

**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED**

**AND IN THE MATTER OF GO-TO DEVELOPMENTS HOLDINGS INC., GO-TO
SPADINA ADELAIDE SQUARE INC., FURTADO HOLDINGS INC.,
and OSCAR FURTADO**

File No. 2022-8

**MOTION
OF OSCAR FURTADO**

For an Order for Disclosure under Rules 27 and 28 of the Capital Markets Tribunal's *Rules of
Procedure and Forms*

A. ORDER SOUGHT

The moving party, Oscar Furtado, requests, with notice, that the Capital Markets Tribunal (the "**Tribunal**") make the following order(s):

- (a) An order directing Staff to disclose the requested materials and information to Mr. Furtado;
and
- (b) Such further relief as counsel may advise and the Tribunal may permit.

B. GROUNDS

1. Mr. Furtado is the founder of Go-To Developments Holdings Inc. ("**GTDH**") and the directing mind of Go-To Spadina Adelaide Square Inc., Furtado Holdings Inc. and other related Go-To entities that are also respondents in the Receivership Application¹, as defined below.

¹ The other respondents to the Receivership Application are: 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 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.

2. On April 30, 2019, the Ontario Securities Commission (the “**Commission**”) issued an order under section 11 of the *Securities Act*, R.S.O. 1990, c. S.5 (the “**Act**”) authorizing Staff of the Commission (“**Staff**”) to investigate GTDH and other related entities (the “**Investigation Order**”). Further orders issued under section 11 removed and appointed various members of Staff investigating the matters described in the Investigation Order.

3. The within proceeding was commenced against Mr. Furtado on March 31, 2022 (the “**Enforcement Proceeding**”). Mr. Furtado is seeking a stay of the Enforcement Proceeding on a motion returnable before the Tribunal on June 1, 2023 (the “**Stay Motion**”). The Stay Motion relates to Staff’s unlawful public disclosure of Mr. Furtado’s compelled testimony and other compelled evidence in the Receivership Application (together, the “**Compelled Evidence**”), as described below.

4. Disclosure is sought both in relation to the Stay Motion and more generally.

Background to the Stay Motion

5. In the course of their investigation, Staff issued numerous summonses to Mr. Furtado and compelled him to attend three separate interviews held on September 24, 2020, November 5, 2020, and July 7, 2021 (together, the “**Compelled Interviews**”). As required by s. 13 of the Act, Mr. Furtado answered all questions put to him by Staff, with the exception of privilege claims. Following the conclusion of the Compelled Interviews, Staff did not substantively communicate further with Mr. Furtado for nearly six months.

6. On the evening of December 6, 2021, Mr. Furtado first received notice of an application brought by the Commission² in the Ontario Superior Court of Justice (the “**Receivership Application**”) seeking: (i) the appointment of a receiver over the Go-To entities pursuant to s. 129 of the Act, and (ii) the continuation of two *ex parte* freeze directions (together, the “**Freeze Directions**”) freezing funds held in Mr. Furtado’s investment account which had been issued by the Tribunal on that same day (December 6, 2021) pursuant to s. 126 of the Act.

7. In support of the Receivership Application (including the continuation of the Freeze Directions), the Commission, through Staff, publicly filed an application record which included an affidavit sworn on December 6, 2021 by Stephanie Collins, Senior Forensic Accountant in the Enforcement Branch of the Commission (the “**Collins Affidavit**”). The Collins Affidavit is 1,958 pages long and attaches 113 exhibits, including a significant amount of evidence that had been compelled by Staff pursuant to s. 13 of the Act.

8. In particular, the Collins Affidavit attaches extensive excerpts from the transcripts of Mr. Furtado’s Compelled Interviews, in addition to those from another compelled witness interview, and other evidence provided by Mr. Furtado pursuant to summonses issued by Staff pursuant to s. 13 of the Act.

² At the time, the Commission was one entity with both regulatory and adjudicative functions. On April 29, 2022, the proclamation of the *Securities Commission Act, 2021*, S.O. 2021, c. 8, Sched. 9 effectively separated the regulatory and adjudicative functions of the Commission, including through the establishment of the Capital Markets Tribunal as a division of the Commission. Accordingly, any reference to “Commission” in these materials in relation to events that took place prior to April 29, 2022 should be understood to mean a reference to the Commission as it was at that time – an integrated entity which carried out both regulatory and adjudicative functions.

9. In breach of the Act, Staff did not seek a s. 17 order from the Commission's adjudicative Tribunal authorizing disclosure of the Compelled Evidence prior to filing it publicly in the Receivership Application.

10. The Receivership Application proceeded on less than 72 hours' notice on December 9, 2021, despite Mr. Furtado's request to adjourn on terms that provided reasonable safeguards, including a continuation of the Freeze Directions. In an order dated December 10, 2021 (the "**Receivership Order**"), Justice Pattillo granted the Receivership Application and ordered: (i) the appointment of KSV Restructuring Inc. ("**KSV**") as receiver over the Go-To entities, and (ii) the continuation of the Freeze Directions indefinitely, subject to any revocation or consent to the release of funds by the Commission or further order of the Court.

11. Shortly thereafter, KSV posted the materials filed in support of the Receivership Application, including the Collins Affidavit containing the Compelled Evidence, on its website. On December 13, 2021, the Commission posted a press release on its website announcing the granting of the Receivership Order and providing a link to the page on KSV's website containing the application materials.

12. In the Stay Motion, as detailed in the notice of motion filed in that motion, Mr. Furtado seeks a stay of the Enforcement Proceeding on the basis of, *inter alia*, Staff/the Commission's conduct in connection with the public disclosure of the Compelled Evidence and in response to the Commission's adjudicative Tribunal's decision in the *Sharpe* matter.

Materials Sought are not “Clearly Irrelevant”

13. On this motion, Mr. Furtado seeks disclosure of all documents relevant to the issues raised on the Stay Motion, including but not limited to:³

(a) Internal and external, non-privileged⁴ communications⁵ relating to the following:

(i) The Commission’s decision to publicly disclose the Compelled Evidence in the Receivership Application;

(ii) The Commission’s consideration of the implications of the pending *Sharpe* application; and

(iii) The Commission’s decision to collaterally attack the *Sharpe* decision in Mr. Furtado’s appeal of the Receivership Order; and

(b) Internal policies and procedures in place at the Commission regarding the filing of compelled evidence, including but not limited to weighing the public interest in filing compelled evidence against the privacy and other rights of those compelled to give evidence.

14. Rule 27 of the Tribunal’s *Rules of Procedure and Forms* requires Staff to disclose copies of all non-privileged documents in its possession that are relevant to an allegation.

³ Note that the breadth of the request is a function of the lack of precise knowledge by Mr. Furtado as to what is in the possession of the Commission/Staff.

⁴ If disclosure is ordered and Staff propose to withhold any documents on the basis of privilege, Mr. Furtado requests that Staff be directed to provide a detailed privilege log listing all such records and the basis of any such privilege claim.

⁵ Mr. Furtado seeks disclosure of communications including but not limited to as between Staff, KSV and/or its counsel, the Director of the Enforcement Branch at the Commission, the Executive Director of the Commission, the Chair of the Commission, the Chief Administrative Officer of the Commission and/or any members of the Tribunal.

15. Relevance is a low threshold. It means relevance in the *Stinchcombe* sense and includes not only material which Staff may rely upon, but also material which could assist in advancing a defence or making a tactical decision.⁶

16. Disclosure should also be made of information which is relevant to issues which might be properly raised.⁷

17. Internal notes are not irrelevant full stop. Rather, what determines relevance is the content of the document in question.⁸

18. At issue on the Stay Motion is the alleged abuse of process arising from conduct described in the notice of motion filed in respect of the Stay Motion. The information sought is plainly relevant (and, in any case, is not clearly irrelevant) to the issues to be determined on the Stay Motion.

19. Further, information which is relevant to the matters at issue in the Stay Motion is relevant to the proceeding, in that it advances a serious issue being raised by Mr. Furtado. As well, some of the categories of information sought could relate more generally to tactical decisions and defences to be advanced.

20. Disclosure of the information sought is necessary to meet Staff's disclosure obligations.

C. EVIDENCE

The moving party intends to rely on the following evidence for the motion:

⁶ *Deloitte & Touche LLP v. Ontario (Securities Commission)*, 2002 CanLII 44980 (Ont. C.A.).

⁷ *BDO Canada LLP (Re)*, 2019 ONSEC 21 [**BDO**].

⁸ *Kitmitto (Re)*, 2020 ONSEC 15; *BDO, supra*.

21. The affidavit of Carly Vande Weghe, sworn on January 16, 2023; and
22. Such further and other evidence as counsel may advise.

DATED this 16th day of January, 2023.

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