

**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

AMENDED MOTION

OF OSCAR FURTADO

(For Orders: (i) Adjourning the Witness Summary Motion and the Hearing on the Merits, (ii) ~~Directing that Part of the Hearing on the Merits be Conducted in Writing~~ Directing the Filing of In-Chief Affidavit Evidence, and (iii) Hearing the Motion and Filing Part of the Motion Record Confidentially under Rules 1, 3, 22, 23, 28 and 29 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 adjourning the witness summary motion brought by Staff of the Ontario Securities Commission (“**Staff**”) in the within proceeding bearing Tribunal File No. 2022-8 (the “**Proceeding**”) returnable on June 2, 2023 (the “**Witness Summary Motion**”) *sine die*;
- b) An order adjourning the hearing on the merits of the Proceeding (the “**Merits Hearing**”), scheduled to begin on August 21, 2023 *sine die*, and directing that the final interlocutory attendance scheduled for July 20, 2023 be used to schedule new dates for the Witness Summary Motion and the Merits Hearing, if Mr. Furtado’s health permits;
- c) In the alternative to paragraphs (a) and (b) above, orders adjourning the Witness Summary Motion and the Merits Hearing on terms that the Tribunal deems just;
- d) An order that the evidence-in-chief to be tendered at the Merits Hearing by Stephanie Collins, Senior Forensic Accountant at the Ontario Securities Commission (the “**Commission**”), and Mr. Furtado, if any, be filed by affidavit in advance of the Merits

Hearing, with cross-examinations, if any, on those affidavit(s) to be conducted orally at the Merits Hearing pursuant to Rules 1, 3 and 23 of the Tribunal's *Rules of Procedure and Forms*;

- e) An order that paragraph 10 and Confidential Exhibit "E" to the affidavit of Oscar Furtado sworn on May 10, 2023, paragraph 7 and Exhibits "F", "G", "H", "I" and "J" to the affidavit of Michelle Spain affirmed on May 17, 2023, and paragraphs 4, 5, 6 to the reply affidavit of Oscar Furtado sworn on May 24, 2023 be treated as confidential and not made available to the public pursuant to Rule 22(4) of the Tribunal's *Rules of Procedure and Forms*;
- f) An order that the hearing of the within motion proceed confidentially without the public present pursuant to Rule 22(2) of the Tribunal's *Rules of Procedure and Forms*;
- g) If necessary, an order abridging time for service and filing of this Notice of Motion and Motion Record; and
- h) Such further relief as counsel may advise and the Tribunal may permit.

B. GROUNDS

The grounds for the motion are:

Background

1. The Proceeding was initiated against Mr. Furtado by a Statement of Allegations dated March 30, 2022.
2. Pursuant to an Order of the Tribunal dated December 20, 2022 (the "**December 2022 Order**"), the Merits Hearing is scheduled to be heard on August 21, 22, 24, 25, 28, 29, 30 and 31, 2023 and November 2, 3, 6, and 7, 2023.

3. Pursuant to the December 2022 Order, Staff's Witness Summary Motion is scheduled to be heard on June 2, 2023.

Adjournment Request

4. Mr. Furtado is currently experiencing significant health issues. As a result of those issues, Mr. Furtado's primary care physician is of the opinion that Mr. Furtado is not medically fit to prepare for or attend the Merits Hearing commencing in August 2023.

5. Mr. Furtado's health issues constitute exceptional circumstances, as contemplated by Rule 29 of the Tribunal's *Rules of Procedure and Forms*, and warrant an adjournment of the Witness Summary Motion and the Merits Hearing.

6. The principles of natural justice and procedural fairness warrant an adjournment in the circumstances. In particular, Mr. Furtado is the only witness who may be called to provide testimony on his behalf in defence of Staff's allegations made in the Proceeding. It is imperative that Mr. Furtado be medically fit to prepare for and testify at the Merits Hearing for him to have a meaningful right to make full answer and defence.

7. This is the first adjournment request made by Mr. Furtado in the Proceeding. The Merits Hearing is yet to commence, and Mr. Furtado is not aware of any prejudice or costs consequences to Staff that would be caused by the adjournment. Conversely, Mr. Furtado will be severely prejudiced if the adjournment is not granted.

Confidentiality Request

8. Paragraph 10 and Confidential Exhibit “E” to the affidavit of Oscar Furtado sworn on May 10, 2023, paragraph 7 and Exhibits “F”, “G”, “H”, “I” and “J” to the affidavit of Michelle Spain affirmed on May 17, 2023, and paragraphs 4, 5, 6 to the reply affidavit of Oscar Furtado sworn on May 24, 2023 include intimate personal details about Mr. Furtado’s health and will necessarily be referred to at the hearing of the motion. In the circumstances, avoiding disclosure of such intimate personal matters outweighs adherence to the principle that hearings should be open to the public. Mr. Furtado requests that paragraph 10 and Confidential Exhibit “E” to the affidavit of Oscar Furtado sworn on May 10, 2023, paragraph 7 and Exhibits “F”, “G”, “H”, “I” and “J” to the affidavit of Michelle Spain affirmed on May 17, 2023, and paragraphs 4, 5, 6 to the reply affidavit of Oscar Furtado sworn on May 24, 2023 be subject to a confidentiality order such that they are not made available publicly, and that their substance is not referred to in any public reasons the Tribunal may issue in connection with this motion.

Request to Introduce Evidence-in-Chief by Affidavit

9. Introducing evidence-in-chief from Staff’s primary witness, Ms. Collins, and Mr. Furtado, if any, by way of affidavit will contribute to the efficiency of the Merits Hearing and is expected to lessen the burden on Mr. Furtado in preparing for the hearing. In the circumstances, proceeding with affidavit in-chief evidence for those witnesses is appropriate and would be efficient.

~~10. — Converting part of the Merits Hearing to a written hearing in this manner is appropriate in light of the factors outlined in Rule 23(4) of the Tribunal’s *Rules of Procedure and Forms*, and would contribute to the just, expeditious and cost-effective conduct of the Proceeding.~~

10. Rules 1, 3, 22, 23, 28 and 29 of the Tribunal's *Rules of Procedure and Forms*.
11. Sections 9(1)(b) and 21 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22.
12. Section 1 of the *Personal Health Information Protection Act, 2004*, S.O. 2004, c. 3, Sched. A.
13. Such further and other grounds as counsel may advise and the Tribunal may accept.

C. EVIDENCE

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

- (a) The affidavit of Oscar Furtado sworn on May 10, 2023; ~~and~~
- (b) The reply affidavit of Oscar Furtado sworn on May 24, 2023; and
- (~~b~~c) Such further and other evidence as counsel may advise.

DATED this ~~11~~-25th day of May, 2023.

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