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

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 RECEIVER – RETURNABLE JUNE 15, 2023

June 12, 2023

AIRD & BERLIS LLP
Barristers and Solicitors
181 Bay St., Suite 1800
Toronto, ON M5J 2T9

Steven L. Graff (LSO# 31871V)
416.865.7726 / sgraff@airdberlis.com

Ian Aversa (LSO# 55449N)
416.865.3082 / iaversa@airdberlis.com

Jeremy Nemers (LSO# 66410Q)
416.865.7724 / jnemers@airdberlis.com

Tamie Dolny (LSO#: 77958U)
647.426.2306 / tdolny@airdberlis.com

PART I – INTRODUCTION

1. This factum is filed by KSV Restructuring Inc. ("**KSV**"), in its capacity as the Court-appointed receiver and manager (in such capacity, the "**Receiver**") of the 23 parties listed on Schedule "B" of the Receivership Order (as defined below) (the "**Receivership Respondents**") in support of the Receiver's motion for two Orders.

2. The first Order proposes the following substantive relief (the "**Aurora AVO**"):

   (a) approval of the agreement of purchase and sale dated May 17, 2023 (the "**Vaughan APS**") between the Receiver and 7386 Islington Development Inc. (the "**Vaughan Purchaser**") for the purchase and sale of the real property municipally known as 7386 Islington Avenue, Vaughan, ON, and legally described in PIN 03222-0909 (collectively, the "**Vaughan Real Property**"), and authorizing the Receiver to complete the transaction contemplated thereby (the "**Vaughan Transaction**");

   (b) upon execution and delivery of a certificate by the Receiver confirming the closing of the Vaughan Transaction, vesting in the Vaughan Purchaser[1] all rights, title and interest in the Purchased Assets (as defined in the Vaughan APS) subject to certain encumbrances; and

   (c) authorizing and directing the Receiver to distribute $6,244,131 following closing of the Vaughan Transaction to Dorr Capital Corporation ("**Dorr**"), the first and only mortgagee registered on title to the Vaughan Real Property.

---

[1] Or, if the Vaughan Purchaser chooses, in the name of another person, entity, joint venture, partnership or corporation, subject to the terms and conditions of section 14.10 of the Vaughan APS.

3. The second Order proposes the following substantive relief (the "**Ancillary Order**"):

   (a) approving certain intercompany distributions from Go-To Glendale, Go-To Chippawa and Go-To Stoney Creek to FHI and GTDH (each defined below);

   (b) directing Dickinson Wright LLP ("**Dickinson Wright**") to serve, by no later than June 30, 2023, an application under section 38 of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") in the bankruptcy proceedings of Capital Build Construction Management Corp. ("**Capital Build**") if Dickinson Wright intends to contest the Receiver's disallowance of the claim filed by Capital Build against Go-To Chippawa (the "**Outstanding Capital Build Claim**"), failing which the notice of disallowance issued by the Receiver to Capital Build's bankruptcy trustee on October 31, 2022 shall be final and conclusive;

   (c) approving the Receiver's Seventh Report dated June 6, 2023 (the "**Seventh Report**") and the actions and activities of the Receiver described therein; and

   (d) approving the fees and disbursements of the Receiver and its counsel.

PART II – THE FACTS

A. Background

4. Pursuant to an application by the Ontario Securities Commission (the "**OSC**") under ss. 126 and 129 of the *Securities Act* (Ontario) (the "**Securities Act**"), the Court made an Order on December 10, 2021 (the "**Receivership Order**") appointing KSV as the Receiver of the 17 pieces of real property described in the Receivership Order (the "**Real Property**") and all the other assets, undertakings and properties of each of the Receivership Respondents, including all the assets held in trust or required to be held in

trust by or for any of the Receivership Respondents, or by their lawyers, agents and/or any other person, and all proceeds thereof (together with the Real Property, the "**Property**").[2]

5. The Receivership Respondents were developers of nine, early-stage residential real estate projects in Ontario (the "**Projects**").[3] The Receivership Respondents' principal is Oscar Furtado ("**Mr. Furtado**").

6. Between 2016 and 2020, Mr. Furtado and the Receivership Respondents raised almost $80 million from Ontario investors for the Projects, the vast majority of which had not been repaid at the outset of this proceeding.[4]

7. Having regard to all the circumstances described in the OSC's application, the Court determined it was in the best interests of the Projects' investors to appoint the Receiver.[5]

8. Mr. Furtado and the Receivership Respondents took steps to appeal the Receivership Order (the "**Appeal**") and moved to stay the Receivership Order pending the Appeal (the "**Stay Motion**").[6] The Court of Appeal for Ontario dismissed both the Appeal and the Stay Motion.[7] Mr. Furtado and the Receivership Respondents then filed an application with the Supreme Court of Canada ("**SCC**") seeking leave to appeal the Appeal's dismissal.[8] On February 16, 2023, the SCC dismissed the leave application.[9]

---

[2] Receivership Order, at recitals, para. 3 and Schedule "A" thereto.

[3] Seventh Report of the Receiver dated June 6, 2023 (the "**Seventh Report**"), section 2.0.

[4] Endorsement of The Honourable Mr. Justice Pattillo dated December 10, 2021 **[Receivership Endorsement]**, at para. 8.

[5] Receivership Endorsement, at para. 22.

[6] Seventh Report, section 1.0.

[7] Seventh Report, section 1.0.

[8] Seventh Report, section 1.0.

[9] Seventh Report, section 1.0.

B. The Sale Process Generally and the Vaughan Real Property Specifically

9. The Receivership Order grants the Receiver the authority to, *inter alia*, market the Property, sell the Property (with Court approval) and apply for vesting Orders.[10] The Receiver also obtained a further Order from the Court on February 9, 2022 (the "**Sale Process Order**") approving a sale process for the Property (the "**Sale Process**").[11]

10. To date, the Court has granted Orders: (i) approving the sale and vesting of eight of the nine groups of Property, all of which transactions have subsequently closed (the "**Completed Transactions**"); (ii) authorizing and directing the Receiver to distribute monies to certain mortgagees following closing of the Completed Transactions; (iii) authorizing and directing the Receiver, in the case of certain groups of Property, to distribute monies to proven unsecured creditors and investors; and (iv) approving the previous reports of the Receiver and the actions and activities of the Receiver.

(i) The Vaughan Real Property and the Vaughan Assembly[12]

11. The Vaughan Real Property totals 4.37 acres along Islington Avenue in Vaughan. Development applications were submitted for the Vaughan Real Property in 2018 which proposed a 54-townhouse development.

12. As noted in the Receiver's second and third reports to Court, the Receiver understands that Go-To Vaughan planned to acquire and develop the Vaughan Real Property as an assembly with the adjacent parcel located at 7400 Islington Avenue, Vaughan ("**7400**

---

[10] Receivership Order, at paras. 4(j), 4(k) and 4(l).

[11] Seventh Report, sections 1.0 and 5.0.

[12] Unless otherwise stated, all references in this section are to section 6.0 of the Seventh Report.

Islington" and, together with the Vaughan Real Property, the "**Vaughan Assembly**"). The Receiver understands that by acquiring 7400 Islington, Go-To Vaughan would have been able to address environmental issues raised by the Toronto and Region Conservation Authority related to accessing the Vaughan Real Property had the Vaughan Real Property been developed on its own.

13. Prior to these receivership proceedings, Go-To Vaughan entered into a transaction with the owner of 7400 Islington (the "**7400 Owner**") to purchase 7400 Islington. Go-To Vaughan's purchase of 7400 Islington was not completed, and litigation arose amongst the 7400 Owner, Go-To Developments Acquisitions Inc. ("**GTD Acquisitions**," which is a Receivership Respondent) and GTD Acquisitions' real estate lawyer (the "**Vaughan Lawyer**") (collectively, the "**Vaughan Litigation**").

14. Following its appointment, the Receiver successfully engaged in settlement discussions with the 7400 Owner. As part of these negotiations, the Receiver and the 7400 Owner agreed to cooperatively list for sale the Vaughan Real Property and 7400 Islington.

15. On February 28, 2022, the Receiver and the 7400 Owner executed minutes of settlement (the "**Vaughan Settlement Agreement**") pursuant to which, *inter alia*:

    (a) both the 7400 Owner and Receiver, in its capacity as Receiver of GTD Acquisitions, discontinued the Vaughan Litigation;

    (b) a $300,000 deposit paid by GTD Acquisitions to acquire 7400 Islington and held in the trust account of RAR Litigation Lawyers, the previous lawyers for Go-To Vaughan, was paid to the 7400 Owner;

(c) the 7400 Owner entered into a separate listing agreement with CBRE for 7400 Islington, which allowed for a joint marketing of that property and the Vaughan Real Property;

(d) the Vaughan Real Property and 7400 Islington were marketed as the Vaughan Assembly; however, each property could be acquired on a stand-alone basis; and

(e) the 7400 Owner agreed to consent to a sale of 7400 Islington if a certain floor price was achieved.

16. The Vaughan Real Property was marketed for sale by CBRE in accordance with the Court-approved Sale Process, which included the opportunity to acquire it on its own or as an assembly with 7400 Islington.

17. CBRE prepared an offering summary (the "**Initial Vaughan Offering Summary**"), which it distributed on March 4, 2022 to an extensive list of prospective purchasers, including local, national and international builders, developers and investors. The acquisition opportunity was also published in trade journals and on social media platforms. CBRE also directly contacted parties that it believed would be interested in the opportunity.

18. Attached to the Initial Vaughan Offering Summary was the form of confidentiality agreement ("**CA**") that interested parties were required to sign to access a virtual data room (the "**VDR**"). The VDR included information provided to the Receiver by representatives of the Receivership Respondents. The VDR also included a form of asset purchase agreement ("**APS**"). The Receiver recommended that prospective

purchasers submit offers in the form of the APS, together with a blacklined version of their offer against the form of template offer.

19. CBRE widely canvassed the market and received 32 signed CAs for the Vaughan Real Property. The Receiver and CBRE reviewed the initial round of offers, and requested that bidders submit their final and best offers by April 25, 2022.

20. The highest offer for the Vaughan Real Property was submitted by Consolidated Development Corporation ("**Consolidated**"), which submitted a separate bid for 7400 Islington, while the highest offer for the Vaughan Assembly was submitted by an investor of Go-To Vaughan (the "**Vaughan Investor**"). Both these parties made their offers for the Vaughan Real Property conditional upon the acquisition of 7400 Islington. Consolidated's offer was also conditional on further due diligence and the Vaughan Investor's offer was also conditional on financing. The Receiver corresponded with both Consolidated and the Vaughan Investor regarding their offers and the conditions.

21. As noted in the Receiver's Fifth Report to Court dated August 11, 2022 (the "**Fifth Report**"), Consolidated also submitted an unconditional offer for the Major Mackenzie Real Property. On April 27, 2022, the Receiver accepted Consolidated's offer for the Major Mackenzie Real Property subject to receipt of a deposit of $750,000 to be paid within three days of the acceptance date. After repeated efforts to collect the deposit, the Receiver terminated the agreement of purchase and sale as no deposit had been paid and Consolidated was unable to provide evidence of financing.

22. Based on Consolidated's correspondence with CBRE at the time, and the Receiver's experience with Consolidated on the Go-To Major Mackenzie project, the Receiver continued to have concerns about Consolidated's ability to finance a transaction for the Vaughan Real Property. The Receiver and CBRE ultimately discontinued dealing with Consolidated after it repeatedly failed to satisfy its commitments.

23. The Receiver also corresponded extensively with the Vaughan Investor and its counsel, Miller Thomson LLP ("**Miller Thomson**"), regarding its offer. The Vaughan Investor was ultimately unable to waive its conditions or provide evidence that it had financing sufficient to complete an acquisition of the Vaughan Real Property.

24. As no acceptable offers were received, the 7400 Owner advised CBRE that it was not prepared to continue to list 7400 Islington. The Vaughan Real Property was thereafter marketed on a standalone basis.

25. The only mortgage registered on title to the Vaughan Real Property (excluding the super-priority Court-ordered charges granted by the Receivership Order) is in favour of Dorr in the registered principal amount of $10,000,000, of which the Receiver understands $6,244,131 is outstanding (plus interest and costs). Based on consultation with CBRE and with Dorr, the Vaughan Real Property was re-listed on June 22, 2022 with an asking price of $9.45 million**.**

26. CBRE continued to widely canvass the market and received an additional 14 signed CAs for the Vaughan Real Property.

27. Following the re-listing, the Receiver corresponded with Marcus Gillam, Go-To Vaughan's former project manager and a guarantor of Go-To Vaughan's debt owing

to Dorr. Mr. Gillam expressed an interest in acquiring the Vaughan Real Property during the Sale Process.

28. On August 19, 2022, CBRE advised the Receiver that a local developer, Quantum Leap Acquisitions Inc., in trust ("**Quantum Leap**"), was interested in the Vaughan Assembly. On September 5, 2022, Quantum Leap submitted conditional bids for each of the Vaughan Real Property and 7400 Islington. Following further discussion with CBRE, and in consultation with Dorr, the Receiver accepted an offer from Quantum Leap, which was conditional on completing a transaction for 7400 Islington and 45 days due diligence from the date of the offer. On October 3, 2022, Quantum Leap advised CBRE that it would not be proceeding with a transaction to acquire the Vaughan Real Property.

29. The Receiver's listing agreement with CBRE expired on September 7, 2022. The Receiver and CBRE agreed to a three-month extension of the listing agreement, to December 7, 2022. The agreement expired on December 8, 2022 and was not further extended. CBRE received no offers following the offer from Quantum Leap.

30. The Receiver continued to engage with Dorr to explore advancing the project, and with Mr. Gillam regarding a potential transaction. On May 17, 2023, the Receiver received an unconditional offer from the Vaughan Purchaser, which the Receiver understands is controlled by Mr. Gillam. The Receiver accepted the offer on May 29, 2023.

(ii) The Proposed Vaughan Transaction and Recommended Distribution[13]

31. A summary of the Vaughan APS is as follows:

(a) Purchaser: The Vaughan Purchaser, which is arm's length to the Receivership Respondents.

(b) Purchased Assets: All of the Receiver's and Go-To Vaughan's right, title and interest in the Vaughan Real Property and certain contracts and permits (if any exist) as specified in the Vaughan APS.

(c) Purchase Price: $6,793,352. The Purchase Price is to be adjusted on closing for adjustments standard for a real estate transaction, including property taxes.

(d) Deposit: $500,000, which has been paid to the Receiver.

(e) Closing Date: The later of: (i) the first Business Day following the date that is ten days following the granting of the Vaughan AVO; and (ii) the first Business Day following the date on which any appeals or motions to set aside or vary the Vaughan AVO have been finally determined, or such other date as the Receiver and the Vaughan Purchaser agree in writing.

(f) Material Conditions:

(i) there shall be no Claim, litigation or proceedings pending or threatened or order issued by a Governmental Authority against either of the Parties, or involving any of the Purchased Assets, for the purpose of enjoining, preventing or restraining the completion of the Transaction or otherwise claiming that such completion is improper; and

(i) the Court shall have issued the Vaughan AVO.

32. Upon closing the Vaughan Transaction, the Receiver recommends that it be authorized and directed to make a distribution of $6,244,131 from the Vaughan Transaction sale proceeds to Dorr, the only mortgagee registered on title to the Vaughan Real Property, representing the principal balance owing by Go-To Vaughan to Dorr. The Receiver will apply the remaining balance of the Purchase Price to the fees and costs incurred to date and a reserve for estimated future fees and expenses. It is not anticipated that

[13] Unless otherwise stated, all references in this section are to, and all capitalized terms in this section are defined in, sections 6.4 and 6.6 of the Seventh Report.

there will be any recoveries from the Vaughan Transaction for Go-To Vaughan's unsecured creditors or investors.

33. The Receiver's counsel has provided an opinion that, subject to the standard assumptions and qualifications contained therein, the real property security granted by Go-To Vaughan to Dorr, as registered on title to the Vaughan Real Property, is valid and enforceable.

34. The Receiver is not aware of any other secured creditors or any other claims that rank, or may rank, in priority to Dorr's secured claim, other than:

(a) property taxes, which will be satisfied on closing of the Vaughan Transaction; and;

(b) the Receiver's Charge. In this regard, the Receiver will retain a reserve for its present and future fees and expenses, and those of its counsel.

C. Claims Procedure Update and Related Relief[14]

35. On April 7, 2022, this Court approved a claims procedure (the "**Claims Procedure**"), pursuant to which the Receiver is authorized, directed and empowered to administer the Claims Procedure for the purpose of calling for, assessing and determining claims against the Receivership Respondents. Pursuant to the Claims Procedure, the deadline for creditors and investors to file claims was June 2, 2022 at 5:00 p.m. (EDT).

36. As previously reported by the Receiver and approved by this Court, there were

[14] Unless otherwise stated, all references in this section are to section 4.0 of the Seventh Report. Unless otherwise defined in this factum, all capitalized terms in this section are defined in the Seventh Report.

sufficient proceeds from the sale of the Real Property owned by each of Go-To Glendale, Go-To Chippawa and Go-To Stoney Creek to pay all valid creditor claims in full in respect of each of these projects. The Receiver held back amounts from the sale proceeds of these properties to satisfy the claims, if determined to be valid, of: (i) two Receivership Respondents, namely, FHI and GTDH; (ii) Mr. Furtado, in his personal capacity; and (iii) in the case of Go-To Chippawa, the former construction manager, Capital Build. All other valid creditor claims for these three projects were paid in full pursuant to the Order of this Court dated November 23, 2022.

37. The proceeds from the sale of the Glendale Real Property were also sufficient to repay, in full, the original capital invested by the limited partners of Go-To Glendale. The proceeds from the sale of the Chippawa Real Property and Stoney Creek Real Property were sufficient to partially repay each limited partner's original capital investment. The Receiver has made an interim distribution of 30% of the original capital owing to Go-To Chippawa's limited partners and 20% of the original capital owing to Go-To Stoney Creek's limited partners. To date, approximately $1.6 million and $6.8 million of original capital remains owing to Go-To Chippawa's and Go-To Stoney Creek's limited partners, respectively.

38. As previously reported, the Receiver held back funds from the sale of Real Property owned by each of Go-To Glendale, Go-To Chippawa and Go-To Stoney Creek to address outstanding claims and/or professional fees to complete the administration of these receivership proceedings. The Receiver may recommend a further distribution to limited partners of all or some of these three entities in due course.

(i) Intercompany Claims by FHI and GTDH against Go-To Glendale, Go-To Chippawa and Go-To Stoney Creek

39. The Claims Procedure provides that claims on behalf of any of the Receivership Respondents against any other Receivership Respondents shall be filed (or deemed to be filed) by the Receiver in amounts determined by the Receiver on the basis of the Receivership Respondents' books and records or as otherwise determined by the Receiver. Accordingly, the Receiver has identified the following claims by FHI and GTDH against each of Go-To Glendale, Go-To Chippawa and Go-To Stoney Creek:[15]

Intercompany Claims by FHI		
Against	**Claim**	**Description**
Go-To Glendale	$225	The Receiver filed and admitted this claim which relates to interest on a loan by FHI to Go-To Glendale. The Receiver is now seeking to distribute monies from Go-To Glendale to FHI to satisfy this claim.
Go-To Chippawa	$21,060	The Receiver filed and admitted this claim which relates to interest on a loan by FHI to Go-To Chippawa. The Receiver is now seeking to distribute monies from Go-To Chippawa to FHI to satisfy this claim.
Go-To Stoney Creek	$41,046	The Receiver filed and admitted this claim which relates to principal and interest on a loan by FHI to Go-To Stoney Creek. The Receiver is now seeking to distribute monies from Go-To Stoney Creek to FHI to satisfy this claim.

Intercompany Claims by GTDH		
Against	**Claim**	**Description**
Go-To Glendale	$33,900	The Receiver filed and admitted this claim which relates to unpaid management services provided by GTDH to Go-To Glendale. The Receiver is now seeking to distribute monies from Go-To Glendale to GTDH to satisfy this claim.
Go-To Chippawa	$94,225	The Receiver filed and admitted this claim which relates to unpaid management services provided by GTDH to Go-To Chippawa. The Receiver is now seeking to distribute monies from Go-To Chippawa to GTDH to satisfy this claim.
Go-To Stoney Creek	$22,103	The Receiver filed and admitted this claim which relates to unpaid management services provided by GTDH to Go-To Stoney Creek and amounts paid by GTDH on behalf of Go-To Stoney Creek. The Receiver is now seeking to distribute monies from Go-To Stoney Creek to GTDH to satisfy this claim.

[15] Mr. Furtado submitted claims on behalf of FHI and GTDH against these entities. As the Receiver has the exclusive authority to file and admit intercompany claims pursuant to the terms of the Claims Procedure Order, the claims admitted reflect the claims filed by the Receiver and not those submitted by Mr. Furtado.

(ii) Claims by Mr. Furtado against Go-To Glendale, Go-To Chippawa and Go-To Stoney Creek

40. Mr. Furtado filed the following claims in his personal capacity against Go-To Glendale, Go-To Chippawa and Go-To Stoney Creek:

Claims by Oscar Furtado against Go-To Glendale, Go-To Chippawa and Go-To Stoney Creek		
Against	**Claim**	**Description**
Go-To Glendale	$116,386	The claim relates to fees associated with Mr. Furtado's guarantee of the mortgage obtained by Go-To Glendale and amounts purportedly personally paid on behalf of Go-To Glendale. Mr. Furtado filed a similar claim against Go-To Stoney Creek, which the Receiver disallowed and is discussed below. The Receiver intends to address this claim following the resolution of Mr. Furtado's claim against Go-To Stoney Creek as the Receiver is of the view that the claims are similar and that the reasons for the outcome of Mr. Furtado's claim against Go-To Stoney Creek will apply to this claim.
Go-To Chippawa	$34,121	This claim relates to mortgage guarantee fees and amounts purportedly personally paid by Mr. Furtado on behalf of Go-To Chippawa. For the same reasons as referenced above regarding Go-To Glendale, the Receiver intends to address this claim following the resolution of Mr. Furtado's claim against Go-To Stoney Creek.
Go-To Stoney Creek	$867,769	See below.

41. Substantially all of Mr. Furtado's claim against Go-To Stoney Creek relates to fees he claims are owing to him for guaranteeing certain Go-To Stoney Creek Real Property mortgages. A nominal portion of his claim is for expenses he claims he paid on behalf of Go-To Stoney Creek. As noted in the above table, Mr. Furtado has made similar claims against Go-To Glendale and Go-To Chippawa.

42. On March 28, 2023, the Receiver issued a Notice of Revision or Disallowance to Mr. Furtado which disallowed Mr. Furtado's claim against Go-To Stoney Creek in full (the "**Stoney Creek Furtado Disallowance**"). On April 11, 2023, Mr. Furtado's counsel, Miller Thomson, disputed the Stoney Creek Furtado Disallowance by filing a Notice of Dispute (the "**Stoney Creek Furtado Dispute Notice**"). Both the Stoney Creek

Furtado Disallowance and the Stoney Creek Furtado Dispute Notice are attached to the Seventh Report.

43. The Receiver will attempt to resolve this dispute with Miller Thomson. If the Stoney Creek Furtado Dispute Notice is not withdrawn in the following weeks, the Receiver intends to bring a motion to Court to have the Receiver's disallowance of the claim upheld. The Receiver intends to deal with Mr. Furtado's claims against Go-To Stoney Creek, Go-To Glendale and Go-To Chippawa contemporaneously given their similarity.

(iii) Claims by Capital Build against Go-To Glendale, Go-To Chippawa and Go-To Stoney Creek

44. Prior to its bankruptcy, the former construction manager (Capital Build) filed a claim of $323,496 against Go-To Chippawa, including a construction lien claim of $300,804 and an unsecured claim of $22,693. Capital Build was deemed to have made an assignment in bankruptcy on October 4, 2022. Pursuant to a Notice of Revision or Disallowance dated October 31, 2022 (the "**Capital Build Disallowance Notice**"), the Receiver disallowed the claim in full.

45. Capital Build's bankruptcy trustee, Goldhar & Associates Ltd. ("**Goldhar**"), initially disputed the Capital Build Disallowance Notice on November 14, 2022. Goldhar then advised on March 20, 2023 that it would not contest the disallowance. Subsequently, Dickinson Wright (a creditor of Capital Build) advised the Receiver on March 20, 2023 that it intends to make an application under Section 38 of the BIA to take an assignment of Capital Build's claim from Goldhar for the purpose of contesting the disallowance (the "**Section 38 Application**"). To date, Dickinson Wright has not served its Section 38 Application.

46. Dickinson Wright has now had over two and a half months to bring the Section 38 Application. The Capital Build claim is the only remaining outstanding claim against Go-To Chippawa other than Mr. Furtado's claim which will be addressed following the resolution of his claim against Go-To Stoney Creek, as noted above. The Receiver believes that further delay dealing with Capital Build's claim is prejudicial to Go-To Chippawa's other creditors, and as such, Dickinson Wright should be required to serve its Section 38 Application in Capital Build's bankruptcy proceedings by no later than June 30, 2023. If Dickinson Wright fails to do so by this date, it is the Receiver's recommendation that the Capital Build Disallowance Notice should be considered final and conclusive and the Receiver should be authorized to distribute the amount currently held as reserve for this claim to the limited partners of Go-To Chippawa.

47. Following service of the Receiver's Seventh Report, Dickinson Wright confirmed it would serve the Section 38 Application (stylized as a motion) by June 30, 2023.

48. Prior to its bankruptcy, Capital Build also filed a claim of $305,680 against Go-To Glendale, which the Receiver also disallowed in full and which disallowance Goldhar also initially disputed. However, both Goldhar and Dickinson Wright subsequently confirmed that they would not contest the disallowance of this claim. The Receiver therefore considers Capital Build's claim against Go-To Glendale to be $nil, which is consistent with the Receiver's disallowance of this claim.

(iv) Claims against Go-To Adelaide

49. As previously reported, immediately following closing of the Adelaide Transaction, distributions were made to Cameron Stephens Mortgage Capital Ltd. and Northridge

Maroak Developments Inc. to fully repay their mortgages on the Adelaide Real Property (being approximately $55.6 million and $18.0 million, respectively), as authorized and directed by the Court.

50. As previously reported, there are also secured claims against Go-To Adelaide filed by: (i) Adelaide Square Developments Inc. ("**ASD**") for $7.8 million, plus interest of $3.3 million as at May 4, 2022, for a total claim of $11.1 million[16] (the "**ASD Claim**"); and (ii) FAAN Mortgage Administrators Inc., in its capacity as Court-appointed trustee of Building & Development Mortgages Canada Inc. (in such capacity, the "**FAAN Trustee**") in the amount of $5.2 million (the "**FAAN Claim**"). ASD and the FAAN Trustee registered mortgages against the Adelaide Real Property on June 29, 2021 and December 17, 2021, respectively.

51. The Receiver disallowed in full the FAAN Claim pursuant to a Notice of Revision or Disallowance dated November 1, 2022 (the "**FAAN Disallowance**"). On November 15, 2022, the FAAN Trustee filed a Notice of Dispute (the "**FAAN Dispute Notice**"), in accordance with the Claims Procedure. The FAAN Disallowance and the FAAN Dispute Notice are attached to the Seventh Report.

52. As at the date of the Seventh Report, there is approximately $14.7 million in the Go-To Adelaide receivership bank account. As the determination of the ASD Claim will impact the potential recoveries to the FAAN Trustee, the FAAN Trustee and the Receiver have agreed to address the FAAN Claim after the ASD Claim is resolved.

---

[16] Interest and costs continue to accrue on this claim.

53. The Receiver has also disallowed in full the ASD Claim pursuant to a Notice of Revision or Disallowance dated March 20, 2023 (the "**ASD Disallowance**"). On April 10, 2023, ASD filed a Notice of Dispute (the "**ASD Dispute Notice**"). The ASD Disallowance and the ASD Dispute Notice are attached to the Seventh Report.

54. Upon review of the ASD Dispute Notice, the Receiver requested that ASD provide additional information, documents and correspondence. To date, the Receiver: (i) has been provided with certain information, which it is reviewing; (ii) has been advised by ASD that other requests by the Receiver are not relevant or are overly broad (which the Receiver does not accept); and (iii) is waiting for additional information from ASD, including correspondence between Mr. Furtado, ASD, Alfredo Malanca a.k.a. Afredo Palmieri a.k.a. Alfredo[17] relating to the acquisition and financing of the Adelaide Real Property and the dividend paid by ASD to FHI.

55. Following receipt of the ASD Dispute Notice, the Receiver corresponded with PricewaterhouseCoopers LLP ("**PwC**"), Go-To Adelaide's former auditor, to investigate certain responses provided in the ASD Dispute Notice. PwC provided certain documents to the Receiver, including a signed version of a loan agreement between Go-To Adelaide and ASD that differs from the one attached to ASD's proof of claim (which is the same as the loan agreement attached to the OSC's application materials[18]) including the amount of the loan and certain terms. Correspondence with PwC, inclusive of the different loan agreement, is attached to the Seventh Report.

---

[17] The Receiver has identified emails to and from Mr. Malanca under all of these names.

[18] The Receiver understands that the version of the loan agreement included in the OSC's application materials was provided to the OSC in the context of its pre-receivership investigation of the Receivership Respondents and its examination of Mr. Furtado.

56. The Receiver is continuing to review the ASD Claim and its related matters. The Receiver is of the view that it is likely this claim will need to be adjudicated by the Court. The Receiver intends to advance this litigation as expeditiously as possible. The Receiver has met with ASD's legal counsel to discuss a litigation timetable, which is being prepared.

57. As noted above, there is approximately $14.7 million in the Receiver's bank account for Go-To Adelaide. As the combined amount of the ASD Claim and the FAAN Claim exceeds the cash balance, the Receiver has not undertaken a review of Go-To Adelaide's other unsecured creditor claims (which total approximately $8.6 million[19]) or investor claims (which total approximately $24.3 million). The Receiver does not intend to commence a review of Go-To Adelaide's other unsecured claims until the ASD claim has been determined.

C. Privilege Protocol[20]

58. As previously reported, upon commencement of these receivership proceedings, the Receiver made copies of the Receivership Respondents' data (the "**Information Collections**"), including from:

(a) their Google Drive, which includes email accounts of the Receivership Respondents' former employees;

---

[19] Includes claims filed by Hans Jain (approximately $3.2 million), who was formerly involved in the development of the Adelaide Real Property, Mr. Furtado (approximately $1.7 million) and Richmond and Mary Developments Inc. (approximately $1 million), a company whose principal is Mr. Jain.

[20] Unless otherwise stated, all references in this section are to, section 7.0 of the Seventh Report. Unless otherwise defined in this factum, all capitalized terms in this section are also defined in the Seventh Report.

(b) their Server;

(c) the laptops of seven former employees of the Receivership Respondents, including Mr. Furtado; and

(d) the cellphones of Messrs. Furtado and Ghani (the Receivership Respondents' former Head of Accounting).

59. In January 2022, the Receiver and Mr. Furtado agreed that: (i) the Receiver could immediately access any source documents relating to the development of the Receivership Respondents' real estate projects, including, without limitation, financial and planning information stored on the server; and (ii) the Receiver would otherwise refrain, on a temporary basis, from accessing the Information Collections, which information is referred to herein as the "**Data**."

60. The Receiver and Miller Thomson then negotiated a privilege protocol dated October 25, 2022 and acknowledged and agreed by Mr. Furtado on November 9, 2022 (the "**Privilege Protocol**"). The Privilege Protocol sets out the process for the Receiver to review the Data and to segregate, to the extent possible, potentially privileged communications. The review of the Information Collections may assist the Receiver with its determination of claims pursuant to the Claims Procedure.

61. In accordance with the Privilege Protocol, the Receiver retained Epiq Global ("**Epiq**"), to host the Data in a repository (the "**Repository**"). Epiq restricted access to the Receiver to the Data pursuant to the terms of the Privilege Protocol and keyword search terms provided by Mr. Furtado's counsel, Miller Thomson.

62. Epiq segregated the Data into "**Potentially Privileged Data**" and "**Remaining Data**." Miller Thomson reviewed the Data in the Repository to determine whether to assert any objections ("**Objection**") to disclosure of Potentially Privileged Data to the Receiver.

63. On May 3, 2023, Miller Thomson preliminarily identified Objections to approximately 57,000 records based on a review of certain of the Data. On May 19, 2023, after a review of the Remaining Data, Miller Thomson advised that it had Objections to approximately 78,000 records. The Receiver's counsel subsequently requested that the Receiver be provided access to all Remaining Data not subject to Objections by Miller Thomson (approximately 550,000 records) that had been segregated.

64. As at the date of the Seventh Report, the Receiver continues to review the Data to which it has been granted access. The Receiver's counsel advised Miller Thomson that the Receiver does not agree that a large portion of the 78,000 records classified as privileged are in fact privileged (and, in the alternative, that the Receiver is entitled to waive certain privilege claims if they are in fact privileged). Accordingly, the Receiver's counsel has requested these documents be released to the Receiver. Miller Thomson responded that it is not prepared to release the records that the Receiver requested and that it requires instructions from Mr. Furtado, who Miller Thomson advises is suffering from health issues which prevent him from providing instructions.

65. The Receiver is considering this issue, including potentially seeking relief from the Court if the matter is not resolved consensually. Resolution of this issue is relevant to the determination of the ASD Claim, which will be a gating issue to resolution of the remaining matters in these proceedings.

PART III – ISSUES AND THE LAW

66. The substantive issues on the Receiver's motion are the granting of the Vaughan AVO and the Ancillary Order, inclusive of the proposed deadline for Dickinson Wright to serve its Section 38 Application, the relief regarding distributions and the approval of the professional fees, disbursements and activities.

PART IV – LAW AND ARGUMENT

67. In determining whether to approve a proposed sale of assets by a Court-appointed receiver, Ontario courts have consistently and uniformly applied the principles set out by the Court of Appeal for Ontario in *Royal Bank v. Soundair*,[21] namely:

(a) *whether the receiver has made a sufficient effort to get the best price and has not acted improvidently*;

(b) *whether the interests of all parties have been considered*;

(c) *the efficacy and integrity of the process by which offers are obtained*; and

(d) *whether there has been unfairness in the working out of the process.*

68. The Receiver submits that the applicable *Soundair* principles have been satisfied in respect of the proposed Vaughan Transaction and related relief. The "facts" section of this factum, together with the analysis in the Seventh Report and the appendices thereto, reflect the significant effort undertaken by the Receiver to maximize realizations, and to act fairly, efficiently and with integrity in considering the interests of all stakeholders, including, without limitation:

---

[21] (1991), 4 O.R. (3d) 1 (C.A.) (CanLII: http://canlii.ca/t/1p78p) [*Soundair*].

(a) the sale process undertaken by the Receiver that led to the Vaughan Transaction was commercially reasonable, and was conducted in accordance with the Court-approved Sale Process;

(b) the Sale Process for the Vaughan Real Property commenced in March 2022 and accordingly, the Vaughan Real Property has been exposed to the market for a significant period of time. It has also been marketed without a listing price, re-listed with a listing price and marketed for sale with 7400 Vaughan. The Receiver retained a qualified realtor, CBRE, with significant experience selling real estate similar to the Vaughan Real Property;

(c) the Court has previously approved the eight Completed Transactions based on the conduct and results of the Sale Process;

(d) CBRE has extensive experience selling development properties in and around the GTA, and widely canvassed the market for prospective purchasers. It is of the view that the Vaughan Transaction is the best available in the circumstances;

(e) the Vaughan APS maximizes recoveries for this property in the circumstances;

(f) the Receiver engaged with several bidders, including Consolidated, the Vaughan Investor and Quantum, before accepting the Vaughan APS; however, none of them was able or willing to complete the purchase of the Vaughan Real Property. The Receiver also explored with Dorr whether it would support advancing the development of the Vaughan Real Property during the receivership. Dorr was not willing to provide funding to the Receiver for this purpose;

(g) the Receiver does not believe that further time marketing the property will result in a superior transaction;

(h) the transaction is unconditional except for Court approval; and

(i) Dorr consents to the transaction.[22]

69. The Receiver's rationale for its acceptance of the Vaughan Transaction and related relief discussed in the Seventh Report and summarized in this factum, inclusive of the proposed distribution to Dorr and the proposed intercompany distributions, reflects sound business judgment. As such, the requested relief falls within "*the general principle that the court will be loathe to interfere with the business judgment of a Receiver and refuse to approve a transaction recommended by the Receiver acting properly in the fulfillment of its obligations as an officer of the court.*"[23]

70. The proposed distribution to Go-To Chippawa's limited partners if Dickinson Wright does not serve its Section 38 Application by June 30, 2023 is also a reflection of sound business judgment by the Receiver.[24] Further delay dealing with this claim is prejudicial to Go-To Chippawa's limited partners.[25] Dickinson Wright indicated on March 20, 2023 that it would bring the Section 38 Application,[26] and has now confirmed to the Receiver that it will meet the June 30, 2023 deadline.

---

[22] Seventh Report, section 6.5.

[23] *Soundair*, at para. 16; *Morganite Canada Corp. v. Wolfhollow Properties Inc.* (2003), 47 CBR (4th) 89 (ONSC) (CanLII: http://canlii.ca/t/4qkp) at para. 7; *B&M Handelman Investments Limited v. Drotos*, 2018 ONCA 581 (CanLII: http://canlii.ca/t/hsp9r) at para. 43.

[24] *Ibid.*

[25] Seventh Report, section 4.0.

[26] Seventh Report, section 4.0.

71. Finally, the fees, disbursements and activities of the Receiver are fair, appropriate and reasonable. The activities of the Receiver and its counsel have been described in the Seventh Report and this factum, and reflect their proper and diligent execution, and, accordingly, the Receiver respectfully believes that they should be approved by this Court.[27]

ALL OF WHICH IS RESPECTFULLY SUBMITTED as of the date first written above.

Aird & Berlis LLP

AIRD & BERLIS LLP, lawyers for the Receiver

[27] Paragraphs 21 and 22 of the Receivership Order provide, amongst other things, that the Receiver and its counsel shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts.

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Royal Bank of Canada v. Soundair Corp.*, (1991) 4 O.R. (3d) 1 (C.A.).

2. *Morganite Canada Corp. v. Wolfhollow Properties Inc.*, (2003) 47 CBR (4th) 89 (ONSC).

3. *B&M Handelman Investments Limited v. Drotos*, 2018 ONCA 581.

SCHEDULE "B"
RELEVANT STATUTES

***Securities Act*, R.S.O. 1990, c. S.5**

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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. .

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. 194, 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.

Limitation period
129.1 Except where otherwise provided in this Act, no proceeding under this Act shall be commenced later than six years from the date of the occurrence of the last event on which the proceeding is based.

Directors and officers
129.2 For the purposes of this Act, if a company or a person other than an individual has not complied with Ontario securities law, a director or officer of the company or person who authorized, permitted or acquiesced in the non-compliance shall be deemed to also have not complied with Ontario securities law, whether or not any proceeding has been commenced against the company or person under Ontario securities law or any order has been made against the company or person under section 127.

ONTARIO SECURITIES COMMISSION Applicant	and	**GO-TO DEVELOPMENTS HOLDINGS INC. et al** Respondents	Court File No: CV-21-00673521-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at TORONTO

FACTUM OF THE RECEIVER

(RETURNABLE JUNE 15, 2023)

AIRD & BERLIS LLP
BARRISTERS AND SOLICITORS
181 Bay St., Suite 1800
Toronto, ON M5J 2T9

Steven Graff, LSO#: 31871V
Email: sgraff@airdberlis.com

Ian Aversa, LSO#: 55449N
Email: iaversa@airdberlis.com

Jeremy Nemers, LSO#: 66410Q
Email: jnemers@airdberlis.com

Tamie Dolny, LSO#: 77958U
Email: tdolny@airdberlis.com

Lawyers for the Receiver