

COURT OF APPEAL FOR ONTARIO

BETWEEN:

ONTARIO SECURITIES COMMISSION

Applicant
(Respondent in Appeal)

- 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 in Appeal – Moving Party)

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

FACTUM

December 15, 2021

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FACTUM

PART I - OVERVIEW

1. This factum is filed in support of a Motion for an Order staying the Order of the Honourable Mr. Justice Pattillo of the Ontario Superior Court of Justice (Commercial List) issued December 10, 2021 (the “**Receivership Order**”), among other things, appointing KSV Restructuring Inc. (“**KSV**”) as receiver and manager (in such capacity, the “**Receiver**”) of:
(i) the real properties and entities listed at Schedule “A” to the Receivership Order (collectively, the “**Real Properties**”), and (ii) all the other assets, undertakings and properties of each of the parties listed on Schedule “B” to the Receivership Order (collectively, the “**Receivership Entities**”). The Receivership Order was granted upon the Application (the “**Receivership Application**”) of the Ontario Securities Commission (the “**Commission**”).

Reference: Receivership Order at Tab 2 to the Motion Record.

2. GTDH and the other Receivership Entities and respondents (collectively, the “**Appellants**” or the “**Moving Parties**”) filed a Notice of Appeal dated December 14, 2021 (the “**Notice of Appeal**”) in respect of the Receivership Order, and seek an expedited hearing of the Motion for the stay of proceedings.

Reference: Notice of Appeal at Tab 4 to the Motion Record.

PART II - THE FACTS

A. Background

3. GTDH operates a property development business. GTDH conducts its business through an organizational structure that includes a number of affiliated limited partnerships (the “**LPs**”). GTDH is the sole shareholder in respect of each of the corporate general partners (the “**GPs**”, and collectively with GTDH and the LPs, “**Go-To Developments**”) in the structure. Each of the LPs owns, alone or with others, one or more Real Properties in Ontario.

Reference: Affidavit of Oscar Furtado sworn December 14, 2021 (the “Furtado Affidavit”) at paras. 4, 5, 8.

4. Oscar Furtado (“**Furtado**”) is the founder and guiding mind behind Go-To Developments. Furtado is the sole officer and director of each of the Moving Parties except for two of them, for which Furtado is sole director, President and Secretary.

Reference: Furtado Affidavit at para. 6.

B. Staff’s Investigation

5. The Enforcement Branch (“**Staff**”) of the Commission has been conducting an investigation of Go-To Developments since before March, 2019. Staff’s investigation has focused on potential contraventions of the *Securities Act*.

Reference: Furtado Affidavit at para. 10.

6. In the course of its investigation of Go-To Developments, the Commission interviewed Furtado three times (collectively, the “**Furtado Interviews**”) for a total of more than 2.5 days: (i) September 24, 2020, (ii) November 5, 2020; and (iii) July 7, 2021.

Reference: Furtado Affidavit at para. 12.

7. In addition to the Furtado Interviews, Furtado, through counsel has provided detailed written responses and supporting documentation to more than two dozen separate Staff requests for information and documents.

Reference: Furtado Affidavit at para. 14.

8. On December 6, 2021, the Commission issued two Freeze Directions in connection with this matter (together, the “**Freeze Directions**”).

Reference: Furtado Affidavit at para. 17.

C. Notice of the Receivership Application

9. At approximately 3:35 pm on Monday December 6, 2021, the Commission notified the respondents through their counsel, Mr. Darryl Green of Torkin Manes LLP, of an Application being brought by the Commission returnable on Thursday December 9, 2021, and that an electronic copy of the Application Record (the “**Application Record**”) can be made available once Mr. Mann confirmed he was authorized to accept service. The Commission did not provide any information at that time as to the nature of its Application, including the relief sought by the Commission.

Reference: Furtado Affidavit at para. 18.

10. By email sent at 7:08 pm on Monday December 6, 2021, Mr. Mann confirmed to Ms. Hoult that he would accept service of the Application Record, and requested that a copy be delivered as soon as possible. Mr. Mann also expressly reserved all rights in respect of the short notice of the proceeding.

Reference: Furtado Affidavit at para. 19.

11. By email sent at 7:21 pm on Monday December 6, 2021, Ms. Hoult provided a link to an electronic copy of Application Record. It was only upon the review of the Application Record that the respondents learned that the Application was for the appointment of a receiver and manager.

Reference: Furtado Affidavit at para. 20.

12. The Application Record was composed of a number of documents including the Affidavit of Stephanie Collins sworn December 6, 2021 (the “**Collins Affidavit**”), which is 1,958 pages long and includes 113 exhibits.

Reference: Furtado Affidavit at paras. 21- 22.

D. Adjournment Request and Proposed Terms

13. On the morning of Tuesday December 7, 2021, Mr. Mann contacted Ms. Hoult by telephone and advised that, given factors that included the late service of the Application Record, the massive size of the Collins Affidavit, the failure of the Commission to disclose the full Furtado Transcripts and exhibits thereto, and Go-To Developments’ need to engage new counsel, it would not be possible for the respondents to properly respond to the Receivership Application. Accordingly, Mr. Mann requested a consensual adjournment of

the Application on terms which included the following (collectively, the “**Adjournment and Proposed Terms**”):

- (a) that the hearing of the Receivership Application be adjourned to a date in January, with at least a half day scheduled before the Court for the hearing;
- (b) that the freeze directions be continued during the course of the adjournment, with certain exceptions for the payment of legal fees and living expenses;
- (c) that a monitor be appointed until the return date of the Receivership Application;
- (d) that the monitor, if appointed, be provided with full and unfettered access to all documents and information pertaining to the limited partnerships and the projects;
- (e) that KSV may be appointed as the monitor;
- (f) that between the proposed adjournment and the return date, if the Commission or monitor discovered any new information, the matter could be returned to Court immediately; and
- (g) that on the return date, the Commission may seek any order in respect of the monitor, including converting the monitor’s appointment into a receivership, or discharging the monitor, as necessary.

Reference: Furtado Affidavit at para. 26(b).

14. In the late afternoon on December 8, 2021, the Commission advised Mr. Mann that it would not consent to the Adjournment and Proposed Terms.

Reference: Furtado Affidavit at para. 26(c).

E. The Hearing of the Receivership Application

15. The Receivership Application was heard by Justice Pattillo at approximately 2:00 pm EST on Thursday December 9, 2021 (the “**Hearing**”), less than 72 hours after receipt of notice of the Hearing and access to the Application Record during the evening of Monday December 6th.

Reference: Furtado Affidavit at para. 25.

16. During the Hearing, Mr. Mann advised Justice Pattillo that, given factors that included the late service of the Application Record, the massive size of the Collins Affidavit and Go-To Developments’ need to engage independent counsel, it had effectively been impossible for Furtado (or the other respondents) to properly respond to the Application. As such, Mr. Mann requested an adjournment of the Application, and proposed the Adjournment and Proposed Terms.

Reference: Furtado Affidavit at para. 28.

F. Issuance of the Order

17. For the reasons set out in the Endorsement dated December 10, 2021 (the “**Endorsement**”), Justice Pattillo declined to grant the adjournment of the Receivership Application and issued the Receivership Order.

Reference: Furtado Affidavit at para. 30.

Endorsement at Tab 3 to the Motion Record.

18. As set out in the Endorsement, Justice Pattillo found that the respondents had received sufficient notice of the Receivership Application to have filed responding material, and dismissed the adjournment request. Justice Pattillo also found that, despite the length of time the Commission's investigation had been ongoing, having regard to the interests of the Investors it was necessary that the Receiver be appointed immediately.

Reference: Endorsement at paras. 5-6 at Tab 3 to the Motion Record.

PART III - POSITION OF THE APPELLANTS

19. The issues raised by the Motion are as follows:
- (i) Does the Court have jurisdiction to grant the stay of the Order pending the hearing of this Appeal?
 - (ii) Do the Moving Parties meet the test for a stay of the Order pending the hearing of this Appeal?
20. The Moving Parties respectfully submit that each of the above questions should be answered in the affirmative.

PART IV - LAW & ARGUMENT

21. The Moving Parties seek an Order staying the Receivership Order pending determination of their Notice of Appeal. It is respectfully submitted that this Honourable Court should grant the Order sought by the Moving Parties and stay the Receivership Order.

A. Jurisdiction to Grant the Stay

22. This Honourable Court has jurisdiction to stay the Receivership Order pending appeal pursuant to Rule 63.02(1)(a)(b) of the Ontario *Rules of Civil Procedure* and sections 106 and 134(2) of the *Courts of Justice Act* (Ontario).

Reference: Ontario *Rules of Civil Procedure*, R.R.O. 1990, c. C. 43, s. 63.02(1)(a)-(b).
Courts of Justice Act (Ontario), R.S.O. 1990, c. C. 43, s. 134(2).

23. Section 63.02(1)(a)(b) of the Ontario *Rules of Civil Procedure* provides:

Stay by Order
By Trial Court or Appeal Court

63.02 (1) An interlocutory or final order may be stayed on such terms as are just,

(a) by an order of the court whose decision is to be appealed;

(b) by an order of a judge of the court to which a motion for leave to appeal has been made or to which an appeal has been taken. O. Reg. 465/93, s. 8.

24. Section 134(2) of the *Courts of Justice Act* provides:

Interim orders

134 (2) On motion, a court to which a motion for leave to appeal is made or to which an appeal is taken may make any interim order that is considered just to prevent prejudice to a party pending the appeal. 1999, c. 12, Sched. B, s. 4 (3).

B. Test for a Stay of Proceedings

25. It is respectfully submitted that the Moving Parties meet the test for a stay of the Receivership Order pending the appeal. The overarching test for stay of proceedings is whether a stay, with or without terms, including an expedited appeal, is in the interests of justice.

26. The factors to be considered are akin to a motion for an interlocutory injunction, *ie*, whether:

- (a) there is a serious issue to be adjudicated;
- (b) there will be irreparable harm if the stay is refused; and
- (c) the balance of convenience favours granting the stay.

Reference: [*RJR-MacDonald Inc. v. Canada \(Attorney General\)*](#), 1994 CanLII 117 (SCC), [1994] 1 S.C.R. 311 (“RJR-MacDonald”), at p. 334.

[*Tisi v St Amand*](#), 2017 ONCA 539 (“*Tisi*”), at paras 4 and 14.

27. In *Longley v. Canada (Attorney General)* (“**Longley**”), this Court has held that these three criteria are not to be considered separate hurdles; strength of one criteria may compensate for weakness of another.

Reference: [*Longley v. Canada \(Attorney General\)*](#), 2007 ONCA 149, at para 15.

28. This Court has further held in *Longley*, that on a motion for a stay pending appeal, the overarching consideration is whether the interests of justice calls for a stay.

Reference: [*Longley v. Canada \(Attorney General\)*](#), 2007 ONCA 149, at para 15.

i. Serious Issues for Appeal

29. Pursuant to the *RJR-MacDonald* test, a party seeking a stay must demonstrate that there are serious issues for appeal. The threshold to overcome is a low one. Justice Kiteley in the case *1305 Dundas St. West Inc. v. 2324702 Ontario Inc.* stated that the threshold is met “if the motions judge is satisfied that the appeal is not vexatious or frivolous”. Justice Kiteley further found that a prolonged examination of the merits of the appeal was not necessary.

Reference: [*1305 Dundas Street West Inc. v. 2324702 Ontario Inc.*](#), 2019 ONSC 5068, at para 34.

Tisi at para. 5.

30. The Moving Parties have raised a number of such “serious issues” in their Notice of Appeal. In particular, the Moving Parties allege that the Application Judge made the following errors of fact, law and mixed fact and law:

- (a) In granting the Receivership Order;
- (b) In denying Mr. Furtado’s adjournment request in order to permit the respondents to retain new counsel and file responding material addressing the very serious allegations made against him;
- (c) In finding that Mr. Furtado and the other respondents had sufficient time to meaningfully respond to the Receivership Application, despite the unnecessarily abbreviated notice and voluminous Application Record of the Commission;
- (d) In considering the fact that the Commission could have proceeded *ex parte* in finding that sufficient notice was given;

- (e) In denying the Moving Parties the opportunity to engage independent counsel to respond to the Receivership Application;
- (f) In refusing to grant the adjournment despite:
 - (i) the Application Judge finding there was no evidence of any precipitous or imminent event that mandated the appointment of a receiver and manager;
 - (ii) the absence of any evidence as to why the Respondents could not or should not have been provided with additional time to deliver responding materials; and
 - (iii) the absence of any explanation as to why the Commission did not move for the Receivership Order at an earlier date;
- (g) In finding that the test for the appointment of a receiver under section 129 of the *Securities Act* (Ontario) was met in the circumstances;
- (h) In granting the appointment of the Receiver based on a fundamental misunderstanding of the facts and the evidence, including, without limitation, the finding that the evidence raises concerns as to Mr. Furtado's ability to operate in capital markets in a manner compliant with securities laws;
- (i) In failing to consider the devastating impact of the Receivership Order on the Appellants' business operations and Mr. Furtado personally;
- (j) In exercising his discretion to grant the Receivership Order despite the availability of less intrusive means of addressing the concerns raised by the Commission, including the

appointment of a monitor in parallel to the continuation of the freeze directions issued under section 126(1) of the *Securities Act*; and

(k) In accepting the evidence of the Commission despite the Moving Parties not having a meaningful opportunity to respond.

Reference: Notice of Appeal filed December 14, 2021, Tab 4 to the Motion Record.

31. The Commission's authority to seek the appointment of a receiver is set out in section 129 of the *Securities Act*, which provides as follows:

(1) The Commission may apply to the Superior Court of Justice for an order appointing a receiver, receiver and manager, trustee or liquidator of all or any part of the property of any person or company.

(2) No order shall be made under subsection (1) unless the court is satisfied that,

(a) the appointment of a receiver, receiver and manager, trustee or liquidator of all or any part of the property of the person or company is in the best interests of the creditors of the person or company or of persons or companies any of whose property is in the possession or under the control of the person or company or the security holders of or subscribers to the person or company; or

(b) it is appropriate for the due administration of Ontario securities law.

(3) The court may make an order under subsection (1) on an application without notice, but the period of appointment shall not exceed fifteen days.

Reference: Securities Act, R.S.O. 1990, c. S.5., s. 129.

32. The Application Judge erred when he considered the fact that under the statute the Commission had authority to proceed with the receivership application *ex parte* when the Application Judge decided that the Commission had provided sufficient notice to the Respondents.

Reference: Endorsement at para. 5.

33. The Commission made a decision not to proceed *ex parte*, which among other things would have triggered a much higher standard of disclosure (*ie*, “full and frank disclosure”). Consequently, the fact that the Commission could have proceeded *ex parte* was not relevant to the sufficiency of notice.
34. Once it was determined that notice was required (which it was, as the Commission did not purport to proceed *ex parte*), then the appropriate analysis should have been whether that notice was sufficient for the respondents to have meaningfully responded to the application.

ii. Irreparable Harm

35. Under the second element of the *RJR-MacDonald* test, a party seeking a stay must establish that it will suffer irreparable harm should a stay not be granted. Generally, demonstrating irreparable harm requires the moving party to establish she will suffer a loss not quantifiable in monetary terms.

Reference: *Tisi* at para. 6.

36. The Moving Parties will sustain irreparable harm in the event the stay is not granted. The issuance of the Receivership Order is devastating to the Go-To Developments’ business, and will have a significant negative impact on the Investors. In particular:
- (a) Go-To Developments is engaged in a number of pending transactions including a sale of one of the Properties on excellent terms that will substantially benefit certain Investors, and was in the course of completing re-financings in respect of certain of the Properties;

- (b) The appointment of the Receiver is causing substantial and baseless reputational damage to the Moving Parties;
- (c) The costs of the receivership (*ie*, the professional fees of the Receiver and its counsel) are being financed by the Moving Parties through an unlimited priority charge on the Real Property. As such, should they continue, the receivership proceeding will strip tremendous value from the Investors;
- (d) The Receivership Order will effectively end Go-To Developments as an ongoing enterprise, as it authorizes the Receiver to market the Real Properties and sell them, subject to Court approval; and
- (e) The Receivership Order is causing Mr. Furtado significant personal prejudice as, in addition to the above, he is unable to reimburse himself for significant business expenses that he paid for personally with his credit card. This has led to a substantial outstanding balance. These problems are particularly acute given his large ongoing medical expenses.

Reference: Furtado Affidavit at paras 36-37 and 76.

See [Ontario v. Shehrazad Non for Profit Housing Inc.](#), 85 OR (3d) 81 at paras 25-26.

iii. Balance of Convenience

37. The balance of convenience branch of the *RJR-MacDonald* test for a stay of proceedings requires a court to consider and balance the respective harm to each party from the grant or refusal of a stay.

Reference: *Ontario v. Shehrazad Non Profit Housing Inc.* 85 OR (3d) 81, at para 27
Tisi at para. 9.

38. It is clear that the Moving Parties will suffer greater harm if the stay is not granted pending appeal, than would the Commission (or the Investors) if it is granted, particularly if certain practical safeguards are implemented.
39. If the stay of proceedings is not granted, the Receivership Order will effectively destroy Go-To Developments' business. On the other hand, if the stay of proceedings is granted neither the Commission nor the Investors will suffer any prejudice, particularly if certain practical safeguards are implemented.

C. Conclusion

40. It is respectfully submitted that: (i) given such factors as the late service of the Application Record, the massive size of the Collins Affidavit, the respondents' need to engage independent counsel, and the reluctance of the Commission to provide copies of documents on which it heavily relies in its Application, it was effectively impossible for the Moving Parties to have properly responded to the Application; and (ii) had the Moving Parties been provided with sufficient time to properly respond to the Application, as well as full and frank disclosure of the relevant documents and information, the Receivership Order would not have been granted; and (iii) there was no urgency to the hearing of the Application, particularly in light of the interim safeguards proposed by counsel to the Moving Parties.
41. Justice Huscroft held in *Abuzour v. Heydary* that the "the strongest argument in favour of granting a stay is fairness".

Reference: [Abuzour v. Heydary](#), 2015 ONCA 249, at para 37.

PART V - ORDER SOUGHT

42. For the foregoing reasons, the Moving Parties seek an Order granting:

- (a) a stay of the Receivership Order pending determination of their Notice of Appeal on the merits; and
- (b) Costs of this motion on a substantial indemnity basis.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 14th day of December, 2021.

A handwritten signature in blue ink, consisting of several overlapping loops and a long tail stroke extending downwards and to the right.

Gregory Azeff & Monica Faheim

MILLER THOMSON LLP
Lawyers for Moving Parties

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. [RJR-MacDonald Inc. v. Canada \(Attorney General\)](#), 1994 CanLII 117 (SCC), [1994] 1 S.C.R. 311.
2. [Tisi v St Amand](#), 2017 ONCA 539.
3. [Longley v. Canada \(Attorney General\)](#), 2007 ONCA 149.
4. [1305 Dundas Street West Inc. v. 2324702 Ontario Inc.](#), 2019 ONSC 5068.
5. [Ontario v. Shehrazad Non for Profit Housing Inc.](#), 85 OR (3d) 81.
6. [Abuzour v. Heydary](#), 2015 ONCA 249.

**SCHEDULE “B”
RELEVANT STATUTES**

Section 63.02(1)(a)(b) of the Ontario *Rules of Civil Procedure*

Stay by Order

By Trial Court or Appeal Court

63.02 (1) An interlocutory or final order may be stayed on such terms as are just,

- (a) by an order of the court whose decision is to be appealed;
- (b) by an order of a judge of the court to which a motion for leave to appeal has been made or to which an appeal has been taken. O. Reg. 465/93, s. 8.

Expiry of Trial Court Stay

(2) A stay granted under clause (1) (a) expires if no notice of motion for leave to appeal or no notice of appeal, as the case may be, is delivered and the time for the delivery of the relevant notice has expired. O. Reg. 534/95, s. 7.

Setting aside or Varying Stay

(3) A stay granted under subrule (1) may be set aside or varied, on such terms as are just, by a judge of the court to which a motion for leave to appeal may be or has been made or to which an appeal may be or has been taken. O. Reg. 465/93, s. 8.

Support Order

(4) A party who obtains a stay of a support order shall obtain a certificate of stay under subrule 63.03 (4) and file it forthwith in the office of the Director of the Family Responsibility Office. O. Reg. 292/98, s. 2.

Section 134 of the *Courts of Justice Act*:

Powers on appeal

- 134** (1) Unless otherwise provided, a court to which an appeal is taken may,
- (a) make any order or decision that ought to or could have been made by the court or tribunal appealed from;
 - (b) order a new trial;
 - (c) make any other order or decision that is considered just. R.S.O. 1990, c. C.43, s. 134 (1).

Interim orders

(2) On motion, a court to which a motion for leave to appeal is made or to which an appeal is taken may make any interim order that is considered just to prevent prejudice to a party pending the appeal. 1999, c. 12, Sched. B, s. 4 (3).

Section 126(1) of the *Securities Act*:

Freeze direction

126 (1) If the Commission considers it expedient for the due administration of Ontario securities law or the regulation of the capital markets in Ontario or expedient to assist in the due administration of the securities laws or the regulation of the capital markets in another jurisdiction, the Commission may,

- (a) direct a person or company having on deposit or under its control or for safekeeping any funds, securities or property of any person or company to retain those funds, securities or property;
- (b) direct a person or company to refrain from withdrawing any funds, securities or property from another person or company who has them on deposit, under control or for safekeeping; or
- (c) direct a person or company to maintain funds, securities or property, and to refrain from disposing of, transferring, dissipating or otherwise dealing with or diminishing the value of those funds, securities or property. 2014, c. 7, Sched. 28, s. 13 (1).

Duration

(1.1) A direction under subsection (1) applies until the Commission in writing revokes the direction or consents to release funds, securities or property from the direction, or until the Superior Court of Justice orders otherwise. 2014, c. 7, Sched. 28, s. 13 (1).

Application

(2) A direction under subsection (1) that names a bank or other financial institution shall apply only to the branches of the bank or other financial institution identified in the direction. 1994, c. 11, s. 375.

Exclusions

(3) A direction under subsection (1) shall not apply to funds, securities or property in a recognized clearing agency or to securities in process of transfer by a transfer agent unless the direction so states. 1994, c. 11, s. 375.

Certificate of pending litigation

(4) The Commission may order that a direction under subsection (1) be certified to a land registrar or mining recorder and that it be registered or recorded against the lands or claims identified in the direction, and on registration or recording of the certificate it shall have the same effect as a certificate of pending litigation. 1994, c. 11, s. 375.

Review by court

(5) As soon as practicable, but not later than 10 days after a direction is issued under subsection (1), the Commission shall serve and file a notice of application in the Superior Court of Justice to continue the direction or for such other order as the court considers appropriate. 2010, c. 26, Sched. 18, s. 32.

Grounds for continuance or other order

(5.1) An order may be made under subsection (5) if the court is satisfied that the order would be reasonable and expedient in the circumstances, having due regard to the public interest and,

- (a) the due administration of Ontario securities law or the securities laws of another jurisdiction; or
- (b) the regulation of capital markets in Ontario or another jurisdiction. 2014, c. 7, Sched. 28, s. 13 (2).

Notice

(6) A direction under subsection (1) may be made without notice but, in that event, copies of the direction shall be sent forthwith by such means as the Commission may determine to all persons and companies named in the direction. 1994, c. 11, s. 375.

Clarification or revocation

(7) A person or company directly affected by a direction may apply to the Commission for clarification or to have the direction varied or revoked. 1994, c. 11, s. 375.

Section 129 of the Securities Act:

Appointment of receiver, etc.

129 (1) The Commission may apply to the Superior Court of Justice for an order appointing a receiver, receiver and manager, trustee or liquidator of all or any part of the property of any person or company. 1994, c. 11, s. 375; 2006, c. 19, Sched. C, s. 1 (1).

Grounds

- (2) No order shall be made under subsection (1) unless the court is satisfied that,
- (a) the appointment of a receiver, receiver and manager, trustee or liquidator of all or any part of the property of the person or company is in the best interests of the creditors of the person or company or of persons or companies any of whose property is in the possession or under the control of the person or company or the security holders of or subscribers to the person or company; or
 - (b) it is appropriate for the due administration of Ontario securities law. 1994, c. 11, s. 375.

Application without notice

(3) The court may make an order under subsection (1) on an application without notice, but the period of appointment shall not exceed fifteen days. 1994, c. 11, s. 375.

Motion to continue order

(4) If an order is made without notice under subsection (3), the Commission may make a motion to the court within fifteen days after the date of the order to continue the order or for the issuance of such other order as the court considers appropriate. 1994, c. 11, s. 375.

Powers of receiver, etc.

(5) A receiver, receiver and manager, trustee or liquidator of the property of a person or company appointed under this section shall be the receiver, receiver and manager, trustee or liquidator of all or any part of the property belonging to the person or company or held by the person or company on behalf of or in trust for any other person or company, and, if so directed by the court, the receiver, receiver and manager, trustee or liquidator has the authority to wind up or manage the business and affairs of the person or company and has all powers necessary or incidental to that authority. 1994, c. 11, s. 375.

Directors' powers cease

(6) If an order is made appointing a receiver, receiver and manager, trustee or liquidator of the property of a person or company under this section, the powers of the directors of the company that the receiver, receiver and manager, trustee or liquidator is authorized to exercise may not be exercised by the directors until the receiver, receiver and manager, trustee or liquidator is discharged by the court. 1994, c. 11, s. 375.

Fees and expenses

(7) The fees charged and expenses incurred by a receiver, receiver and manager, trustee or liquidator appointed under this section in relation to the exercise of powers pursuant to the appointment shall be in the discretion of the court. 1994, c. 11, s. 375.

Variation or discharge of order

(8) An order made under this section may be varied or discharged by the court on motion. 1994, c. 11, s. 375.

ONTARIO SECURITIES COMMISSION
Applicant (Respondent in Appeal)

and

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

Respondents (Appellants in Appeal –
Moving Party)

Court of Appeal File No.: C70114

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

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Toronto

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