



Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Electronically issued : 10-Dec-2021
Délivré par voie électronique : 10-Dec-2021
Toronto

D E L I V E R E E :

ONTARIO SECURITIES COMMISSION

Applicant

- and -

GO-TO DEVELOPMENTS HOLDINGS INC., OSCAR FURTADO, FURTADO HOLDINGS INC., GO-TO DEVELOPMENTS ACQUISITIONS INC., GO-TO GLENDALE AVENUE INC., GO-TO GLENDALE AVENUE LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK II INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK II LP, GO-TO NIAGARA FALLS CHIPPAWA INC., GO-TO NIAGARA FALLS CHIPPAWA LP, GO-TO NIAGARA FALLS EAGLE VALLEY INC., GO-TO NIAGARA FALLS EAGLE VALLEY LP, GO-TO SPADINA ADELAIDE SQUARE INC., GO-TO SPADINA ADELAIDE SQUARE LP, GO-TO STONEY CREEK ELFRIDA INC., GO-TO STONEY CREEK ELFRIDA LP, GO-TO ST. CATHARINES BEARD INC., GO-TO ST. CATHARINES BEARD LP, GO-TO VAUGHAN ISLINGTON AVENUE INC., GO-TO VAUGHAN ISLINGTON AVENUE LP, AURORA ROAD LIMITED PARTNERSHIP, and 2506039 ONTARIO LIMITED

Respondents

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

NOTICE OF APPLICATION

TO THE RESPONDENTS:

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

THIS APPLICATION will come on for a hearing

By video conference

at the following location:

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

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

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

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

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

Date: December ¹⁰~~6~~, 2021

Issued by _____
Local Registrar

Address of Court Office:
Commercial List Office,
9th Floor, 330 University Avenue,
Toronto, Ontario
M5G 1R7

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

2354 Salcome Drive
Oakville, ON
L6H 7N3

**AND TO: Go-To Developments Holdings Inc.
Go-To Developments Acquisitions Inc.
Go-To Glendale Avenue Inc.
Go-To Glendale Avenue LP
Go-To Major Mackenzie South Block Inc.
Go-To Major Mackenzie South Block LP
Go-To Major Mackenzie South Block II Inc.
Go-To Major Mackenzie South Block II LP
Go-To Niagara Falls Chippawa Inc.
Go-To Niagara Falls Chippawa LP
Go-To Niagara Falls Eagle Valley Inc.
Go-To Niagara Falls Eagle Valley LP
Go-To Spadina Adelaide Square Inc.
Go-To Spadina Adelaide Square LP
Go-To Stoney Creek Elfrida Inc.
Go-To Stoney Creek Elfrida LP
Go-To St. Catharines Beard Inc.
Go-To St. Catharines Beard LP
Go-To Vaughan Islington Avenue Inc.
Go-To Vaughan Islington Avenue LP
Aurora Road Limited Partnership
2506039 Ontario Limited**

1267 Cornwall Road
Suite 301
Oakville, ON
L6J 7T5

APPLICATION

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

2. THE GROUNDS FOR THE APPLICATION ARE:

Overview

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

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

The Investigation & Breaches of the *Securities Act*

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

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

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

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

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

Need for a Receiver

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

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

Continuation of the Directions is Reasonable and Expedient

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

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

Legislative provisions, etc.

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

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

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

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December 6, 2021

ONTARIO SECURITIES COMMISSION

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

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Lawyers for the Ontario Securities Commission

Court File No. _____

ONTARIO SECURITIES COMMISSION
Applicant

- and -

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

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

Proceeding commenced at Toronto

NOTICE OF APPLICATION
(Application under sections 126 and 129
of the *Securities Act*)

Ontario Securities Commission
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