



Capital
Markets
Tribunal

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Citation: *Go-To Developments Holdings Inc (Re)*, 2024 ONCMT 2
Date: 2024-01-15
File No. 2022-8

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

REASONS AND DECISION

**(Rules 22(4) and 29(1) of the *Capital Markets Tribunal Rules of Procedure and
Forms*)**

Adjudicators: M. Cecilia Williams (chair of the panel)

Hearing: By videoconference, October 19, 2023

Appearances: Erin Hault
Johanna Braden
Braden Stapleton
Melissa MacKewn
Dana Carson
Asli Deniz Eke

For Staff of the Ontario Securities
Commission

For Oscar Furtado

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REASONS AND DECISION

1. OVERVIEW

[1] These are my reasons for finding that Oscar Furtado’s health issues met the test of “exceptional circumstances” and that the merits hearing scheduled to start on November 3, 2023 should be adjourned to July 8, 2024. I held the hearing of Furtado’s motion for an adjournment and other related relief in public, with the parties’ agreement, despite Furtado’s initial request that part of the hearing occur without the public present. These reasons also cover my decision that certain information in the medical evidence Furtado filed to support his motion shall remain confidential.

2. BACKGROUND

[2] This is Furtado’s third motion to adjourn the merits hearing due to health issues. He also asked for orders:

- a. adjourning the dates set in the Tribunal’s July 20, 2023 order for the parties to complete the remaining steps before the merits hearing;¹
- b. extending the time for the delivery of a further and better witness summary from Furtado; and
- c. hearing part of the motion without the public present and keeping certain information in the motion record confidential.

[3] Staff did not oppose the adjournment. The Receiver took no position on the motion.

[4] I heard Furtado’s motion on October 19, 2023. I granted the adjournments and extensions the same day for reasons to follow. I reserved my decision about the appropriate redactions, if any, to the medical evidence filed in support of the adjournment.

[5] The 10-day merits hearing into Furtado’s and related entities’ alleged misconduct was scheduled to start in August 2023 and continue in November 2023. The

¹ (2023) 46 OSCB 6371

Tribunal granted Furtado's first request for an adjournment on June 22, 2023, in part to allow Furtado to obtain further treatment from a psychiatrist.² Rather than granting Furtado's request for an indefinite delay to the start of the merits hearing, the Tribunal vacated the hearing dates in August. The panel for that motion scheduled the merits hearing to commence on November 3, 2023.

- [6] The Tribunal heard Furtado's second motion for an indefinite adjournment for health reasons and for late disclosure by Staff on October 2, 2023. Although Furtado had been under the care of a psychiatrist in the intervening period, he did not file a report from that doctor. Evidence on that motion included an affidavit from Furtado and a letter from his treating physician that reported the conclusion from the psychiatrist's report. The Tribunal, in that instance, concluded that the evidence failed to meet the threshold of exceptional circumstances and denied the motion.³

3. ISSUES

- [7] The issues I had to address were:

- a. Should I adjourn the merits hearing? and
- b. Should I order that the entire independent medical report remain confidential?

- [8] I did not have to decide whether to hold part of the motion hearing in private. As I had read the motion materials before the hearing, I agreed with Furtado that it would be sufficient for my purposes for him only to identify the conclusion drawn in the medical evidence material rather than provide the details of his symptoms and diagnosis. The hearing, therefore, continued in public.

4. ADJOURNMENT MOTION

4.1 Law with respect to Adjournments

- [9] Rule 29(1) of the Tribunal's *Rules of Procedure and Forms* (the **Rules**) provides that every merits hearing shall proceed on the scheduled date unless the party

² *Go-To Developments Holdings Inc (Re)*, 2023 ONCMT 35 (***Go-To Developments Adjournment Motion #1***)

³ *Go-To Developments Holdings Inc (Re)*, 2023 ONCMT 44 at para 26 (***Go-To Developments Adjournment Motion #2***)

requesting an adjournment satisfies the panel that there are exceptional circumstances requiring an adjournment.⁴ The standard set out in rule 29(1) is a “high bar” that reflects the important objective set out in rule 1, that Tribunal proceedings be conducted in a just, expeditious and cost-effective manner.⁵

4.2 Parties’ positions and my analysis

[10] Furtado submitted that he continues to face significant health issues, and he is not currently fit to prepare for or attend the merits hearing. The allegations against Furtado are serious and, as the only defence witness that may testify in response to those allegations, the principles of natural justice and procedural fairness make it imperative that he be fit to prepare for and testify at the merits hearing.

[11] For this motion, Furtado obtained an independent medical examination conducted by Dr. J. Sadavoy, a qualified psychiatrist in Ontario (the **Specialist**). Dr. Sadavoy’s report, dated October 14, 2023, indicates that he had access to all of Furtado’s medical records and that he conducted a full, detailed examination.

[12] Furtado asked the Specialist to address two questions in his report:

- a. Does Furtado’s current state of health permit him to instruct counsel and prepare for, attend and participate in the merits hearing scheduled to begin on November 3, 2023? and
- b. If the Specialist determined that Furtado was not able to participate, attend, and instruct counsel, could he provide an opinion as to when Furtado’s health may be improved so that he will be able to do so?

[13] Furtado submitted that he meets the test of exceptional circumstances. The Specialist’s conclusion is consistent with the evidence provided by Dr. Shroff, Furtado’s treating physician. Dr. Shroff’s letter filed in connection with the first motion to adjourn concluded that Furtado required six months to be medically able to proceed. It is also consistent with a letter from Dr. Shroff filed in the second motion to adjourn, which referred to the opinion of another unnamed

⁴ Rules, r 29(1)

⁵ *Money Gate Mortgage Investment Corporation (Re)*, 2019 ONSEC 40 (**Money Gate**) at para 54; *First Global Data Ltd (Re)*, 2022 ONCMT 23 (**First Global Data**) at para 7

psychiatrist that Furtado required six months to be able to proceed. In addition, Furtado submitted his own affidavit evidence setting out the very difficult symptoms he has been dealing with for a significant period.

- [14] Staff submitted that the exceptional circumstances test for adjournments is important to ensure the Tribunal runs effectively and fairly. In addition, Staff submitted that I should view Staff's non-objection to the motion in this instance as an accommodation in the unique circumstances of this case.
- [15] Staff submitted that the Specialist's report does not fully address their concerns. Staff received the Specialist's report on Sunday, four days before this motion. Staff submitted that if there had been more time, Staff's first step would have been to explore with Furtado the possibility of accommodations to allow him to participate in the hearing. However, Staff faced the practical reality of having ten hearing days set for the merits hearing and no room to add dates for any such accommodations.
- [16] Staff's non-objection to the adjournment is also without prejudice to any position Staff might take in the future with respect to any further requests from Furtado to adjourn, including with respect to the sufficiency of the Specialist's report.
- [17] The Receiver confirmed that it did not participate in the discussions between Staff and Furtado about this motion and was not taking a position regarding the adjournment.
- [18] I concluded that the evidence before me established that there were exceptional circumstances warranting the requested adjournment.
- [19] Furtado has established a sound and compelling evidentiary basis for the requested adjournment. Although the Specialist did not appear before me, Staff did not contest his expertise. The Specialist's report persuaded me that Furtado required time to be able to prepare for and participate in the merits hearing meaningfully.
- [20] The Specialist's resume indicated that he is a qualified medical practitioner in Ontario with a specialty in psychiatry. He has an active clinical practice in that discipline in addition to a variety of academic, research and leadership roles. The Specialist has had experience evaluating adult patients of all ages and

determining their capacity to competently carry out specific tasks, including the ability to participate in legal proceedings and instruct counsel. The Specialist has also submitted numerous expert reports on mental capacity and testified on such matters. The Specialist submitted that courts in Ontario and Alberta have accepted the Specialist as a medical expert in psychiatry.

- [21] In his report, the Specialist acknowledged his duty to provide an opinion that is fair, objective, and nonpartisan and that this duty prevails over any obligation he owed to Furtado, who had engaged him.
- [22] The Specialist concluded that Furtado is experiencing impairments that may allow him to instruct counsel on specific key issues but would result in him being overwhelmed and unable to instruct counsel when integrating substantial amounts of information and reasoning through problems. Also, the Specialist concluded that while Furtado can attend the proceedings, his participation will be limited due to the same impairments.
- [23] In terms of the prognosis, the Specialist concluded that Furtado requires further examination and testing and that he requires six months or more to be “clarified and to stabilize.”
- [24] The fact that this is Furtado’s third request for an adjournment does not weigh against granting the relief he seeks. Furtado sought the first adjournment well before the merits hearing, which allowed him time to receive treatment from a psychiatrist and would have resulted in the hearing concluding shortly after the originally scheduled dates.⁶ The panel, considering the second adjournment, concluded that the lack of direct evidence from the psychiatrist who had treated Furtado for three months meant Furtado had failed to establish that there were exceptional circumstances in that instance.⁷ Furtado submitted that, when issues arose with the psychiatrist he was seeing, there was insufficient time to arrange for a referral to another psychiatrist or to arrange an independent medical examination before bringing the second adjournment motion; he therefore, filed the information he had available to him at the time.

⁶ *Go-To Developments Adjournment Motion #1* at para 34

⁷ *Go-To Developments Adjournment Motion #2* at para 26

- [25] The allegations against Furtado are serious and he may be the only responding witness. Procedural fairness dictates that, in these circumstances, the merits hearing be adjourned to give Furtado the opportunity to prepare and participate meaningfully in the merits hearing.
- [26] I conclude that exceptional circumstances exist in this instance to warrant a delay to the start of the merits hearing to July 8, 2024 and continue for, at the parties' request, fifteen days until July 26, 2024.
- [27] I now turn to Furtado's request that the Specialist's entire report remain confidential.

5. CONFIDENTIALITY REQUEST

5.1 Law with respect to confidential records

- [28] Rule 22(4) provides that a panel may order that part of an adjudicative record remain confidential if it determines that avoiding disclosure of intimate financial or personal matters or other matters outweighs adherence to the principle that adjudicative records should be open to the public. The test for determining whether portions of the adjudicative record should remain confidential is the same as determining if a hearing should be held in confidence.
- [29] The Tribunal's *Practice Guideline* states that personal information relevant to the resolution of the matter is generally not treated as confidential.
- [30] Court and Tribunal proceedings are presumptively open to the public. The constitutional guarantee of freedom of expression protects court openness. The test for discretionary limits on court openness, set by the Supreme Court of Canada in *Sherman Estate v Donovan*⁸ is directed at maintaining the presumption while offering sufficient flexibility to protect other public interests that may arise.⁹
- [31] Given the fundamental nature of the open justice principle, there's a high threshold for a confidentiality order. The Tribunal has adopted the following requirements for confidentiality orders:

⁸ 2021 SCC 25 (*Sherman Estate*)

⁹ *Sherman Estate* at para 30

- a. court openness poses a serious risk to an important public interest;
- b. the order sought is necessary to prevent the serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- c. as a matter of proportionality, the benefit of the order outweighs its negative effects.¹⁰

[32] Protection of privacy may be an “important public interest” where the information at issue reveals core aspects of a person’s life, disclosure of which would result in an affront to their dignity.¹¹

[33] To overcome the presumption of openness, the onus is on Furtado to establish that there is a serious risk that, without a confidentiality order, he will suffer “an affront to his dignity” by the disclosure of his intimate personal matters during the hearing.¹²

[34] I now turn to the parties’ positions and my analysis.

5.2 Parties’ positions and my analysis

[35] Furtado requested that Dr. Sadavoy’s entire report, including his resume attached to the report as an exhibit, remain confidential as it contained personal information about Furtado and others that went to their personal dignity. Furtado indicated that he had reached an agreement with Staff to this effect.

[36] I asked Furtado why certain sections of the Specialist’s report that did not contain his personal information should remain confidential. Those sections included the questions posed to the Specialist, his conflict assessment, his authority for the report, his acknowledgement of the expert’s duty, his credentials, and his resume.

[37] Furtado submitted that he had not given any thought to these sections, given the agreement with Staff for the Specialist’s report to remain confidential, but that he did not have any concerns with those sections being public.

¹⁰ *Sherman Estate* at para 38, *Odorico (Re)*, 2023 ONCMT 10 at para 36 (**Odorico**) at para 36

¹¹ *Sherman Estate* at paras 32-35, *Odorico* at paras 37-38

¹² *Odorico* at para 37, referring to *Sherman Estate*

- [38] Staff submitted that it had agreed that the physical report from Dr. Sadavoy not be available to the public. Staff agreed that there was no reason the sections I referred Furtado to in the report should not be public. Staff submitted, however, that even though the Specialist's report itself is not available publicly, it does not mean that I cannot or should not refer to the details that I think are important in my reasons for decision.
- [39] Referring to the test established in *Sherman Estate*,¹³ and demonstrated in the recent Tribunal cases in *Ali (Re)*¹⁴ and *Odorico (Re)*, Staff submitted that in balancing the need for public transparency against individual privacy interests, it is important that the reasons for decision be very clear and detailed so all interested parties can understand the basis for what remains confidential and what is public. Staff submitted that while the substance of the Specialist's report may remain confidential, I should refer to some of the details in the report so that the public can understand the basis for my decision.
- [40] The Receiver confirmed that it was not taking a position about whether or to what extent the Specialist's report should remain confidential. As a matter of law, however, the Receiver submitted that *Sherman Estate* should be interpreted to require as minimally invasive redaction as possible to protect the privacy concerns. The Receiver submitted that the stakeholders in the receivership proceeding will be interested and have a right to know beyond what *Sherman Estate* properly redacts from the Specialist's report.
- [41] Recent Tribunal decisions, including two earlier *Go-To Developments Holdings Inc.* decisions,¹⁵ have concluded that the appropriate balance between the public interest in preserving a respondent's dignity and the public interest in open hearings is achieved by redacting language from documents that deals with specific symptoms, diagnosis and treatment, the public disclosure of which could reasonably be considered to result in an affront to his dignity.¹⁶ I agree.

¹³ *Sherman Estate* at para 38

¹⁴ 2023 ONCMT 30 (*Ali*)

¹⁵ *Go-To Developments Adjournment Motion #1* at para 52; *Go-To Developments Adjournment Motion #2* at para 54.

¹⁶ *Sherman Estate* at para 30; *Odorico* at paras 40-43; *Ali* at para 51.

[42] Applying that balance to the Specialist's report, I conclude that in addition to the sections referred to in paragraph 36 of a general nature, additional portions of the Specialist's report that do not disclose Furtado's specific symptoms, diagnosis and treatment but give context to the doctor's assessment, including the conclusions reached, remain public.

6. CONCLUSION

[43] For the reasons above, I adjourned the merits hearing to July 8, 2024. The hearing will continue for 15 days until July 26. I also set new dates for the exchange of materials by the parties, for Furtado to deliver a new and amended witness summary and for a final interlocutory attendance before the merits hearing.¹⁷

[44] I also concluded that portions of the Specialist's report should be redacted as indicated in Schedule A to these reasons.

Dated at Toronto this 15th day of January, 2024

"M. Cecilia Williams"

M. Cecilia Williams

¹⁷ (2023), 46 OSCB 8653

Schedule A

List of Redactions to the report of Dr. J. Sadavoy dated October 14, 2023

- Page 2, under "Materials reviewed":
 - o Item 3;
 - o Item 4;
 - o In Item 5, the words following "Shroff";
 - o Item 6;
 - o In Item 8, the words following "Henry";
 - o In Item 9a, the words following "Physician)";
 - o In Item 9b, the words following "Dentist)";
 - o In Item 12, the words after "from" to the hyphen;
- Page 3, continuing under the heading "Materials reviewed":
 - o In Item 14, the words after Furtado to the start of the words in parentheses;
 - o In Item 16, the words from the start of the sentence to the word "Complete";
- Page 4
 - o Under "Identifying data" the words after "Furtado was" to the end of the sentence; and in the third sentence the words after "married" to the end of the sentence;
 - o Under "Education and occupation" in the second paragraph, the last two sentences;
 - o Under "Health practitioners" the name at the start of the second bullet point;
- Page 5, under "Physical health":
 - o In the third sentence, the words following "symptoms" to "leading";
 - o The fourth sentence;
 - o In the sixth sentence, the words following "investigated for" to the end of sentence;
 - o The seventh sentence;

- Page 5 under "Recent Psychiatric History", the entire section after the first sentence;
- Pages 6, 7, 8, 9, 10, 11 and 12 – all the content on these pages;
- Page 13 all the content up to the title "Conclusions";
- Page 13, under "Conclusions":
 - o Under "Summary":
 - In the second sentence, the words after "began," to the end of the sentence;
 - In the fourth sentence, the words after "success" to the end of the sentence;
 - The last two words on page 13
- Page 14, continuing under the heading "Summary":
 - o The words from the start of the page to the end of the first sentence;
 - o The words following "notably, his" to "became disrupted";
 - o The last sentence;
- Page 14, under "Analysis of Diagnostic Picture":
 - o The first two paragraphs;
 - o In the third paragraph, the words after "contributors to" to "aspects";
 - o The fourth and fifth paragraphs;
- Page 15, the first three lines at the start of the page;
- Page 15, under "Opinion":
 - o Under "1.":
 - the words following "impaired in key" to "which disrupt";
 - the words following "limited because of" to "and associated";
 - o Under "2. Prognosis":
 - in the second sentence, the words following "worked up for his" to the end of the sentence;

- the lines following “complete effectively” in the fifth sentence to “Taking all these”;
- the words following “if his” to “proves to be”;
- the words following “related to any” to “problem, this”.