

**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 Orders: (i) Adjourning the Hearing on the Merits, (ii) Hearing Part of the Motion and Filing Part of the Motion Record Confidentially, and (iii) Requiring Further Disclosure from Staff under Rules 1, 22, 23, 27, 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 orders:

- a) An order adjourning the hearing on the merits (the “**Merits Hearing**”) of the within proceeding (the “**Proceeding**”), scheduled to begin on November 3, 2023, and directing that a new date be scheduled for the Merits Hearing;
- b) An order adjourning the dates set in the Tribunal’s order dated July 20, 2023 for the remaining steps to be completed in advance of the Merits Hearing;
- c) An order extending the time for the delivery of a further and better witness summary from Mr. Furtado;
- d) In the alternative to paragraphs (a), (b) and (c) above, an order adjourning the Merits Hearing, the dates currently scheduled for the remaining steps in advance of the Merits Hearing, and the deadline for delivery of a further and better witness summary from Mr. Furtado on terms that the Tribunal deems just;

- e) An order directing that Staff (“**Staff**”) of the Ontario Securities Commission (the “**Commission**”) disclose to Mr. Furtado, forthwith, copies of any correspondence or other documents exchanged between Staff and the Royal Canadian Mounted Police (the “**RCMP**”), or any other law enforcement agency, involving Mr. Furtado or otherwise relating to the matters at issue in the Proceeding (together, “**Law Enforcement Documents**”);
- f) An order directing that Staff disclose to Mr. Furtado, forthwith, all evidence obtained pursuant to the order dated September 20, 2022 issued pursuant to section 11 of the *Securities Act*, R.S.O. 1990, c. S.5. (the “**September 2022 Investigation Order**”) to present;
- g) Orders directing:
 - a. Staff to confirm whether they intend to rely on, or otherwise seek to introduce into evidence, any of the evidence obtained pursuant to the September 2022 Investigation Order in this Proceeding;
 - b. If the answer to (a) is yes, that Staff provide an updated witness summary for Stephanie Collins in accordance with the Tribunal’s decision in this Proceeding in *Go-To Developments Holdings Inc (Re)*, 2023 ONCMT 29 forthwith and, in any event, at least 90 days prior to the commencement of the Merits Hearing;
 - c. Staff to confirm whether they intend to commence a new or otherwise separate proceeding against Mr. Furtado which engages, relates to or involves any of the matters at issue in the within Proceeding based on any of the evidence obtained pursuant to the September 2022 Investigation Order to date; and

- d. Staff to confirm whether the investigation pursuant to the September 2022 Investigation Order has concluded or is ongoing;
- h) An order that certain information, to be identified in advance of the hearing of the within motion, contained in the affidavit of Oscar Furtado, to be sworn, 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*;
- i) An order that part of 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*;
- j) If necessary, an order abridging the time for service and filing of this Notice of Motion and Motion Record; and
- k) Such further relief as counsel may request 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 was scheduled to be heard on August 21, 22, 24, 25, 28, 29, 30, 31, 2023 and November 2, 3, 6, and 7, 2023.
3. On May 11, 2023, Mr. Furtado served a motion seeking an adjournment of the Merits Hearing as a result of his ill health (the "**First Adjournment Motion**").

4. Pursuant to the Tribunal's Order dated June 22, 2023, the commencement of the Merits Hearing was adjourned from August 21, 2023 and rescheduled to commence on November 2, 2023, concluding on November 15, 2023.

5. Pursuant to a Notice issued by the Tribunal on August 9, 2023, the currently-scheduled November 2 and 9, 2023 hearing dates were directed not to proceed and, in their place, additional dates for the Merits Hearing were scheduled on November 10 and 17, 2023.

6. Pursuant to Reasons for Decision dated September 7, 2023, the Tribunal directed that Mr. Furtado deliver a further and better witness summary by September 20, 2023.

Disclosure Issues

7. As detailed below, Staff made late disclosure of a significant number (nearly 25% of the preexisting number of documents disclosed in the Proceeding to date) of new documents (together, the "**New Documents**") in May and July 2023 after Mr. Furtado's service of the First Adjournment Motion. The New Documents were in Staff's possession for, in most cases, well over six months before their disclosure, despite Staff having made three other tranches of disclosure in the intervening period.

8. Staff have provided no substantive explanation for this late disclosure and, as detailed below, have not been forthcoming about whether they intend to rely on the New Documents in this Proceeding or otherwise. Staff have refused to provide an updated witness summary for their main witness, Staff's investigator Ms. Collins, and have refused to confirm whether a separate proceeding may be commenced against Mr. Furtado in connection with the investigation authorized by the September 2022 Investigation Order.

9. The New Documents were not obtained as a result of investigative steps taken pursuant to the authority granted to Staff under the section 11 order which gave rise to this Proceeding. Staff did not amend the section 11 order which gave rise to this Proceeding. Rather, they sought a separate order, yet disclosed the information obtained pursuant to it in the context of this Proceeding. Staff presumably see this information as relevant to the Proceeding, hence the delayed decision to make disclosure. Accordingly, Mr. Furtado's inquiries as to Staff's intended use of the New Documents and the status of the investigation being conducted pursuant to the September 2022 Investigation Order are reasonable and deserve an appropriate response so that full answer and defence can be made and Mr. Furtado may know the case to be met.

10. In the circumstances, it was foreseeable that the late disclosure of the New Documents would impact Mr. Furtado's ability to prepare for the Proceeding, particularly as he has been experiencing serious health issues that have impaired his ability to review information and instruct his counsel. Mr. Furtado now has to address a significant amount of new information which includes new lines of investigation and a referral by the Commission of certain issues to law enforcement. Procedural fairness requires that Mr. Furtado have additional time to prepare his defence.

11. Further, it should not be the case that Mr. Furtado be required to defend the allegations made against him in this Proceeding, only to have Staff potentially commence a separate but overlapping proceeding against him based on the evidence collected pursuant to the September 2022 Investigation Order. Nor would such an approach be fair to this Tribunal. The Commission is not entitled to litigate enforcement proceedings by instalment.

12. Additionally, as detailed below, certain of the New Documents disclosed in the Seventh Disclosure Set, as defined below, delivered three days after the last attendance in the Proceeding on July 20, 2023 (at which the schedule for remaining steps in the Merits Hearing was set), reveal that Staff authorized the disclosure of a significant amount of evidence and other financial analysis relating to the matters at issue prepared by FINTRAC to the RCMP.

13. Staff have refused to produce any communications with law enforcement or to confirm whether they are aware of the existence of a criminal investigation relating to any of the matters at issue in the Proceeding. The possibility of a parallel investigation by law enforcement engages Mr. Furtado's rights under the *Canadian Charter of Rights and Freedoms* (the "**Charter**") and could impact his defence strategy. In the absence of cooperation from the Commission, counsel for Mr. Furtado are making their own inquiries of the RCMP.

I. Sixth Disclosure Set

14. On May 23, 2023, Staff provided its sixth tranche of disclosure in the Proceeding to Mr. Furtado (the "**Sixth Disclosure Set**"). The Sixth Disclosure Set contained 2,147 documents, including the September 2022 Investigation Order.

15. In their cover letter delivering the Sixth Disclosure Set, Staff confirmed, *inter alia*, that the Sixth Disclosure Set contains documents collected pursuant to the September 2022 Investigation Order that relate to the time period outside of the material period in the Statement of Allegations.

16. It appears that all, or nearly all, of the 2,147 documents contained in the Sixth Disclosure Set were obtained shortly after the September 2022 Investigation Order was issued. Despite having made three other sets of disclosure after the issuance of that order, including on November

15, 2022, February 23, 2023 and April 26, 2023, Staff did not disclose the documents in the Sixth Disclosure Set until May 23, 2023, at which point the First Adjournment Motion was pending.

17. In response to Mr. Furtado's inquiries regarding the timing of the Sixth Disclosure Set, Staff indicated that delivery of the disclosure was delayed because the investigation authorized by the September 2022 Investigation Order was "ongoing" and asserted that Staff had exercised its discretion as to when to disclose the 2,147 New Documents.

18. Staff have refused to confirm whether a separate proceeding may be commenced against Mr. Furtado either before, during or after the Merits Hearing in this Proceeding in connection with the new investigation authorized by the September 2022 Investigation Order.

II. Seventh Disclosure Set

19. On July 27, 2023, Staff delivered a further disclosure set to Mr. Furtado (the "**Seventh Disclosure Set**") containing, *inter alia*, a number of documents (together, the "**FINTRAC Documents**") exchanged between Staff and the Financial Transactions and Reports Analysis Centre of Canada ("**FINTRAC**").

20. One of the FINTRAC Documents dated February 21, 2023 confirms that the Commission, as primary disclosure recipient, authorized FINTRAC to disseminate its disclosure to the RCMP as "additional disclosure recipient".

21. Staff have refused to confirm: (i) whether any of the FINTRAC Documents have been provided to the RCMP, (ii) whether Staff are aware of any documents other than the FINTRAC

Documents having been provided to the RCMP, or any other law enforcement agency, and (c) whether Staff are aware of any pending criminal investigations into Mr. Furtado.

22. In order to make tactical decisions regarding his defence and meaningfully exercise his rights pursuant to the *Charter*, including his right to silence, Mr. Furtado needs to know whether there is a criminal investigation involving the matters at issue in the Proceeding as a result of the OSC's referral and to production of the Law Enforcement Documents.

Adjournment Request

23. In addition to the above, unfortunately, Mr. Furtado's significant health issues are ongoing, despite his best efforts to seek and receive medical care since the First Adjournment was granted.

24. Mr. Furtado's health experienced a decline as a result of the stress associated with the late disclosure of the FINTRAC Documents in July 2023, including, in particular, concerns over whether a parallel criminal proceeding may be commenced against him in relation to the matters at issue in the Proceeding.

25. Through no fault of his own, at this time, Mr. Furtado is not medically fit to prepare for or attend the Merits Hearing commencing in November 2023.

26. Mr. Furtado's health issues continue to constitute exceptional circumstances, as contemplated by Rule 29 of the Tribunal's *Rules of Procedure and Forms*, and warrant a second adjournment of the Merits Hearing.

27. The principles of natural justice and procedural fairness warrant an adjournment in the circumstances. 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 in order to defend the allegations against him.

28. In the specific circumstances of this case, which in addition to Mr. Furtado's health issues involve substantive late disclosure and a referral to law enforcement, an adjournment to ensure a fair hearing outweighs any public interest in the Proceeding commencing on the originally scheduled dates.

29. Mr. Furtado requests that a new date be scheduled for the commencement of the Merits Hearing in 2024 in order to permit him sufficient time to address the matters raised above from the Sixth and Seventh Disclosure Sets and to seek additional medical treatment necessary to improve his symptoms.

Confidentiality Request

30. Certain information to be included in the affidavit of Mr. Furtado to be sworn in support of this motion will contain intimate personal details about Mr. Furtado's health ("**Confidential Information**") 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.

31. Mr. Furtado requests that the Confidential Information be subject to a confidentiality order such that it is not made available publicly, and that the substance of the Confidential Information is not referred to in any public reasons the Tribunal may issue in connection with this motion.

C. EVIDENCE

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

- (a) The affidavit of Oscar Furtado, to be sworn;
- (b) The affidavit of Carly Vande Weghe, to be sworn; and
- (c) Such further and other evidence as counsel may advise.

DATED this 7th day of September, 2023.

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