

**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

**RESPONDING MOTION RECORD OF THE RESPONDENTS
(Returnable October 6, 2023)**

September 11, 2023

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**ONTARIO
SUPERIOR COURT OF JUSTICE
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ONTARIO SECURITIES COMMISSION

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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**

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(as at September 11, 2023)**

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**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

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TAB	DOCUMENT
1.	Affidavit of Maureen McLaren, sworn September 11, 2023
Exhibit A	Letter from Counsel to the Receiver to Counsel to the Respondents, dated May 24, 2023
Exhibit B	Letter from Counsel to the Respondents to Counsel to the Receiver, dated May 31, 2023

TAB 1

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

AFFIDAVIT OF MAUREEN MCLAREN

I, Maureen McLaren, of the Town of Keswick, in the Regional Municipality of York, in the Province of Ontario, MAKE OATH AND SAY:

1. I am an Assistant with the law firm of Miller Thomson LLP, lawyers for the Respondents, and, as such, have knowledge of the following matters.
2. On May 24, 2023, Aird & Berlis LLP, counsel to KSV Restructuring Inc. in its capacity as court-appointed receiver in the above noted matter (the “**Receiver**”) delivered correspondence to

Miller Thomson LLP, counsel for the respondents. A copy of this letter is attached hereto and marked as **Exhibit “A”**.

3. On May 31, 2023, Miller Thomson LLP delivered reply correspondence to counsel for the Receiver. A copy of the letter is attached hereto and marked as **Exhibit “B”**.

4. I swear this affidavit in response to the motion returnable October 6, 2023 brought by the Receiver in the above-noted matter and for no other improper purpose.

SWORN by Maureen McLaren of the Town of Keswick, in the Regional Municipality of York, before me at the City of Toronto, in the Province of Ontario, on September 11, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Monica Faheim

A927328440B742A...

Commissioner for Taking Affidavits
(or as may be)

MONICA FAHEIM

DocuSigned by:

Maureen McLaren

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MAUREEN MCLAREN

**This is Exhibit "A" referred to in the affidavit
of MAUREEN MCLAREN, SWORN BEFORE ME
this 11th day of September, 2023**

DocuSigned by:

Monica Faleim

A927328440B742A...

A COMMISSIONER FOR TAKING AFFIDAVITS



Ian Aversa
Direct: 416.865.3082
E-mail: iaversa@airdberlis.com

May 24, 2023

BY EMAIL (gazeff@millerthomson.com and mfaheim@millerthomson.com)

Miller Thomson LLP

40 King Street West, Suite 5800
Toronto, ON M5H 3S1

Attention: Gregory Azeff and Monica Faheim

Dear Mr. Azeff and Ms. Faheim:

**Re: Ontario Securities Commission v. Go-To Developments Holdings Inc., et al. –
Court File No. CV-21-00673521-00CL (the “Receivership Proceedings”)**

As you know, we are the lawyers for KSV Restructuring Inc., in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”) in the above-referenced Receivership Proceedings. The Receiver was appointed pursuant to the Order of The Honourable Mr. Justice Pattillo of the Ontario Superior Court of Justice (Commercial List) dated December 10, 2021 (the “**Receivership Order**”), a copy of which is available on the Receiver’s website at: <https://www.ksvadvisory.com/experience/case/go-to>.

Unless otherwise stated, all capitalized terms in this letter are defined in Privilege Protocol between the Receiver and Oscar Furtado dated October 25, 2022.

Reference is made to the 78,129 Objections that you tagged as being “*privileged*,” including, without limitation:

- a) 1,931 emails (plus their families, including, without limitation, any attachments thereto) retrieved from the Receivership Respondents’ Drive, Server and/or Devices, as applicable, from Alfredo Malanca at alfredo@goldmountfinancial.ca, the release of which to the Receiver you have Objected. In 1,927 of the 1,931 cases, the sole purported basis for the Objection is solicitor-client privilege, notwithstanding that Mr. Malanca is not a lawyer (and, in many cases, other individuals were also parties to these emails);
- b) a further 3,561 emails (plus their families, including, without limitation, any attachments thereto) retrieved from the Receivership Respondents’ Drive, Server and/or Devices, as applicable, to Alfredo Malanca at alfredo@goldmountfinancial.ca, the release of which to the Receiver you have Objected. In 3,555 of the 3,561 cases, the sole purported basis for the Objection is solicitor-client privilege, notwithstanding that Mr. Malanca is not a lawyer (and, in many cases, other individuals were also parties to these emails);
- c) a further 2,501 emails (plus their families, including, without limitation, any attachments thereto) retrieved from the Receivership Respondents’ Drive, Server and/or Devices, as applicable, copying Alfredo Malanca at alfredo@goldmountfinancial.ca, the release of which to the Receiver you have Objected. In 2,496 of the 2,501 cases, the sole purported basis for the Objection is solicitor-client privilege, notwithstanding that Mr. Malanca is not a lawyer (and, in many cases, other individuals were also parties to these emails);

- d) a further 540 emails (plus their families, including, without limitation, any attachments thereto) retrieved from the Receivership Respondents' Drive, Server and/or Devices, as applicable, from Mr. Malanca's alias, Alfredo Palmeri, the release of which to the Receiver you have Objected. In all 540 cases, the sole purported basis for the Objection is solicitor-client privilege, notwithstanding that Mr. Malanca a.k.a. Palmeri is not a lawyer (and, in many cases, other individuals were also parties to these emails);
- e) a further 1,499 emails (plus their families, including, without limitation, any attachments thereto) retrieved from the Receivership Respondents' Drive, Server and/or Devices, as applicable, to Mr. Malanca's alias, Alfredo Palmeri, the release of which to the Receiver you have Objected. In 1,490 of the 1,499 cases, the sole purported basis for the Objection is solicitor-client privilege, notwithstanding that Mr. Malanca a.k.a. Palmeri is not a lawyer (and, in many cases, other individuals were also parties to these emails); and
- f) a further 1,268 emails (plus their families, including, without limitation, any attachments thereto) retrieved from the Receivership Respondents' Drive, Server and/or Devices, as applicable, copying Mr. Malanca's alias, Alfredo Palmeri, the release of which to the Receiver you have Objected. In 1,263 of the 1,268 cases, the sole purported basis for the Objection is solicitor-client privilege, notwithstanding that Mr. Malanca a.k.a. Palmeri is not a lawyer (and, in many cases, other individuals were also parties to these emails).

It is trite law that solicitor-client privilege applies to communications between a solicitor and his/her client which seek or give legal advice and which are intended to be confidential,¹ and that non-privileged communications cannot be "*cloaked with privilege by copying them to a lawyer.*"²

The Receiver therefore considers the above-referenced assertions of solicitor-client privilege as frivolous and without merit. Moreover, even if privilege somehow did attach to certain of these communications, the Receiver would still be entitled to review them for the purpose of exercising its investigative powers under the Receivership Order³ relative to the alleged improper dealings between Messrs. Furtado and Malanca/Palmeri, which dealings gave rise to the Receivership Proceedings in the first place.

Accordingly, without prejudice to any further disclosure requests stemming from the Objections (including, without limitation, numerous other instances where solicitor-client privilege has been asserted without any basis at law), the Receiver requires at this time that it be provided with immediate access to the 11,271 emails referenced above (plus their families, including, without limitation, any attachments thereto) involving Mr. Malanca a.k.a. Palmeri as a party, where Objections have been made on the sole basis of purported solicitor-client privilege.

If Mr. Furtado does not consent to this request within **the next three business days**, we have instructions to bring this matter to the Court's attention and seek an Order compelling the delivery of these materials to the Receiver and costs against Mr. Furtado.

¹ See *Pritchard v Ontario (Human Rights Commission)*, 2004 SCC 31 at [para 15](#); see also *Solosky v The Queen* (1979), [1980] 1 S.C.R. 821 at [para 28](#).

² See *Bray v York (Municipality)*, 2023 ONSC 837 at [para 15](#); see also *Ernewein v Honda Canada*, 2017 ONSC 1181 at [para 76](#).

³ See *Ontario (Securities Commission) v Greymac Credit Corp.*, 41 O.R. (2d) 328 at [para 60](#).

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We look forward to hearing from you.

Yours truly,

AIRD & BERLIS LLP

A handwritten signature in blue ink, appearing to be 'Ian Aversa', with a stylized flourish at the end.

per Ian Aversa

IA/jn

53152999.2

AIRD BERLIS

**This is Exhibit “B” referred to in the affidavit
of MAUREEN MCLAREN, SWORN BEFORE ME
this 11th day of September, 2023**

DocuSigned by:

Monica Fakhim

A6273284466742A

A COMMISSIONER FOR TAKING AFFIDAVITS



MILLER THOMSON
AVOCATS | LAWYERS

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MILLERTHOMSON.COM

May 31, 2023

Sent Via Email: iaversa@airdberlis.com

Aird & Berlis LLP
Brookfield Place,
181 Bay Street, suite 1800
Toronto, Ontario
M5J 2T9

Monica Faheim
Direct Line: 416.597.6087
mfaheim@millerthomson.com

Private and Confidential

Attention: Ian Aversa

Dear Mr. Aversa:

**Re: Ontario Securities Commission v. Go-To Developments Holdings Inc., et al. –
Court File No. CV-21-00673521-00CL**

We are in receipt of your correspondence dated May 24, 2023.

As we understand the Receiver is aware, our client is currently experiencing serious health issues which have led him to seek an adjournment of the merits hearing before the Capital Markets Tribunal. We understand that you have been provided with details of Mr. Furtado's health issues on a confidential basis in that context. Mr. Furtado asserts all available privacy rights and privileges attaching to that information.

Due to these health issues, at this time, our client is unable to provide us with instructions or otherwise meaningfully participate in any review that might be required to assist with the Receiver's request in the May 24, 2023 letter.

In the interim, please note that we disagree with your suggestion that the Receiver is entitled to receive privilege documents. To be clear, it is our view that the Receiver is not entitled to review any privileged documents. Certain of the documents requested by the Receiver give rise to common-interest privilege and on that basis we will not be voluntarily providing the Receiver with same. We require Mr. Furtado's involvement in identifying the documents subject to such privilege.

We recognize that there may be documents described in the May 24, 2023 letter which are not privileged. It is our intention to work diligently in response to the Receiver's request as best as we can in the circumstances.

Yours truly,

MILLER THOMSON LLP

Per:

A handwritten signature in black ink, appearing to read 'mfa', is positioned above the printed name of the signatory.

Monica Faheim
cc: Gregory Azeff



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

AFFIDAVIT OF MAUREEN MCLAREN

MILLER THOMSON LLP

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40 King Street West, Suite 5800
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Lawyers for the Respondents

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

**RESPONDING MOTION RECORD OF THE
RESPONDENTS**
(Returnable October 6, 2023)

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Lawyers for the Respondents