for the Goldmount corporations and AKM are attached as **Exhibits "1", "2" and "3"** respectively.

9. In early April 2019, as a result of a variety of transactions, the Adelaide LP purchased the Properties, the rights to which it acquired from Adelaide Square Developments Inc. (**ASD**). The

3.

total acquisition cost of both Properties to the Adelaide LP at closing was \$74.25 million, which included the payment of a \$20.95 million assignment fee (**Assignment Fee**) to ASD.

10. After the Adelaide LP acquired the Properties, ASD issued shares and made payments to both Furtado's holding company, Furtado Holdings Inc. (**Furtado Holdings**), and AKM. In particular, each of Furtado Holdings and AKM received 11 shares of ASD and payments of \$388,087.33 in April 2019 and \$6 million in October 2019 from ASD. Furtado did not disclose, to the Adelaide LP investors, the shares or the payments that Furtado Holdings received from ASD.

11. Furtado used the proceeds of the \$6 million received from ASD in October 2019 to, among other things, make personal investments and to provide funds to Go-To limited partnerships. The funds provided to Go-To limited partnerships appear to have been used to fund their operations including payments due to investors.

12. Further, Furtado pledged the assets of two other limited partnerships to secure obligations of the Adelaide LP in relation to the acquisition of the Properties, contrary to the relevant limited partnership agreements. He did not disclose the pledges to the investors in those LPs until more than a year later and only after being questioned about the pledges by Staff.

13. In addition, it appears that during the Investigation Furtado has attempted to conceal information from and given conflicting and misleading evidence to Staff.

B. THE RESPONDENTS' BUSINESS

14. GTDH is an Ontario corporation with its head office in Oakville; a copy of its corporation profile report is attached as **Exhibit "4"**. According to correspondence provided to Staff by GTDH's counsel on April 18, 2019, a copy of which is attached as **Exhibit "5"**:

4.

- (a) GTDH's shares are owned by Furtado Holdings;
- (b) GTDH owns all of the shares of Go-To Developments Acquisitions Inc. (**GTDA**);
- (c) GTDH organizes limited partnerships to acquire and develop land;
- (d) GTDH owns all of the shares of each corporate general partner for each limited partnership;
- (e) Furtado is the only 'key individual' of GTDH; and
- (f) GTDH has a staff of eight persons, including Furtado and five members of his family.

15. As part of the Investigation, I reviewed the corporation profile reports for each of the incorporated respondents, all of which are Ontario corporations. Furtado is the sole officer and director of each of them, except for Go-To Major Mackenzie South Block Inc. and Go-To Major Mackenzie South Block II Inc. Furtado is the sole director, President and Secretary of those two corporations and another individual is listed as an "*Other (untitled)*" officer of them.

16. The incorporated respondents, other than GTDH, Furtado Holdings and GTDA, are the general partners (**GPs**) of the limited partnership (**LPs**) respondents. Although there are nine Go-To projects, there are ten GPs and ten LPs, as one project (Major Mackenzie South Block) has two of each. A copy of a "Corporate Structure" chart that GTDH provided to Staff is attached as **Exhibit "6"**.

17. Each of the LPs owns, alone or with others, one or more real properties in Ontario, all of which are subject to one or more secured charges, as summarized in Appendix A. Furtado's evidence to Staff in July 2021 was that none of the projects has begun construction, but one has entered site servicing. An excerpt of the examination of Furtado is attached as **Exhibit "7"**.

18. Between May 2016 and June 2020, almost \$80 million was raised from approximately 85 Ontario residents via distributions of units of the 10 limited partnerships. Attached at **Appendix “B”** is a table summarizing the funds that were raised from investors for each LP, compiled from a review of a unitholder list provided by Furtado, banking records for the partnerships, subscription agreements signed by investors, and written answers to Staff’s written questions, provided by GTDH and Furtado via counsel. Bank accounts for the respondents are primarily held at the Royal Bank of Canada (RBC). In addition, 2506039 Ontario Limited has account(s) with TD Canada Trust and Go-To Glendale Avenue Inc. has account(s) with Meridian Credit Union.

19. Furtado’s evidence to Staff was that he met with and provided information to all investors in the LPs before they invested. Excerpts of the transcript of the examinations of Furtado are attached as **Exhibit “8”**. Investors were also provided with written materials in relation to their investments. By way of example, I attach copies of:

- (a) an “Investment Opportunity” document and sample corporate and individual subscription agreements for the Go-To Niagara Falls Eagle Valley LP (**Eagle Valley LP**), as **Exhibits “9”, “10”, and “11”**, respectively; and
- (b) an “Investment Opportunity” document and sample corporate and individual subscription agreements for the Go-To Stoney Creek Elfrida LP (**Elfrida LP**), as **Exhibits “12”, “13”, and “14”**, respectively.

20. Copies of the limited partnership agreements for each of the Go-To LPs are attached as Exhibits **“15” to “24”**. In order to protect investors’ information, redactions have been applied to some of the exhibits, including Exhibit 23.

21. Specifically, the Adelaide LP raised approximately \$42 million from 23 investors from February 15, 2019 to June 18, 2020. Attached as **Appendix “C”** is a spreadsheet summarizing the funds raised by the Adelaide LP, compiled from a unitholder list provided by Furtado, banking records for the Adelaide LP, subscription agreements signed by investors, written answers to Staff’s questions provided by GTDH and Furtado, and other supporting documentation.

C. BRIEF HISTORY OF ASD AND THE PROPERTIES PRIOR TO BEING PURCHASED BY THE ADELAIDE LP

22. Beginning in approximately February 2018, Malanca was engaged in obtaining agreements of purchase and sale (**PSAs**) for 355 Adelaide Street West, Toronto (**Adelaide Property**) and 46 Charlotte Street, Toronto (**Charlotte Property**). The initial PSAs for the Properties were each subsequently amended, and in the case of the agreement for the Charlotte Property ultimately replaced with a fresh agreement. ASD obtained the purchasers’ rights for each of the Properties, via either amendment or assignment of the PSAs.

23. Beginning in at least April 2018, Malanca liaised with, at least, various non-bank lenders, potential investors, real estate appraisers, planners, architects, environmental consultants and performed due diligence regarding the Properties. Malanca also circulated a promotional “presentation deck” for a project involving the Properties which was called “Adelaide Square”. The contact information on that presentation deck is Malanca’s. For example, a copy of an email from Malanca dated November 26, 2018 with the attached presentation deck is attached as **Exhibit “25”**.

24. At the beginning of 2018, Malanca contacted Furtado to determine if he was interested in acquiring property in downtown Toronto. Furtado subsequently became involved with Malanca

and others in discussing, among other things, options for the structure and financing of the purchase of the Properties. During the Investigation, Furtado's evidence to Staff included that:

- (a) he first met Malanca before he formed Go-To Developments;
- (b) it was his understanding that Malanca was a representative of ASD; and
- (c) before Malanca approached him about the Properties, they had prior business dealings. In particular, Malanca was Furtado's "go-to brokerage person" to find private debt lending for the majority of the Go-To limited partnerships.

An excerpt of the transcript of the examination of Furtado reflecting the foregoing is attached as **Exhibit "26"**.

25. The Adelaide LP and ASD entered into the Acquisition Agreements (defined below), pursuant to which, among other things, ASD assigned the rights to purchase the Properties to the Adelaide LP and the Adelaide LP agreed to pay ASD the Assignment Fee.

26. Angelo Pucci (**Pucci**) is the sole registered officer and director of ASD; copies of its corporation profile report are attached as **Exhibit "27"**.

27. During the Investigation, I attempted to contact and speak to Pucci but was not successful. I have been advised by two individuals, who identified themselves to me as Pucci's former landlord and his son that Pucci has health issues including dementia. Pucci's landlord told me that his first episode of leaving the house and not knowing where he was or how to get back occurred in approximately August 2019.

8.

28. During the Investigation, Furtado's evidence to Staff included that:

- (a) Malanca was his primary contact for the negotiation of the Memorandum of Agreement regarding the \$388K Payment (defined below);
- (b) in the summer of 2019, Furtado was told during a lunch meeting with Malanca and Pucci that ASD intended to pay Furtado Holdings the \$6M Dividend (defined below) "*when they had the funds to pay*". Further, that Malanca had the lead in the discussion; and
- (c) Furtado said that Malanca was present each of the three times that Furtado met Pucci.

29. Furtado's evidence to Staff about his interactions with ASD is discussed in further detail below.

D. INITIAL ADELAIDE LP CAPITAL RAISES

30. Between February 15 and April 2, 2019, approximately 16 investors invested \$25.25 million in the Adelaide LP, as reflected in Appendix C. Included in this amount is the purchase of 336 Class A units for \$16.8 million by Anthony Marek (**Marek**).

31. Investors in the Adelaide LP signed subscription agreements and were provided with a limited partnership agreement effective April 4, 2019 (**LP Agreement**), a copy of which is attached as Exhibit 23 above. Copies of sample corporate and individual subscription agreements for the Adelaide LP are attached as **Exhibits "28"** and **"29"**, respectively.

32. A copy of a brochure that was given to potential investors about the project is attached as **Exhibit "30"**.

E. ACQUISITION OF THE PROPERTIES BY THE ADELAIDE LP

33. Ultimately, the Adelaide LP entered into four agreements to acquire the Properties (together, the **Acquisition Agreements**), as follows:

- (a) an Assignment of Agreement of Purchase and Sale with ASD, in respect of the Adelaide Property, dated March 26, 2019, a copy of which together with the agreement of purchase and sale and its amendments are attached as **Exhibit “31”**;
- (b) an Assignment of Agreement of Purchase and Sale with ASD, in respect of the Charlotte Property, dated March 29, 2019, a copy of which together with the agreement of purchase and sale referred to therein are attached as **Exhibit “32”**;
- (c) an Assignment Fee Agreement with ASD, dated March 29, 2019, a copy of which is attached as **Exhibit “33”**; and
- (d) a Memorandum of Understanding, dated April 3, 2019, relating to Charlotte Street with, among others, ASD and FAAN Mortgage Administrators Inc. (**FAAN**), a copy of which is attached as **Exhibit “34” (MOU)**. FAAN is the Court-appointed trustee of one of the mortgage holders on the Charlotte Property.

34. Pursuant to the Acquisition Agreements:

- (a) the purchase price for the Adelaide Property was \$36.8 million;
- (b) the purchase price for the Charlotte Property, on closing, was \$16.5 million. As discussed below in (d), a density bonus was subsequently due;
- (c) the Adelaide LP owed ASD the Assignment Fee of \$20.95 million; and,

- (d) under the MOU, further payments were required in the future for the Charlotte Property, namely a “density bonus” ranging from \$1.95 million to \$7.15 million depending on the size of the allowable residential gross floor area of the Adelaide Square project.

35. Torkin Manes LLP (**Torkin**) acted for the Adelaide LP in relation to the acquisition of the Properties. The funds used on closing to pay for the Properties, the Assignment Fee, taxes and expenses, included mortgages from Canadian Mortgage Service Corporation and Scarecrow Capital Inc. (**Scarecrow**), and investor funds. Furtado, as president of Go-To Spadina Adelaide Square Inc. (**Adelaide GP**), directed Torkin to pay the amounts required to close the transactions. A copy of the Direction to Torkin is attached as **Exhibit “35”**. The Direction provides that the Assignment Fee was to be paid to Concorde Law Professional Corporation, in trust. Attached as **Exhibit “36”** is an excerpt of written answers provided to Staff by Furtado’s counsel, Torkin, summarizing the flow of funds to complete the transactions.

36. The parcel registers for the Properties record their transfers to the Adelaide LP on April 5, 2019. Copies of the parcel registers for the Adelaide Property and the Charlotte Property comprise Exhibit 108 to Appendix A.

F. TRANSACTIONS WITH ASD IN APRIL 2019

37. In this section, the transactions involving ASD, Furtado Holdings, and AKM that occurred after the Adelaide LP acquired the Properties in April 2019 are detailed. In brief summary, after the payment of the Assignment Fee to ASD:

- (a) on April 5, 2019, the Adelaide LP redeemed Marek’s \$16.8 million of units;

- (b) the redemption of Marek's units, together with a \$2.7 million fixed fee return, was funded via a redirection by ASD of most of the Assignment Fee (\$19.5 million). The Adelaide LP entered a demand loan agreement dated April 4, 2019, pursuant to which it owed ASD \$19.8 million;
- (c) on April 15, 2019, Furtado Holdings, AKM and two others received shares in ASD; and
- (d) Furtado Holdings and AKM each received a cheque dated April 15, 2019 for \$388,087.33 from the Assignment Fee via a redirection by ASD.

1) Redirection of the Assignment Fee by ASD

38. In a Re-Direction dated April 15, 2019, a copy of which is attached as **Exhibit "37"**, ASD instructed its lawyers, Concorde Law, to redirect the Assignment Fee funds as follows:

West Maroak Developments	\$19,500,000.00
Goldmount Financial Group	300,000.00
Concorde Law	115,500.00
RAR Litigation Lawyers	200,000.00
AKM Holdings Corp.	388,087.33
AKM Holdings Corp.	58,325.34
Furtado Holdings Inc.	388,087.33
Total	\$20,950,000.00

(i) *West Maroak Developments*

39. Marek is an officer and director, and the controlling mind of West Maroak Developments (**West Maroak**). A copy of the corporation profile report is attached as **Exhibit "38"**. As noted above, Marek subscribed for 336 units of the Adelaide LP for \$16.8 million on March 17, 2019.

40. As part of the Investigation, Staff examined Marek over two days. His evidence to Staff, excerpts of the transcript of which are attached as **Exhibit “39”**, included that:

- (a) Marek was introduced to the Adelaide Square project by a lawyer at Concorde Law, who then introduced Marek to Malanca. Marek subsequently met with Furtado;
- (b) prior to the investment in the Adelaide LP, Marek had never bought limited partnership units; and
- (c) Marek did not have a role in the structuring of his initial investment of \$16.8 million. His understanding was that he was providing short-term funding and would receive his \$16.8 million investment back, together with a fixed return of \$2.7 million once the acquisition of the Properties closed. A copy of a limited partnership agreement for the Adelaide LP, which was produced to Staff by Marek and reflects the \$2.7 million flat fee, is attached as **Exhibit “40”**.

41. On April 5, 2019, a resolution of the sole director (Furtado) of the Adelaide GP noted that the Adelaide LP would make a return of capital to Marek in the amount of \$16.8 million. A copy of the resolution with Marek’s signed acknowledgement is attached as **Exhibit “41”**.

42. The initial investment of \$16.8 million plus the fixed return of \$2.7 million totals the \$19.5 million noted in the Re-Direction. While the Re-Direction is dated April 15, 2019, banking records show that West Maroak received \$19.5 million from Concorde Law on April 5, 2019, the date of the resolution to return Marek’s capital. An excerpt of the banking records for West Maroak is attached as **Exhibit “42”**.

(ii) *Payment to Goldmount*

43. As discussed below, Furtado told Staff that \$300,000 was paid to Goldmount for introducing Marek to the Adelaide LP.

(iii) *Payments to Furtado Holdings and AKM*

44. Furtado Holdings received a cheque dated April 15, 2019, from Concorde Law for \$388,087.33 (the **\$388K Payment**) a copy of which is attached as **Exhibit “43”**. Furtado’s changing explanations of that payment are noted below. AKM also received a cheque from Concorde Law for the same amount that day, a copy of which is attached as **Exhibit “44”**.

2) The Demand Loan from ASD to the Adelaide LP

45. Furtado told Staff that the Adelaide LP borrowed \$19.8 million from ASD in order to finance the return of capital plus the flat fee to Marek and the \$300,000 payment to Goldmount for referring Marek. Attached as **Exhibit “45”** are excerpts from the transcripts of the examination of Furtado. During the Investigation, Furtado produced a demand loan agreement dated April 4, 2019, for \$19.8 million between the Adelaide LP as the borrower and ASD as the lender (the **Demand Loan**), a copy of which is attached as **Exhibit “46”**. The Demand Loan agreement states that the purpose of the loan was “... *to reimburse the bridge equity loan received from an equity investor who deposited directly to lawyer’s trust account for closing of Adelaide Project [sic]. The Lender reimbursed the funds directly to the equity investor and set up a receivable from the Borrower*”.

46. After being asked by Staff about the loan, on June 29, 2021, Furtado authorized the registration of a \$19.8 million charge against the Properties on behalf of ASD, in relation to the Demand Loan. A copy of that charge is attached as **Exhibit “47”**.

3) ASD Shares

47. One week after the Adelaide LP acquired the Properties, on April 12, 2019, the articles of ASD were amended to change the share structure. A copy of the Articles of Amendment is attached as **Exhibit “48”**.

48. Furtado Holdings received 11 Class A common shares in ASD on April 15, 2019; a copy of the share certificate is attached as **Exhibit “49”**. Several documents, each dated April 15, 2019, were executed in relation to the issuance of ASD shares to Furtado Holdings, including:

- (a) A Resolution of the Board of Directors of ASD, resolving to issue 11 shares to each of Furtado Holdings, AKM, and FIM Holdings Inc., and 67 shares to Pucci, a copy of which is attached as **Exhibit “50”**;
- (b) A Subscription of Shares, in which Furtado Holdings agreed to subscribe for 11 common shares of ASD for \$11, a copy of which is attached as **Exhibit “51”**;
- (c) A Special Resolution of the Shareholders of ASD, resolving to reorganize the capital stock of the corporation, a copy of which is attached as **Exhibit “52”**; and
- (d) A Shareholders’ Agreement, a copy of which is attached as **Exhibit “53”**.

G. ADELAIDE LP’S FURTHER SALES OF LP UNITS AND DEMAND LOAN PAYMENT - FALL 2019

1) Further Sales of LP Units

49. Between September 19 and 30, 2019, Furtado raised additional funds totalling \$13.25 million for the Adelaide LP from four investors, including a further \$12 million from Marek on September 26, as seen in Appendix C.

(i) *Discussions prior to Marek's \$12 million investment*

50. During his examination, Marek told Staff that Furtado contacted him in August 2019 to seek further investment in the Adelaide LP. Furtado, however, told Staff at his examination in September 2020 that Marek approached him in August 2019 indicating that he was willing to come back as an investor. Excerpts of the transcripts of Marek and Furtado, respectively, are attached as **Exhibits “54” and “55”**.

51. Both Furtado and Marek gave evidence that they met to discuss a potential new investment by Marek in the Adelaide LP, in late August and/or early September 2019. They also agree that Furtado provided Marek with a copy of the brochure attached as **Exhibit “56”**.

52. Furtado and Marek also both gave evidence that Furtado did not expressly tell Marek how the proceeds of any further investment would be used by the Adelaide LP, nor did Marek ask. In this respect:

- (a) Marek's evidence was that, during the meeting, Furtado presented to him about the Adelaide Square project, including about the building, the architects involved, the timing and direction of the total project. Marek's evidence was that he understood that the Adelaide LP was raising funds *“In order to pay its consultants and the development fees and going forward with the project”*. His evidence was that Furtado said *“that they needed another \$12 million to flow through to complete the project”*; and
- (b) Furtado's evidence was that he told Marek *“we are raising equity for the LP. We didn't get into the details of what the money was to be used for.”*

Excerpts of the transcript of the examinations of Marek and Furtado, respectively, that reflect the foregoing are attached as **Exhibits “57” and “58”**.

53. Furtado and Marek were each asked about a portion of the brochure attached as Exhibit 56 above which, again, was provided to Marek in August or September 2019. In particular, each were shown this page 10 of that Exhibit:

10

ADELAIDE
SQUARE

PROJECT OVERVIEW

Land Acquisition

- The Partnership closed the acquisition of the Project property in April 2019.
- Go-To Developments and its partners in the Project (see Section III) have collectively invested approximately \$19.8 million of the total \$27 million equity required.

Partnership Sources & Uses of Capital (\$ millions)

Sources

Equity – third-party investors	\$ 7.5
Equity – Atria Development	3.0
Equity – Adelaide Square Developments	16.8
1 st Mortgage	48.3
2 nd Mortgage	13.7
	\$ 89.2

Uses

Acquisition of land	\$ 74.3
Interest reserves & other fees	9.9
Land transfer tax	3.0
Cost to Achieve ZBA & SPA	2.0
	\$ 89.2

54. Furtado’s evidence about page 10 was that it reflected the circumstances as of the day the acquisitions of the Properties closed. Furtado stated that the line “*Equity – Adelaide Square Developments – 16.8*” indicated that ASD was, on April 4, 2019, holding Marek’s \$16.8 million investment and would be the entity paying him back. Furtado asserted that he explained that fact to Marek during their meeting. Among other things, Furtado stated “*It was clearly made clear to [Marek] that that is all that was, was his own money, and he said yes, okay...*”. Furtado acknowledged that ASD had not invested any equity in the Adelaide LP, and stated that the

document “*Could have been worded better...*” An excerpt of the transcript of the examination of Furtado that reflects the foregoing is attached as **Exhibit “59”**.

55. Marek’s evidence, on the other hand, was that Furtado told him “*nothing*” about the line “*Equity – Adelaide Square Developments – 16.8*”. Marek’s evidence was that Furtado did not tell him, nor did he understand before making the investment of \$12 million in September 2019, any of the following:

- (a) the “16.8” figure on page 10 represented Marek’s previous investment of \$16.8 million in the Adelaide LP;
- (b) ASD was the entity that had paid back Marek’s earlier investment;
- (c) the Adelaide LP had received a loan from ASD to repay Marek’s investment; and
- (d) Marek’s \$12 million investment was to be used to repay part of the loan owed to ASD.

An excerpt of the transcript of the examination of Marek that reflects the foregoing is attached as **Exhibit “60”**.

2) Demand Loan Payment and its Source of Funds

56. On October 1, 2019, less than a week after Marek’s \$12 million investment, the Adelaide LP transferred \$12 million to Schneider Ruggiero Spencer Milburn LLP (**Schneider Ruggiero**). The Adelaide LP’s bank balance immediately prior to the payment was approximately \$13.2 million. Based on a review of the bank statements and supporting documentation, the majority of the payment to Schneider Ruggiero must have been comprised of the \$12 million investment by Marek. Copies of the bank statements and supporting documentation are attached as **Exhibit “61”**.

57. Furtado's evidence to Staff was that the \$12 million payment by the Adelaide LP to Schneider Ruggiero on October 1, 2019 was a partial payment on the Demand Loan. He further stated that such payment was not due and had not been demanded by ASD. Furtado also asserted that one of the Adelaide LP's goals was to raise equity to pay down debts. It appears from the Demand Loan agreement and a summary of the status of the loan provided by Furtado's counsel that the interest payable on the Demand Loan was a fixed monthly amount that increased over time but was not changed by the \$12 million payment. Excerpts of written answers provided to Staff by Furtado's counsel, and from the transcripts of the examinations of Furtado on these matters are attached as Exhibit 36 above, **Exhibits "62" and "63"** respectively.

H. PAYMENT OF ASD DIVIDENDS TO FURTADO HOLDINGS AND AKM

58. In a document titled "Re Direction Re Funds" dated September 30, 2019, a copy of which is attached as **Exhibit "64"**, ASD instructed Schneider Ruggiero to pay a \$6M partial dividend to Furtado Holdings (**\$6M Dividend**). The direction states that it is "*Re: Adelaide Square Developments Inc. dividend distribution relating to the properties municipally known as 355 Adelaide St. W., Toronto, Ontario 46 Charlotte St., Toronto, Ontario*".

59. On October 1, 2019, Furtado Holdings and AKM were each paid a \$6M dividend by Schneider Ruggiero; an excerpt of the Furtado Holdings bank statement is attached as **Exhibit "65"** and a copy of a wire payment confirmation for AKM's account is attached as **Exhibit "66"**. For the year ending 2019, AKM and Furtado Holdings each received a T5 Statement of Investment Income in the amount of \$6,388,087 for dividend income, copies of which are attached as **Exhibits "67" and "68"** respectively. It thus appears that the payments in the amounts of \$388,087 and \$6 million to each of AKM and Furtado Holdings were recorded as dividends for their shareholding in ASD.

60. Thus, on the same day that the Adelaide LP paid \$12 million to Schneider Ruggiero, purportedly as a partial payment on the Demand Loan with ASD, Furtado Holdings and AKM were each wired a \$6 million dividend payment from ASD via Schneider Ruggiero.

I. FURTADO'S USE OF THE \$6 MILLION FROM ASD

61. Prior to the receipt of the \$6 million dividend on October 1, 2019, the balance in the Furtado Holdings Royal Bank account was approximately \$2,000. Between October 1, 2019 and August 17, 2020 (the **Dividend Period**), the only other funds deposited in the account were: (a) a repayment of a loan by the Adelaide LP in the amount of \$75,000; and (b) approximately \$1,800 from an unknown source. An excerpt from my draft source and application of funds analysis and the relevant bank statements for the Furtado Holdings account for the Dividend Period are attached, respectively, as **Appendix "D"** and **Exhibit "113"** thereto. In summary, during the Dividend Period approximately:

- (a) \$2.25 million was transferred from Furtado Holdings to Furtado's personal account at RBC between November 28, 2019 and March 31, 2020 (**Furtado Bank Account**);
- (b) \$3.265 million was loaned or otherwise transferred to various Go-To entities;
- (c) \$541,000 was transferred to law firms;
- (d) \$10,000 was paid to Humberstone Lands Inc. in relation to "MF Georgetown Expenses"; and
- (e) as at August 17, 2020, the balance in the Furtado Holdings account had diminished to approximately \$11,861.

62. With respect to the approximately \$2.25 million transferred to the Furtado Bank Account, there were transfers out of that account totalling approximately \$2.026 million to Furtado's RBC Direct Investing account (**RBC Direct Account**) which were made close in time to the transfers in from Furtado Holdings. Attached as **Exhibit "69"** are copies of the account statements for the Furtado Bank Account for the period November 8, 2019 to April 9, 2020, together with the supporting documents for the transfers in from Furtado Holdings and the transfers out to the RBC Direct Account in that period.

63. The approximately \$2.026 million which went to the RBC Direct Account was transferred into that account over time, with the first transfer occurring in January 2020. As at the end of December 2019, Furtado's RBC Direct Account had assets valued at CAD (6,822.24) and USD 307,235.58. I reviewed the RBC Direct Account statements for the period January 2020 to October 2021, which is the most recent month for which I have statements. Over that period, Furtado purchased and sold various securities within the RBC Direct Account, in both CAD and USD, the valuations of which fluctuated over time, and made transfers in and out of the RBC Direct Account. As of October 29, 2021, the market values of the securities and cash in the RBC Direct Account were CAD 1,240,041.27 and USD 463,056.44. Attached as **Exhibit "70"** are copies of the CAD and USD December 2019 and October 2021 statements for the RBC Direct Account.

64. Appendix D above contains a summary of the receipts of the \$3.265 million by the Go-To entities in the Dividend Period. I have not yet completed a full source and application analysis of the approximately \$3.265 million that went to other Go-To entities. Generally speaking, however, it appears that those funds were spent on operating costs and payments to LP investors.

J. FURTADO'S EXPLANATIONS FOR THE ASD SHARES AND PAYMENTS

65. In addition to providing, via counsel, answers to written questions, Furtado was examined by Staff over 2.5 days, on September 24, 2020, November 5, 2020 and July 7, 2021. Furtado's evidence to Staff as to Furtado Holdings' receipt of the ASD shares, the \$388K Payment, and the \$6M Dividend has changed over time, and is discussed in chronological order below.

66. Furtado confirmed that none of the \$388K Payment, Furtado Holdings' shareholding in ASD, nor the \$6M Dividend were disclosed to Adelaide LP investors. It was Furtado's position that the shareholding and dividend took place after the Properties were acquired, had no impact on unitholders and there was no disclosure requirement. Attached as **Exhibit "71"** are excerpts of the transcripts of the examination of Furtado reflecting the foregoing.

1) First Examination – September 24, 2020

67. On the first day of his examination, Furtado was shown the deposit slip and cheque for the \$388K Payment dated April 16, 2019, attached as Exhibit 43 above, which refers to 46 Charlotte in the memo line. Furtado was asked what the cheque represents. Furtado's answer was "*I don't recall. I don't recall offhand*". Attached as **Exhibit "72"** is an excerpt of the transcript containing this exchange.

68. During that examination, Furtado was also shown the Furtado Holdings bank statement showing a \$6 million transfer from Schneider Ruggiero on October 1, 2019 and was asked what the funds were for. Furtado's answer was "*I don't recall offhand*". Attached as **Exhibit "73"** is an excerpt of the transcript containing this exchange.

2) Second Examination – November 5, 2020

69. During the second day of his examination in November 2020, Furtado's evidence regarding the \$388K Payment was that:

- (a) by agreement with ASD, Furtado Holdings was paid \$388,087.33 as a return for having "*assumed the risk*" for a non-refundable deposit of \$800,000 that was paid to the vendor of the Adelaide Property with funds from the Adelaide LP;
- (b) ASD did not have the money to fund the deposit, so Furtado offered to fund it. Furtado Holdings "*assumed the risk that it would be lost*" if the transaction did not close and asked ASD to pay a fee if the deal did close; and
- (c) There was no contract or other written document relating to the foregoing and the return was agreed during a "*verbal discussion*" he had with Pucci.

Attached as **Exhibit "74"** is an excerpt of the transcript of the examination of Furtado reflecting the above.

70. Regarding the ASD shares and the \$6M Dividend, Furtado's evidence at the second examination was that:

- (a) ASD's management approached him after the closing of the Properties and said they wanted to give him shares in ASD, comprising a minority interest of 11%, and that he "*was not aware they were going to do so*";
- (b) he met with ASD and completed the paperwork to receive the shares;

- (c) ASD subsequently decided to declare a dividend of \$6 million on Furtado Holdings' shares;
- (d) ASD wanted to give him shares as "*they saw the value that [he] brought to the transaction*". Furtado claimed that certain negotiation strategies and aspects of the transactions, for example the density bonus for the Charlotte Property, were his ideas and his ideas "*save[d] the deal*". He stated that his receipt of the \$6M Dividend "*was more of a thank you than anything else*"; and
- (e) His usual contact at ASD was Pucci, and that the conversation about ASD giving Furtado Holdings shares was with Pucci.

Attached as **Exhibit "75"** is an excerpt of the transcript of the examination of Furtado reflecting the above.

3) Documents Produced After the Second Examination

71. After the second examination, Staff sought, via summons, additional documents from Furtado relating to the Adelaide LP transactions and Furtado Holdings' receipt of payments and shares from ASD, including all correspondence with ASD or its representatives in relation to the purchase and sale of the Properties. A copy of Furtado's written answers in response, provided to Staff by his counsel on January 28, 2021, is attached as **Exhibit "76"**.

72. In addition, with the January 2021 written answers Furtado produced:

- (a) a "Memorandum of Agreement" between Furtado, ASD and the Adelaide LP relating to the \$388K Payment, despite his evidence at the second examination that there was no written document regarding the \$388K Payment; a copy is attached as

Exhibit “77”. (Furtado also produced a Memorandum of Agreement between himself, Furtado Holdings and the Adelaide LP, a copy of which is attached as **Exhibit “78”**); and

- (b) versions of the Re-Direction and certain of the ASD shareholding documents containing redactions, which removed references to anyone other than Furtado and Pucci, copies of which are attached as **Exhibit “79”**. The unredacted versions of these documents, which are attached as Exhibits 37, 53, 50 and 52 above, were produced to Staff on February 23, 2021.

4) Third Examination – July 7, 2021

73. Furtado’s evidence at the third examination included that:

- (a) Malanca was his primary contact for the negotiation of the Memorandum of Agreement regarding the \$388K Payment;
- (b) in the summer of 2019, Furtado was told during a lunch meeting with Malanca and Pucci that ASD intended to pay Furtado Holdings the \$6M Dividend “*when they had the funds to pay*”. Further, that Malanca had the lead in the discussion; and
- (c) he had limited exposure to Pucci, only recalled meeting him 3 times in person, and that Malanca was present at all those meetings.

Attached as **Exhibit “80”** are excerpts of the transcript of the July 2021 examination of Furtado reflecting the above.

74. In addition, with respect to the \$388K Payment to Furtado Holdings, Furtado’s evidence at this examination was that, if the acquisition of the Properties failed to close and the \$800,000

deposit was forfeited, Furtado Holdings would have reimbursed the Adelaide LP the \$800,000 it had advanced. When asked what assets Furtado Holdings had at the time it provided this assurance to the Adelaide LP, Furtado's evidence was that he could not recall offhand and, via counsel, he refused to provide that information by way of undertaking. Attached as **Exhibits "81" and "82"** respectively are excerpts of the transcript reflecting the foregoing and from his written answers to undertakings delivered thereafter.

75. As mentioned above, for the year ending 2019, AKM and Furtado Holdings each received a T5 in the amount of \$6,388,087 for dividend income. When asked why Furtado Holdings received a T5 indicating that the \$388K was a dividend, Furtado's evidence was that payment in that manner was more tax effective. Furtado further indicated that he had "*no idea*" why, or if, AKM also received a payment of \$388,087. Attached as **Exhibit "83"** are excerpts of the transcript reflecting the foregoing.

K. FURTADO'S ADDITIONAL BUSINESS DEALINGS WITH MALANCA AND/OR AKM

76. During the third examination, Staff also entered as exhibits for identification and questioned Furtado about four email exchanges between him and Malanca in February and March 2019, copies of which, including the exhibit stamps, are attached as **Exhibits "84", "85", "86", and "87"** respectively. All of these Exhibits, which pre-dated the closing of the Properties, refer to a "lift" or "lift payment" within them. An excerpt of the transcript relating to these email exchanges is attached as **Exhibit "88"**.

77. Furtado asserted that "lift" was a term that could imply many things. Further, Furtado stated that in relation to the Properties, Malanca used the term 'lift' in conversations with Furtado relating to "*the profitability that he was making on – that [ASD] was making*". It appears that

ASD's profit, before expenses, on the sale of the Properties to the Adelaide LP was the \$20.95 million Assignment Fee. Furtado's evidence to Staff was that when he was negotiating the Properties' acquisition, he did not negotiate, expect or intend to receive part of the benefit of the Assignment Fee payable to ASD. An excerpt of the transcript reflecting the foregoing is attached as **Exhibit "89"**.

78. Furtado's evidence at the third examination also included that:

- (a) Malanca continues to be involved with the Adelaide LP project, including that he has been assisting with the development application process; and
- (b) Furtado has provided Malanca with a Go-To email account under the name "Alfredo Palmeri", because Malanca asked for the email account to be in that name. Furtado claimed that he did not know why some people know Malanca as Palmeri, other than that Palmeri is Malanca's mother's maiden name.

Excerpts of the transcript reflecting the foregoing are attached as **Exhibit "90"**.

79. In contrast to Furtado's evidence, Marek gave evidence to Staff that, in summary:

- (a) he received emails from both "Alfredo Malanca" and "Alfredo Palmeri" and, at some point after making the \$12 million investment in September 2019, he did some internet searching of those names and discovered, among other things, documents relating to criminal conviction of "Alfredo Italo Malanca";
- (b) he then contacted Furtado to ask if the person they were dealing with was Alfredo Italo Malanca. Furtado invited Marek to a meeting. Among other things, Furtado

confirmed Marek's conclusion about Malanca's history. Further, Marek had a subsequent meeting with Furtado and Malanca, in which Malanca himself confirmed he had spent time in prison; and

- (c) When Marek asked why Malanca sometimes goes by Palmeri, he was told *"...because of his storied past, he could not get financing...because [sic] would do a check on him and most likely ... he would not fall within the requirements ... of what a lender would looking at from a borrower"*.

Excerpts of the transcript of the examination of Marek reflecting the foregoing are attached as **Exhibit "91"**. Attached as **Exhibits "92"**, **"93"**, and **"94"** respectively are copies of the reasons of the Superior Court of Justice, the Court of Appeal, and the Supreme Court of Canada (denying leave) in the proceeding against Alfredo Italo Malanca.

80. The Adelaide GP entered into a Project Management Agreement dated July 31, 2020, with GTDH and AKM as consultants (the **PMA**). In the PMA produced to Staff by Furtado's counsel, the manager is listed as "TBD"; a copy is attached as **Exhibit "95"**. Among other things, the PMA provides that each of GTDH and AKM are to be paid a "Development Consultant Fee" of \$750,000 and a "Construction Consultant Fee" in an amount to be determined (see article 5.2 of the PMA). Note 5 to the draft financial statements for the Adelaide LP for the calendar year ended 2020 states that the Adelaide LP accrued \$750,000 in development management fees owing to both GTDH and AKM in 2020; a copy of those draft financial statements is attached as **Exhibit "96"**.

L. CROSS-COLLATERALIZATION – USE OF OTHER LPS’ ASSETS FOR ADELAIDE LP

81. In addition, as part of the transactions to acquire the Properties for the Adelaide LP, Furtado pledged the assets of two other limited partnerships to secure obligations of the Adelaide LP.

82. Furtado signed the MOU attached at Exhibit 34 on behalf of the Adelaide LP and Adelaide GP, himself, and on behalf of the Elfrida LP and Go-To Stoney Creek Elfrida Inc. (**Elfrida GP**). Under the MOU, the Elfrida GP and Elfrida LP are guarantors of obligations of the Adelaide LP, as set out in that agreement. Among other things in the MOU, the Elfrida GP and Elfrida LP agreed to the registration of a \$7.15 million collateral charge on the Elfrida LP’s property. A \$7.15 million charge was registered against the Elfrida LP’s property by FAAN on April 5, 2019 (**FAAN Charge**) and removed from title on November 9, 2021; copies of the FAAN Charge and the discharge are attached as **Exhibit “97”**.

83. Furtado also caused the Eagle Valley LP and Go-To Niagara Falls Eagle Valley Inc. to agree to the registration of a \$13,712,500 charge on the Eagle Valley LP’s property as collateral for Scarecrow in respect of its mortgage loan to the Adelaide LP. The charge was registered against the Eagle Valley LP’s property on April 4, 2019, a copy of which is attached as **Exhibit “98” (Scarecrow Charge)**. The Scarecrow Charge was transferred and subsequently removed from title by the transferee on April 1, 2021. Copies of the transfer and discharge of the Scarecrow Charge are attached as **Exhibit “99”**.

84. The LP Agreements for the Elfrida LP and the Eagle Valley LP, respectively, which are attached at Exhibits 19 and 15 above, both state at section 5.16:

5.16 Restrictions upon the General Partner. ... *The General Partner covenants that it shall not:*

- (a) Cause the Partnership to guarantee the obligations or liabilities of, or make loans to, the General Partner or any Affiliate of the General Partner; or*
- (b) Commingle the funds and assets of the Partnership with the funds or assets of any other Person, including those of the General Partner or any Affiliate of the General Partner.*

85. Furtado was asked about uses of other limited partnership assets as security for obligations of the Adelaide LP during Staff's examinations of him. In summary, his evidence included that:

- (a) cross collateralization, which is the nature of the FAAN Charge and Scarecrow Charge, is common in the industry;
- (b) investors were not told of the FAAN Charge and the Scarecrow Charge before they occurred. It was Furtado's position that notice to or approval of investors was not required. Further, he stated that investors were subsequently informed of the charges either via their receipt of audited financial statements for the relevant limited partnership (sent when requested by the investor), a progress report on the relevant project, or in discussions with him. The disclosure to investors via the progress reports occurred only after Staff questioned Furtado about the cross collateralizations; and
- (c) Furtado did not obtain any compensation for either the Eagle Valley LP or the Elfrida LP in exchange for the pledging of their assets for the FAAN Charge and the Scarecrow Charge.

Excerpts of the transcripts of the examination of Furtado reflecting the foregoing are attached as **Exhibit "100"**.

86. Staff began asking questions about these cross-collateralizations at the first examination of Furtado on September 24, 2020. The progress reports to Eagle Valley LP and Elfrida LP investors which first mention the April 2019 cross-collateral charges are dated November 9, 2020 and December 18, 2020, respectively; copies are attached as **Exhibits “101” and “102”**.

M. CONCLUSION

87. I make this affidavit in relation to the Commission’s application pursuant to the *Securities Act*, and for no other purpose.

SWORN before me remotely by Stephanie Collins stated as being located at the City of Toronto in the Province of Ontario, before me at the City of Mississauga in the Province of Ontario, on this 6th day of December, 2021, in accordance with O. Reg 431/20, *Administering Oath or Declaration Remotely*.



Commissioner for taking affidavits

Michelle Spain, a Commissioner, etc.,
Province of Ontario, for the Government of Ontario,
Ontario Securities Commission.
Expires March 22, 2024.



STEPHANIE COLLINS

This is Exhibit “7” referred to
in the Affidavit of Stephanie Collins
sworn before me, this
6th day of December, 2021



A COMMISSIONER FOR TAKING AFFIDAVITS

**Michelle Spain, a Commissioner, etc.,
Province of Ontario, for the Government of Ontario,
Ontario Securities Commission.
Expires March 22, 2024.**

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July 7, 2021

COMPELLED INTERVIEW OF OSCAR FURTADO

1 MS. HOULT: For the sake of
2 the record, we will enter this letter and summons
3 as Exhibit 1.

4 EXHIBIT NO. 1: Summons
5 and cover letter dated
6 June 7, 2021.

7 BY MS. HOULT:

8 8 Q. You can remove it from
9 the screen, Mr. Baik.

10 I want to remind you of the
11 confidentiality obligations from the Securities
12 Act. Mr. Furtado, did you speak with anyone aside
13 from your legal counsel regarding this examination
14 and/or the summons?

15 A. No.

16 9 Q. You are obligated to
17 answer our questions fully and completely. It is
18 an offence to mislead staff. If you do not
19 understand a question, please let us know. Do you
20 understand?

21 A. Yes, I understand.

22 10 Q. So the last time staff
23 spoke with you, Mr. Furtado, we understood none of
24 Go-To Developments' projects had reached the
25 construction stage. Is that still the case?

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July 7, 2021

COMPELLED INTERVIEW OF OSCAR FURTADO

1 A. One of our projects has
2 advanced and has entered into site servicing in
3 the last ten days, and as of today it's still
4 going on --

5 11 Q. Okay.

6 A. -- which is (inaudible)
7 of construction.

8 12 Q. Which is a stage of
9 construction? Is that what you've said?

10 A. It's the stage to enter
11 construction.

12 13 Q. Okay. Which project is
13 that?

14 A. The Eagle Valley project.

15 14 Q. Has any Go-To limited
16 partnership raised funds from investors after
17 June 2020?

18 A. I don't recall offhand.

19 15 Q. Okay. Can you check and
20 let me know after the examination?

21 MR. MANN: Sorry, what exactly
22 are you asking?

23 MS. HOULT: We have like to
24 know if there have been any raises from investors
25 since June 2020, which is when we understand the

This is Exhibit “8” referred to
in the Affidavit of Stephanie Collins
sworn before me, this
6th day of December, 2021

A handwritten signature in black ink, appearing to read "Michelle Spain", written over a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS

**Michelle Spain, a Commissioner, etc.,
Province of Ontario, for the Government of Ontario,
Ontario Securities Commission.
Expires March 22, 2024.**

COMPELLED INTERVIEW OF OSCAR FURTADO

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1 terminate them.

2 346 Q. When you were selling the
3 units in the LPs to individuals, did you collect
4 know your customer or know your client information
5 or other financial information from them?

6 A. Sorry, what do you mean
7 by "know your customer"?

8 347 Q. Or know your client.

9 A. For our Adelaide project
10 that was required by the private lender, and we
11 provided that.

12 348 Q. Okay. And so was it just
13 for the Adelaide project, or for any of the other
14 projects?

15 MR. MANN: Sorry, was what for
16 any of the projects?

17 MS. COLLINS: Well, Mr. Mann,
18 what we're talking about is KYC or other financial
19 information about investors.

20 MS. VAILLANCOURT: It is a
21 term of art, Mr. Furtado, "know your client"
22 information. It is basically information about
23 their financial circumstances to determine whether
24 or not the investment is suitable for them.

25 THE WITNESS: The majority of

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1 my clients I personally know or are close business
2 associates. So they have known me well. I know
3 them well, and kind of know of them.

4 So I can walk you through that
5 process. And every client approached me to come
6 into the investment because they knew what I was
7 doing for a living mainly, through all of the work
8 I do in the Goan community and reported in some of
9 the write-ups.

10 I have done extensive work in
11 the Goan community, and I have done a lot of work
12 in the community. I have met many, many of the
13 people in the community, that got to know me, got
14 to become personal friends over the years.

15 The key over the years in the
16 Goan community is I took the community out of
17 financial ruin when they were facing bankruptcy.
18 I was asked to step in while I was still in my
19 early 30s to see if I could clean up the mess
20 because they didn't want to go into bankruptcy.

21 I took it over with sole
22 discretion and turned the community around.

23 And in doing so, that is how
24 people got to know me. I have known many people
25 well before I took over this task but they got to

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1 see the financial side of me. And I got to know
2 who they were and the fact they were sophisticated
3 individuals in the community. So that was the
4 front end.

5 I have spent a substantial
6 amount of time with the people that came on as
7 investors. Not just through attending meetings of
8 the Goan community, attending events, events held
9 at my house. So events on trips, on vacations, I
10 really got to know all of these people more.

11 Now one thing that I know we
12 did when I was approached by a potential investor
13 and they wanted to find out more about the
14 project, I always made it clear to them that no
15 matter how much they know me, and I know them,
16 they still have to come into my office and meet
17 with me as they would have to qualify through my
18 process to ensure that they qualified as a private
19 investor.

20 So every investor knew they
21 had to come to meet with me. I spent, in fact,
22 multiple hours in meetings with these investors
23 when they came in. And, in fact, I did decline
24 people that I felt would not qualify.

25 Not just financially they

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1 wouldn't qualify. If I believed at the end of the
2 meeting because I know these people, I wanted to
3 make sure I was comfortable taking them. If they
4 didn't understand the risks and if I explained the
5 risks and they didn't understand them, I wouldn't
6 take them on.

7 That being said, the process I
8 followed when they came in was, no matter how much
9 they knew about me and I knew about them, I still
10 wanted to know their financial background, their
11 educational background, and what they did for a
12 living, so that I could determine whether they
13 were in fact what I always was led to believe were
14 sophisticated investors.

15 And that is how I basically
16 started every meeting with them. And when I
17 started the meeting, that was the front end of the
18 meeting.

19 The second part of the meeting
20 would be to, I would make sure that they fully
21 knew my business history and what I have done, not
22 just in the Goan community, but also through RBC
23 and my previous working in the accounting firm,
24 risk management, back into including the
25 Securities Commission where I worked for a very

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1 short period of time, and the insurance company,
2 banks and eventually launching the real estate
3 sector.

4 So in doing all of that I have
5 always followed the same process. Once I got past
6 explaining to them who I was, then my next big
7 step was to explain to them my business strategy.
8 And in that business strategy I broke it up into
9 several components.

10 The first component was always
11 explaining to them how I got my land, the land I
12 wanted to close on.

13 I would walk them through how
14 I searched for the land, how I assembled
15 properties like Major Mackenzie.

16 How I got people to go search
17 for properties, and I did not go for publicly
18 listed properties because I knew that there was a
19 significant difference in price if you went to the
20 public. How I negotiated the deals with the land
21 owners.

22 There was not a deal I
23 negotiated who I believed to the land owner, there
24 was not a deal that I didn't offer or come up with
25 special payment terms, because the terms are not

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1 consistent with the marketplace.

2 The key in doing all of that
3 is that also to put the purchase price in front of
4 them that I was looking at. The funds I was
5 closing on in the LP, and demonstrated to them how
6 it is comfortable in that purchase price. The
7 purchase price was very profitable.

8 So that was for the first
9 part, how I brought my land in, because we knew it
10 was not consistent with how other people found
11 land.

12 And that goes into an example
13 paying the finder's fee to people not in the
14 business, so they drive around and search and find
15 a property and we end up saying this is a good one
16 we can do a deal on. So that was the first phase
17 of what I discussed with them.

18 The second component that I
19 discussed with all of the investors was the
20 structure about the limited partnership agreement
21 and the project management agreement.

22 In the limited partnership
23 agreement, I would walk through all of the aspects
24 in the limited partnership agreement. In fact, I
25 opened it in front of me and I would even ask them

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1 to take the document home and ask their lawyers to
2 review it if they wanted to.

3 But I walked them through that
4 limited partnership agreement and explained to
5 them, the waterfall as an example, I believe in
6 section 4, how we get paid out from the limited
7 partnership agreement and how I structured it in
8 such a way to ensure these individuals who were my
9 family and friends I wanted to make sure they get
10 paid out first.

11 The equity gets paid out
12 first. The six percent payment gets paid out
13 first. The third payment gets paid out. And only
14 at that point in time that you get the opportunity
15 to pay myself and the construction companies that
16 had an agreement with me and the project manager
17 agreement.

18 One of the key differences
19 that I put in my LPs, at huge risk to myself but
20 huge benefit to the investors is, I made their
21 return annualized.

22 So if I experienced a delay on
23 a project of one or two or three years, they
24 continued to accrue the ten percent to be paid out
25 while the -- if you say as example that you can

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1 only make \$20 million dollars on a given project,
2 you might make more revenue, costs go up, you
3 still only have to make \$20 million.

4 Well, if you have a four or
5 five-year delay, that profit starts getting
6 smaller and smaller. So the only person at risk
7 of getting close to nothing if they keep it going
8 long enough is myself.

9 And I was okay with that
10 because I knew the people I was bringing into the
11 deals.

12 And that was a huge priority
13 of mine, to make them preferred on the waterfall,
14 and you will see that in section 4.

15 The other key thing I told
16 them about was the fact that my investors, some
17 investors were bigger than the others and some of
18 the corporate-type investors that came in, they're
19 all sophisticated. But we have large investors
20 and smaller investors and I wanted to make sure I
21 controlled the voting.

22 So what I did, I put the large
23 corporate investor in a different class of units,
24 class C, while I gave my, the rest of the
25 investors, the class A units. So that if the

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1 class C units attempted to get in and disrupt the
2 limited partnership, the other -- they wouldn't be
3 able to do so because the voting was controlled.

4 And even if they did so, I was
5 given as the developer one unit of one class B
6 unit. So they needed my overriding vote, both
7 investment categories' overriding vote to take
8 over the -- to take over the project. Now, this
9 is all just explaining to you.

10 Also in the limited
11 participation agreement I explained to them this
12 was a private company. Even though it was a
13 private company, there was no requirement for
14 audits, notice to readers, so any of that sort.

15 But I personally decided that
16 I wanted audited financials prepared and available
17 for my investors, if they chose to see them.

18 I didn't want them to just
19 have any audit. I went to probably the most
20 expensive accounting firm with a strong real
21 estate department. I went to
22 PricewaterhouseCoopers and I said, I want you to
23 audit my books.

24 I talked to them about my
25 control environment in my office because my

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1 background is in terms of controls, risk
2 management. I did a lot of this for RBC right
3 across the world in different locations, going,
4 buying units that were a mess, fixing them up,
5 restructuring them, putting the controls in place,
6 putting policies and procedures in place, putting
7 process maps in place.

8 And all of that exists in
9 Go-To Developments, even though it was never
10 required.

11 But I was willing to bring PWC
12 in because I wanted them to have that comfort
13 level that no matter how much they knew me and how
14 well they knew me and knew my financial background
15 and how much I knew them, I wanted them to have a
16 comfort level that they were investing in a solid
17 company where books and records were being vetted
18 by a very strong accounting firm. And that has
19 been taking place.

20 In fact, it is taking place
21 this week, because of the delay from COVID. It
22 should be wrapped over the next week.

23 I told them all about -- spent
24 a lot of time focussing on the different
25 components of the limited partnership agreement.

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1 Then I went into the project
2 management agreement, and this is the third
3 category where I talked about how I bring
4 construction companies to work for me.

5 I realized very quickly that,
6 realistically, being, unfortunately, in no racist
7 way, being non-Italian and non-Jewish, I would
8 have a tough time breaking into this marketplace.
9 Because you go to the big construction companies,
10 they only want to build for the people that they
11 know.

12 I had to come up with a
13 business model to bring the construction companies
14 in. But also to find a way to have them have skin
15 in the game. Otherwise they will jump ship
16 whenever they want to.

17 And that is why I developed
18 the detailed construction management agreement
19 which I walk through with my investors.

20 So before I continue on that
21 theme, let me just touch one more point in the
22 limited partnership agreement. I did explain to
23 them the whole concept of the money was brought in
24 initially to fund the project.

25 Additional funds would be

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1 raised for operating expenses, but I had the
2 discretion to take on any debt, do anything I felt
3 was in the best interests of all of my projects
4 and to protect all of my projects, which is what I
5 have actually done.

6 Going now to the project
7 management agreement, I walked them through the
8 clause that says the builder had to make the 6
9 percent payment. Had to pay for these expenses at
10 my request or he would be in default.

11 And those payments that he had
12 to make to the LP and all of the funding, if there
13 was no funding available, the access was all
14 interest free but that would be the builder's skin
15 in the game.

16 So I walked through them with
17 that. Walked them through the history of the
18 existing construction company that was at the
19 table, Capital Build. What they built. In fact
20 in some cases depending on the weather we actually
21 drove them out to a --

22 COURT REPORTER: Sorry, your
23 audio is breaking. "Drove them out to..."

24 THE WITNESS: To a
25 construction site. It is called, the property is

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1 called AquaBlu. It is off the QEW, heading to
2 Niagara, and that was -- the property is developed
3 and owned by Homes by DeSantis.

4 But if you went on site you
5 would realize that every single employee there was
6 a Capital Build employee, or subcontracted by
7 Capital Build. They were the construction
8 company.

9 So I was deliberate in how I
10 picked my construction companies, because Capital
11 Build was in fact one of the strongest, in fact,
12 the first construction company in Southern Ontario
13 to build six-storey construction.

14 And six-storey construction
15 was never approved here. Capital Build has been
16 involved in coming up with the specs for it,
17 before province approved building six storeys with
18 wood frame.

19 That was significant for me
20 because if you go to steel frame, anything up to
21 nine floors, if it is going past six storeys, now
22 you have to go to nine floors. And if you go up
23 to nine floors, you have to go steel frame.
24 Beyond nine floors, you have to go concrete.

25 But in the wood construction

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1 you can build your elevator shaft and your
2 underground parking that's both concrete; the rest
3 is all wood.

4 So because they were the
5 experts in it and I signed them up, that was an
6 important thing that I shared with my investors
7 and I would take them to the site. Show them --
8 give them all of the hard hats and boots and
9 everything and I was given permission to walk on
10 to the site for the investors I was able to take
11 there.

12 So I wanted to make sure they
13 understood every aspect of the building, the
14 builder, every aspect of the LP. And so the focus
15 was to make sure they had maximum information.
16 This is still the first part of the meeting.

17 The next part of the meeting
18 was that the information book you have seen where
19 I wanted to tell them -- and I didn't follow along
20 the pages. I gave them a lot more detail than is
21 in there. I wanted them to know where the
22 property is, why I was going after the property.
23 What the zoning was.

24 And, as an example, I made a
25 very clear to them that if the property was

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1 commercially zoned or retail or something that
2 required significant zoning change, I wouldn't
3 touch it because you cannot predict how long it
4 might take to get that property.

5 It had to have some form of
6 residential designation on the property before I
7 considered it. And so they got to know the
8 location.

9 In fact, in a lot of cases I
10 asked them to drive out to see the property even
11 before they came to see me, so they knew the
12 location. As part of our analysis we would give
13 them all of the infrastructure in the area and,
14 for example, I don't touch a property if the
15 infrastructure is not there.

16 I will give you a quick
17 example. With the Stoney Creek property, it may
18 be a property that is being developed in four or
19 five years but it's considered to every developer
20 now to be a gold mine because adjacent on Upper
21 Centennial is the piping.

22 The city predicted this thing
23 is going to come in the open boundary and they put
24 big enough pipe adjacent to my property, adjacent
25 to --

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1 COURT REPORTER: Sorry. Can
2 you repeat?

3 THE WITNESS: Adjacent to
4 Upper Centennial.

5 So if you go to the property,
6 and by the way, this process -- my investors ask
7 me a lot of questions and I will get into that
8 conversation with them saying -- in fact, a lot of
9 them I took to that property too because it is not
10 that far from Oakville.

11 And if you go there, you will
12 actually see that the number one property in
13 Hamilton is over probably 10,000 hectares coming
14 into the open boundary at different points in
15 time.

16 But there is one key property
17 that is in the front of the line of anything
18 coming into the urban boundary and it happens to
19 be the 33 acres I own.

20 In fact, the city has already
21 come up with plans saying that they want full
22 development on my property. There is no schools,
23 no ponds, no anything else to make it
24 unattractive. So I went through that.

25 Now, the important part of

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1 this discussion in talking to them about the
2 property is, I talked to them about the risks.
3 What are the risks involved in the development?
4 Could I have a delay?

5 I used the example where,
6 about four or five years ago, I don't know the
7 actual year, there was an elevator strike.

8 Everyone in the GTA that had
9 to put an elevator in their building ran into
10 four- to six- to seven-month delays because of the
11 elevator strike. I said, those are the types of
12 things you cannot account for.

13 I come up with time lines on,
14 projected time lines, but the projected time lines
15 were driven by the whole fact that we had, we had
16 from the city, we could go on their web page and
17 see how long they say they would actually take to
18 put you through the approval process.

19 Not one city has actually
20 complied with those time lines. They have all
21 blown the time line. But I made sure my investors
22 knew that that was a significant issue.

23 So that was one of the risks I
24 had to explain to them.

25 Then I explained to them the

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1 whole risk of getting materials, and what
2 construction companies do to get the product and
3 material to construct, and what kind of pricing
4 would they get.

5 And, again, we made sure we
6 selected, we selected builders that we knew had
7 the buying power linked, they had to be linked
8 with the larger families that have the buying
9 power to get material at special pricing. To get
10 preferred pricing from the unions.

11 If you just think you can be a
12 developer in this city, you are 100 percent wrong.
13 You need to know what you are going to get your
14 trades coming in at, and how much is glass going
15 to cost you, and where will you get your glass
16 from. There is only one chief supplier of glass,
17 and he is shipping all his glass across the border
18 for the better deals with the exchange rate.

19 So if you don't know all of
20 these things, you are getting into a dangerous
21 game because you will not be able to build. So I
22 selected builders that had the network, and that
23 was critical to us. And, in fact, it will be
24 critical for me going forward how I pick my
25 builders for the remaining projects.

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1 We spent a lot of time saying:
2 What are the possible risks? Some of the
3 investors would ask me, what is the risk? In
4 fact, I will get into some of the forms they sign.
5 They wanted to know what the risk was in the
6 project. And the key, initially when you started
7 off, they were more concerned with the risk of
8 "What happens to me"?

9 And it is a risk I addressed
10 at the very beginning, the very beginning. I've
11 got chartered accountants to join forces with me,
12 Paschal, P-a-s-c-h-a-l DeSouza or D'Souza-- I
13 can't remember which one -- and Conrad Fernandes.

14 And I addressed that risk
15 because of the way that risk was supposed to be
16 addressed is, I was bringing two very strong
17 chartered accountants into my company. I am a
18 chartered accountant myself and they all knew my
19 financial background. In fact, the majority of
20 the investors happened to know them too.

21 So they were looking at the
22 front line being three chartered accountants
23 running the show here. And my view was I was
24 never going to give up any part of the ownership
25 in Go-To Developments to these guys until they

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September 24, 2020

COMPELLED INTERVIEW OF OSCAR FURTADO

1 proved themselves to me. And so that was the
2 initial.

3 Since then, I have brought in
4 a CFO that is very, very strong coming from
5 various builders, but that was not in the original
6 conversation.

7 So I addressed every risk that
8 they brought up. And once I got through going
9 through all of the risks within the project, I
10 then spent time going through, saying they had to
11 be accredited investors.

12 And when I went through that
13 paperwork with them, it was not just going through
14 the financial calculations and those accredited
15 investor forms. I went through the risks over
16 there. Spent a lot of time on the risks.

17 And one of the key risks I
18 said, look at this form right here. Point number
19 1 says you cannot -- you can lose your entire
20 investment. Are you prepared to lose your entire
21 investment?

22 And they asked me what that
23 means. And I explained to them that you are
24 investing in a private company. There is always a
25 worst case scenario. And they said to me: What

COMPELLED INTERVIEW OF OSCAR FURTADO

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September 24, 2020

1 is that worst case scenario? Is it possible?

2 And personally I have always
3 strongly believed the worst case scenario isn't
4 possible as long as you protect the project. That
5 is only possible if you have an act of God.

6 Unfortunately, we're into
7 COVID and still I battled through the COVID to
8 make sure that everything we have done was
9 protected.

10 So when I went through that
11 first item, the very second item, if I recall
12 correctly was that: Your investment is not
13 liquid. Once you put it in, you can't get it out
14 until the end of the project.

15 The original plan is build out
16 all of these projects. We might take an early
17 exit if something comes to me with a crazy offer.

18 If they want to buy the
19 project from us, we will sell it if I feel it is
20 of benefit to my investors. Otherwise I intend to
21 build out every project and take it in that
22 direction.

23 So they knew that the
24 investment was not liquid. They couldn't have
25 access to these funds. It had to be excess funds

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September 24, 2020

COMPELLED INTERVIEW OF OSCAR FURTADO

1 they didn't require.

2 The third thing I talked to
3 them about is the fact that there is a risk of
4 being with a private company. They would get
5 limited information from me.

6 Now I will tell you I
7 committed to giving them semi-annual reports, and
8 I have always done that. In fact, it was
9 important I gave them more than semi-annual
10 reports so to ensure they had proper information,
11 but I said there is a risk of planning on the
12 semi-annual reports.

13 Then the final risk I told
14 them about was, at the end of the day I am not
15 qualified to make the decision for them in the
16 sense is this a good investment. I am not an
17 investment advisor.

18 I said to all of them, if you
19 want to see a lawyer, seek an advisor, seek the
20 accountants. Go do it. Let them give you advice.
21 But I can only tell you what products I have in
22 front of me.

23 So a lot of time was spent
24 doing that. But at the front end of this meeting
25 a lot of time was spent on saying, who are they.

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September 24, 2020

1 Are they accredited? Are they sophisticated? The
2 key for me was, were they sophisticated investors
3 and what their educational background was. I
4 spent a lot of time on finding out what their
5 educational background was, but a lot of them I
6 knew. Some of them I knew quite well...

7 COURT REPORTER: I'm sorry. I
8 need a short break. I cannot concentrate any
9 longer.

10 --- Recess at 4:07 p.m.

11 --- Upon resuming at 4:15 p.m.

12 MR. MANN: Can we start.
13 Okay, we're all back? I'm going to invite Mr.
14 Furtado to just continue on with his answer.

15 THE WITNESS: Okay. So after
16 I had continued the discussion on walking through
17 all of the risks of the project, the exposures and
18 risks, to make sure they understood the risks, I
19 talked to them about what their financial
20 objectives were.

21 Because I wanted to make sure
22 that the investors came to me with longer term
23 objectives. Otherwise it wouldn't be a good fit
24 for them.

25 If you're in for a year, the

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COMPELLED INTERVIEW OF OSCAR FURTADO

1 investments are illiquid and you won't be out in a
2 year. So I wanted to be sure they were in the
3 right investment. I also wanted to know about
4 their education.

5 I wanted them to make sure
6 their objectives were in line with the objectives
7 of the various projects.

8 Once I was comfortable with
9 that, I wanted to understand their financial
10 position. And in most cases it was something I
11 required, since I knew them and I wanted to know
12 what their combined family position was, what they
13 did for a living, what appetite they had and that
14 whole bit about -- a lot of them claimed they had
15 multiple projects and properties and other
16 investments in place.

17 I wanted to understand --I
18 really wanted to understand the financial position
19 to help -- I knew they were sophisticated from
20 their educational background and most of them
21 already knew that, but I still asked the question
22 on what their educational background was.

23 I wanted to get comfortable
24 that these guys were sophisticated. But what was
25 their financial position?

COMPELLED INTERVIEW OF OSCAR FURTADO

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September 24, 2020

1 Did they have the financial
2 strength to do this and work, and be brought in
3 and accepted by me on these projects?

4 Another key thing was
5 investment experience. Did they invest in similar
6 projects? And in fact some guys, some actually
7 told me they had invested with other builders. So
8 I wanted to get comfortable they knew what type of
9 investment they were getting into because it is
10 not common to have this out in the public place.

11 But all of these people came
12 to me and I wanted them to understand that not
13 everyone who came to me was accepted just because
14 they called me, and that is why I declined a lot
15 of people.

16 So education was important.
17 The investment experience was important to me.
18 The knowledge of investments in general.

19 If I got down a path in the
20 discussion where I realized these guys really
21 didn't understand investments and private
22 investments and all of that, I would openly say, I
23 don't think this is the right thing for you. And
24 that is where it would end.

25 I didn't want people investing

COMPELLED INTERVIEW OF OSCAR FURTADO

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September 24, 2020

1 just because they know me and they know about my
2 financial strength and my financial background and
3 all of the work I have done in the community and
4 RBC. That was a given to them. But I wanted to
5 know who they were.

6 To me, that was my vetting
7 process. Am I bringing the right people to the
8 table? So yeah, that's...

9 MR. MANN: That was a long
10 answer.

11 MS. VAILLANCOURT: That's
12 helpful. That is helpful, Mr. Furtado. Thank you
13 for that background. It is helpful. Just a
14 couple of questions.

15 MR. MANN: Sorry. Unless
16 these are absolutely necessary questions for you
17 to ask now, I can tell you at the break Mr.
18 Furtado expressed that he is tired and has had it
19 for the day. That is the only discussion I had
20 with him off the record. I urged him just to
21 complete the answer.

22 So for obvious reasons -- and
23 so you have his answer now. And I suggest we have
24 a discussion that we had earlier about how to
25 continue and complete the examination.

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November 5, 2020

CONTINUED INTERVIEW OF OSCAR FURTADO

1 the connections and how they --

2 MS. VAILLANCOURT: Okay.

3 MR. MANN: -- knew him and how
4 he met them and how they knew of his reputation
5 through business and so on, so --

6 MS. VAILLANCOURT: Okay,
7 that's fine. We'll move on, Mr. Mann. That's
8 fine.

9 Ms. Collins, do you want to
10 take a five-minute break? I want to talk to you
11 for five minutes.

12 MS. COLLINS: Okay.

13 MS. VAILLANCOURT: So, can we
14 go off the record for five minutes.

15 --- Recess taken at 12:16 p.m.

16 --- Upon resuming at 12:22 p.m.

17 MS. COLLINS: So, the time is
18 12:22 and we're back on the record.

19 MS. VAILLANCOURT: I'm still
20 alone. That's Michelle.

21 MS. COLLINS: Okay.

22 BY MS. COLLINS:

23 554 Q. Is the investment
24 opportunity document provided to investors before
25 or after they provide their funds?

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November 5, 2020

CONTINUED INTERVIEW OF OSCAR FURTADO

1 A. As I explained in our
2 previous interview, they come in and meet with me.
3 And when they meet with me, that's the first time
4 they will see that investment opportunity. I will
5 walk it through with them. Nothing is given to
6 them before. I don't collect funds first at all.

7 555 Q. But if they're referred
8 by a third party, do they get the investment
9 opportunity document from that third party or
10 would they get it from you?

11 A. They get it from me.

12 556 Q. Have any of the investors
13 in any of the limited partnerships signed risk
14 acknowledgement forms?

15 A. They sign the
16 subscription agreement pages in the back that has
17 the Securities Commission forms in there
18 acknowledging the different risks, that they
19 understand the risks as an individual. As an
20 example, there's a risk saying the risk of loss.

21 MR. MANN: You have or staff
22 has what the investors signed. Characterizing it
23 as you have, I don't know that we'll accede to
24 that. We believe that the investors have signed
25 documentation which certainly and sufficiently

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Arbitration Place

416-564-2727

416-861-8720

This is Exhibit “26” referred to
in the Affidavit of Stephanie Collins
sworn before me, this
6th day of December, 2021

A handwritten signature in black ink, appearing to read "Michelle Spain", with a long horizontal flourish extending to the right.

A COMMISSIONER FOR TAKING AFFIDAVITS

**Michelle Spain, a Commissioner, etc.,
Province of Ontario, for the Government of Ontario,
Ontario Securities Commission.
Expires March 22, 2024.**

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July 7, 2021

COMPELLED INTERVIEW OF OSCAR FURTADO

1 We then provided the additional or discussed it in
2 a subsequent meeting.

3 57 Q. Okay. The limited
4 partnership agreement for Spadina Adelaide has
5 three classes of unit holders, "A", "B" and "C",
6 and it's my understand there's no class "C" unit
7 holder to date. Is that correct?

8 A. I believe that is
9 correct.

10 58 Q. Is there an anticipated
11 class "C" unit holder or unit holders?

12 A. No.

13 59 Q. There isn't one. Okay.

14 A. At this stage there
15 isn't.

16 60 Q. Okay. All right. So I
17 would like to talk a bit now about the actual
18 acquisition of the 355 Adelaide and 46 Charlotte
19 properties by the Spadina Adelaide LP.

20 So I understand you were
21 approached by Adelaide Square Developments Inc.,
22 who I will just refer to as Adelaide Square
23 Developments or ASD during this exam. Is that
24 acceptable to you?

25 A. That is fine.

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COMPELLED INTERVIEW OF OSCAR FURTADO

1 61 Q. So I understand you were
2 approached by ASD after that company had entered
3 agreements to purchase or had procured agreements
4 to purchase both 355 Adelaide and 46 Charlotte.
5 Is that correct?

6 A. That's not accurate. I
7 was approached by a representative who said he was
8 representing Adelaide Square Developments, and
9 that was, I believe, AKM Holdings, with the
10 intention that they were looking to acquire two
11 properties, 46 Charlotte and 355 Adelaide, and
12 with the potential of also acquiring two parking
13 lots adjacent to those two properties for a block
14 plan, and was I was interested in entering into an
15 -- to buy the property from them if they assembled
16 the four properties.

17 62 Q. Okay. When,
18 approximately, was that that you were first
19 approached about this potential opportunity?

20 A. Sometime in the beginning
21 of 2018. I don't recall the actual date.

22 63 Q. Is there a way you would
23 be able to find out?

24 A. I don't believe so. I
25 didn't keep any records when I met him the first

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COMPELLED INTERVIEW OF OSCAR FURTADO

1 time.

2 64 Q. Okay. Who was it that
3 approached you? What is the person's name?

4 A. Alfredo Malanca.

5 65 Q. Okay. How did he come to
6 approach you? Did you know Mr. Malanca already?

7 A. Yes, I did.

8 66 Q. How did you know
9 Mr. Malanca when he approached you about this
10 project?

11 A. Mr. Malanca, when I
12 first -- before I even formed the GTD and
13 initiated my whole business plan, I was in search
14 for any individuals that had access to equity,
15 meaning -- let me correct that. Access to debt
16 financing, (audio distortion) private lenders. So
17 I needed someone who had access to debt financing,
18 not necessarily the schedule "A" banks but the
19 second tier lenders like Atrium, Cameron Stephens,
20 the second tier lenders who do private lending,
21 because you need to have access to them to buy
22 property. Banks don't generally finance it.

23 I also wanted access to the
24 general construction community. Who are the
25 builders? Who are the different major trades?

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COMPELLED INTERVIEW OF OSCAR FURTADO

1 And I was introduced to Mr. Malanca as an
2 individual who had his brokerage operation, had a
3 lot of history at his broker operation, and had a
4 significant Rolodex of people in the business that
5 he could introduce me to.

6 67 Q. Okay. Who introduced you
7 to Mr. Malanca?

8 A. I don't recall offhand.

9 68 Q. Okay. You mentioned --

10 A. There were many people I
11 spoke with. I was meeting people, seven, eight
12 people a day, (indiscernible) and it just went
13 from person to person to person, just meeting
14 people, just to learn about the business. That
15 was my education part of the business when I first
16 started.

17 69 Q. All right. You mentioned
18 a brokerage business. Mr. Malanca has a brokerage
19 business. What is that?

20 A. My understanding is that
21 he (inaudible) brokerage business. I believe when
22 I've seen the actual deals being put together, the
23 billing came through -- sometimes they came --
24 it's not -- sorry, I believe it's his wife's
25 company. It's either Beaumont Financial or

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COMPELLED INTERVIEW OF OSCAR FURTADO

1 Beaumont Capital. I don't recall the actual names
2 offhand, but there is a brokerage there that
3 brokered the deals. That was the primary one.

4 70 Q. All right. When,
5 approximately, did you first meet Mr. Malanca?
6 What month? What year?

7 A. I don't recall offhand
8 the month. It's many years ago.

9 71 Q. Right. When he
10 introduced the Go-To -- pardon me, it wasn't a
11 Go-To opportunity, but the opportunity at Adelaide
12 and Charlotte to you, had you had any other
13 business dealings with him to that point before
14 that offer?

15 A. Yes. In fact, the
16 majority of my limited partnerships when I needed
17 the debt financing, which is something you
18 generally need, I went to Mr. Malanca because he
19 had the private lenders, the only -- I believe
20 there are two LPs that I was able to find private
21 lenders on my own and I went a different path and
22 found the private lenders on my own. But he was
23 basically my go-to brokerage person to find the
24 debt financing on a project.

25 72 Q. All right. So the

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COMPELLED INTERVIEW OF OSCAR FURTADO

1 opportunity was introduced to you by -- about
2 Adelaide and Charlotte and potentially some other
3 projects by Mr. Malanca, and he said he was a
4 representative of Adelaide Square Developments at
5 that time?

6 A. I believe so, yes.

7 73 Q. Okay. How did he
8 introduce it to you? Did he send you an email or
9 did you have a discussion?

10 A. I believe it was a
11 discussion.

12 74 Q. Okay. Please tell me
13 what you remember about what he told you about the
14 opportunity and how he came to -- what he told you
15 in that initial discussion.

16 A. So, all I recall -- this
17 is going back now two and a half years. Sometime
18 in the beginning of 2019, I believe it happened.
19 All I recall at the time is he said he was
20 looking at -- through a group of people looking at
21 acquiring two properties and the two parking lots.
22 And at the time he said to me that 46 Charlotte
23 was in -- I don't know what the right word is. It
24 was with court-appointed trustees, FAAN
25 administration, and the previous owners or the

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COMPELLED INTERVIEW OF OSCAR FURTADO

1 owner, actual owner, was Fortress.

2 At the time I said, "Sorry,
3 but I read about Fortress in the newspapers. I
4 don't want to touch this. It will just destroy my
5 company. I don't want to be connected in any way
6 to Fortress", and I walked away. And he went on
7 his own path then, looking for other partners, and
8 I didn't speak to him for a couple of months about
9 it. That was the initial conversation.

10 75 Q. Okay. How did it come
11 back around, then, if you walked away and then
12 eventually it came to fruition? So how did it
13 restart the discussions?

14 A. So it came back because
15 he actually said to me that, "Listen, everything
16 is being done properly. You don't have to worry
17 about Fortress." And the initial discussions were
18 that I would not require any equity from investors
19 to do the deal. They knew about my back office at
20 Go-To. I have strong control of back office and
21 all our limited partnerships are audited,
22 everything. We've got a pretty good shop here. I
23 said we'd like you to place this -- get the
24 acquisition in, but we will arrange all the equity
25 -- he was the -- so that he could find the equity

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COMPELLED INTERVIEW OF OSCAR FURTADO

1 partners to work with me.

2 He introduced me to large
3 equity partners, because you can't raise anything
4 20 million-plus just like that. It's not the size
5 of the deals I do. The deal was very large. He
6 was to -- initially, he was to bring the equity
7 partners to me, introduce them to me, and provide
8 me more details about the deal, because I had no
9 -- I didn't have any due diligence yet on the
10 deal. What could you build there? What is the
11 output? Is it profitable? Do we just do the
12 deal, get the approvals and flip it? Or do we
13 find another buyer? Because this deal is over my
14 head in terms of size to build out. So who would
15 be the build-out partners? All that type of
16 discussion started taking place as the discussions
17 progressed over the months.

18 76 Q. Okay. Did you have a
19 sense, approximately, of when this sort of -- the
20 more in-depth discussions, I will say, commenced?
21 When did these discussions about perhaps being
22 involved take place?

23 A. I believe eventually
24 mid-2018 --

25 MR. MANN: He said a few

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COMPELLED INTERVIEW OF OSCAR FURTADO

1 months later. I think --

2 THE INTERVIEWEE: Yes.

3 MR. MANN: -- that was his
4 best evidence, his best recollection. Without
5 knowing when the first discussions took place, I
6 don't know how he could pinpoint the second one.

7 MS. HOULT: Memory can be a
8 funny thing, Mr. Mann. Sometimes people have
9 memories of when certain events occur and not
10 others, so I thought I would ask.

11 BY MS. HOULT:

12 77 Q. So you mentioned in
13 this -- and we will say mid-2018, although it is
14 not a certain date, but the mid-2018 discussions,
15 the second round of discussions, you said that
16 Mr. Malanca indicated that he was going to take
17 care of any equity raising.

18 What did he want Go-To to do,
19 then, is my question. Why was he talking to you
20 if he was going to raise the money himself?

21 MR. MANN: First of all, I
22 think he wanted to clarify --

23 THE INTERVIEWEE: I just want
24 to clarify.

25 MR. MANN: -- a premise of

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COMPELLED INTERVIEW OF OSCAR FURTADO

1 your question.

2 THE INTERVIEWEE: He would
3 introduce me to the people that would be able to
4 bring the equity in. I just said I don't deal
5 with investors of this size. I don't have access
6 to larger investors in a short time frame to come
7 up with 20-plus million.

8 BY MS. HOULT:

9 78 Q. Okay. Thank you. That
10 is a helpful clarification. Again, what did he
11 want Go-To's role to be? I'm just trying to
12 understand. If he had the connections to the
13 investors, I just want to understand what he was
14 hoping Go-To would bring to the deal.

15 MR. MANN: I don't know that
16 Mr. Furtado is going to answer what this other
17 gentleman's hope was. I think all that
18 Mr. Furtado can address, if he is able to recall,
19 is what Mr. Furtado was told. But he's not going
20 to get into Mr. Malanca's mind as to what
21 Mr. Malanca hoped or wanted necessarily. Go
22 ahead.

23 THE INTERVIEWEE: Yes. So my
24 understanding was that everyone believed that we
25 had a strong back office that could manage the

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COMPELLED INTERVIEW OF OSCAR FURTADO

1 project once it came on board. And we believe we
2 do have a strong back office, because we already
3 had eight projects being managed at various stages
4 within our back office. And we had the
5 infrastructure and the ability to bring on the
6 resources as we progressed into the next phase of
7 construction and build-out. So he was aware of
8 that.

9 BY MS. HOULT:

10 79 Q. Okay. In terms of your
11 discussions with -- let me step back. So
12 Mr. Malanca brings this opportunity to you on
13 behalf of Adelaide Square Developments. What was
14 Mr. Malanca's role with Adelaide Square
15 Developments or why was -- what was your
16 understanding of why Mr. Malanca was bringing this
17 opportunity to you and his connection to Adelaide
18 Square Developments?

19 MR. MANN: You asked two
20 questions: Why Mr. Malanca was bringing this
21 opportunity to Mr. Furtado, which he has already
22 indicated. He has already answered that. The
23 second question or second part of that question
24 was: What, to Mr. Furtado's knowledge, was
25 Mr. Malanca's involvement, which I think your word

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COMPELLED INTERVIEW OF OSCAR FURTADO

1 was, with Adelaide Square Developments?

2 THE INTERVIEWEE: I don't know
3 his full relationship with Angelo Pucci. That was
4 his business. He was just a representative that
5 was coming to me. That's all I looked at. I'm
6 getting a deal. Do I now want to consider
7 bringing it in to Go-To? And I believed that the
8 opportunity was presented to other people and he
9 came back to me. I walked away. And that doesn't
10 seem to be something (audio distortion).

11 BY MS. HOULT:

12 80 Q. Sorry, I didn't catch
13 that last part. You said it doesn't seem to be
14 something?

15 A. As I mentioned earlier,
16 initially I walked away from the deal because it
17 was not something I wanted to consider. My
18 understanding at that interim time -- I didn't
19 know the details. My understanding was he was
20 looking at other partners that might want to
21 consider working with them or selling or posting
22 the property -- managing the property for him, the
23 acquisition.

24 81 Q. All right. Your
25 understanding was that Mr. Malanca was in some way

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COMPELLED INTERVIEW OF OSCAR FURTADO

1 a representative of Mr. Pucci? You said he was a
2 representative. I just want to understand what
3 your understanding was of Mr. Malanca's role.
4 That is my question.

5 A. My understanding was that
6 he was a representative of Adelaide Square, and
7 the key principal, I was told, was Angelo Pucci.
8 That's it.

9 82 Q. Did you have direct
10 dealings with Mr. Pucci?

11 A. As I have mentioned in
12 the previous examinations, I have met him a few
13 times. There was limited exposure.

14 83 Q. All right. In the
15 materials we have received, we received an offer,
16 and I guess it was an agreement because it was
17 accepted from the Spadina Adelaide LP to Adelaide
18 Square Developments in December 2018 to purchase
19 the 355 Adelaide and 46 Charlotte properties for a
20 total price of \$74,250,000. Can you tell me, how
21 did you arrive at that price to put in your offer?

22 A. That was the price that I
23 was told I would have to -- the offer I would have
24 to make for that price if I was interested in
25 buying the property.

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July 7, 2021

COMPELLED INTERVIEW OF OSCAR FURTADO

1 84 Q. Okay. So it wasn't a
2 negotiated number?

3 A. Very rarely do you get to
4 negotiate these numbers. I was told a price. I
5 had to determine if I felt the price was a good
6 price for the acquisition, and that is when you do
7 the land pro forma and see what profitability you
8 can make.

9 85 Q. Okay. Who provided you
10 that price? Who said this is the price you will
11 have to provide?

12 A. Well, it was a
13 discussion, again, with Alfredo Malanca.

14 86 Q. Okay. What do you recall
15 of that discussion? What did Mr. Malanca tell
16 you?

17 A. Generally, I'm told a
18 price. I was told the price, and I said, well --
19 I think if I recall back -- these are multiple
20 discussions leading up to this, so I recall
21 asking -- I need some kind of backup to determine
22 the value. And also, I need to have some form of
23 indication of what we can actually build to see if
24 there is any profitability.

25 Mr. Malanca had access to an

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COMPELLED INTERVIEW OF OSCAR FURTADO

1 appraisal that he had ordered. I don't recall if
2 it was Cushmans or Colliers. He ordered an
3 appraisal on behalf of one of his legal entities
4 and shared that appraisal with me. So I saw that
5 the value came in from the appraisal at, I
6 believe, approximately 82 million.

7 So he had his own internal
8 appraisals that I looked at, and then we started
9 running numbers. I need to run numbers, and he
10 had an architect, Roy Varacalli, who is now an
11 architect on the deal, who provided some stats and
12 information and also had discussions with the city
13 at the time prior to closing on (indiscernible)
14 value.

15 87 Q. Okay. That December 2018
16 offer 74.25 million, was that the only price
17 Go-To -- was that the first price Go-To offered?
18 Were there any prior offers or prices discussed
19 with Mr. Malanca?

20 A. The price for the two
21 properties and the -- when I say 74.25, yes, I
22 will be taking over the deal at 74.25. That was
23 the only price ever discussed and that was the
24 only price I ever shared with any potential
25 investor that came in after the deal had been

This is Exhibit “39” referred to
in the Affidavit of Stephanie Collins
sworn before me, this
6th day of December, 2021

A handwritten signature in black ink, appearing to read "Michelle Spain", written over a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS

**Michelle Spain, a Commissioner, etc.,
Province of Ontario, for the Government of Ontario,
Ontario Securities Commission.
Expires March 22, 2024.**

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May 5, 2021

COMPELLED INTERVIEW OF ANTHONY MAREK

1 THE INTERVIEWEE: Sorry, just
2 to hear everything, I have to put my ears just a
3 little closer. Sorry, Erin.

4 MS. COLLINS: Okay. So, no,
5 we don't need to have the summons up right now.

6 It's going to look a little
7 bit weird because the way my screens are set up,
8 the camera is on a different screen than the
9 pictures appear, so it looks like when I'm talking
10 to you that I'm looking away, but I'm not. I'm
11 actually looking at you. It's just that the
12 camera is on a different screen. Anyway, I'm not
13 great with technology either. So if it looks
14 weird, that is why.

15 BY MS. COLLINS:

16 65 Q. So I would like to talk
17 to you a little bit about your dealings with Go-To
18 Developments and Oscar Furtado. How did you meet
19 Mr. Furtado?

20 A. I met him through an
21 introduction of a solicitor that I went to go
22 visit to sign a document for a foreclosing that I
23 needed as a witness. And I understood that this
24 solicitor always had mortgage opportunities, and
25 as I was getting the signature, I sat down in his

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COMPELLED INTERVIEW OF ANTHONY MAREK

1 office and, being the inquisitive person that I
2 am, I asked, "Do you have any mortgages?" The
3 gentleman said, "Do you have time for lunch on a
4 Friday?" I said, "Sure, let's go for lunch."

5 The long and short of it, we
6 had lunch and he presented option number one and
7 number two and I wasn't keen on it, and number
8 three, he introduced it in a way, "If you're
9 interested in pursuing what my third option is, I
10 could introduce you to who the people are involved
11 in this."

12 As a result of that, I went
13 back to his office and was introduced to a
14 gentleman, and it was still very vague on what
15 they required and what the needs were. It was a
16 very time-sensitive transaction that would have to
17 occur, and there was a different set of values
18 coming up for how much money that they needed, and
19 in order for me to do that, I would have to have a
20 meeting in which we left that office and they then
21 basically put together a meeting at the office of
22 Torkin Manes where I met Mr. Furtado for the first
23 time and was introduced to him.

24 66 Q. Okay. What was the name
25 of the solicitor that made the introduction or the

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COMPELLED INTERVIEW OF ANTHONY MAREK

1 solicitor that you went to visit that day?

2 A. It was a gentleman. I
3 would have to check the records to see what his
4 name is. I don't recall right now.

5 MR. NASTER: Can I just ask my
6 client if he recalls a gentleman by the name of
7 Louis Farraghello?

8 THE INTERVIEWEE: That was the
9 solicitor that came with me to the offices of
10 Torkin Manes. But I think you specifically asked
11 me who the solicitor was at Torkin Manes.

12 MS. COLLINS: Mr. Naster, I
13 think it is Lewis or Louis Raffaghello, right?

14 MR. NASTER: Raffaghello.

15 MS. COLLINS: Wasn't it
16 Raffaghello?

17 MR. NASTER: Yes, Raffaghello.
18 Forgive me. Raffaghello.

19 MS. COLLINS: No, that's okay.
20 Just for the court reporter, just for the record.
21 I want to make sure -- I didn't know if you were
22 right or I was right.

23 BY MS. COLLINS:

24 67 Q. So the solicitor that did
25 the initial -- that you visited to sign the

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COMPELLED INTERVIEW OF ANTHONY MAREK

1 document, was it at the same law firm? Was it at
2 Concorde Law?

3 A. I'm sorry, can you just
4 ask the question one more time? I didn't
5 understand at the beginning what you were
6 questioning.

7 68 Q. Okay. Sorry. The
8 solicitor that you went to visit that day to sign
9 documents on a closing that you asked about
10 mortgages, was that solicitor at Concorde Law?

11 A. Sorry, you're asking
12 about the original reason I went to go visit the
13 lawyer?

14 69 Q. Well, I'm trying to
15 figure out what law firm it was.

16 A. Okay. I originally --
17 how I went to visit the solicitor was to sign an
18 affidavit at Concorde Law.

19 70 Q. I see. Okay?

20 A. For a closing that I had
21 in Florida.

22 71 Q. I see. But it wasn't
23 Mr. Raffaghello?

24 A. Yes, it was
25 Mr. Raffaghello that I went to get the affidavit

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1 signed.

2 72 Q. Okay. So when you went
3 for lunch that day to hear about the different
4 mortgage proposals that they had, who was at that
5 lunch?

6 A. Just me and Louis
7 Raffaghello.

8 73 Q. Okay. So when Mr. Naster
9 was clarifying or asked you, was the name of the
10 lawyer Louis Raffaghello, you indicated that, no,
11 it wasn't him that talked to you first about --

12 MR. NASTER: No. Can I just
13 clarify --

14 MS. COLLINS: Do I have that
15 wrong?

16 MR. NASTER: Yeah. Well,
17 Mr. Marek thought you were asking for the name of
18 the lawyer he met with at Torkin Manes.

19 MS. COLLINS: Okay.

20 MR. NASTER: That's why he --

21 THE INTERVIEWEE: You asked me
22 who it was at Torkin Manes and I don't recall who
23 that original solicitor was at the table when I
24 met Mr. Oscar Furtado for the first time.

25 BY MS. COLLINS:

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1 74 Q. Okay. Was it male or
2 female?

3 A. It was a male.

4 75 Q. Okay.

5 A. The only one I'm thinking
6 of at Torkin Manes that has dealt with real estate
7 would be Stephanie, I think, Eley, E-L-E-Y, but if
8 it was a male, it probably wasn't her.

9 MR. NASTER: I believe in some
10 of the documents that we presented to you, there
11 was a person by the name of Rodness.

12 THE INTERVIEWEE: I recall the
13 name Len Rodness, yes.

14 MS. COLLINS: Okay. Do you
15 know how to spell that, Mr. Naster? Well, that's
16 okay. If you don't know -- I thought you just
17 might know. If you don't know --

18 THE INTERVIEWEE: It's
19 R-O-D-N-E-S-S.

20 BY MS. COLLINS:

21 76 Q. Okay. That's great.
22 Just for the court reporter.

23 So then a meeting was put
24 together and you met at Torkin Manes with a Torkin
25 Manes lawyer and Mr. Furtado. Was anybody else at

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1 that meeting?

2 A. Yes, I attended it with
3 Louis Raffaghello.

4 77 Q. Okay. Can you tell me
5 just generally what was discussed at that meeting?

6 A. It was an initial
7 introduction between parties.

8 78 Q. Okay. How long did the
9 meeting last for, do you think?

10 A. I would say within an
11 hour.

12 79 Q. Okay. When you walked
13 out of that meeting, what was your understanding
14 of the business of Go-To Developments Holdings?

15 A. I understand that it was
16 a development firm. Sorry, land development firm.

17 80 Q. Okay. When you left that
18 meeting, did you have some interest in the
19 project? Well, let me back up a little bit. When
20 you were in the meeting, did he pitch the Spadina
21 Adelaide project to you?

22 A. That was the reason for
23 the meeting, is to introduce what is required, how
24 much is required, and the length of time that is
25 required to get the mortgage money done or money

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1 agreement. Since it was a sliding scale on how
2 much they were looking for from a monetary
3 perspective, I said, "Louis, I will give you
4 50 percent up to a certain amount, and anything
5 over that, I would want --" I don't know if it's
6 a 60/40 split or a 55/45 split, but there was some
7 sort of split wherein I would get more for the
8 additional bump up of money that they needed.
9 That was verbal and it was not a contractual
10 agreement or a written agreement anywhere.

11 107 Q. Okay. In relation to the
12 Spadina Adelaide project, did you ever retain
13 Louis Raffaghello or the Concorde Law firm in
14 their capacity as lawyers?

15 A. No.

16 108 Q. Okay.

17 MR. NASTER: If I may, there
18 is just another clarifying point. Forgive me,
19 Ms. Collins, but it may be a relevant to you.

20 You have asked the witness
21 about his initial meeting with Mr. Raffaghello and
22 he described going out for lunch with him. And I
23 believe he has indicated that after lunch he
24 returned to Mr. Raffaghello's office. Is that
25 correct, sir?

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1 THE INTERVIEWEE: That is
2 correct.

3 MR. NASTER: Were you
4 introduced to anybody else at that time? This is
5 that initial time when you're meeting with
6 Mr. Raffaghello.

7 THE INTERVIEWEE: Yes.

8 MR. NASTER: Perhaps you can
9 explain your recollections in that regard to the
10 OSC.

11 THE INTERVIEWEE: During that
12 lunch hour, Mr. Louis Raffaghello said, "If you
13 want to go further, I could bring into my office
14 the person involved in this deal", and his name
15 was Alfredo Malanca.

16 BY MS. COLLINS:

17 109 Q. Okay. Did you know how
18 Mr. Malanca was -- what he was doing in the
19 Concorde Law offices?

20 A. He was called by Louis
21 for me to meet one of the people from Go-To
22 Developments.

23 110 Q. Okay. So just so I
24 understand, you go for lunch with Mr. Raffaghello?

25 A. Correct.

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1 111 Q. Then you go back to the
2 office. Was it when you went back to the office
3 that Mr. Raffaghello called Mr. Malanca to come
4 over?

5 A. I'm not sure if it was
6 during lunch that he called him, on the way back,
7 or when he was at the office, but when we returned
8 to the office, I would probably say he tried to
9 call him or messaged him and asked him if he was
10 available that afternoon, and when I got back to
11 Concorde Law, I probably waited within a half an
12 hour and this Mr. Malanca came in and I was first
13 introduced to him for this person involved in the
14 project.

15 112 Q. What was your
16 understanding at that time -- well, no, let me go
17 back a little bit.

18 After Mr. Malanca came to the
19 Concorde Law offices, did you have a meeting with
20 him that day?

21 A. We met in Louis
22 Raffaghello's office and we got introduced as
23 Tony, Alfredo, Alfredo, Tony. Basically, on a
24 very low-level introduction. And I asked once
25 again how much money you're looking for, what time

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1 period, what's happening with the job, and, you
2 know, I would be interested if you would give me
3 fulfilment of some of the parameters that I'm
4 looking for.

5 113 Q. Right. Was Malanca able
6 to answer any of those questions?

7 A. No.

8 114 Q. Okay. And do you know --
9 sorry. Did I cut you off?

10 A. Well, I don't think he
11 definitely knew exactly the amount of money they
12 were looking for either. I think that it was --
13 the way I understood and the take-off that I got
14 from there is there are several things happening
15 at the same time and they can't quantify the exact
16 number that they're looking for.

17 115 Q. I see. Do you know what
18 Mr. Malanca's role was in the project?

19 A. I just know that he was
20 associated with the job. I didn't go into
21 specifics on ownership or role or anything else.

22 116 Q. Okay. We'll get back to
23 Mr. Malanca a little bit later. Well, maybe I
24 will ask now. Did you ever come to learn what
25 Mr. Malanca's role in the project was?

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1 looking for a profit that I wanted to make on the
2 deal if I was going to stay or go out. So I had a
3 fixed amount of money that I was looking for for a
4 return on the investment principal that I put in.

5 175 Q. Okay. I may have asked
6 this before but I'm not sure that I'm clear on the
7 answer. What ended up happening is you purchased
8 \$16.8 million worth of units in the limited
9 partnership. Can you tell me why it was
10 structured as an equity investment as opposed to
11 lending them the \$16.8 million?

12 A. First of all, I didn't
13 know which entity I was going to be dealing with.
14 I lent or I gave them money under the provision
15 that I would get a fixed amount for the principal
16 money that I put forward to be held in trust by
17 Torkin Manes, and not know if the deal would or
18 wouldn't close because it was extremely
19 time-sensitive and I was told that they have to
20 jump through certain hurdles in order to make this
21 deal happen and come to fruition.

22 That being said, I think at
23 that point in time I had a level of comfortability
24 that the money would be held in trust by Torkin
25 Manes. If it didn't happen, I would get it back.

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1 176 Q. Right.

2 A. If it did happen, I was
3 looking for a fee and that fee then would be given
4 or the 16.8 would be given to me as units within
5 their partnership and I would be then structured
6 given the return back from the units of
7 \$2.7 million.

8 177 Q. But why was it structured
9 that you buy units as opposed to just lending them
10 the money?

11 A. It's a question I
12 couldn't answer. I would have to go back in time
13 and figure out why it was. I am not sure who I
14 would be lending it to if it didn't mortgage on
15 somebody, it was held in trust. This is the way
16 that it was given to me from Go-To Developments,
17 that we would give it in a limited partnership and
18 we would pay it out. And I said fine, as long as
19 I gave you the money, it was held in trust, I went
20 with the scenario that would be units in a limited
21 partnership.

22 178 Q. Okay. So did you
23 complete the subscription agreement prior to
24 sending your \$16.8 million to Torkin Manes or was
25 that done after the deal was completed?

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1 181 Q. So that is your
2 handwriting, Mr. Marek, on --

3 A. That is correct.

4 182 Q. Okay.

5 A. Oh, Louis Raffaghello,
6 name of witness --

7 183 Q. That is the witness. So
8 it says March 17th, 2019, and it was witnessed by
9 Louis Raffaghello. Does that refresh your
10 recollection about whether that date is correct?

11 A. It's a good question. I
12 couldn't answer that. I'm trying to recall where
13 this was signed because I don't recall
14 Mr. Raffaghello witnessing it. But he did witness
15 it according to that document, and it was most
16 likely at his office that it was witnessed.

17 184 Q. Okay. Just so -- sorry,
18 go ahead.

19 MR. NASTER: I'm sorry, I want
20 to just see if I can help to clarify sort of this
21 initial investment, if I may, just to clarify with
22 Mr. Marek.

23 MS. COLLINS: Please.

24 MR. NASTER: There was a
25 decision that you made to lend money or to invest

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1 money in Go-To; is that correct? That's what
2 we've been discussing.

3 THE INTERVIEWEE: That's
4 correct.

5 MR. NASTER: And it was agreed
6 that you would provide \$16.8 million; is that
7 correct?

8 THE INTERVIEWEE: That's
9 correct.

10 MR. NASTER: Was there an
11 agreement reached as to what your return would be?

12 THE INTERVIEWEE: There was --
13 yes. I asked for that return and Go-To said yes,
14 they would give me that return.

15 MR. NASTER: And I believe we
16 have looked at a document that refers to the fee
17 of \$2.7 million; is that correct? We saw that on
18 the LP agreement, the schedule to the LP
19 agreement.

20 THE INTERVIEWEE: That is
21 correct.

22 MR. NASTER: And that was the
23 return that you received?

24 THE INTERVIEWEE: That's
25 right.

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1 MR. NASTER: What I want to
2 clarify is, was it your understanding that in
3 addition to the return, which I will refer to as a
4 profit, was it also your understanding that you
5 were going to have your principal returned, in
6 other words, the \$16.5 million was also to be
7 returned to you?

8 THE INTERVIEWEE: 16.8, yes.

9 MR. NASTER: 16.8?

10 THE INTERVIEWEE: Yes.

11 MR. NASTER: So when you
12 entered into this transaction, were you intending
13 to buy units and hold those units in the limited
14 partnership of Go-To for any extended period of
15 time?

16 THE INTERVIEWEE: No.

17 MR. NASTER: So your intention
18 was to lend the money and to get a return on that
19 money plus the return of your principal; correct?

20 THE INTERVIEWEE: That is
21 correct.

22 MR. NASTER: Whose idea was it
23 for you to do this by way of an LP subscription?

24 THE INTERVIEWEE: I imagine it
25 was something between Go-To and Louis Raffaghello.

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1 I basically signed a document facilitating what
2 they were looking for from their point of view in
3 order to have this properly done, if you will.

4 MR. NASTER: To clarify, this
5 wasn't your idea to use the LP agreement or
6 subscription to facilitate this process? You were
7 asked to do that; is that correct?

8 THE INTERVIEWEE: That's
9 correct.

10 MR. NASTER: Okay. I'm trying
11 to just give you some context, Ms. Collins and
12 Ms. Hoult, just so you understand that this
13 structure is not one that was conceived of by
14 Mr. Marek.

15 MS. COLLINS: Yeah, no, that
16 is fantastic, Mr. Naster. You have just gone
17 through very quickly exactly the next questions I
18 was going to ask Mr. Marek, so thank you for that.
19 No, I mean it. That is exactly what I was going
20 to clarify with him, whose idea was it that it
21 would be units as opposed to a loan, and you did
22 it very well, so I appreciate that. It makes for
23 a good transcript.

24 BY MS. COLLINS:

25 185 Q. Effectively, and I don't

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1 want to put words into your mouth, but just to
2 make sure that I understand -- I mean, I
3 understand what Mr. Naster has said, but it sounds
4 more like what you were providing to them or what
5 your intention was to provide to them was more of
6 a bridge loan. Does that sound right? Regardless
7 of how it is actually structured --

8 A. I'm not sure what the
9 definition of a bridge loan is, but in my
10 discussions with Louis Raffaghello, I was supposed
11 to provide this money, was supposed to get a
12 payout of 2.7, and was supposed to split our
13 difference, pay him his fee, and I come up with my
14 money if this deal happens and that's it.

15 186 Q. Okay. That's great.
16 Thank you. So we talked a little bit about
17 Adelaide Square Developments Inc., and I think you
18 said you never met any of the principals from --
19 I'll just refer to it as ASD. Is that correct?

20 A. I don't know who they
21 are, sorry.

22 187 Q. Okay. So if I said the
23 name to you Angelo Pucci, does that ring a bell
24 for you?

25 A. At that point in time,

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1 A. It could have been that I
2 was more than a 25 percent owner, and as a result
3 of it, I had to qualify who the person was, is my
4 understanding of the document.

5 MR. NASTER: Do you have a
6 recollection of being asked to sign this document?

7 THE INTERVIEWEE: I don't have
8 a recollection of it.

9 BY MS. COLLINS:

10 193 Q. Okay. That is fine.

11 That is fine.

12 Now, after you gave them the
13 \$16.8 million, were you to have any involvement in
14 the Spadina Adelaide project except for providing
15 capital?

16 A. If I could just qualify
17 that by saying that once this initial 16.8 was
18 given and 19.5 was given back, money distributed,
19 file was closed. After the fact, I received a
20 call half a year later from Mr. Furtado. He said,
21 "Hello, Mr. Marek. It's Mr. Furtado calling back.
22 We have proceeded with putting together
23 information in order to develop the property.
24 Would you be further interested in revisiting your
25 investment into the property?" And I said, "Okay,

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COMPELLED INTERVIEW OF ANTHONY MAREK

1 let's have some sort of meeting and see what could
2 actually come out and what you're offering."

3 194 Q. Okay. But other than
4 being an investor of money, were you to have any
5 other involvement in the Spadina Adelaide project?

6 A. No.

7 195 Q. And as we sit here today,
8 is that still true or have you gotten more
9 involved in the project?

10 A. I have gotten more
11 involved in the project from an investment
12 perspective.

13 196 Q. Okay. Can you tell me
14 about that?

15 A. Well, as you had
16 mentioned before, I had given an additional
17 million dollars to pay -- to take LP shares back
18 in order for them to pay all their outstanding
19 invoices that they had. I was also --

20 MR. NASTER: To clarify, that
21 is the subsequent additional one million to the 12
22 million that he had already invested in units of
23 the limited partnership. Does that ring your --

24 MS. COLLINS: That's right.

25 MR. NASTER: Fair enough. Go

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COMPELLED INTERVIEW OF ANTHONY MAREK

1 333 Q. Did you know one way or
2 another or you had no knowledge one way or another
3 whether there were other investors?

4 A. I had no knowledge one
5 way or another. I just know that they had to
6 quickly close the deal, and if they didn't get
7 this, whatever that amount was, which we actually
8 refined to 16.8, the deal would be dead and they
9 couldn't go forward.

10 334 Q. Okay. I think it is
11 perhaps implicit by the answers you have given me
12 so far, Mr. Marek, but did anyone walk through the
13 limited partnership agreement with you before you
14 made your \$16.8 million investment?

15 A. No.

16 335 Q. Or at any time
17 thereafter?

18 A. No.

19 MS. HOULT: Mr. Baik, could you
20 pull up our document 5187? This is just a
21 clarification question. Sorry, Mr. Naster, do you
22 need --

23 MR. NASTER: No, I wanted to
24 confirm -- it may be of value to note. Mr. Marek,
25 prior to this investment in what is described as a

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1 limited partnership, had you ever subscribed for
2 units in a limited partnership previously?

3 THE INTERVIEWEE: No.

4 BY MS. HOULT:

5 336 Q. Thank you. If you could
6 zoom in. I believe, Mr. Naster, earlier today you
7 referred to your document 221, which is this
8 document, our 5187, which is an email from
9 Mr. Raffaghello of March 13th, 2019, to yourself,
10 Mr. Marek. It says:

11 "Hi Anthony, I just sent
12 you the LP agreement and
13 subscriptions for your
14 review."

15 My question is just
16 clarifying. We didn't -- it is not clear to us if
17 the attachment -- if there were attachments to
18 this email or if this was a -- or if those
19 documents, the LP agreement and subscriptions that
20 Mr. Raffaghello refers to, came with another
21 email.

22 And so my question is simply:
23 Are you able, by way of undertaking, to tell us if
24 the documents that Mr. Raffaghello is referring to
25 in this March 13th, 2019, email have been produced

This is Exhibit “54” referred to
in the Affidavit of Stephanie Collins
sworn before me, this
6th day of December, 2021



A COMMISSIONER FOR TAKING AFFIDAVITS

**Michelle Spain, a Commissioner, etc.,
Province of Ontario, for the Government of Ontario,
Ontario Securities Commission.
Expires March 22, 2024.**

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3 of it, I had to qualify who the person was, is my
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8 a recollection of it.

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16 mentioned before, I had given an additional
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23 the limited partnership. Does that ring your --

24 MS. COLLINS: That's right.

25 MR. NASTER: Fair enough. Go

CONTINUED COMPELLED INTERVIEW OF ANTHONY MAREK

1 A. Correct.

2 349 Q. To start today, I'm going
3 to focus on the second investment that you made in
4 Go-To Adelaide which occurred in late
5 September 2019 for a total of \$12 million. Do you
6 recall that investment?

7 A. I recall that investment.

8 350 Q. Okay. From the documents
9 you have provided to us earlier, it looks like
10 Oscar Furtado reached out to you in early
11 August 2019 to request a meeting and that you then
12 attended a meeting with him on August 27th, 2019.
13 Do I have that correct?

14 A. I know in and around that
15 time. I'm not sure what the dates were, but it's
16 somewhere around that time.

17 351 Q. Okay. I can refer you to
18 a document to the extent that would assist.
19 Mr. Baik, can you please put our document 5272 on
20 the screen, which, for reference, Mr. Naster, is
21 Mr. Marek's document 255.

22 I will invite Mr. Baik to
23 perhaps zoom in for you and allow you a moment to
24 review this chain.

25 A. If you could go down in

CONTINUED COMPELLED INTERVIEW OF ANTHONY MAREK

1 that chain just to -- it's a little too quick.

2 MR. NASTER: If you could
3 start at the bottom because it goes in reverse
4 chronological order.

5 THE INTERVIEWEE: Correct. I
6 replied back to Oscar that -- I think he had sent
7 me an email previous and I would like to sit down
8 and speak to him. I see that he sent something
9 August 9th and I replied August 23rd. That is
10 correct.

11 MS. HOULT: Okay. Mr. Baik,
12 if you could scroll up to the previous page.

13 THE INTERVIEWEE: So on the
14 26th I basically said I'm available at any
15 time and -- okay. Yes. So, 10:30 the following
16 day on the 27th we had met.

17 MS. HOULT: So you can remove
18 that document from the screen, Mr. Baik. I guess
19 before you do, we should mark that as the next
20 exhibit on this examination, which is going to be
21 what exhibits number, Mr. Baik?

22 THE REPORTER: I believe it's
23 Exhibit 18.

24 MR. BAIK: Yes.

25 MS. HOULT: Thank you, Madam

CONTINUED COMPELLED INTERVIEW OF ANTHONY MAREK

1 Reporter. As Exhibit 18 on this examination, it's
2 an email chain between Mr. Furtado and Mr. Marek
3 ending August 26th, 2019, bearing our document
4 number 5272 as the short form. Exhibit 18.

5 EXHIBIT NO. 18: Email
6 chain between Mr. Furtado
7 and Mr. Marek ending
8 August 26, 2019.

9 BY MS. HOULT:

10 352 Q. You did, in fact, meet
11 with Mr. Furtado on August 27th, 2019, Mr. Marek?

12 A. That is correct.

13 353 Q. You met him at the Go-To
14 Developments office?

15 A. In their boardroom.

16 354 Q. Was anyone else besides
17 yourself and Mr. Furtado present at that meeting?

18 A. To the best of my
19 recollection, I think it was just the two of us.

20 355 Q. Okay. Can you please
21 tell me what you recall from that meeting, what
22 the discussion was?

23 A. Just a brief introduction
24 to one another once again after not speaking for a
25 while. Maybe ten minutes of just small chitchat

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COMPELLED INTERVIEW OF OSCAR FURTADO

1 any further funds, then use my personal assets to
2 support the project.

3 171 Q. Of course, yes. I
4 understand. So next I want to talk a little bit
5 about Spadina Adelaide.

6 So it appears that fairly
7 recently you raised funds for Spadina Adelaide
8 from -- Anthony Merrick purchased some units in
9 June 2020 and AKM Holdings purchased in February
10 2020.

11 So those funds, those
12 investments were sold after the property was
13 purchased. So I am wondering what is the main use
14 of those funds once you've already purchased the
15 property?

16 THE WITNESS: Okay. So I am
17 going to give you two explanations because one is
18 a general explanation in the limited partnership,
19 where I am allowed to raise additional funds for
20 any additional capital required for the project up
21 until I go to construction.

22 So, as an example, if in this
23 case we have to, after we close the property we
24 have to engage an external planner. We have to
25 engage architects and all of the consulting groups

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COMPELLED INTERVIEW OF OSCAR FURTADO

1 to put the application together.

2 We have to pay, I believe in
3 this case, approximately 260,000 in application
4 fees. That money is not necessarily raised
5 upfront. So we have to then raise additional
6 funds until -- so we can pay those bills.

7 Now, in Anthony Merrick's case
8 it is two-fold. One is Anthony Merrick was an
9 investor when we first acquired the property, but
10 his money came in as an investor as a bridge loan.
11 So I believe the number is 16.8 million, if I
12 recall correctly?

13 172 Q. Yes?

14 A. The money came in and
15 then his money was returned. And returned, and
16 then Anthony Merrick got to know me and he just
17 came in through the recommendation of a lawyer to
18 finance the deal.

19 Anthony Merrick is a very,
20 very sophisticated investor well known in the city
21 of Toronto and surrounding cities. His history is
22 in buying and selling land through his family.
23 And he got to know me over time, and he approached
24 me and said I am willing to come back as an
25 investor.

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1 So what we did is the funds
2 that were borrowed to cover his repayment were
3 partially repaid and he came back in I believe for
4 12 million. He has since come back in for I
5 believe he is up to 14 million now in all of the
6 subscription agreements. He should have a 16.8,
7 if I remember, correctly coming in. Going out.
8 And he is no longer an investor.

9 Then he comes back in for 12
10 and I believe the subsequent payment after that is
11 a million dollars each.

12 Some of that money was used to
13 repay. The rest of the money is being used for
14 ongoing operations.

15 As an example also
16 Spadina-Adelaide, I mentioned in a question you
17 asked about Eagle Valley. That administration had
18 a density clause.

19 173 Q. Yes. Yes. We're going
20 to talk about that.

21 MR. MANN: I'm sorry, can you
22 not interrupt him? He is in the middle of giving
23 you an answer. Thank you.

24 THE WITNESS: So the reason I
25 bring it up is because what is the money used for.

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COMPELLED INTERVIEW OF OSCAR FURTADO

1 So that is another payment not just to an
2 application for Spadina to get it through
3 approval. We had density cost payments that were
4 required to be paid.

5 So there is a lot of cash flow
6 requirements after you close. Specifically, first
7 time we negotiated that density clause, and that
8 is one of the reasons we were able to get this
9 property and basically outsmart the other builders
10 at the table who didn't think about a density
11 clause. Sorry, I'm done.

12 174 Q. Okay, thank you. Let's
13 take about a five minute break. So we will come
14 back on the record at 12:30.

15 MR. MANN: Do you want to take
16 an early lunch?

17 MS. COLLINS: Sure, I am happy
18 to do that.

19 MR. MANN: It is your
20 examination, so I don't want to interfere. It is
21 just short of 12:30. If you want to come back at
22 1:15?

23 MS. COLLINS: Sure.

24 MR. MANN: Is that convenient
25 for you, Stephanie, Michelle, Paul and Madame

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in the Affidavit of Stephanie Collins
sworn before me, this
6th day of December, 2021

A handwritten signature in black ink, appearing to read "Michelle Spain", with a long horizontal flourish extending to the right.

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COMPELLED INTERVIEW OF OSCAR FURTADO

1 redirection, was April 15th from Adelaide Square
2 Developments. So he knew what this was about very
3 clearly, no doubt in my mind.

4 464 Q. Why did you reflect it as
5 "Equity - Adelaide Square Developments", 16.8?
6 Why is it reflected in that way?

7 A. I just explained it to
8 you, that the money was sent from Adelaide Square
9 to him, so that's why the person that put the deck
10 together wrote down the word "Adelaide Square
11 Developments", because it was Anthony Marek's
12 money. Had not been paid back to him. It was
13 sitting in Adelaide Square to pay him back. That
14 was the purpose of it. Could have been worded
15 better. Could have been. But that is what we did
16 at the time. But it was very clear to him what we
17 did.

18 465 Q. When you spoke to
19 Mr. Marek in September 2019, what, if anything,
20 did you tell him about the intended uses of the
21 additional equity that you were raising at that
22 time?

23 A. In the meetings when
24 Mr. Marek came in the second time to invest, which
25 is the 12 million, we told him we were raising 12

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COMPELLED INTERVIEW OF OSCAR FURTADO

1 million and we showed him the schedule. If you go
2 to the next page you'll see it in this deck. We
3 walked him through this deck.

4 MR. MANN: Keep going. Keep
5 talking.

6 THE INTERVIEWEE: Okay. So we
7 showed him the payout schedule. We told him we
8 are raising equity for the LP. We didn't get into
9 the details of what the money was to be used for.
10 We just said for the LP. He didn't want -- care
11 to know what the use of funds were. His entire
12 focus was he wanted to spend all his time on this
13 page right here. And the returns are outlined on
14 this page.

15 If you want me to continue the
16 conversation, part of the conversation was you
17 don't need to invest all the 12 million. He said,
18 "Oh, no, will I get the higher return and the full
19 amount if I invest the full amount?" His entire
20 focus was on this, not on what the use of funds
21 were.

22 466 Q. We can close that
23 document, Mr. Baik.

24 When Mr. Marek invested in
25 September 2019, one of the things that you offered

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1 incorrect?

2 A. That is an error. It was
3 incorrect. It's an oversight everyone missed.

4 456 Q. Okay. Do you have any
5 knowledge or belief as to why that appeared in
6 this MOU?

7 A. The lawyers on both sides
8 put this together and it was an error.

9 457 Q. We can close that
10 document, Mr. Baik. Can we open up Exhibit 2,
11 Mr. Baik?

12 So this, we looked at earlier
13 this morning, is the September 2019 information
14 document that was given to Mr. Marek. I'm going
15 to direct you to page 10 of this document,
16 Mr. Furtado.

17 At the time this document was
18 prepared, Adelaide Square Developments Inc. had
19 not invested any equity into the Go-To Spadina
20 Adelaide LP?

21 A. Correct.

22 458 Q. So is this document also
23 an error, given that it says in the "Partnership
24 Sources and Uses of Capital" chart, "Sources",
25 "Equity - Adelaide Square Developments", 16.8?

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COMPELLED INTERVIEW OF OSCAR FURTADO

1 A. This document was to
2 reflect the transaction -- the closing transaction
3 of April 4th, 2019. When the page was presented
4 to Anthony Marek, there was clear reference to
5 this line where I informed him that that
6 represented his 16.8 million, and the reason
7 Adelaide Square Developments was recorded there is
8 because he was being paid back through them. It
9 was clearly made clear to him that that is all
10 that was, was his own money, and he said yes,
11 okay, and we went on to the next page. I remember
12 that clearly.

13 459 Q. Why is it listed as
14 "Equity" next to "Adelaide Square Developments",
15 Mr. Furtado?

16 A. Because Anthony Marek's
17 investment on the closing date was equity.

18 460 Q. Above the chart it says:
19 "Go-To Developments and
20 its partners in the
21 project have collectively
22 invested approximately
23 19.8 million of the total
24 27 million equity
25 required." (As read)

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COMPELLED INTERVIEW OF OSCAR FURTADO

1 A. Anthony Marek --

2 MR. MANN: There is no

3 question.

4 BY MS. HOULT:

5 461 Q. But at the time of this
6 presentation in September 2019, Mr. Marek's equity
7 investment had been redeemed; correct?

8 A. Correct.

9 462 Q. And Go-To Spadina
10 Adelaide LP had entered into a demand loan
11 agreement with Adelaide Square Developments to
12 repay those monies; correct?

13 A. Correct.

14 463 Q. So there was no equity
15 investment by Adelaide Square Developments of
16 16.8 million.

17 A. As I said earlier, this
18 page was to reflect the April 4th transaction. It
19 clearly states land acquisition, April 4th cash
20 flow, the sources of funds and use of funds. And
21 it was made very clear to Mr. Marek from the
22 meeting with him in this boardroom that the 16.8
23 was his money and it was equity. His money and
24 his equity return was April 5th, the day after.
25 And also cash movement, it appears from the

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COMPELLED INTERVIEW OF OSCAR FURTADO

1 redirection, was April 15th from Adelaide Square
2 Developments. So he knew what this was about very
3 clearly, no doubt in my mind.

4 464 Q. Why did you reflect it as
5 "Equity - Adelaide Square Developments", 16.8?
6 Why is it reflected in that way?

7 A. I just explained it to
8 you, that the money was sent from Adelaide Square
9 to him, so that's why the person that put the deck
10 together wrote down the word "Adelaide Square
11 Developments", because it was Anthony Marek's
12 money. Had not been paid back to him. It was
13 sitting in Adelaide Square to pay him back. That
14 was the purpose of it. Could have been worded
15 better. Could have been. But that is what we did
16 at the time. But it was very clear to him what we
17 did.

18 465 Q. When you spoke to
19 Mr. Marek in September 2019, what, if anything,
20 did you tell him about the intended uses of the
21 additional equity that you were raising at that
22 time?

23 A. In the meetings when
24 Mr. Marek came in the second time to invest, which
25 is the 12 million, we told him we were raising 12

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CONTINUED COMPELLED INTERVIEW OF ANTHONY MAREK

1 Mr. Naster the same question of -- unless
2 Mr. Marek can tell me now -- when he first
3 received a copy of this brochure from Go-To
4 Developments or Mr. Furtado.

5 MR. NASTER: I believe he
6 answered that question. That was at the meeting
7 of August 27th, the brochure.

8 BY MS. HOULT:

9 414 Q. Yeah, so --

10 A. Sorry.

11 415 Q. Okay. So this brochure
12 that is part of what we have marked at Exhibit 20
13 is the one that you received at the meeting of
14 August 27th, 2019?

15 A. Correct.

16 416 Q. Okay. Mr. Furtado
17 reviewed this brochure with you on August 27th,
18 2019; correct?

19 A. Correct.

20 417 Q. And you have told me
21 earlier today about what occurred in that meeting
22 of August 27th, 2019. So I would like to draw
23 your attention to a particular page of this
24 brochure, which is page 10 of the brochure itself,
25 which is at page 76 of this Exhibit 20.

CONTINUED COMPELLED INTERVIEW OF ANTHONY MAREK

1 Do you see what is marked as
2 10 in the upper left-hand corner of the brochure
3 on the screen, Mr. Marek?

4 A. Yes.

5 418 Q. Did Mr. Furtado review
6 this particular page of the brochure with you at
7 the August 27th, 2019, meeting?

8 A. I would say it was
9 skimmed over as a project overview. I wouldn't
10 say that we went through each particular point on
11 the left or right-hand side.

12 419 Q. Okay. To the best of
13 your recollection, what did Mr. Furtado tell you
14 about this page of the brochure?

15 A. That these were the land
16 acquisition costs.

17 420 Q. Any further details?

18 A. No further details.

19 421 Q. Among other things, this
20 page 10 of the brochure says that Go-To
21 Developments and its partners in the project
22 collectively invested approximately 19.8 million
23 in equity in the project, in the second bullet.
24 Do you see that statement which I've summarized?

25 A. Yes.

CONTINUED COMPELLED INTERVIEW OF ANTHONY MAREK

1 422 Q. What, if anything, did
2 Mr. Furtado tell you on August 27th, 2019, or at
3 any time before you made your \$12 million
4 investment about that statement?

5 A. My question to him was --
6 I was just wondering who the investors were, and
7 he did his historical friends and family and
8 anybody that has invested in my previous projects
9 have all made money and nothing has failed.
10 Again, he stated that without mentioning any names
11 that these were all friends and family within the
12 partnership.

13 423 Q. Was that a discussion you
14 had with Mr. Furtado on August 27th, 2019?

15 A. I would suggest that I
16 asked him on that date.

17 424 Q. You asked him certainly
18 before you made the \$12 million investment who the
19 investors were?

20 A. Yes.

21 425 Q. There is a chart on this
22 page 10 of the brochure called "Partnership
23 sources and uses of capital". Do you see that
24 chart?

25 A. Yes, I do.

CONTINUED COMPELLED INTERVIEW OF ANTHONY MAREK

1 426 Q. What, if anything,
2 Mr. Marek, did Mr. Furtado tell you about the line
3 in that chart that says "Equity - Adelaide Square
4 Developments", 16.8?

5 A. Nothing.

6 427 Q. Did you say nothing?

7 A. That is correct.

8 428 Q. Did Mr. Furtado tell you
9 that the 16.8 listed next to Adelaide Square
10 Developments was the 16.8 million that you
11 invested in April 2019?

12 A. No, he didn't.

13 429 Q. Did you understand that
14 to be the case before you made your \$12 million
15 investment in September 2019?

16 A. No, I didn't.

17 430 Q. Did Mr. Furtado tell you
18 that the 16.8 was listed beside Adelaide Square
19 Developments in this chart because your
20 \$16.8 million investment was being paid back
21 through Adelaide Square Developments?

22 A. No, he didn't.

23 431 Q. Did Mr. Furtado tell you
24 that you were going to or had been paid back by
25 Adelaide Square Developments at any time prior to

CONTINUED COMPELLED INTERVIEW OF ANTHONY MAREK

1 your \$12 million investment in September 2019?

2 A. No, he didn't.

3 432 Q. Did Mr. Furtado tell you
4 or did you otherwise understand that Adelaide
5 Square Developments was an equity investor in the
6 Adelaide Square project?

7 A. No, he didn't.

8 433 Q. Were you told or did you
9 have any understanding that the Go-To Adelaide
10 Square LP owed a loan to Adelaide Square
11 Developments as a result of the repayment of your
12 \$16.8 million investment?

13 A. No, I didn't.

14 434 Q. You didn't have an
15 understanding of that?

16 A. I had no knowledge of it.

17 435 Q. And then obviously you
18 were not told that?

19 A. That is correct.

20 436 Q. We can remove that
21 document from the screen, Mr. Baik. Mr. Marek,
22 you have spoken to me a bit about what you
23 understood about those who were invested in the
24 Adelaide LP project before you made the
25 \$12 million investment in late September 2019. I

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COMPELLED INTERVIEW OF OSCAR FURTADO

1 BY MS. HOULT:

2 284 Q. All right. So I
3 understand that the Go-To Spadina Adelaide LP has
4 paid some repayments on the demand loan already,
5 Mr. Furtado; is that correct?

6 A. Yes, it has.

7 285 Q. Okay. And in particular,
8 a payment of \$12 million on October 1st, 2019, and
9 \$700,000 on October 3rd, 2019. Are those amounts
10 correct?

11 A. If you're reading from
12 the reconciliation we provided the Securities
13 Commission and the dates, then that answer is yes.

14 286 Q. Okay. Have there been
15 any further payments on the demand loan since
16 October 2019?

17 A. I don't recall offhand.

18 287 Q. You don't recall if the
19 LP has made any further loan repayments to
20 Adelaide Square Developments?

21 A. Correct.

22 288 Q. Okay. Can you please
23 advise me following the examination if there have
24 been any further payments?

25 U/A MR. MANN: Take it under

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COMPELLED INTERVIEW OF OSCAR FURTADO

1 advisement.

2 BY MS. HOULT:

3 289 Q. When Go-To Spadina

4 Adelaide LP made loan repayments on this demand

5 loan, to whom did the LP direct the funds?

6 A. If I recall, the funds

7 were directed to Schneider Ruggiero.

8 290 Q. Okay. Why were the

9 payments made to Schneider Ruggiero?

10 A. My understanding is they

11 were the new solicitors representing Adelaide

12 Square Developments.

13 291 Q. Sorry, you said they were

14 the what solicitors representing Adelaide?

15 MR. MANN: He said they were

16 the new solicitors representing Adelaide Square

17 Developments.

18 BY MS. HOULT:

19 292 Q. Okay. And why do you say

20 new solicitors representing Adelaide Square

21 Developments? Who were the old solicitors?

22 A. My understanding, again,

23 is that Concorde Law was representing them

24 initially.

25 293 Q. Okay. Who are the Go-To

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COMPELLED INTERVIEW OF OSCAR FURTADO

1 Spadina LP's contacts regarding the demand loan?
2 If you're going to be making payments, whether
3 interest or principal or you have questions about
4 it, who do you deal with in relation to the loan?

5 A. Alfredo Malanca.

6 294 Q. Okay. What is his role
7 at Adelaide Square Developments?

8 A. I don't know. I just
9 know he is the contact person.

10 295 Q. Okay. Why did Go-To
11 Spadina Adelaide LP make a \$12 million payment on
12 this loan in October of 2019?

13 A. As I've previously said,
14 our goal was to raise equity to pay down our
15 debts, and the sooner, the better, because
16 interest rates were escalating.

17 296 Q. Okay. So this loan has a
18 fixed monthly interest payment; correct?

19 A. Correct.

20 297 Q. Right. Why did you pay
21 12 million in October 2019? The loan was not yet
22 due.

23 A. If you look at the
24 interest payment, there's an escalating payment.
25 So the faster you pay off the full loan, the

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COMPELLED INTERVIEW OF OSCAR FURTADO

1 better it is.

2 298 Q. The interest payments are
3 fixed if any portion of the loan remains
4 outstanding.

5 A. If you scroll down, I
6 believe there is an escalating interest rate after
7 a certain period of time. You're only looking at
8 the beginning part. There's an escalation
9 someplace --

10 MR. MANN: You have -- the
11 document speaks for itself. You asked Mr. Furtado
12 why a certain payment was made, and you have his
13 evidence. We're not going to sit here and go
14 beyond that. You asked him why the payment was
15 made. He has indicated to you why it was paid on
16 that day and what his understanding was.

17 BY MS. HOULT:

18 299 Q. Was there any demand from
19 ASD to make a loan payment at that time? It being
20 October 2019 or thereabouts.

21 A. There was no demand, no.

22 MS. HOULT: All right. We can
23 take that document off the screen. It may be an
24 appropriate time to take the lunch break if that
25 works for everyone.

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A handwritten signature in black ink, appearing to read "Michelle Spain", with a long horizontal flourish extending to the right.

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CONTINUED INTERVIEW OF OSCAR FURTADO

1 dividend of \$6 million, but it was very
2 straightforward. It was more of a thank you than
3 anything else.

4 BY MS. COLLINS:

5 413 Q. And so was it ever
6 disclosed to the shareholders of Spadina Adelaide
7 LP that you had become a shareholder of Adelaide
8 Square Developments? Do you know? Did you ever
9 disclose it to them?

10 A. The transaction took
11 place after the closing of the deal and it has no
12 impact to the unitholders, not the shareholders,
13 the unitholders of Adelaide Square Development LP.

14 414 Q. Okay, so was it ever
15 disclosed to the unitholders of the Spadina
16 Adelaide LP that you had received shares in
17 Adelaide Square Developments?

18 A. As I was just saying,
19 because there was no requirement, because there's
20 no financial impact to them, financial impact at
21 all, it was not disclosed.

22 415 Q. Okay. And so then the
23 corollary of that is that the dividend that you
24 received from them, that also was not disclosed to
25 the unitholders?

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CONTINUED INTERVIEW OF OSCAR FURTADO

1 A. Correct.

2 416 Q. Thank you.

3 Ms. Vaillancourt, do you have further questions on
4 that issue?

5 MS. VAILLANCOURT: No. That's
6 fine. We can move on. Thanks.

7 BY MS. COLLINS:

8 417 Q. Okay, so question
9 number five in the written questions, one of the
10 written questions asked for the --

11 MS. VAILLANCOURT: Sorry,
12 Stephanie, I just had one question.

13 BY MS. VAILLANCOURT:

14 418 Q. That conversation you
15 told us about where they decided to give you
16 shares, who was that conversation with at the
17 Adelaide company, Mr. Furtado?

18 A. I believe I answered that
19 question earlier. All the conversations were with
20 Angelo Pucci.

21 419 Q. Okay, thank you.

22 BY MS. COLLINS:

23 420 Q. Okay, so question five
24 talks about the answers to the written questions,
25 and the answers note that the Class D unitholder

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COMPELLED INTERVIEW OF OSCAR FURTADO

1 can be given to me as a dividend, it's more tax
2 effective for me.

3 170 Q. Did you tell investors in
4 the Go-To Spadina Adelaide LP that Furtado
5 Holdings was going to and did receive this
6 \$388,000 payment from Adelaide Square
7 Developments?

8 A. Sorry, did I tell who?

9 MR. MANN: Your voice lapsed.

10 BY MS. HOULT:

11 171 Q. Unit holders in the Go-To
12 Spadina Adelaide LP. Did you tell investors that
13 you were going to receive this \$388,000 payment?

14 A. No, I didn't.

15 172 Q. Sorry, I didn't hear you.

16 A. No, I didn't tell them.

17 173 Q. Okay. I apologize. I
18 had Mr. Baik take it off the screen. We may not
19 need it back. I would like to know where that
20 memorandum of agreement, where was it kept in the
21 LP's records?

22 MR. MANN: Do you know?

23 THE INTERVIEWEE: I don't
24 recall offhand where we kept it.

25 BY MS. HOULT:

This is Exhibit “72” referred to
in the Affidavit of Stephanie Collins
sworn before me, this
6th day of December, 2021



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September 24, 2020

COMPELLED INTERVIEW OF OSCAR FURTADO

1 end of this examination. But you have marked
2 documents as exhibits, and I would like copies of
3 the documents that you marked as exhibits to Mr.
4 Furtado's examination. Are you refusing to do
5 that?

6 MS. VAILLANCOURT: This is a
7 confidential investigation, Mr. Mann. So it is
8 not our practice to -- we will consider your
9 request.

10 I think most of the documents
11 we referred to today are documents either that
12 your client provided us with or things that are
13 public record like what's registered on title
14 and/or Mr. Furtado's personal bank accounts or his
15 company bank accounts.

16 So it may not be contentious.
17 Let me -- we will consider that, but like I said
18 it is not our practice to do that after the fact,
19 but we will consider it.

20 MR. MANN: I am making a
21 request for all of the documents that were marked
22 as exhibits, so I will wait to hear from you on
23 that.

24 BY MS. COLLINS:

25 339 Q. Mr. Baik, can you now go

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COMPELLED INTERVIEW OF OSCAR FURTADO

1 to April 2019. Okay. So I am going to show you a
2 deposit that was made April 16th, 2019, in the
3 amount of \$388,087.33.

4 Now, Mr. Baik, can you now
5 pull up document 3099 please. Mr. Baik is going
6 to bring up the supporting documentation for that
7 transaction. As you can see, that is the deposit
8 slip for \$388,087.33.

9 Now let's see the cheque,
10 please, Mr. Baik. Here is the cheque. It has
11 come from Concorde Law Professional Corporation.
12 It says at the bottom: 46 Charlotte Street,
13 Toronto.

14 Can you tell me what that
15 cheque represents?

16 MR. MANN: Do you recall?

17 THE WITNESS: I don't recall.
18 I don't recall offhand.

19 BY MS. COLLINS:

20 340 Q. Okay. Can you undertake
21 to find out, please?

22 MR. MANN: Well, if you send
23 us all of these documents.

24 MS. VAILLANCOURT: No, that is
25 not how it works, Mr. Mann. We are asking a

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COMPELLED INTERVIEW OF OSCAR FURTADO

1 342 Q. So we are looking at the
2 Furtado account holdings. Bank statement.
3 Document 10223-00000911, and on October 1st, 2019,
4 there was a funds transfer from Schneider Ruggiero
5 for \$6 million. Mr. Furtado, can you tell me what
6 those funds are for?

7 MR. MANN: Do you remember?

8 THE WITNESS: I don't recall
9 offhand.

10 MR. MANN: Who is the transfer
11 from? All it says is "IT Schneider, Ru."

12 MS. COLLINS: It says "TT
13 Schneider, Ru," and that is Schneider Ruggiero.

14 MR. MANN: And you know this
15 because there is another document, I take it? I
16 am just trying to follow along.

17 Again, I apologize. I have
18 never seen these documents before now and I am
19 just trying to understand them for the first time.

20 MS. COLLINS: Well, Mr.
21 Furtado doesn't recall, so we will leave it with
22 him and he can tell us if we're wrong.

23 MR. MANN: That's fair. You
24 are reading a document into the record and you
25 have read it in incorrectly. That is all I am

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in the Affidavit of Stephanie Collins
sworn before me, this
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CONTINUED INTERVIEW OF OSCAR FURTADO

1 and Scarfone Hawkins is the solicitor for that
2 property, it has no relation or any relation to
3 Go-To Developments or any of the LPs, and it
4 received an income from that property.

5 370 Q. Okay, so that dollar
6 figure is just income from a property?

7 A. Correct, dividend --

8 MR. MANN: It's a dividend
9 paid, yes. That's unrelated to any of the
10 projects that are the subject matter of your
11 dealings.

12 BY MS. COLLINS:

13 371 Q. Okay. On April 16, 2019,
14 the account received \$388,087.33 from Concorde Law
15 Professional Corporation. Can you tell me what
16 that was in relation to?

17 A. Right. Furtado Holdings
18 assumed the risk for a non-refundable deposit that
19 was put on during negotiations for the Adelaide
20 Square Development acquisitions. And as a return
21 on the deposit, because of the risk assumed, after
22 the closing of the deal Adelaide Square
23 Developments made that payment to Furtado
24 Holdings.

25 372 Q. Okay. Just so I

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CONTINUED INTERVIEW OF OSCAR FURTADO

1 understand, did you say you got a return of the
2 deposit?

3 A. It's a return on the --
4 sorry. It's an investment return on deposit.

5 MR. MANN: The \$388,000 is a
6 return on the deposit. It is a --

7 BY MS. VAILLANCOURT:

8 373 Q. Is it like interest on
9 the deposit? Is that what you mean? Was it
10 because it was held in a trust account and there's
11 interest? I'm not following.

12 A. It was interest, yes.

13 MR. MANN: Ms. Vaillancourt,
14 this \$388,000 -- and Mr. Furtado, you can ask him
15 to confirm this -- as I understand it is not the
16 deposit. The deposit was paid for the
17 transaction. But for the deposit, the transaction
18 would likely have created Mr. Furtado or the
19 deposit was paid and in addition to receiving the
20 deposit back, Furtado Holdings received this
21 \$388,000 as a return on the deposit. I'm not
22 going to categorize it as interest or whatever,
23 but it's above and beyond the actual deposit that
24 was paid.

25 MS. VAILLANCOURT: Thank you.

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CONTINUED INTERVIEW OF OSCAR FURTADO

1 MR. MANN: Is that correct?

2 THE WITNESS: Correct.

3 BY MS. COLLINS:

4 374 Q. And how was it decided

5 that Spadina Adelaide would pay that return to

6 Furtado Holdings?

7 A. At the time the deposit

8 was required, Adelaide Square Developments did not

9 have the money. And as part of the negotiations

10 for the property, additional funds were requested

11 or the deal would be cancelled, so I offered the

12 deposit on the condition and assumed the risk that

13 it would be lost when the deal closed. And I

14 asked management at Adelaide Square Developments

15 to pay me a fee on the deposit if the deal closes

16 because I was assuming the risk.

17 375 Q. Okay. And is there some

18 kind of a contract or other written document that

19 sets that out?

20 A. No. That's a verbal

21 discussion.

22 376 Q. Okay. And who did you

23 have that discussion with?

24 A. Angelo Pucci.

25 377 Q. I'm sorry, Angela?

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CONTINUED INTERVIEW OF OSCAR FURTADO

1 A. Angelo Pucci.

2 378 Q. Okay. And who is Angelo
3 Pucci in relation to the Spadina Adelaide LP?

4 A. He has no relation to the
5 Spadina Adelaide LP. He is the director,
6 president, of Adelaide Square Developments, the
7 company that assigned the property to us.

8 BY MS. VAILLANCOURT:

9 379 Q. And I apologize if you
10 already said this. I didn't hear it properly.
11 Who paid the return? Because it was coming from
12 Concorde Law, but which entity paid the return to
13 Furtado Holdings?

14 A. Adelaide Square
15 Developments did.

16 BY MS. COLLINS:

17 380 Q. And that's a company that
18 you don't control. Is that correct?

19 A. Correct.

20 381 Q. And do you have any
21 shareholdings in that company at all?

22 A. Prior to the closing of
23 the transaction, no. I was given a few common
24 shares in a non-controlling interest after the
25 closing.

This is Exhibit “75” referred to
in the Affidavit of Stephanie Collins
sworn before me, this
6th day of December, 2021

A handwritten signature in black ink, appearing to read "Michelle Spain", written over a horizontal line.

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CONTINUED INTERVIEW OF OSCAR FURTADO

1 an offer having been received that it essentially
2 "ties up," in air quotes, the properties.

3 BY MS. COLLINS:

4 388 Q. I'm not actually
5 suggesting there's anything improper. I'm simply
6 using the language that Mr. Furtado used.

7 So, my question is: How did
8 Spadina Adelaide, either LP, GP, or both, get
9 involved in that project?

10 A. Their representatives,
11 Adelaide Square Developments representatives,
12 contacted me to see if I was interested in
13 acquiring a property in the Downtown Toronto core.

14 389 Q. Okay. And was that
15 person the Angelo Pucci?

16 A. No. His representatives
17 contacted me.

18 390 Q. I see. And so who were
19 his representatives?

20 A. He had several. The
21 contacts from APM Holdings, the manager of APM
22 Holdings contacted me. He had engaged them to
23 assist in the complete transaction.

24 391 Q. I see, okay. Thank you.
25 So, we're still on question four and the next

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CONTINUED INTERVIEW OF OSCAR FURTADO

1 point, (c). So, \$6 million was transferred or
2 deposited into the account on October 1, 2019 by
3 Schneider Ruggiero, and can you explain to me why
4 Furtado Holdings received those funds?

5 A. It is similar to -- it is
6 related to the Adelaide Square Development
7 project. As I said in my previous answer, the
8 management of Adelaide Square Developments
9 Holdings decided -- approached me, which I was not
10 aware they were going to do so, after the closing
11 and said they wanted to give me some shares in the
12 company in a minority interest.

13 They then decided to declare a
14 dividend of \$6 million with Furtado Holdings, but
15 primarily for the significant contributions that
16 kept the deal together in many aspects of
17 negotiations or the deal would have been lost and
18 they wouldn't have made the significant funds they
19 made, so they issued me a dividend for that loss.

20 392 Q. Okay, so the dividend was
21 from your shareholding in Adelaide Square
22 Developments?

23 A. That was done after,
24 subsequent to the closing.

25 393 Q. But what I'm trying to

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CONTINUED INTERVIEW OF OSCAR FURTADO

1 understand is you noted that the \$6 million was a
2 dividend, and I'm just trying to make sure I've
3 got it right. That was for shares in Adelaide
4 Square Developments or was that for a shareholding
5 in something else?

6 A. It was the shares that
7 were issued to me, common shares, the ten percent,
8 eleven percent common shares, in Adelaide Square
9 Developments, yes.

10 394 Q. And so how many shares of
11 Adelaide Square Developments do you own?

12 A. Eleven percent.

13 395 Q. Eleven percent of the
14 common shares?

15 A. Correct.

16 396 Q. Okay. And so do you
17 know, with respect to that dividend that was paid
18 that you received in 2019, do you know if it was
19 something that all common shareholders got?

20 A. I'm not aware of who got
21 dividends of the shareholders.

22 397 Q. Okay. And who was your
23 usual contact at Adelaide Square Developments? Is
24 it Angelo Pucci?

25 A. Correct.

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CONTINUED INTERVIEW OF OSCAR FURTADO

1 398 Q. Okay.

2 BY MS. VAILLANCOURT:

3 399 Q. I have some questions. I
4 just don't understand and maybe -- I didn't know
5 we would need to go into this level of
6 transaction, so I'm sorry if I get some of the
7 facts wrong.

8 But the Adelaide limited
9 partnership, you have raised capital for the
10 Adelaide limited partnership and they're acquiring
11 the Spadina Adelaide properties ultimately.
12 Correct?

13 A. The equity rates, they
14 acquired units in the limited partnership and the
15 limited partnership acquired the properties.

16 400 Q. Right, and so that
17 investor money was used in part to acquire these
18 properties?

19 A. Correct.

20 401 Q. All right. And the
21 investment of these investors won't really be
22 monetized until this property is developed and,
23 when that happens, you'll be in a position to
24 return the capital and give them profits?

25 A. That is not correct.

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CONTINUED INTERVIEW OF OSCAR FURTADO

1 402 Q. Oh, okay.

2 A. If you go through the
3 limited partnership for Adelaide Square
4 Developments, it is clear in there that the
5 returns -- the investments will be returned and
6 the coupon on their investment will be returned,
7 will be paid out, upon achievement of site plan
8 approval from the city, which is significantly --

9 403 Q. Okay.

10 A. -- before the
11 developments took place.

12 404 Q. Okay, so that's different
13 than the other projects, then?

14 A. Correct.

15 405 Q. Okay. Thank you for that
16 clarification. So, I'm just trying to understand
17 how is it that you are able to receive \$6 million
18 at this juncture? Like, I don't understand that.

19 A. It's a decision by
20 Adelaide Square Developments.

21 MR. MANN: It wasn't something
22 that was part of the agreement. It wasn't
23 negotiated or anything. It was something that
24 they brought in after the deal closed. It wasn't
25 anything that was expected or negotiated or part

CONTINUED INTERVIEW OF OSCAR FURTADO

1 of any transaction prior to that point in time.

2 BY MS. VAILLANCOURT:

3 406 Q. Okay, so did they end up
4 making money? Do you know how much money they
5 made as being the -- you know, they put the first
6 offer on the property and then Go-To, Adelaide
7 Spadina, ultimately end up acquiring the property.
8 Do you know what the difference is in the purchase
9 price between what the LP paid and what the offer
10 had been by the Adelaide company?

11 A. There were three
12 agreements. One was the purchase of 46 Charlotte
13 for \$16.5 million, that you have. The second
14 agreement was for the purchase of 355 Adelaide for
15 \$6.8 million. And the third agreement is an
16 assignment to the agreement for \$20,950,000, so
17 the \$20,950,000 would be the profit they made --
18 sorry, would be the payment, sorry, it would be
19 the payment made to them. What their expenses are
20 against that payment, I don't know, so what that
21 profit is, I don't know.

22 407 Q. So then after they get
23 their money, which would include a gross amount of
24 \$20 million that they have to maybe write off
25 certain expenses to, after that happens, they pay

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CONTINUED INTERVIEW OF OSCAR FURTADO

1 you \$6 million?

2 A. I don't know their
3 finances, but I know I received a payment for
4 \$6 million.

5 408 Q. And on what basis did you
6 become invested in their company? Like, how did
7 that arise in the context of this transaction?

8 A. Well, they saw the value
9 that I brought to the transaction. The
10 transaction was going to fail in many aspects,
11 including the negotiations of the density clause
12 with that administration. That was my idea that I
13 put forth because they're going to walk away from
14 the deal and say, we want more money from this
15 deal or we're not going to sell it to you, approve
16 the sale to you, so I came up with the whole
17 concept of the density clause and the terms in
18 there. So, everything I came up with, Adelaide
19 Square Developments management did not, I did. I
20 came up with the ideas to save the deal because I
21 wanted to save it and protect my investments and
22 close the deal.

23 409 Q. Okay. So, what you're
24 saying is that they had an offer in place, then
25 the offer was in jeopardy of not closing, and you

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CONTINUED INTERVIEW OF OSCAR FURTADO

1 came up with the density clause that resulted in
2 the deal being able to close. Is that what you're
3 saying?

4 A. That is only one aspect.
5 That's only dealing with 46 Charlotte. And you've
6 received all the paperwork for Adelaide Square,
7 for 355 Adelaide Square also. There were various
8 amendments to the original agreement that they
9 tied up the property with, various amendments
10 including the additional \$800,000 deposit that was
11 required to save the deal. So, every time
12 negotiations were required and deals were
13 required, I pretty much came up with everything,
14 the whole strategy, to protect the deals.

15 BY MS. COLLINS:

16 410 Q. Do you think that that
17 was the reason why they were gifting you these
18 shares?

19 MR. MANN: Sorry, can you
20 repeat that question?

21 BY MS. COLLINS:

22 411 Q. Well, Mr. Furtado has
23 suggested that he got the Adelaide Square
24 Development shares for free, so they effectively
25 gifted him the shares --

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CONTINUED INTERVIEW OF OSCAR FURTADO

1 MR. MANN: No.

2 BY MS. COLLINS:

3 412 Q. -- and I'm wondering can
4 you tell me about the conversation where they told
5 you that they were going to give you these shares?

6 MR. MANN: So, the premise of
7 your question is totally inconsistent with what he
8 said. He didn't say that they gave him shares for
9 free. And your first part of your question, you
10 had a whole bunch of questions in there,
11 Ms. Collins. Why do you think they gave it to
12 you? He's already answered those questions.

13 And he didn't pay for these
14 shares, so I don't know if that's what you mean,
15 you got them for free, but that's not a fair
16 characterization of his evidence. He has
17 indicated directly or indirectly various
18 significant contributions that he made, and that
19 they then came to him and said, well, because
20 you've done all that, we're going to give you
21 these shares. It's not something that was
22 negotiated as part of the transaction.

23 And then subsequently, after
24 the closing of the transaction, they came to him,
25 again not negotiated, not requested, not expected,

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CONTINUED INTERVIEW OF OSCAR FURTADO

1 and gave the \$6 million. Those are the facts.

2 MS. COLLINS: But that's why
3 I'm asking him about the conversation where they
4 came to him and told him that they were going to
5 give him the shares in Adelaide Square
6 Developments. I would like to know about that
7 conversation.

8 MR. MANN: That's different
9 than what you just asked before. So, if you're
10 asking him, tell me about the conversation, he
11 will give you that answer.

12 MS. VAILLANCOURT: She just
13 asked the question. She --

14 MS. COLLINS: I did ask that
15 question.

16 THE WITNESS: The conversation
17 was very straightforward. They called me, I went
18 and met with them, and they said that they wanted
19 to thank me for the value of the deal, they made a
20 lot of money on the deal, and they wanted to give
21 me some shares in the company. And they decided
22 that they were going to give me 11 percent of the
23 shares and we did the paperwork for that.

24 They then said to me, as part
25 of the dividend, they were going to give me a

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CONTINUED INTERVIEW OF OSCAR FURTADO

1 dividend of \$6 million, but it was very
2 straightforward. It was more of a thank you than
3 anything else.

4 BY MS. COLLINS:

5 413 Q. And so was it ever
6 disclosed to the shareholders of Spadina Adelaide
7 LP that you had become a shareholder of Adelaide
8 Square Developments? Do you know? Did you ever
9 disclose it to them?

10 A. The transaction took
11 place after the closing of the deal and it has no
12 impact to the unitholders, not the shareholders,
13 the unitholders of Adelaide Square Development LP.

14 414 Q. Okay, so was it ever
15 disclosed to the unitholders of the Spadina
16 Adelaide LP that you had received shares in
17 Adelaide Square Developments?

18 A. As I was just saying,
19 because there was no requirement, because there's
20 no financial impact to them, financial impact at
21 all, it was not disclosed.

22 415 Q. Okay. And so then the
23 corollary of that is that the dividend that you
24 received from them, that also was not disclosed to
25 the unitholders?

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CONTINUED INTERVIEW OF OSCAR FURTADO

1 A. Correct.

2 416 Q. Thank you.

3 Ms. Vaillancourt, do you have further questions on
4 that issue?

5 MS. VAILLANCOURT: No. That's
6 fine. We can move on. Thanks.

7 BY MS. COLLINS:

8 417 Q. Okay, so question
9 number five in the written questions, one of the
10 written questions asked for the --

11 MS. VAILLANCOURT: Sorry,
12 Stephanie, I just had one question.

13 BY MS. VAILLANCOURT:

14 418 Q. That conversation you
15 told us about where they decided to give you
16 shares, who was that conversation with at the
17 Adelaide company, Mr. Furtado?

18 A. I believe I answered that
19 question earlier. All the conversations were with
20 Angelo Pucci.

21 419 Q. Okay, thank you.

22 BY MS. COLLINS:

23 420 Q. Okay, so question five
24 talks about the answers to the written questions,
25 and the answers note that the Class D unitholder