

**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 THE ONTARIO SECURITIES COMMISSION
(For dismissal of the Stay Motion of Oscar Furtado)**

A. ORDER SOUGHT

The Moving Party, the Ontario Securities Commission (**OSC**) requests, with notice, that the Tribunal make the following orders:

1. An order dismissing the Motion of Oscar Furtado dated January 16, 2023 and returnable June 1, 2023, which seeks to stay the proceedings against Mr. Furtado (**Stay Motion**); and
2. Such further and other orders as counsel may advise and the Tribunal deems just.

B. GROUNDS

The grounds for the motion are:

3. On March 30, 2022, the Statement of Allegations (**SOA**) was issued in this proceeding;
4. On December 6, 2021, the OSC served former counsel for the respondents and related entities – Darryl Mann of Torkin Manes LLP – with its application returnable December 9, 2021, to the Ontario Superior Court of Justice – Commercial List (**Application**) for:
 - a. the appointment of a receiver over Go-To Developments Holdings Inc. (**GTDH**) and related entities pursuant to s. 129 of the Act; and
 - b. the continuation of two freeze directions (**Directions**) relating to an investment account of Mr. Furtado, which had been issued by the Commission on December 6, 2021, pursuant to s. 126 of the Act;

5. The OSC's Application record contained evidence from its investigation, including excerpts of the transcripts of compelled examinations of Mr. Furtado and another, as well as a draft order;
6. The OSC requested that the Application be scheduled on a confidential basis, which the Court permitted. The Application record was sent directly to the judge (Justice Pattillo). The Notice of Application was not issued until after the hearing;
7. The OSC advised Mr. Mann that the Application had been scheduled on a confidential basis;
8. The OSC served enforcement notices on Mr. Mann for the respondents to this proceeding, and others, on December 8, 2021;
9. Mr. Furtado, GTDH and related entities (**Receivership Entities**) were represented by Mr. Mann at the Application hearing on December 9, 2021. Mr. Mann, among other things:
 - a. Requested an adjournment on terms including production of full copies of the compelled transcripts excerpted in the Application record; and
 - b. Made submissions on the Application itself;
10. Justice Pattillo refused the adjournment request, appointed a receiver over the Receivership Entities and continued the Directions in an order and endorsement dated December 10, 2021 (**Receivership Order and Endorsement**);
11. Among other things, the Receivership Order provided that:
 - a. the OSC was to prepare a redacted copy of the Application materials removing Personal Information (as defined in the Order) and file same with the Court (paras 28-29);
 - b. the unredacted copy of the Application materials would be sealed (para 31); and
 - c. the redacted copy of the Application record was to be posted by the Receiver (KSV Restructuring Inc.) on a website for the case (para 32);

12. Materials relating to the Application, including the redacted Application record, have been available on the Receiver's website since December 11, 2021;
13. The Commercial List has a model receivership order, which model order requires receivers to create a website for a case and to post court materials on that website in accordance with the E-Service Protocol of the Commercial List;
14. Mr. Furtado and the Receivership Entities appealed the Receivership Order and sought a stay of that order from the Court of Appeal for Ontario. The Court of Appeal denied the request for a stay in reasons dated December 24, 2021 and dismissed the appeal on April 28, 2022;
15. Among other things, the Court of Appeal:
 - a. Upheld Justice Pattillo's denial of the adjournment and issuance of the Receivership Order;
 - b. Found that the fresh evidence adduced on appeal "*demonstrates further misconduct and self-dealing after Mr. Furtado was served with the application materials*"; and
 - c. Held that Justice Pattillo made no error in admitting and relying on the compelled transcripts, given that the appellants had not raised any concern regarding the inclusion of such evidence at the hearing of the Application. Among other things, the Court of Appeal noted that the appellants' position on the appeal that such transcripts were inadmissible was in contrast to their earlier position seeking complete copies of the compelled transcripts (raised at both the Application hearing and on the motion for a stay of the Receivership Order);
16. Mr. Furtado and the Receivership Entities sought leave to appeal the Court of Appeal's decision to the Supreme Court of Canada. The Supreme Court refused leave to appeal on February 16, 2023;
17. Disclosure motions by the respondents to this proceeding were due by (an extended deadline of) September 29, 2022;

18. On September 29, 2022, Mr. Furtado’s counsel wrote to OSC counsel that, among other things, they did “not have instructions to bring any disclosure motions at this time” and purported to reserve their client’s rights with respect to “disclosure of [Mr. Furtado’s] compelled testimony”;
19. On December 19, 2022, at 7 p.m. – the night before the Third Attendance in this matter – Mr. Furtado’s counsel wrote to OSC counsel advising they intended to bring a motion to stay this proceeding on the grounds of abuse of process;
20. On December 20, 2022, Mr. Furtado’s counsel sought to schedule both the Stay Motion and a related disclosure motion;
21. Both the Stay Motion and the related disclosure motion were served on January 16, 2023;
22. Furtado withdrew the disclosure motion via Notice of Withdrawal dated February 6, 2023;
23. The allegations in the Stay Motion relate to the conduct of the OSC in relation to the Application and appeal thereof;
24. The Stay Motion should be summarily dismissed because:
 - a. The issues raised therein are irrelevant to this proceeding;
 - b. Mr. Furtado delayed bringing the Stay Motion;
 - c. It does not disclose an abuse of process or any basis to warrant a stay of proceedings, including without limitation that it does not disclose any prejudice, unfairness or risk to the integrity of the adjudicative process that could warrant a stay of proceedings;
 - d. It has no reasonable prospect of success, and should be dismissed pursuant to the Tribunal’s authority to control its process;
 - e. It is frivolous and vexatious, attempts to relitigate matters addressed by the courts, and/or otherwise constitutes an abuse of process;

- f. It will unnecessarily add to the time and costs expended by the parties and the Tribunal; and/or
 - g. To the extent that the Stay Motion involves an attempt to delve into privileged discussions, such privilege has not been waived;
25. Rules 1, 3, and 28 of the Tribunal's *Rules*;
26. Sections 23 and 25.0.1 of the *Statutory Powers Procedure Act*, RSO 1990, c S.22; and
27. Such further and other grounds as counsel may advise and the Tribunal deems just.

C. EVIDENCE

The OSC intends to rely on, or refer to, the following evidence for the motion:

- 28. The Motion Records of Oscar Furtado, each dated January 16, 2023;
- 29. Affidavit of Michelle Spain affirmed February 21, 2023; and
- 30. Such other evidence as counsel may advise and the Tribunal may permit.

DATED this 22nd day of February, 2023.

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