

**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 OCTOBER 31, 2023
(STONEY CREEK DISALLOWANCE MOTION)**

October 20, 2023

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PART I – OVERVIEW

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 Receivership Respondents (as defined in the Receivership Order, as defined below), in support of the Receiver’s motion for an Order upholding the Receiver’s disallowance of the claim filed by Oscar Furtado (“**Mr. Furtado**”) against Go-To Stoney Creek Elfrida LP (“**Stoney Creek LP**”) and Go-To Stoney Creek Elfrida Inc. (“**Stoney Creek GP**” and, together with Stoney Creek LP, “**Stoney Creek**”) (collectively, the “**Disallowance Order**”).

2. Mr. Furtado was the Receivership Respondents’ principal. Stoney Creek LP and Stoney Creek GP are two of the Receivership Respondents. Mr. Furtado was the president and sole director of Stoney Creek GP, which was Stoney Creek LP’s general partner.

3. Mr. Furtado claims that he is owed almost \$900,000 by Stoney Creek for personally guaranteeing certain mortgages that were registered on title to Stoney Creek’s real property. This guarantee fee arrangement was never disclosed to any of Stoney Creek’s unit holders.

4. It is clear that Mr. Furtado’s claim, which the Receiver has disallowed, constitutes undisclosed, related-party agreements made by a fiduciary in breach of the fiduciary’s duties.

5. The Receiver’s disallowance of Mr. Furtado’s claim should be upheld. The Disallowance Order is both necessary and appropriate to: (i) bring finality to Mr. Furtado’s claim, which he has refused to withdraw; and (ii) enable the Receiver to distribute monies to Stoney Creek’s limited partners.

PART II – FACTS

A. Background

6. Pursuant to an application by the Ontario Securities Commission (the “**Commission**”) under ss. 126 and 129 of the *Securities Act*, RSO 1990, c. S.5, as amended (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 listed on Schedule “A” of 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**”).¹

7. The Receivership Respondents were developers of nine, early-stage residential real estate projects in Ontario (the “**Projects**”).² Between 2016 and 2020, Mr. Furtado and the Receivership Respondents raised almost \$80 million from Ontario investors for the Projects. The vast majority of investors’ funds remain outstanding.³

8. One of the real estate projects was owned by the Stoney Creek Receivership Respondents, which were involved in the proposed development of certain properties in Hamilton (the “**Stoney Creek Properties**”). Another one of the real estate projects was owned by the Receivership Respondents named Go-To Adelaide Square LP (“**Adelaide LP**”) and Go-To Adelaide Spadina Inc. (jointly, “**Adelaide**”), which were involved in the development and partial construction of certain properties in downtown Toronto (the “**Adelaide Properties**”).

¹ [Receivership Order](#), at recitals and para. 3.

² [Endorsement of The Honourable Mr. Justice Pattillo](#) dated December 10, 2021 (the “**Receivership Endorsement**”) at para. 8.

³ Receivership Endorsement, *supra*, at para. 8.

9. In granting the Commission’s application for the Receivership Order, this Court was “*satisfied based on the Commission’s evidence of [Mr.] Furtado’s dealings in respect of Adelaide LP that it is in the best interest of the investors in the Go-To projects that a receiver be appointed to ensure that the Go-To projects are managed in a proper fashion to protect the investors’ investments.*”⁴

10. Amongst other things, this Court noted that “*The Commission’s evidence establishes [Mr.] Furtado:*

- (a) *Arranged to personally profit from Adelaide LP’s purchase of the [Adelaide] Properties; [and]*
- (b) *Misused other Go-To LP assets to secure Adelaide LP’s acquisition of the [Adelaide] Properties,”*⁵ including, without limitation, “[Mr.] Furtado pledged the assets of [Stoney Creek] to secure Adelaide LP obligations contrary to the LP agreements and without notice to any of the unit holders.”⁶

11. Mr. Furtado unsuccessfully attempted to appeal (and stay) the Receivership Order as follows:

- (a) on December 29, 2021, the Court of Appeal for Ontario (the “**Court of Appeal**”) dismissed Mr. Furtado’s motion to stay the Receivership Order pending an appeal of the granting of the Receivership Order (the “**Appeal**”);
- (b) on April 28, 2022, the Court of Appeal dismissed the Appeal; and

⁴ Receivership Endorsement, *supra*, at para. 22.

⁵ Receivership Endorsement, *supra*, at para. 24.

⁶ Receivership Endorsement, *supra*, at para. 13.

- (c) on June 27, 2022, Mr. Furtado filed a Notice of Application seeking leave to appeal the Court of Appeal’s dismissal of the Appeal to the Supreme Court of Canada, which leave application the Supreme Court of Canada dismissed on February 16, 2023.⁷

B. The Claims Process and Mr. Furtado’s Claim against Stoney Creek

12. On April 7, 2022, this Court approved a claims procedure (the “**Claims Procedure**”), which the Receiver is authorized, directed and empowered to administer for the purpose of calling for, assessing and determining claims against the Receivership Respondents.⁸

13. Notwithstanding Mr. Furtado’s conduct, including, without limitation, as set out in the Receivership Endorsement, Mr. Furtado has filed a claim pursuant to the Claims Procedure against Stoney Creek.

14. Substantially all of Mr. Furtado’s claim against Stoney Creek relates to fees totalling \$867,769 that he claims are owing to him for personally guaranteeing certain mortgages that were registered on title to the Stoney Creek Properties.⁹

15. On March 28, 2023, the Receiver issued the requisite notice under the Claims Procedure disallowing Mr. Furtado’s claim against Stoney Creek in full. Amongst other things, the notice disallows the claim because the purported fee arrangement “*constitutes undisclosed, related-party agreements made by a fiduciary in breach of the fiduciary’s contractual and/or common law duties.*”¹⁰

⁷ [Seventh Report](#) of the Receiver dated June 6, 2023 (the “**Seventh Report**”), s. 1.0.

⁸ [Claims Procedure Order](#) of The Honourable Madam Justice Conway dated April 7, 2022.

⁹ Mr. Furtado has not disputed the Receiver’s disallowance of the remainder of his claim (a nominal amount of \$748) in respect of a purported shareholder loan.

¹⁰ Appendix D to the Seventh Report, *supra*.

16. On April 11, 2023, Mr. Furtado’s counsel issued the requisite notice under the Claims Procedure disputing the Receiver’s disallowance of Mr. Furtado’s claim. Mr. Furtado’s notice does not dispute the Receiver’s finding that he failed to disclose the agreements. Instead, the dispute states that *“Mr. Furtado disagrees entirely with the assertion that there was any requirement or obligation on his part to disclose the entitlement to guarantee fees. In addition and more importantly, any failure to disclose the guarantee fees does not eliminate the enforceable liability for guarantee fees, which is clearly and unequivocally documented in the Guarantee Agreement.”*¹¹

17. On June 6, 2023, the Receiver advised the Court, Mr. Furtado and all the stakeholders that *“If the Stoney Creek [disputed claim] 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.”*¹²

18. On August 2, 2023, Mr. Furtado’s counsel confirmed that the disputed claim would not be withdrawn.¹³ Mr. Furtado’s counsel also alleged, as it had in the past, that Mr. Furtado was *“suffering from severe health challenges and is unable to properly instruct counsel and participate in a fair adjudication of the claim.”*¹⁴ In fact, Mr. Furtado was both providing instructions to his counsel and had recently personally authored a detailed explanation document to the Receiver regarding the Receiver’s treatment of certain intercompany claims under the Claims Procedure.¹⁵

19. At a case conference held on August 14, 2023, the Court scheduled the Disallowance Order motion for October 31, 2023.¹⁶

¹¹ Appendix E to the Seventh Report, *supra*.

¹² Seventh Report, *supra*, s. 4.0 at para. 17.

¹³ [Document Brief](#) of the Receiver for Case Conference of August 14, 2023 (“**Document Brief**”), s. 1.

¹⁴ Document Brief, *supra*, s. 1.

¹⁵ Document Brief, *supra*, s. 1.

¹⁶ [Endorsement of The Honourable Madam Justice Conway](#) dated August 14, 2023.

20. Pursuant to orders granted by the Court, the Receiver has made an interim distribution of 20% of the original capital invested by Stoney Creek's limited partners, but approximately \$6.8 million of original capital remains owing to these stakeholders.¹⁷ The Receiver cannot distribute further monies to Stoney Creek's limited partners while Mr. Furtado's claim remains outstanding (and, even then, the limited partners are anticipated to lose most of their investment).¹⁸

21. As noted in the Receiver's disallowance of Mr. Furtado's claim:

- (a) neither the limited partnership agreement nor the investment opportunity brochure disclose the existence of any guarantee fee agreements or Mr. Furtado's entitlement to any guarantee fees;
- (b) the brochure goes even further, in that it specifically references that "*The General Partner and the Builder will sign for all third party financing and provide the Banks with all personal guarantees when required,*" making no mention of: (i) Mr. Furtado providing a personal guarantee; (ii) any guarantee fee agreements; or (iii) anyone being entitled to a guarantee fee (much less Mr. Furtado); and
- (c) the undisclosed guarantee fee agreements were only signed by Mr. Furtado, who purported to act for both Stoney Creek and himself personally.¹⁹

PART III – ISSUE

22. The sole issue on this motion is whether the Receiver is correct in having disallowed Mr. Furtado's claim against Stoney Creek.

¹⁷ Seventh Report, *supra*, s. 4.0, at para. 7.

¹⁸ Seventh Report, *supra*, s. 4.0, at para. 8.

¹⁹ Appendix D to the Seventh Report, *supra*.

PART IV – LAW AND ARGUMENT

23. It is trite law that directors, officers and general partners are agents of their respective corporations and partnerships,²⁰ and owe fiduciary duties to them. Without being exhaustive:

- (a) the OBCA requires that “*Every director and officer of a corporation in exercising his or her powers and discharging his or her duties to the corporation shall ... act honestly and in good faith with a view to the best interests of the corporation,*”²¹ and
- (b) Stoney Creek’s limited partnership agreement similarly provides that “*The General Partner shall exercise its powers and discharge its duties honestly, in good faith and in the best interests of the Partnership.*”²²

24. It is also trite law that full disclosure by an agent is one of its core fiduciary duties, which must be enforced rigorously. As noted by the Court of Appeal:

One of the prime fiduciary duties of an agent is that of full disclosure. Wherever it appears that the agent is going to profit from the agency over and above the remuneration agreed to be paid by the principal, the duty of disclosure must be rigorously enforced by the Court, and it must be shown that after full disclosure, the principal has expressly or by necessary implication consented to the agent making a profit. The principle has been stated in many cases [citations omitted].²³

²⁰ *Blue Line Hockey Acquisition Co., Inc. v. Orca Bay Hockey Limited Partnership*, 2008 BCSC 27 (CanLII: <https://canlii.ca/t/1vd2g>) at para. 133 (“Directors and officers of a corporation, particularly when they are developing company business, act exclusively as agents of the corporation and not in their personal capacities or on their own behalf”); *Partnerships Act* (Ontario) (CanLII: <https://canlii.ca/t/5643v>), ss. 5 and 6 (“Persons who have entered into partnership with one another are, for the purposes of this Act, called collectively a firm” and “Every partner is an agent of the firm and of the other partners for the purpose of the business of the partnership”); *Limited Partnerships Act* (Ontario) (CanLII: <https://canlii.ca/t/56440>), s. 8 (“A general partner in a limited partnership has all the rights and powers and is subject to all the restrictions and liabilities of a partner in a partnership without limited partners except that, without the written consent to or ratification of the specific act by all the limited partners, a general partner has no authority to [do certain enumerated things]”).

²¹ *Business Corporations Act* (Ontario) (CanLII: <https://canlii.ca/t/5643x>) [OBCA], s. 134.

²² Appendix D to the Seventh Report, *supra.*, s. 5.9 to the limited partnership agreement.

²³ *Advanced Funding Corp. v. Bannick* (1979), 27 O.R. (2d) 193 (C.A.) (CanLII: <https://canlii.ca/t/g1hnl>) at 196.

25. The agent’s full disclosure duty ensures that the principal “*has an opportunity to make an informed decision about the best course of action.*”²⁴ As such, the duty of full disclosure:

requires the agent to make full disclosure of material facts which place or may place the agent in a conflict of interest. The duty of full disclosure extends to every material fact regarding the subject matter of the agency, which clearly would contemplate financial disclosure. The onus of proving that there was adequate disclosure lies with the agent. It is not sufficient for the agent merely to disclose that he or she has an interest or to make a statement that would signal the principal should inquire. “Material information means information that a reasonable person would consider likely to operate on the principal’s judgment.” The test for whether information is material is objective [citations omitted].²⁵

26. In the partnership context specifically, a partner “*must not, in anything connected with the partnership, take any profit clandestinely for himself.*”²⁶ Yet this is exactly the nature of Mr. Furtado’s claim against Stoney Creek, which his own notice of dispute emphasises by stating that “*Mr. Furtado disagrees entirely with the assertion that there was any requirement or obligation on his part to disclose the entitlement to guarantee fees.*”²⁷

27. Where, as in Mr. Furtado’s case, a director ignores the interests of the corporate general partner and the limited partnership and acts solely in his self-interest by clandestinely claiming guarantee fees for himself, his personal fiduciary duties attach at both the general corporate partner and limited partnership levels. As noted by the Court of Appeal for Ontario:

[I]t would be an anomalous result if the law offered no remedy for the breach of a director’s fiduciary duty in circumstances where the limited partnership suffered the resulting loss. If that were the case, directors could act with impunity to damage the interests of the limited partnership, including by engaging in self-dealing, and there would be no remedy for such a breach of fiduciary duty. The law of fiduciary duties, which is based in equity, should not brook such a lacuna in its remedies.²⁸

²⁴ *Extreme Venture Partners Fund I LP v. Varma*, 2021 ONCA 853 (CanLII: <https://canlii.ca/t/jl3lh>) [*Extreme Venture*] at para. 68, leave to appeal refused by the Supreme Court of Canada (<https://decisions.scc-csc.ca/scc-csc/scc-l-csc-a/en/item/19465/index.do?q=amar>); *Rochwerg v. Truster* (2002), 58 O.R. (3d) 687 (C.A.) (CanLII: <https://canlii.ca/t/1db42>) [*Rochwerg*] at para. 36.

²⁵ *Klana v. Jones* (2003), 35 B.L.R. (3d) 236 (Ont. S.C.J.) (CanLII: <https://canlii.ca/t/7b8c>) at para. 44.

²⁶ *Rochwerg, supra*, at para. 37.

²⁷ Appendix E to the Seventh Report, *supra*.

²⁸ *Extreme Venture, supra*, at paras. 96-106.

28. The minimum remedy required by the Court in such a situation is to preclude Mr. Furtado from obtaining/retaining the loss that would otherwise be incurred by the limited partnership from the guarantee fees, which, in this case, corresponds to: (i) “*the gain of the faithless fiduciary*”²⁹ if Mr. Furtado were to receive the guarantee fees; plus (ii) the costs incurred by the Receivership Respondents’ estate (and borne by the limited partners) in adjudicating Mr. Furtado’s claim.³⁰

29. It is therefore respectfully submitted that the Receiver is correct in having disallowed Mr. Furtado’s claim against Stoney Creek, and that costs ought to be ordered against Mr. Furtado. Contrary to Mr. Furtado’s notice of dispute, which incorrectly states that “*any failure to disclose the guarantee fees does not eliminate the enforceable liability for guarantee fees*,”³¹ the law is clear that withholding the guarantee fees is the bare minimum, and that it may be appropriate to fashion a further remedy “*that would have a deterrent impact*.”³² As noted by the Court of Appeal for Ontario:

I agree with counsel for the Respondents that simply ordering the Appellants to pay the Respondents what they would otherwise have been entitled to receive serves as no disincentive. A party considering breaching a fiduciary duty could reasonably look at the trial judge's decision and conclude that in a worst-case scenario, they would only be forced to pay over to the aggrieved beneficiary what the beneficiary was always owed ...³³

PART V – RELIEF REQUESTED

30. It is respectfully submitted that the Receiver’s request for the Disallowance Order be granted in its totality, with costs.

²⁹ *Extreme Venture, supra*, at paras. 113-114.

³⁰ *Extreme Venture, supra*, at paras. 113-114.

³¹ Appendix E to the Seventh Report, *supra*.

³² *Extreme Venture, supra*, at para. 113.

³³ *Extreme Venture, supra*, at para. 113.

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

A handwritten signature in blue ink, appearing to be "J. N.", is written above a horizontal line.

AIRD & BERLIS LLP, lawyers for the Receiver

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *Blue Line Hockey Acquisition Co., Inc. v. Orca Bay Hockey Limited Partnership*, 2008 BCSC 27.
2. *Advanced Funding Corp. v. Bannick* (1979), 27 O.R. (2d) 193 (C.A.).
3. *Extreme Venture Partners Fund I LP v. Varma*, 2021 ONCA 853, leave to appeal refused by the Supreme Court of Canada.
4. *Rochweg v. Truster* (2002), 58 O.R. (3d) 687 (C.A.).
5. *Klana v. Jones* (2003), 35 B.L.R. (3d) 236 (Ont. S.C.J.).

**SCHEDULE “B”
RELEVANT STATUTES**

Securities Act (Ontario), ss. 126 and 129

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.

Partnerships Act (Ontario), ss. 5-6.

Meaning of “firm”

5 Persons who have entered into partnership with one another are, for the purposes of this Act, called collectively a firm, and the name under which their business is carried on is called the firm name.

Power of partner to bind firm

6 Every partner is an agent of the firm and of the other partners for the purpose of the business of the partnership, and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he or she is a member, bind the firm and the other partners unless the partner so acting has in fact no authority to act for the firm in the particular matter and the person with whom the partner is dealing either knows that the partner has no authority, or does not know or believe him or her to be a partner.

Limited Partnerships Act (Ontario), s. 8

Rights of general partners

8 A general partner in a limited partnership has all the rights and powers and is subject to all the restrictions and liabilities of a partner in a partnership without limited partners except that, without the written consent to or ratification of the specific act by all the limited partners, a general partner has no authority to,

- (a) do any act in contravention of the partnership agreement;
- (b) do any act which makes it impossible to carry on the ordinary business of the limited partnership;
- (c) consent to a judgment against the limited partnership;
- (d) possess limited partnership property, or assign any rights in specific partnership property, for other than a partnership purpose;
- (e) admit a person as a general partner;
- (f) admit a person as a limited partner, unless the right to do so is given in the partnership agreement; or
- (g) continue the business of the limited partnership if a general partner dies, retires or becomes incapable as defined in the Substitute Decisions Act, 1992 or a corporate general partner is dissolved, unless the right to do so is given in the partnership agreement.

Business Corporations Act (Ontario), s. 134

Standards of care, etc., of directors, etc.

134 (1) Every director and officer of a corporation in exercising his or her powers and discharging his or her duties to the corporation shall,

- (a) act honestly and in good faith with a view to the best interests of the corporation; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Duty to comply with Act, etc.

(2) Every director and officer of a corporation shall comply with this Act, the regulations, articles, by-laws and any unanimous shareholder agreement.

Cannot contract out of liability

(3) Subject to subsection 108 (5), no provision in a contract, the articles, the by-laws or a resolution relieves a director or officer from the duty to act in accordance with this Act and the regulations or relieves him or her from liability for a breach thereof.

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 OCTOBER 31, 2023)

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