

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

FACTUM OF THE ONTARIO SECURITIES COMMISSION

December 6, 2021

ONTARIO SECURITIES COMMISSION
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8

Erin Hoult (LSO No. 54002C)
Tel.: (416) 593-8290
Email: ehoult@osc.gov.on.ca

Lawyers for the Ontario Securities Commission

TABLE OF CONTENTS

PART I – OVERVIEW	1
PART II – FACTS	3
The Respondents, the Go-To Business, and Investors	3
Other Key Persons – Malanca et al.	3
Chronology of Key Events	5
Furtado’s Misappropriation of Funds and Broken Obligations to Investors.....	7
Investments in Go-To LPs Generally	7
Adelaide LP – Misappropriation of Partnership Funds	7
Furtado Planned to Profit from the Adelaide LP’s Acquisition of the Properties	8
Funds to Make the Demand Loan Payment – September 2019 Investments	11
Eagle Valley and Elfrida LPs – Improper Use of Partnership Assets.....	14
Furtado’s Attempts to Mislead Staff and Conduct During the Investigation.....	15
Furtado’s Use of the \$6 Million Dividend	17
Freeze Directions Issued by the Commission	18
PART III – THE ISSUES	18
PART IV – LAW AND ARGUMENT	19
Grounds to Appoint a Receiver	19
Appointing the Receiver is the Best Interests of the Go-To Respondents’ Stakeholders	19
Receivership Necessary for the Due Administration of Securities Law.....	21
Fraud	21
Misleading Staff.....	22
Furtado’s Misconduct	22
Continuation of the Directions	23
PART V – RELIEF SOUGHT	25
Schedule “A” – Cases and Authorities Cited.....	26
Schedule “B” – Statutory Provisions	27
Schedule “C” – Excerpts of Furtado’s Evidence re: Payments from and Dealings with ASD	30
Schedule “D” – Annotated Key Persons Chart and Chronology of Key Events	35

PART I – OVERVIEW

1. In this case, it appears that Oscar Furtado (**Furtado**), the founder and directing mind of the respondent entities (collectively **Go-To**), arranged and received a kickback of at least \$6 million on the acquisition of two properties, which were funded, in part, with investor funds. Furtado then spent those millions on himself and to keep the Go-To businesses afloat.
2. By his actions, Furtado has demonstrated that he lacks the necessary integrity to continue to control projects involving investor funds. Accordingly, the Ontario Securities Commission (**Commission**) seeks the appointment of KSV Restructuring Inc. as receiver and manager (**Receiver**) over Go-To and the continuation of freeze directions it issued relating to Furtado.
3. Between 2016 and 2020, Furtado raised almost \$80 million from Ontario investors for nine Go-To real estate projects by selling limited partnership (**LP**) units. The projects are not complete, and investors' funds remain outstanding.
4. An investigation by Enforcement Staff of the Commission (**Staff**) has found evidence that:
 - (a) beginning in February 2019, Furtado raised capital from investors to acquire and develop two properties in downtown Toronto by selling LP units in Go-To Spadina Adelaide Square LP (**Adelaide LP**);
 - (b) investors were not told that Furtado's holding company (**Furtado Holdings**) was to and did receive shares and payments of over \$6.3 million from Adelaide Square Developments Inc. (**ASD**) after the Adelaide LP paid ASD \$20.95 million for the assignment of the rights to purchase these properties;

- (c) Furtado used monies from ASD on personal expenses, investments, and in the operation of the Go-To businesses, including to make payments due to investors;
- (d) Furtado's key contact for ASD was Alfredo Malanca (**Malanca**). Furtado's relationship with Malanca pre-dates the Adelaide LP project. Malanca's spouse's company received the same quantum of shares and payments from ASD that Furtado Holdings did, on the same dates. Further, Malanca continues to be involved with and, indirectly, earn fees from the Adelaide LP project. Also, Furtado has given Malanca a Go-To email account under a different last name; and
- (e) Furtado pledged the assets of two other Go-To LPs to secure obligations of the Adelaide LP during its property acquisitions, in breach of the applicable LP agreements. Furtado did not disclose these uses of assets to investors for over a year, and only did so after he was questioned by Staff about it.

5. During the investigation, Furtado gave varying and misleading evidence about his dealings with ASD. For example, Furtado initially stated he could "not recall" why Furtado Holdings received the payments in issue. Subsequently, Furtado said he received ASD shares unexpectedly, "as a thank you", some ten days after the Adelaide LP's property acquisitions, and that a \$6 million payment to Furtado Holdings six months later was a dividend on those shares.

6. The evidence raises serious concerns that Furtado has committed fraud and misled Staff of the Commission in breach of the *Securities Act* (the **Act**). The Commission accordingly seeks the appointment of the Receiver in the interests of all stakeholders in the Go-To businesses, and for the sake of the administration of Ontario securities law. Likewise, it seeks the continuation of the freeze directions to maintain assets Furtado obtained from the misconduct.

PART II – FACTS

The Respondents, the Go-To Business, and Investors

7. Furtado is the founder and directing mind of all the other respondents. He is a Chartered Accountant and an Ontario resident. Each of the Go-To respondents are Ontario entities.

Affidavit of Stephanie Collins sworn December 6, 2021 (**Collins Affidavit**), paras. 4, 14-16, Application Record (**Record**) Tab 2.

8. 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. For most LPs, investors were promised semi-annual payments on their investments. Investors in the Adelaide LP were not promised semi-annual payments.

Collins Affidavit paras. 6, 18, Appendix (**App.**) B and, e.g., Exhibits (**Ex.**) 9 (p. 122) and 12 (p. 180), Record Tab 2.

9. For each project, Furtado and GTDH set up an LP and a wholly-owned subsidiary of GTDH to act as the general partner (**GP**) (one project has two LPs and GPs). Together, the Go-To LPs own multiple properties in Ontario. The Go-To projects contemplate the development of land and/or of a variety of buildings. No project has begun construction, although Furtado has indicated to Staff that one project (the Eagle Valley project) has begun site servicing.

Collins Affidavit paras. 14, 16-17 and App. A. See also: LP Agreements, Exs. 15-24, Record Tab 2.

Other Key Persons – Malanca et al.

10. The events in issue involve persons beyond the respondents. Malanca (aka Alfredo Palmeri) is a central figure. Among other things:

(a) Furtado negotiated the Adelaide LP's property acquisitions with Malanca, as a representative of ASD, and discussed funding strategies with him;

- (b) AKM Holdings Corp. (**AKM**), which is Malanca’s spouse’s company, received the same quantum of payments and shares from ASD as Furtado Holdings;
- (c) Furtado first met Malanca before he established GTDH. Malanca was Furtado’s “go-to brokerage person” to arrange debt financing for the Go-To projects;
- (d) Malanca also goes by the name Palmeri and Furtado has given him a Go-To email address under that name;¹ and
- (e) Furtado’s evidence is that Malanca continues to assist with the development application process for the Adelaide LP project. In July 2020, Furtado caused the Adelaide LP to enter into an agreement giving ‘consultant’ roles to GTDH and AKM, under which they are to be paid at least \$750,000 each. Draft 2020 financial statements for the Adelaide LP show a \$1.5 million accrual for those fees.

Collins Affidavit paras. 7-8, 24, 44, 59, 78-80, Record Tab 2.

11. The events in issue also involve, among others:²

Katarzyna (Kasia) Pikula (Pikula)	Malanca’s spouse. The director of AKM and Goldmount Capital Inc., a mortgage brokerage.
AKM	A holding company. A shareholder of ASD. Pikula is the director.
Goldmount Financial Group Corp. (Goldmount)	Malanca is the director.
Angelo Pucci (Pucci)	The sole registered director, and a shareholder of ASD. Furtado claims to have met him 3 times, with Malanca present. When Staff tried to contact Pucci, his son and former landlord advised that he has dementia (one said his symptoms began in 2019).
Anthony Marek (Marek)	A repeat investor in the Adelaide LP. Marek had never dealt with Furtado or Go-To before his first investment in the Adelaide LP.

¹ For Furtado and an investor’s evidence on why Malanca also goes by Palmeri, see para. 36 below.

² Schedule “D” contains annotated copies of this chart and the chronology below, with cites to the Collins Affidavit.

Chronology of Key Events

May 2016-June 2020	Furtado raises ~\$80M from investors for 9 Go-To projects, including: <ul style="list-style-type: none"> - \$4.25M for Eagle Valley LP between Apr. 2017-May 2019 - \$10.6M for Elfrida LP between Sept. 2017-Feb. 2019 - \$42M for Adelaide LP between Feb. 2019-June 2020
February 2018 and following	Malanca is engaged in: <ul style="list-style-type: none"> - securing purchase rights for 355 Adelaide Street W. and 46 Charlotte Street in downtown Toronto (together, the Properties) via agreements with the then-current owners; - due diligence on the Properties, and promotional efforts for the proposed project, called “Adelaide Square”.
July 30, 2018	ASD incorporated.
In or before October 2018	Malanca, as a representative of ASD, asks Furtado if he is interested in acquiring the Properties.
December 2018	Adelaide LP makes an offer to buy the Properties from ASD for \$74.25M, which is accepted. This particular agreement does not close; the transaction is restructured in late March 2019.
February 15 – April 2, 2019	Furtado raises ~\$25M from investors for the Adelaide LP in this period, which includes a \$16.8M investment by Marek.
March 26, 2019 to April 3, 2019	Adelaide LP and ASD enter into 4 agreements for the acquisition of the Properties (the Acquisition Agreements): <ul style="list-style-type: none"> - assignment of purchase and sale agreement for 355 Adelaide; - assignment of purchase and sale agreement for 46 Charlotte; - Assignment Fee agreement, under which the Adelaide LP owes ASD a fee of \$20.95M; and - Memo of Understanding (MOU) with others, including FAAN Mortgage Administrators Inc. (the Court-appointed trustee re: a mortgage on 46 Charlotte). MOU requires further payments on Charlotte after closing (the Density Bonus).
April 3, 2019	In the MOU, Furtado pledges assets of Elfrida LP to secure Adelaide LP obligations. A charge is registered on the Elfrida LP’s properties. ³
	Furtado directs Go-To counsel to pay funds in trust (mortgage and investor funds) for the acquisition of the Properties, including to pay the \$20.95M Assignment Fee to ASD.
April 4, 2019	Furtado pledges assets of Eagle Valley LP to secure Adelaide LP obligations to one of its mortgage lenders, Scarecrow Capital Inc. ⁴

³ This charge was removed from title of the Elfrida properties on November 9, 2021.

⁴ This charge was removed from title of the Eagle Valley property on April 1, 2021.

	Date of a demand loan agreement for a \$19.8M loan from ASD to Adelaide LP (the Demand Loan). Loan proceeds are paid by ASD to Marek and Goldmount, as below.
April 5, 2019	Transfer of Properties to Adelaide LP recorded.
	Marek paid \$19.5M by ASD from the Assignment Fee (for redemption of \$16.8M of Adelaide LP units plus a \$2.7M flat fee return).
April 12, 2019	ASD articles amended to change share structure.
April 15, 2019	Furtado Holdings and AKM each receive: <ul style="list-style-type: none"> - 11 shares of ASD; and - \$388,087.33 cheques (\$388K Payment) of this date, paid out of the Assignment Fee.
	Goldmount paid \$300,000 by ASD from the Assignment Fee. Per Furtado: this payment was a referral fee as Malanca introduced Marek to the Adelaide LP and the LP thus owed the \$300,000 to ASD.
Summer 2019	Per Furtado: Malanca advised, at a lunch with Pucci, that ASD intended to pay Furtado a \$6M dividend “ <i>when they had the funds to pay</i> ”.
By August 2019	Furtado begins seeking further investments for Adelaide LP.
August/September 2019	Furtado meets with Marek to seek further investment for Adelaide LP
September 19-30, 2019	Furtado raises \$13.25M for the Adelaide LP from 4 investors, which includes \$12M invested by companies belonging to Marek.
October 1, 2019	Adelaide LP pays ASD \$12M on the Demand Loan. No payment had been due or demanded.
	ASD pays a \$6M dividend to Furtado Holdings (\$6M Dividend).
	ASD pays a \$6M dividend to AKM.
July 31, 2020	Adelaide LP enters into a Project Management Agreement with GTDH and AKM as consultants; the ‘manager’ thereunder remains TBD.
September 24, 2020	First examination of Furtado by Staff.
November 5, 2020	Second examination of Furtado by Staff.
November 9 and December 18, 2020	Progress reports sent to Eagle Valley LP and Elfrida LP investors advising them of the pledges of LP assets that occurred in April 2019.
June 29, 2021	Demand Loan agreement registered on title to the Properties (more than two years after the date of the loan agreement).
July 7, 2021	Third examination of Furtado by Staff.

Furtado's Misappropriation of Funds and Broken Obligations to Investors

Investments in Go-To LPs Generally

12. For each Go-To LP, investors were told that funds were being raised to acquire properties and pay soft costs, such as taxes, due diligence and development costs. The terms for the investments were set out in a subscription agreement and an LP agreement.

Collins Affidavit paras. 6, 19-20 and, e.g., Exs. 9 (p. 123) and 12 (p. 181), Record Tab 2.

13. Each LP agreement permits the GP and its affiliates to earn certain fees, receive reimbursement for reasonable expenses, and to provide services to the LP at a reasonable and competitive cost.

Exs. 15-24, Record Tab 2. See, e.g., Adelaide LP agreement, Ex. 23 at ss. 4.1, 5.3(f), 5.4, 5.12, 10.1 (pp. 586-591, 594-595, 606).

14. Consistent with typical partnership principles, each LP agreement requires, among other things, the GP to act prudently, reasonably, honestly, in good faith, and in the best interests of the LP. Furtado is the principal of all the GPs.

Exs. 15-24, Record Tab 2. See, e.g., Adelaide LP agreement, Ex. 23 at ss. 5.1, 5.9 (pp. 589, 594).

Adelaide LP – Misappropriation of Partnership Funds

15. The business of the Adelaide LP, as per its LP agreement, is “purchasing, holding an interest in, conducting pre-development planning with respect to, development and construction of” the Properties, up to obtaining site plan approval for the proposed project.

Adelaide LP agreement, Ex. 23 at ss. 1.11, 5.3 (pp. 579, 591), Record Tab 2.

16. 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.

Adelaide LP agreement, Ex. 23 at ss. 4.1, 4.9 (pp. 586-588), Record Tab 2.

Furtado Planned to Profit from the Adelaide LP's Acquisition of the Properties

17. Notwithstanding the representations, obligations, and fiduciary duties to investors, Furtado planned (with Malanca) to personally profit from the Adelaide LP's acquisition of the Properties.

To carry out that plan, Furtado:

- (a) obligated and caused the Adelaide LP to pay ASD the \$20.95 million Assignment Fee as part of the acquisitions, in addition to the purchase prices owed to the owners of the Properties (which totaled \$53.3 million, plus the Density Bonus on 46 Charlotte);
- (b) caused the Adelaide LP to take the Demand Loan from ASD to redeem Marek's investment, and pay his return and the \$300,000 'referral' fee to Goldmount. The redemption of one investor's units, with return, was contrary to the LP agreement;
- (c) caused Furtado Holdings to subscribe for ASD shares;
- (d) raised further investor funds for the Adelaide LP of \$13.25 million; and
- (e) made an early \$12 million payment on the Demand Loan to ASD and, the same day, received the \$6M Dividend. AKM also received a \$6 million dividend that day.

18. Furtado denies that he planned to profit on the purchase of the Properties by the Adelaide LP. He asserts that ASD decided (mere days after closing) to give Furtado Holdings shares, and subsequently paid a \$6 million dividend, essentially as "a thank you". Furtado's evidence

included: “...they said that they wanted to thank me for the value of the deal, they made a lot of money on the deal, and they wanted to give me some shares in the company. ... They then said to me, as part of the dividend, they were going to give me a dividend of \$6 million, but it was very straightforward. It was more of a thank you than anything else.” Such an assertion is incredible on its own. Additional context only underscores that Furtado planned to profit from the acquisition of the Properties, including:

- (a) emails between Furtado and Malanca pre-dating the closing of the Properties referring to a “lift” or “lift payment” and enclosing calculations showing proposed payments to, among others, Malanca and Furtado;
- (b) Furtado Holdings and AKM ultimately receiving the same number of shares, and quantum of payments, from ASD on the same days; and
- (c) Furtado’s attempts to mislead Staff about the payments Furtado Holdings received from ASD and his dealings with ASD (see paras. 33-36 below).

Collins Affidavit paras. 44, 59-60, 70, 76 and Exs. 84-87 (pp. 1288-1303) and 89 (pp. 1369-1370 at qq. 340-343), Record Tab 2.

19. In July 2021, Staff questioned Furtado about four email exchanges referring to “lift” or “lift payment”, and his evidence included:

- (a) “lift” was a term that could imply many things. In relation to the Properties, Malanca used the term ‘lift’ in conversations with Furtado to refer to “*the profitability that he was making on – that [ASD] was making*”;
- (b) Malanca posed a variety of scenarios to get adequate funding to close the acquisitions of the Properties. The emails reflect some of those potential scenarios, but not the

transactions that in fact occurred. Furtado asserted that, initially, it was not anticipated that the Adelaide LP would raise equity from investors; and

- (c) although the emails show Furtado sending calculations to Malanca, Furtado claimed he was essentially a scribe (in that Malanca would call him and ask him to enter numbers into spreadsheets to see how a potential funding scenario would work).

Collins Affidavit paras. 76-77 and Exs. 88 (e.g., pp. 1325-1335 at qq. 357-363, 368, 372-375) and 89 (pp. 1360-1364 at qq. 327-335), Record Tab 2.

20. Most telling was Furtado's evidence in response to this attachment to a March 13, 2019 email he sent to Malanca:

Alfredo Lift			
355 Adelaide	36,000,000		
46 Charlotte	23,650,000		
Less: VTB	8,050,000		
Net Cash Required	51,600,000	14,600,000	
Land Transfer tax	2,064,000		
Planner	15,000		
Appraisals	12,500		
Environmentals	40,000		
Legal Fees	450,000		
Cost to close	2,581,500	2,581,500	
VTB		3,712,500	
A/Scotty/Michael		1,150,000	
		7,156,000	7,156,000
Less Retained by Alfredo		4,000,000	
Net		3,156,000	
Alfredo / Hans / Oscar		1,052,000	
		Roco	1,000,000
		hans	1,052,000
		Alfredo	2,552,000
		Oscar	2,552,000
			7,156,000

21. Furtado admitted that the above scenario, sent about three weeks before the Adelaide LP acquired the Properties, was one in which he would have received a profit share from the acquisitions. Furtado claimed, however, that such scenario:

- (a) contemplated that he and others would 'find a way' to fund the acquisitions themselves;

(b) would not have involved any investors in the Adelaide LP; and

(c) would have meant the funds already raised from investors for the Adelaide LP would have been returned.

Ex. 88 (pp. 1340-1348 at qq. 383-384, 392-401), Record Tab 2.

22. When that email was sent, Furtado had already raised about \$5 million from investors. Furtado had not invested any money in the Adelaide LP by the time the properties were acquired.

Collins Affidavit App. C.

Funds to Make the Demand Loan Payment – September 2019 Investments

23. Most of the funds used to make the \$12 million payment on the Demand Loan on October 1, 2019, came from investments from Marek in September 2019.

Collins Affidavit para. 56 and App. C, Record Tab 2.

24. Marek first invested in the Adelaide LP in March 2019. His investment of \$16.8 million was redeemed and paid together with a flat fee return of \$2.7 million on April 5, 2019. Marek's March 2019 investment was his first dealing with Furtado and Go-To. He had learned of the Adelaide LP project from a lawyer who first introduced him to Malanca, then Furtado.

Collins Affidavit paras. 39-42 and App. C, Record Tab 2.

25. Marek and Furtado were each examined by Staff about Marek's second investment in the Adelaide LP of \$12 million in September 2019 (which was made through two of Marek's companies). Their evidence conflicts in certain respects. In summary:

(a) Marek said Furtado approached him in August 2019 seeking further investment.

Furtado suggested Marek sought him out;

- (b) Furtado and Marek agree that they met to discuss a further investment by Marek, and that Furtado provided Marek with a brochure in August or September 2019; and
- (c) They agree that Furtado did not expressly tell Marek how any further investment would be spent. Marek’s evidence, however, was that Furtado provided him details about the progress of and next steps for the Adelaide LP project, and that he understood that money was needed to advance the project.

Collins Affidavit paras. 50-52, Record Tab 2.

26. Marek and Furtado were each examined about this page of the brochure that Furtado gave Marek in August or September 2019:

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.

Sources		Uses	
Equity – third-party investors	\$ 7.5	Acquisition of land	\$ 74.3
Equity – Atria Development	3.0	Interest reserves & other fees	9.9
Equity – Adelaide Square Developments	16.8	Land transfer tax	3.0
1 st Mortgage	48.3	Cost to Achieve ZBA & SPA	2.0
2 nd Mortgage	13.7		
	\$ 89.2		\$ 89.2

27. Furtado asserted that the above page was meant to reflect the circumstances as of the day the Adelaide LP acquired the Properties. He claimed the line “*Equity – Adelaide Square Developments – 16.8*” reflected that ASD was holding Marek’s initial \$16.8 million investment as of that date and would be the entity paying Marek back. Furtado admitted ASD was never an

equity investor in the Adelaide LP. Furtado claimed he reviewed this page with Marek and made clear to him that the 16.8 listed next to Adelaide Square Developments was Marek's own money.

Collins Affidavit paras. 53-54 and Exs. 56 and 59, Record Tab 2.

28. Marek's evidence was that Furtado told him no such thing. He said that, at the time of making his \$12 million investment in September 2019, he did not know that:

- (a) ASD had provided the funding that paid back his earlier investment;
- (b) the Adelaide LP received a loan from ASD to repay his earlier investment; and
- (c) his further investment of \$12 million would be used to repay part of the ASD loan.

Collins Affidavit para. 55 and Ex. 60, Record Tab 2.

29. Furtado admitted that he knew ASD was going to pay him a \$6 million dividend once it had the money to do so. In fact, ASD did pay Furtado the \$6M Dividend the same day Furtado caused the Adelaide LP to make a \$12 million loan payment to ASD.

Collins Affidavit paras. 58-60, 73, Record Tab 2.

30. Furtado also admitted that no payment had been due or demanded when he caused the Adelaide LP to pay \$12 million on the Demand Loan to ASD. He claimed the Adelaide LP wanted to pay down debt. However, the Demand Loan has fixed 'interest' payments that vary over time but not from any reduction of the principal. Furtado's own summary of the loan's status (provided via counsel) shows that the \$12 million payment had no effect on the monthly payments owed.

Collins Affidavit para. 57 and Exs. 36 (p. 902), 46 (p. 1005 under "Interest"), 62 (p. 1124), and 63, Record Tab 2.

Eagle Valley and Elfrida LPs – Improper Use of Partnership Assets

31. In April 2019, Furtado used assets of both the Eagle Valley LP and the Elfrida LP to secure obligations of the Adelaide LP. The LP agreements prohibited this, as they each provide:

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.

Collins Affidavit paras. 81-84 and Exs. 15 (p. 246) and 19 (p. 432), Record Tab 2.

32. Furtado asserted that cross-collateralization of assets was typical in the industry and that he disclosed such uses to investors. However:

- (a) Furtado only told investors about the cross-collateralizations after Staff asked him about them, which was more than 1.5 years after they occurred;
- (b) in progress reports to investors, Furtado stated that the cross-collateralization “strategy” benefited the projects. For example, in a December 18, 2020 progress report to Elfrida investors, Furtado said there was a charge against his residence to Elfrida’s benefit. However, Furtado did not tell investors in that report that:

1. the charge against his house was registered that very day (i.e., December 18, 2020); and
2. he was charging the Elfrida LP a 5% fee (on a \$10.35 million charge) for having provided that security; and

(c) Furtado obtained no payment for either the Elfrida LP or the Eagle Valley LP in exchange for the use of their assets to the Adelaide LP's benefit.

Collins Affidavit paras. 85-86 and Exs. 101 (p. 1574) and 102 (p. 1577), Record Tab 2.

Furtado's Attempts to Mislead Staff and Conduct During the Investigation

33. During the investigation, Furtado gave misleading evidence under oath and attempted to conceal information from Staff, particularly relating to his dealings with ASD and the involvement of Malanca. A table comparing Furtado's evidence on these topics is attached as **Schedule "C"**.

34. In summary, Furtado's evidence about his dealings with ASD was that:

(a) at the first examination, he did not recall why Furtado Holdings received payment of the \$388K Payment or the \$6M Dividend;⁵

(b) at the second examination:

1. Furtado Holdings received the \$388K Payment from ASD for having "assumed the risk"⁶ of a non-refundable deposit on 355 Adelaide that had been paid with Adelaide LP funds, pursuant to an oral agreement he made with Pucci;
2. Furtado Holdings received the \$6M Dividend on shares of ASD, which ASD decided to give to Furtado as "a thank you" after the acquisitions closed. The conversation about that gift of shares was with Pucci; and
3. his usual contact at ASD was Pucci; and

⁵ Furtado's claim not to recall the reason for the \$6M Dividend payment is particularly notable given that Furtado Holdings had about \$2,000 in its account when it received the \$6M Dividend: Ex. 65 (p. 1133).

⁶ At the third examination, Furtado stated this meant that if the Adelaide LP transactions had not closed and the deposit (of \$800,000) was lost, Furtado Holdings would have reimbursed the Adelaide LP. When asked what assets Furtado Holdings had at the relevant time, Furtado said he could not recall and, via counsel, he refused to answer by way of undertaking: Exs. 81 and 82 (p. 1282 re: Q183).

(c) at the third examination,

1. he had written agreements in respect of the \$388K Payment, one of which was with ASD and had been negotiated with Malanca;⁷
2. Malanca told Furtado that ASD intended to pay the \$6M Dividend when it had the funds to do so; and
3. he had limited exposure to Pucci, only recalled meeting him 3 times and that Malanca was present each time.

Collins Affidavit paras. 65-70, 73, Record Tab 2. See also Sch. C.

35. Between the second and third examination, Staff required production of documents from Furtado including: (a) those relating to the payments and shares Furtado Holdings received from ASD; and (b) correspondence with ASD or its representatives in relation to the purchase and sale of the Properties. In his response, provided via counsel, Furtado:

- (a) provided redacted copies of ASD shareholding documents and the Redirection that showed ASD's disbursements from the Assignment Fee. The redactions removed references to anyone other than Furtado and Pucci, the effect of which was to conceal all connections to, among others, Malanca (i.e., AKM, Goldmount, and Pikula); and
- (b) claimed there was "no correspondence" with ASD or its representatives, other than emails or texts arranging meetings which had been discarded. The lift emails discussed

⁷ While the Memoranda of Agreement Furtado produced to Staff assert that the \$388K Payment was made because Furtado Holdings 'assumed the risk' of a non-refundable deposit paid towards 355 Adelaide: (i) AKM received the same amount on the same day; and (ii) both AKM and Furtado Holdings received tax slips indicating those payments were dividend income: Collins Affidavit Exs. 77, 78 and paras. 44, 59.

above (which Staff obtained from Malanca) show that Furtado emailed with Malanca beyond just arranging meetings.

Collins Affidavit paras. 71-72 and Exs. 76 (p. 1227) and 79, Record Tab 2.

36. Lastly, at the third examination, Furtado admitted he provided Malanca a Go-To email address under the name 'Palmeri'. However, he claimed he did not know why Malanca went by Palmeri, other than it is Malanca's mother's maiden name. In contrast, Marek told Staff that he discovered that Malanca had criminal convictions⁸ via a Google search sometime before June 2020, and confronted Furtado. Marek said Furtado confirmed Malanca's criminal history, and that Malanca and Palmeri are one and the same.

Collins Affidavit paras. 78-79, Record Tab 2.

Furtado's Use of the \$6 Million Dividend

37. Furtado Holdings received the \$6M Dividend on October 1, 2019. It used the bulk of the \$6M Dividend by August 2020 to:

- (a) transfer approximately \$2.25 million to Furtado's personal bank account (**Furtado Bank Account**); and
- (b) loan or otherwise transfer approximately \$3.265 million to various Go-To entities.

Collins Affidavit para. 61 and App. D, Record Tab 2.

38. From the Furtado Bank Account, approximately \$2.026 million was transferred to Furtado's RBC Direct Investing account (**RBC Direct Account**) in close proximity to transfers received from Furtado Holdings. The first transfer was made in January 2020. At the end of

⁸ Per the decision of the Court of Appeal for Ontario, Malanca was convicted, in 2005, of conspiracy to import and importing cocaine and subsequently sentenced to 19 years imprisonment: Ex. 93 (pp. 1435-1436, 1450).

December 2019, the RBC Direct Account had assets valued at approximately USD 300,000. By October 2021, it had assets valued at CAD 1,240,041.27 and USD 463,056.44.

Collins Affidavit paras. 62-63, Record Tab 2.

39. The \$3.265 million sent by Furtado Holdings to Go-To entities included transfers to every Go-To GP, to GTDH and to Go-To Developments Acquisitions Inc. Generally speaking, it appears that transfers to the GPs were spent on operating costs and payments due to LP investors.

Collins Affidavit para. 64 and App. D, Record Tab 2.

Freeze Directions Issued by the Commission

40. On December 6, 2021, the Commission issued two freeze directions (the **Directions**) under s. 126(1) of the Act. The Directions require:

- (a) Furtado to maintain and refrain from imperiling assets derived from investor funds; and
- (b) RBC Direct Investing to maintain the assets in the RBC Direct Account.

Directions, Record Tab 4.

PART III – THE ISSUES

41. The issues on this Application are:

- (a) whether to appoint the Receiver, pursuant to section 129 of the Act; and
- (b) whether to continue the Directions, pursuant to section 126 of the Act.

PART IV – LAW AND ARGUMENT

Grounds to Appoint a Receiver

42. The Court may, on application by the Commission, appoint a receiver and manager of the property of any person or company where: (i) it is in the best interest of the creditors, security holders, or subscribers of such person or company; or (ii) it is appropriate for the due administration of securities law. Satisfaction of either one of the grounds is sufficient for the appointment of a receiver. Both grounds are met in this case.

Act ss. 129(1)-(2), Sch. B.

43. The Court can appoint a receiver, initially, on an *ex parte* basis for up to fifteen days. An initial *ex parte* order may be continued by the Court on motion by the Commission.

Act s. 129(3), Sch. B.

Appointing the Receiver is the Best Interests of the Go-To Respondents' Stakeholders

44. The first ground upon which the Court may appoint a receiver is where the appointment is in the best interests of stakeholders of the entities in issue. In *Sextant*, Justice Morawetz (as he then was) emphasized that the “best interests” analysis is broader than a solvency test. Instead, the Court should consider “all the circumstances and whether, in the context of those circumstances, it is in the best interest of creditors that a receiver be appointed. The criteria should also take into account the interests of all stakeholders.”

Ontario Securities Commission v Sextant Strategic Opportunities Hedge Fund L.P., [2009 CanLII 38503 \(ON SC\)](#) (*Sextant*) at para. 54.

45. Factors that courts have considered in deciding whether to appoint a receiver under the Act include:

(a) evidence of potential fraud or self-dealing;

- (b) potential regulatory breaches;
- (c) a lack of transparency and failure to disclose material facts;
- (d) the loss of confidence in management;
- (e) evidence that investor interests will not be served by maintaining the *status quo* and the respondent is not in a better position than a receiver to protect investor interests; and,
- (f) evidence that a significant investigation would be required to unravel various transactions and understand the true state of affairs of the respondent.

[Sextant](#) at paras. 15, 55, 56 and 58; *Ontario Securities Commission v Portus Alternative Asset Management Inc.*, [2006 CanLII 8882 \(ON SC\)](#) at para. 58.

46. In *Sextant*, for example, Justice Morawetz granted an order appointing a receiver on the basis of various concerns raised by the Commission, including: (i) significant regulatory non-compliance; (ii) evidence of potential fraud, misappropriation, and forgery; (iii) manipulation of the value of the funds and corresponding management fees; and (iv) precarious financial circumstances, including a capital shortfall for some of the funds.

[Sextant](#) at paras. 15, 57-59.

47. On the basis of these concerns, Justice Morawetz held that: (i) investors' interests would not be served by maintaining the *status quo*; (ii) investors were entitled to an independent review and verifiable reporting process on which they could rely; (iii) a receiver was necessary to ensure that investors' assets were managed in an orderly fashion; and (iv) anything less than the appointment of a receiver would not permit the overview or control of the financial affairs of the *Sextant* group.

[Sextant](#) at paras. 57-63.

48. The reasoning in *Sextant* is apt here. The investigation revealed evidence of undisclosed payments to Furtado, misappropriation, improper use and intermingling of partnership assets, and deception to conceal transactions from investors and from Staff of the Commission. The evidence demonstrates the need for independent management of assets acquired with investor monies and full, independent investigation as to the extent of wrongdoing and harm to investor interests.

Receivership Necessary for the Due Administration of Securities Law

49. The goal of securities legislation is to protect the investing public and the integrity of capital markets. Assessment of whether the appointment of a receiver is appropriate for the “due administration of Ontario securities law” should therefore be animated by the purposes of the Act, which include protecting investors from unfair, improper or fraudulent practices and fostering fair and efficient capital markets.

Pezim v British Columbia (Superintendent of Brokers), [1994] 2 SCR 557 at 592-593; Act ss. 1.1 and 2.1(2), Sch. B.

50. In an application for a receiver, the Commission does not have to prove a breach of the Act. Rather, it is sufficient for the Commission to raise serious concerns with respect to possible breaches of the Act.

Ontario Securities Commission v. Sbaraglia (23 December 2010), Toronto, Court File No CV-10-883-00CL (unreported) at 26.

Fraud

51. Fraud is one of the most egregious securities law violations as it is both “an affront to the individual investors directly targeted” and “decreases confidence in the fairness and efficiency of the entire capital market system.”

Al-Tar Energy Corp. (Re), [2010 ONSEC 11](#) at para. 214; Act s. 126.1(1)(b), Sch. B.

52. Fraud can be committed by deceit, falsehood or other fraudulent means, which the courts have interpreted to include the use of corporate funds for personal purposes, the unauthorized diversion of funds, the non-disclosure of important facts and the failure of a fiduciary to disclose conflicts of interest.

R v Théroux, [\[1993\] 2 SCR 5](#) at 15-17; *R v Zlatic*, [\[1993\] 2 SCR 29](#) at 44-45.

Misleading Staff

53. Every person is prohibited from making misleading or untrue statements to Staff of the Commission, and from omitting facts that are required to be stated so that a statement is not misleading or untrue. In *Wilder*, the Court of Appeal observed that “it is difficult to imagine anything that could be more important to protecting the integrity of capital markets than ensuring those involved in those markets...provide full and accurate information to the OSC.”

Act s. 122(1)(a), Sch. B; *Wilder v Ontario Securities Commission*, [2001 CanLII 24072 \(ON CA\)](#) at para 22.

Furtado’s Misconduct

54. As set out above, it appears that Furtado: (a) arranged to personally profit from the Adelaide LP’s purchase of the Properties, in a manner contrary to his representations and obligations to investors; (b) misused other partnership assets to secure the 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 payments from ASD.

55. The gravity of the potential breaches of the Act indicated by the evidence raises significant concerns about Furtado’s ability or intention to operate in the capital markets in a manner compliant with securities law. The interests of investors, and all stakeholders, and the integrity of the capital

markets would be better served if Furtado was not to continue in a position of trust over the assets of the Go-To respondents, which were acquired with investor money.

56. The proposed receivership order will ensure that investors' interests are protected and that the Go-To business is properly administered by the Receiver in compliance with Ontario securities law and in the best interests of all stakeholders.

Continuation of the Directions

57. Where the Commission issues a freeze direction, it must apply to the Court to seek its continuation. Per s. 126(5.1) of the Act, the Court may continue a freeze direction where 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.

Act s. 126(5.1), Sch. B.

58. In *Future Solar*, Justice Pattillo set out the requirements for continuation of a freeze direction under s. 126(5.1) of the Act as follows:

- (a) there is a serious issue to be tried in respect of the respondents' breaches of the *Securities Act* or securities laws in another jurisdiction;
- (b) there is a basis to suspect, suggest or prove a connection between the frozen assets and the conduct at 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 Inc., [2015 ONSC 2334](#) (*Future Solar*) at para. 31.

59. *Future Solar* was the Court’s first consideration of s. 126(5.1), which was added to the Act in 2014. Justice Pattillo explained the effects of the addition of s. 126(5.1), as follows:

- (a) the terms “reasonable” and “expedient” provide for a lesser standard than the requirement to establish a strong *prima facie* case or even a *prima facie* case;
- (b) s. 126(5.1) requires the Court to consider all the circumstances and, in so doing, the Court must have regard to the public interest; and
- (c) the Commission is not required to establish dissipation of assets. A freeze direction may be used to address inappropriate use of investor funds, dissipation of assets, and preservation of assets, or any other situation where a freeze direction is necessary to protect the investing public or capital markets.

[*Future Solar*](#) at paras 22 to 30.

60. The Court of Appeal recently commented, in *Qin*, that the narrow evidentiary focus applied in *Future Solar* was appropriate in the context of an application to continue a freeze direction.

Qin v Ontario Securities Commission, [2021 ONCA 165](#) at paras. 20-22, 24-26.

61. The evidence satisfies all three parts of the test as set out in *Future Solar*:

- (a) as discussed above, there is at least a serious issue to be tried as to potential breaches of the Act, including fraud, by Furtado and/or certain Go-To respondents;
- (b) the Directions freeze the RBC Direct Account and any other assets of Furtado derived from investor funds. The evidence of Furtado’s uses of the \$6M Dividend shows at least a basis to “suspect, suggest or prove” a connection between the assets frozen and the conduct in issue; and

(c) continuation of the Directions is necessary for the due administration of securities law and/or the regulation of capital markets in Ontario. In particular, the Directions address inappropriate use of investor funds, dissipation of assets, and preservation of assets, any one of which meets the third element of the *Future Solar* test.

PART V – RELIEF SOUGHT

62. The Commission requests orders appointing the Receiver and continuing the Directions, substantially in the form of the draft order in the Application Record.

Draft Order, Record Tab 5.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6th day of December, 2021



Erin Hoults
Senior Litigation Counsel, Enforcement



Braden Stapleton
Litigation Counsel, Enforcement

Lawyers for the Ontario Securities
Commission

Schedule “A” – Cases and Authorities Cited

1. *Al-Tar Energy Corp. (Re)*, [2010 ONSEC 11](#).
2. *OSC v Future Solar Developments Inc.*, [2015 ONSC 2334](#).
3. *Ontario Securities Commission v Portus Alternative Asset Management Inc.*, [2006 CanLII 8882 \(ON SC\)](#), 146 ACWS (3d) 768.
4. *Ontario Securities Commission v Sbaraglia* (23 December 2010), Toronto, Court File No CV-10-883-00CL (unreported).
5. *Ontario Securities Commission v Sextant Strategic Opportunities Hedge Fund L.P.*, [2009 CanLII 38503 \(ON SC\)](#), 179 ACWS (3d) 345.
6. *Pezim v British Columbia (Superintendent of Brokers)*, [\[1994\] 2 SCR 557](#).
7. *Qin v Ontario Securities Commission*, [2021 ONCA 165](#).
8. *R v Théroux*, [\[1993\] 2 SCR 5](#).
9. *R v Zlatic*, [\[1993\] 2 SCR 29](#).
10. *Wilder v Ontario Securities Commission*, [2001 CanLII 24072 \(ON CA\)](#), 53 OR (3d) 519.

Schedule “B” – Statutory Provisions

<u>Securities Act</u> , RSO 1990, c. S.5
--

Purposes of the Act

1.1 The purposes of this Act are,

- (a) to provide protection to investors from unfair, improper or fraudulent practices;
- (b) to foster fair and efficient capital markets and confidence in capital markets; and
- (c) to contribute to the stability of the financial system and the reduction of systemic risk.

Principles to consider

2.1 In pursuing the purposes of this Act, the Commission shall have regard to the following fundamental principles:

...

2. The primary means for achieving the purposes of this Act are,

- i. requirements for timely, accurate and efficient disclosure of information,
- ii. restrictions on fraudulent and unfair market practices and procedures, and
- iii. requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants.

Offences, general

122 (1) Every person or company that,

- (a) makes a statement in any material, evidence or information submitted to the Commission, a Director, any person acting under the authority of the Commission or the Executive Director or any person appointed to make an investigation or examination under this Act that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading;

...

is guilty of an offence and on conviction is liable to a fine of not more than \$5 million or to imprisonment for a term of not more than five years less a day, or to both.

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.

...

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.

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.

Fraud and market manipulation

126.1 (1) A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities, derivatives or the underlying interest of a derivative that the person or company knows or reasonably ought to know,

- (a) results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a security, derivative or underlying interest of a derivative; or
- (b) perpetrates a fraud on any person or company.

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.

(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.

Schedule "C" – Excerpts of Furtado's Evidence re: Payments from and Dealings with ASD

<i>Re: \$6M Dividend</i>		
First Examination	Second Examination	Third Examination
<p>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.</p>	<p>24 391 Q. I see, okay. Thank you. 25 So, we're still on question four and the next 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. ... 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 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</p>	<p>24 207 Q. That is fine. What was 25 discussed at that summer 2019 restaurant meeting 1 with Mr. Pucci and Mr. Malanca? 2 A. There was discussion 3 about -- and Alfredo had the lead in the 4 discussion, discussion about wanting to -- the 5 plan was to give me the 6 million out of their 6 profit share from -- because they did quite well 7 on the deal and they saw the potential of doing 8 future deals with me at the table in the city of 9 Toronto. 10 208 Q. Okay. So I would like to 11 know everything that you can recall about that 12 discussion. How was it introduced? Who said 13 what? 14 A. Alfredo was the primary 15 guy that did the majority of the talking with -- 16 he referred to Angelo Pucci as "we". And he did 17 the majority of the talking. They wanted to 18 acknowledge the value that I brought to the 19 project to close the deal. And I was surprised 20 with the amount because I knew I had shares in the 21 company and I was a minority holder of one class 22 of shares. So was just surprised that -- I was 23 more thankful than anything else. There was 24 nothing more discussed. 25 ... [Furtado continues on to describe that Malanca/Pucci raised another potential project that went nowhere]</p>

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
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.

...

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?
[counsel interjections omitted]

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
1 dividend of \$6 million, but it was very
2 straightforward. It was more of a thank you than
3 anything else.

Re: \$388K Payment

First Examination	Second Examination	Third Examination
<p>339 Q. Mr. Baik, can you now go 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.</p>	<p>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 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. ... 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</p>	<p>7 156 Q. Okay. But your holding 8 company, Furtado Holdings, entered agreements 9 entitling it to be paid a \$400,000 fee less legal 10 expenses from Adelaide Square Developments for 11 providing the non-refundable deposit? 12 A. There have been two 13 agreements that have been sent to the Securities 14 Commission. The first one was to assume the risk 15 between Furtado Holdings and the LP. In case the 16 800,000 was lost, Furtado Holdings would have to 17 pay the 800,000 back to the LP. To assume that 18 risk, the LP had to enter into an agreement with 19 Adelaide Square that if that deposit was lost -- 20 sorry, if the deal goes through, the return would 21 be paid to Furtado Holdings for assuming that 22 risk. ... 4 161 Q. Were you present when 5 Mr. Pucci signed this document? 6 A. I wasn't. 7 162 Q. Okay. Who did you 8 negotiate this agreement with on behalf of 9 Adelaide Square Developments? 10 A. Alfredo Malanca would 11 have been my primary contact.</p>

	<p>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.</p>	
--	--	--

Re: ASD Contacts	
Second Examination	Third Examination
<p>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.</p> <p>...</p> <p>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.</p>	<p>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.</p> <p>24 207 Q. That is fine. What was 25 discussed at that summer 2019 restaurant meeting with Mr. Pucci and Mr. Malanca? 2 A. There was discussion 3 about -- and Alfredo had the lead in the 4 discussion, discussion about wanting to -- the 5 plan was to give me the 6 million out of their 6 profit share from -- because they did quite well 7 on the deal and they saw the potential of doing 8 future deals with me at the table in the city of 9 Toronto. 10 208 Q. Okay. So I would like to 11 know everything that you can recall about that 12 discussion. How was it introduced? Who said 13 what? 14 A. Alfredo was the primary 15 guy that did the majority of the talking with -- 16 he referred to Angelo Pucci as "we". And he did 17 the majority of the talking. They wanted to 18 acknowledge the value that I brought to the 19 project to close the deal. And I was surprised 20 with the amount because I knew I had shares in the 21 company and I was a minority holder of one class 22 of shares. So was just surprised that -- I was 23 more thankful than anything else. There was</p>

24 nothing more discussed.
25 They did -- as I recall, there
1 was -- they did bring up the fact that there was
2 another big property in downtown Toronto that they
3 had considered
...
14 209 Q. Okay. So it was in the
15 summer of 2019 that they discussed that they were
16 going to pay you a dividend?
17 A. It was discussed they
18 were going to pay me the 6 million when they had
19 the funds, when they became (inaudible).
20 210 Q. When they became in
21 funds? Is that what you said?
22 A. When they had the funds
23 to pay.
24 211 Q. Okay. Why 6 million?
25 Was there any discussion of that? Where did the
1 number come from?
2 A. You have to ask them.
3 212 Q. Was that the last time
4 you saw Mr. Pucci in person, that summer 2019
5 meeting?
6 A. Correct.
7 213 Q. Okay. So you only recall
8 three times that you met Mr. Pucci in person?
9 That lunch before the deal closed, the meeting at
10 Louis' office in April 2019, and then a summer
11 2019 lunch. Is that correct? Sorry, I didn't
12 hear that.
13 A. Correct.

Schedule “D” – Annotated Key Persons Chart and Chronology of Key Events

Person	Description	Reference to Collins Affidavit
Katarzyna (Kasia) Pikula (Pikula)	Malanca’s spouse. The director of AKM and Goldmount Capital Inc., a mortgage brokerage.	Para. 8 and Exs. 2-3
AKM	A holding company. A shareholder of ASD. Pikula is the director.	Para. 48 and Exs. 3 and 50
Goldmount Financial Group Corp. (Goldmount)	Malanca is the director.	Para. 8 and Ex. 1
Angelo Pucci (Pucci)	The sole registered director, and a shareholder of ASD. Furtado claims to have met him 3 times, with Malanca present. When Staff tried to contact Pucci, his son and former landlord advised that he has dementia (one said his symptoms began in 2019).	Paras. 26-27, 73 and Exs. 27 and 80
Anthony Marek (Marek)	A repeat investor in the Adelaide LP. Marek had never dealt with Furtado or Go-To before his first investment in the Adelaide LP.	Paras. 40 and 50

Date	Events	Reference to Collins Affidavit
May 2016-June 2020	Furtado raises ~\$80M from investors for 9 Go-To projects, including: <ul style="list-style-type: none"> - \$4.25M for Eagle Valley LP between Apr. 2017-May 2019 - \$10.6M for Elfrida LP between Sept. 2017-Feb. 2019 - \$42M for Adelaide LP between Feb. 2019-June 2020 	Para. 18, App. B and C
February 2018 and following	Malanca is engaged in: <ul style="list-style-type: none"> - securing purchase rights for 355 Adelaide Street W. and 46 Charlotte Street in downtown Toronto (together, the Properties) via agreements with the then-current owners; - due diligence on the Properties, and promotional efforts for the proposed project, called “Adelaide Square”. 	Paras. 22-23 and Ex. 25
July 30, 2018	ASD incorporated.	Ex. 27
In or before October 2018	Malanca, as a representative of ASD, asks Furtado if he is interested in acquiring the Properties.	Para. 24 and Ex. 26 (qq. 61-72)
December 2018	Adelaide LP makes an offer to buy the Properties from ASD for \$74.25M, which is accepted. This particular agreement does not close; the transaction is restructured in late March 2019.	Ex. 26 (qq. 83-85)
February 15 – April 2, 2019	Furtado raises ~\$25M from investors for the Adelaide LP in this period, which includes a \$16.8M investment by Marek.	Para. 30 and App. C

March 26, 2019 to April 3, 2019	<p>Adelaide LP and ASD enter into 4 agreements for the acquisition of the Properties (the Acquisition Agreements):</p> <ul style="list-style-type: none"> - assignment of purchase and sale agreement for 355 Adelaide; - assignment of purchase and sale agreement for 46 Charlotte; - Assignment Fee agreement, under which the Adelaide LP owes ASD a fee of \$20.95M; and - Memo of Understanding (MOU) with others, including FAAN Mortgage Administrators Inc. (the Court-appointed trustee re: a mortgage on 46 Charlotte). MOU requires further payments on Charlotte after closing (the Density Bonus). 	Para. 33 and Exs. 31-34
April 3, 2019	<p>In the MOU, Furtado pledges assets of Elfrida LP to secure Adelaide LP obligations. A charge is registered on the Elfrida LP's properties.⁹</p>	Para. 82, Exs. 34 (p. 870) and 97
	<p>Furtado directs Go-To counsel to pay funds in trust (mortgage and investor funds) for the acquisition of the Properties, including to pay the \$20.95M Assignment Fee to ASD.</p>	Para. 35 and Ex. 35
April 4, 2019	<p>Furtado pledges assets of Eagle Valley LP to secure Adelaide LP obligations to one of its mortgage lenders, Scarecrow Capital Inc.¹⁰</p>	Para. 83 and Exs. 98-99
	<p>Date of a demand loan agreement for a \$19.8M loan from ASD to Adelaide LP (the Demand Loan). Loan proceeds are paid by ASD to Marek and Goldmount, as below.</p>	Para. 45 and Exs. 45-46
April 5, 2019	<p>Transfer of Properties to Adelaide LP recorded.</p>	Para. 36 and Ex. 108 (pp. 1773, 1790)
	<p>Marek paid \$19.5M by ASD from the Assignment Fee (for redemption of \$16.8M of Adelaide LP units plus a \$2.7M flat fee return).</p>	Paras. 38-39, 40(c), 41-42, and Exs. 40 (p. 978), 41, 42
April 12, 2019	<p>ASD articles amended to change share structure.</p>	Para. 47 and Ex. 48

⁹ This charge was removed from title of the Elfrida properties on November 9, 2021.

¹⁰ This charge was removed from title of the Eagle Valley property on April 1, 2021.

April 15, 2019	Furtado Holdings and AKM each receive: <ul style="list-style-type: none"> - 11 shares of ASD; and - \$388,087.33 cheques (\$388K Payment) of this date, paid out of the Assignment Fee. 	Paras. 38, 44, 48 and Exs. 37, 43-44, 49-50
	Goldmount paid \$300,000 by ASD from the Assignment Fee. Per Furtado: this payment was a referral fee as Malanca introduced Marek to the Adelaide LP and the LP thus owed the \$300,000 to ASD.	Paras. 38, 45 and Ex. 45 (pp. 1001-1003, qq. 272-281)
Summer 2019	Per Furtado: Malanca advised, at a lunch with Pucci, that ASD intended to pay Furtado a \$6M dividend “ <i>when they had the funds to pay</i> ”.	Para. 73 and Ex. 80 (pp. 1271-1273, qq. 202-210)
By August 2019	Furtado begins seeking further investments for Adelaide LP.	Para. 50 and Exs. 54-55
August/September 2019	Furtado meets with Marek to seek further investment for Adelaide LP	Para. 51 and Exs. 54 (pp 1052-1056, qq. 350-354) and 55 (pp. 1058-1063, qq. 171-173)
September 19-30, 2019	Furtado raises \$13.25M for the Adelaide LP from 4 investors, which includes \$12M invested by companies belonging to Marek.	App. C
October 1, 2019	Adelaide LP pays ASD \$12M on the Demand Loan. No payment had been due or demanded.	Paras. 56-57 and Exs. 46 (p. 1005 at “Interest”), 61-63
	ASD pays a \$6M dividend to Furtado Holdings (\$6M Dividend).	Paras. 58-59 and Exs. 64, 65, 68
	ASD pays a \$6M dividend to AKM.	Paras. 58-59 and Exs. 64, 66, 67
July 31, 2020	Adelaide LP enters into a Project Management Agreement with GTDH and AKM as consultants; the ‘manager’ thereunder remains TBD.	Para. 80 and Ex. 95

September 24, 2020	First examination of Furtado by Staff.	Para. 65
November 5, 2020	Second examination of Furtado by Staff.	Para. 65
November 9 and December 18, 2020	Progress reports sent to Eagle Valley LP and Elfrida LP investors advising them of the pledges of LP assets that occurred in April 2019.	Para. 86 and Exs. 101-102
June 29, 2021	Demand Loan agreement registered on title to the Properties (more than two years after the date of the loan agreement).	Para. 46 and Ex. 47
July 7, 2021	Third examination of Furtado by Staff.	Para. 65

ONTARIO SECURITIES COMMISSION
Applicant

- AND -

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**FACTUM OF THE ONTARIO
SECURITIES COMMISSION**
(Application under Sections 126 and 129 of
the *Securities Act*)

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