

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N :

ONTARIO SECURITIES COMMISSION

Applicant

- and -

GO-TO DEVELOPMENTS HOLDINGS INC., OSCAR FURTADO, FURTADO HOLDINGS INC., 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 INC., 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

Respondents

**APPLICATION UNDER
Sections 126 and 129 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended**

**NOTICE OF MOTION
(returnable June 18, 2024)**

KSV Restructuring Inc. (“KSV”), in its capacity as the Court-appointed receiver and manager (in such capacity, the “Receiver”), without security, of the real property listed on Schedule “A” hereto (the “Real Property”) and all the other assets, undertakings and properties of each of the parties listed on Schedule “B” hereto (the “Receivership Respondents”), including all the assets held in trust or required to be held in trust by or for any of the Receivership Respondents, or by their lawyers, agents and/or any other person, and all proceeds thereof (collectively together with the Real Property, the “Property”), will make a motion to a

Judge of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on Tuesday, June 18, 2024 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- in writing under subrule 37.12.1 (1);
- in writing as an opposed motion under subrule 37.12.1 (4);
- in person;
- by telephone conference;
- by video conference.

THE MOTION IS FOR:

1. an Order, substantially in the form attached as Schedule “C” hereto, upholding the Receiver’s disallowance of the claims originally filed by Capital Build Construction Management Corp. (“**Capital Build**”) (and subsequently assigned in Capital Build’s bankruptcy proceedings to Dickinson Wright LLP (“**Dickinson Wright**”)) against the Receivership Respondents known as Go-To Niagara Falls Chippawa LP and Go-To Niagara Falls Chippawa Inc. (jointly, “**Go-To Chippawa**”); and
2. such further and other relief as counsel may advise and this Court may permit.

THE GROUNDS FOR THE MOTION ARE:

- (a) the Receivership Respondents were developers of nine residential real estate projects in Ontario, and Mr. Oscar Furtado was the Receivership Respondents’ founder and directing mind;¹
- (b) between 2016 and 2020, Mr. Furtado and the Receivership Respondents raised approximately \$80 million from Ontario investors for these nine real estate projects by selling limited partnership units;²

¹ Endorsement of The Honourable Mr. Justice Pattillo (the “**Pattillo Endorsement**”), at para. 8.

² Pattillo Endorsement, *supra*, at para. 8.

- (c) Capital Build acted as project manager and construction manager on four of these projects,³ and guaranteed mortgages that were granted on some of the underlying real property;⁴
- (d) Messrs. Michael Smith and Frank Servello were Capital Build’s principals;⁵
- (e) on April 21, 2017, Go-To Chippawa purchased two parcels of land in Niagara Falls, Ontario (jointly, the “**Chippawa Properties**”) for an aggregate purchase price of \$3 million from an entity named 2557815 Ontario Inc. (“**255**”). 255 had purchased the same Chippawa Properties earlier that day for \$1.2 million, yielding a same-day “lift” in value of \$1.8 million;⁶
- (f) on June 22, 2017, another pair of Receivership Respondents, Go-To Niagara Falls Eagle Valley LP and Go-To Niagara Falls Eagle Valley Inc. (jointly, “**Go-To Eagle Valley**”), purchased additional land in Niagara Falls, Ontario (the “**Eagle Valley Property**”) from 255 for a purchase price of \$5.1 million. 255 had purchased the same Eagle Valley Property earlier that day for \$3.7 million, yielding a same-day “lift” in value of \$1.4 million;⁷
- (g) Capital Build and its principals (through companies of which they are the sole registered directors) received approximately \$1.1 million as a result of the foregoing “lift” transactions (collectively, the “**Flip Transactions**”), including, without limitation, approximately \$964,000 as a result of the Flip Transactions pertaining to the Chippawa Properties;⁸
- (h) on December 10, 2021, upon application by the Ontario Securities Commission (the “**Commission**”) pursuant to the *Securities Act* (Ontario), KSV was appointed Receiver over the Property of all the Receivership Respondents by Order of this Court (the “**Receivership Order**”);

³ Second Report of the Receiver dated February 3, 2022 (the “**Second Report**”), s. 5.0.

⁴ Fifth Report of the Receiver dated August 12, 2022 (the “**Fifth Report**”), ss. 4.2 and 7.4.

⁵ Sixth Report of the Receiver dated November 14, 2022 (the “**Sixth Report**”), s. 8.0.

⁶ Sixth Report, *supra*.

⁷ Sixth Report, *supra*.

⁸ Sixth Report, *supra*.

- (i) in granting the Commission’s application, this Court was satisfied that “*it is in the best interest of the investors in the Go-To projects that a receiver be appointed to ensure that the Go-To projects are managed in a proper fashion to protect the investors’ investments;*”⁹
- (j) Mr. Furtado unsuccessfully attempted to appeal (and stay) the Receivership Order at both appellate levels, as follows:¹⁰
- (i) on December 29, 2021, the Court of Appeal for Ontario (the “**Court of Appeal**”) dismissed Mr. Furtado’s motion to stay the Receivership Order pending an appeal of the granting of the Receivership Order (the “**Appeal**”);
- (ii) on April 28, 2022, the Court of Appeal dismissed the Appeal; and
- (iii) on June 27, 2022, Mr. Furtado filed a Notice of Application seeking leave to appeal the Court of Appeal’s dismissal of the Appeal to the Supreme Court of Canada, which leave application the Supreme Court of Canada dismissed on February 16, 2023;
- (k) on April 7, 2022, this Court approved a claims procedure (the “**Claims Procedure**”), pursuant to which the Receiver is authorized, directed and empowered to call for, assess and determine claims against the Receivership Respondents;
- (l) on May 31, 2022, Capital Build filed proofs of claim under the Claims Procedure against Go-To Chippawa totalling approximately \$324,000 (the “**Subject Claims**”);
- (m) the Subject Claims filed by Capital Build are alleged to be secured (claimed to total \$300,803.64) and unsecured with a priority right (claimed to total \$22,692.66);

⁹ Pattillo Endorsement, *supra*, at para. 22.

¹⁰ Seventh Report of the Receiver dated June 6, 2023 (the “**Seventh Report**”), s. 1.0.

- (n) the Subject Claims filed by Capital Build are in respect of:
- (i) services that were to have been provided by a different company, Capital Build Chippawa Holdings Inc. (“**Capital Build Chippawa**”), to Go-To Chippawa in consideration for project management and construction management fees of \$12,500 per month from November 2020 to November 2021 (claimed to total \$169,500, including taxes); and
 - (ii) expenses alleged to have been incurred by Go-To Chippawa and paid for by Capital Build and/or its affiliates (including, without limitation, Capital Build Chippawa) on Go-To Chippawa’s behalf (claimed to total \$154,023.30);¹¹
- (o) on October 4, 2022, Capital Build was deemed to have made an assignment in bankruptcy, and Goldhar Associates Ltd. was appointed its licensed insolvency trustee (in such capacity, “**Goldhar**”);
- (p) on October 31, 2022, the Receiver issued the requisite notice under the Claims Procedure to Goldhar, disallowing Capital Build’s claims against Go-To Chippawa in full (the “**Capital Build Disallowance Notice**”);¹²
- (q) the Receiver’s reasons for disallowing the Subject Claims are described in the Capital Build Disallowance Notice, which include, most notably (but without limitation): (1) the Subject Claims being precluded by the governing contract between the relevant parties; (2) the Subject Claims not belonging to Capital Build; (3) the Subject Claims being barred by the *Limitations Act* (Ontario) (the “**Limitations Act**”); (4) the Subject Claims not constituting secured or priority amounts; and (5) the Subject Claims being offset by the Receiver’s claims in Capital Build’s bankruptcy proceeding in connection with the Flip Transactions (which Receiver’s claims are addressed later in this notice of motion);

¹¹ Sixth Report, *supra*, at Appendix “I” thereto.

¹² Sixth Report, *supra*, s. 5.5.

- (r) on November 14, 2022, Goldhar issued the requisite notice under the Claims Procedure disputing the Receiver’s disallowance of the Subject Claims (the “**First Dispute Notice**”);¹³
- (s) in the Receiver’s view, the First Dispute Notice does not adequately respond to the concerns raised in the Capital Build Disallowance Notice, and does not identify any valid reason to allow any of the Subject Claims against Go-To Chippawa;
- (t) on March 20, 2023:
 - (i) Goldhar advised it would no longer contest the Capital Build Disallowance Notice; and
 - (ii) Dickinson Wright (a creditor of Capital Build) advised it intended to make an application under section 38 of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) to take an assignment of the Subject Claims for the purpose of contesting the Capital Build Disallowance Notice;¹⁴
- (u) Dickinson Wright delayed bringing its section 38 application;
- (v) on June 15, 2023, the Receiver obtained an Order from this Court, which included the following paragraph:

THIS COURT ORDERS that the Capital Build Disallowance Notice be and is final and conclusive unless Dickinson Wright LLP serves its Section 38 Application (as defined in the Seventh Report) by no later than the close of business on June 30, 2023. For greater certainty, unless Dickinson Wright LLP serves its Section 38 Application by the close of business on June 30, 2023, the Receiver be and is authorized to distribute to Go-To Chippawa’s limited partners the amount currently held as a reserve for the claim[s] in respect of which the Receiver issued the Capital Build Disallowance Notice;

¹³ Seventh Report, *supra*, s. 4.0.

¹⁴ Seventh Report, *supra*, s. 7.0.

- (w) on June 29, 2023, Dickinson Wright served its Section 38 Application, which was not opposed by any stakeholder;
- (x) on September 13, 2023, Associate Justice Ilchenko refused to grant Dickinson Wright's Section 38 Application;
- (y) Dickinson Wright amended its Section 38 Application, and, on January 10, 2024, obtained the requisite section 38 order under the BIA in respect of Capital Build's Subject Claims against Go-To Chippawa (the "**Section 38 Order**");
- (z) on January 22, 2024, Dickinson Wright issued its own notice under the Claims Procedure disputing the Receiver's disallowance of the Subject Claims against Go-To Chippawa (the "**Second Dispute Notice**");
- (aa) the Second Dispute Notice is materially consistent with what the Receiver had already reviewed from the Subject Claims themselves and from Goldhar's First Dispute Notice, and the Receiver has therefore advised Dickinson Wright that the Capital Build Disallowance Notice continues to apply;
- (bb) the Receiver cannot distribute further monies to Go-To Chippawa's stakeholders until the Subject Claims totalling approximately \$324,000 filed by Capital Build and now residing with Dickinson Wright have been dealt with;
- (cc) the Receiver has filed proofs of claim in Capital Build's bankruptcy proceeding on behalf of Go-To Chippawa and Go-To Eagle Valley in the amounts of \$1.8 million and \$1.4 million, respectively, representing the damages suffered by Go-To Chippawa's and Go-To Eagle Valley's creditors and investors as a result of Capital Build having participated with others to benefit economically from the Flip Transactions;¹⁵
- (dd) based on the information provided by Goldhar, it is unlikely there will be funds available from Capital Build's estate for distribution to Capital Build's creditors;¹⁶

¹⁵ Sixth Report, *supra*.

¹⁶ Sixth Report, *supra*.

- (ee) section 126 of the Securities Act;
- (ff) section 38 of the BIA;
- (gg) the Limitations Act;
- (hh) rules 1.04, 2.03, 3.02, 37 and 41 of the *Rules of Civil Procedure* (Ontario); and
- (ii) such further and other grounds as counsel may advise and this Court may permit.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- (a) the Receiver's document brief, including, amongst other things:
 - (i) the Receivership Order and the associated Pattillo Endorsement;
 - (ii) certain previous reports and supplements thereto filed in this proceeding by the Receiver (including, without limitation, the Second Report, the Fifth Report, the Sixth Report and the Seventh Report) and certain appendices thereto;
 - (iii) the Claims Procedure, the Subject Claims, the Capital Build Disallowance Notice, the First Dispute Notice and the Second Dispute Notice;
 - (iv) Goldhar's preliminary report regarding its administration of Capital Build's bankruptcy estate dated October 21, 2022;
 - (v) the Court's Order dated June 15, 2023;
 - (vi) the endorsement of Associate Justice Ilchenko dated September 13, 2023;
 - (vii) the Section 38 Order;
 - (viii) the Receiver's aide-mémoire dated March 5, 2024;
 - (ix) the Court's endorsement dated March 7, 2024; and
 - (x) the email exchanges between counsel dated March 7-11, 2024; and
- (b) such further and other material as counsel may submit and this Court may permit.

Date: May 17, 2024

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven Graff (LSO#: 31871V)
Tel: 416.865.7726
Email: sgraff@airdberlis.com

Ian Aversa (LSO#: 55449N)
Tel: 416.865.3082
Email: iaversa@airdberlis.com

Jeremy Nemers (LSO#: 66410Q)
Tel: 416.865.7724
Email: jnemers@airdberlis.com

Lawyers for the Receiver

TO: SERVICE LIST

Schedule "A"
REAL PROPERTY

1. 527 Glendale Avenue
St. Catharines, ON
PIN: 46415-0949
2. 185 Major MacKenzie Drive East
Richmond Hill, ON
PIN: 03139-0047
3. 197 Major MacKenzie Drive East
Richmond Hill, ON
PIN: 03139-0049
4. 209 Major MacKenzie Drive East
Richmond Hill, ON
PIN: 03139-0051
5. 191 Major MacKenzie Drive East
Richmond Hill, ON
PIN: 03139-0048
6. 203 Major MacKenzie Drive East
Richmond Hill, ON
PIN: 03139-0050
7. 215 Major MacKenzie Drive East
Richmond Hill, ON
PIN: 03139-0052
8. 4210 Lyons Creek Road
Niagara Falls, ON
PIN: 64258-0110
9. 4248 Lyons Creek Road
Niagara Falls, ON
PIN: 64258-0713
10. 2334 St. Paul Avenue
Niagara Falls, ON
PIN: 64269-0559
11. 355 Adelaide Street West
Toronto, ON
PIN: 21412-0150

12. 46 Charlotte Street
Toronto, ON
PIN: 21412-0151

13. Highland Road
Hamilton, ON
PIN: 17376-0025

14. Upper Centennial Parkway
Hamilton, ON
PIN: 17376-0111

15. 19 Beard Place
St. Catharines, ON
PIN: 46265-0022

16. 7386 Islington Avenue
Vaughan, ON
PIN: 03222-0909

17. 4951 Aurora Road
Stouffville, ON
PIN: 03691-0193

**Schedule “B”
RECEIVERSHIP RESPONDENTS**

1. GO-TO DEVELOPMENTS HOLDINGS INC.
2. FURTADO HOLDINGS INC.
3. GO-TO DEVELOPMENTS ACQUISITIONS INC.
4. GO-TO GLENDALE AVENUE INC.
5. GO-TO GLENDALE AVENUE LP
6. GO-TO MAJOR MACKENZIE SOUTH BLOCK INC.
7. GO-TO MAJOR MACKENZIE SOUTH BLOCK LP
8. GO-TO MAJOR MACKENZIE SOUTH BLOCK II INC.
9. GO-TO MAJOR MACKENZIE SOUTH BLOCK II LP
10. GO-TO NIAGARA FALLS CHIPPAWA INC.
11. GO-TO NIAGARA FALLS CHIPPAWA LP
12. GO-TO NIAGARA FALLS EAGLE VALLEY INC.
13. GO-TO NIAGARA FALLS EAGLE VALLEY LP
14. GO-TO SPADINA ADELAIDE SQUARE INC.
15. GO-TO SPADINA ADELAIDE SQUARE LP
16. GO-TO STONEY CREEK ELFRIDA INC.
17. GO-TO STONEY CREEK ELFRIDA LP
18. GO-TO ST. CATHARINES BEARD INC.
19. GO-TO ST. CATHARINES BEARD LP
20. GO-TO VAUGHAN ISLINGTON AVENUE INC.
21. GO-TO VAUGHAN ISLINGTON AVENUE LP
22. AURORA ROAD LIMITED PARTNERSHIP
23. 2506039 ONTARIO LIMITED

Schedule "C"
FORM OF ORDER BEING SOUGHT

Court File No. CV-21-00673521-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE)	TUESDAY, THE 18TH
)	
)	
JUSTICE)	DAY OF MAY, 2024

B E T W E E N :

ONTARIO SECURITIES COMMISSION

Applicant

- and -

GO-TO DEVELOPMENTS HOLDINGS INC., OSCAR FURTADO, FURTADO HOLDINGS INC., 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 INC., 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

Respondents

APPLICATION UNDER
Sections 126 and 129 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended

ORDER
(Chippawa Disallowance Matter)

THIS MOTION, made by KSV Restructuring Inc. (“**KSV**”), in its capacity as the Court-appointed receiver and manager in this proceeding (in such capacity, the “**Receiver**”), for an order upholding the Receiver’s disallowance of the claims filed by Capital Build Construction Management Corp. (“**Capital Build**”), and subsequently assigned to Dickinson Wright LLP (“**Dickinson Wright**”) pursuant to a section 38 order made in Capital Build’s bankruptcy proceedings, against Go-To Niagara Falls Chippawa LP and Go-To Niagara Falls Chippawa Inc. (jointly, “**Go-To Chippawa**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the claims, the Receiver’s disallowance thereof, Dickinson Wright’s dispute thereof and the facts of the Receiver and Dickinson Wright, and on hearing the submissions of counsel for the Receiver, Dickinson Wright and such other counsel as were present, no one appearing for any other person on the Service List, as appears from the affidavit of service, filed,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion of the Receiver is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the Receiver’s disallowance of the claim filed by Capital Build against Go-To Chippawa in this receivership proceeding be and is hereby upheld, such that, for greater certainty, none of Capital Build, its bankruptcy trustee, Dickinson Wright and any of Capital Build’s other creditors has any claim against Go-To Chippawa.
3. **THIS COURT ORDERS** costs against Dickinson Wright in the amount of \$_____ which are payable to the Receiver forthwith.
4. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.
5. **THIS COURT HEREBY REQUESTS** the aid and recognition of any other Canadian and foreign court, tribunal, regulatory or administrative body (“**Judicial Bodies**”) to give effect to this Order and to assist the Receiver and its respective agents in carrying out the terms of this Order. All Judicial Bodies are hereby respectfully requested to make such orders and to provide

such assistance to the Receiver as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its respective agents in carrying out the terms of this Order.

6. **THIS COURT ORDERS** that this Order is effective from today's date and is enforceable without the need for entry or filing.

ONTARIO SECURITIES COMMISSION

- and - **GO-TO DEVELOPMENTS HOLDINGS INC., et al.**

Applicant

Respondents

CV-21-00673521-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

**NOTICE OF MOTION
(returnable on June 18, 2024)**

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven Graff (LSO#: 31871V)

Tel: 416.865.7726

Email: sgraff@airdberlis.com

Ian Aversa (LSO#: 55449N)

Tel: 416.865.3082

Email: iaversa@airdberlis.com

Jeremy Nemers (LSO# 66410Q)

Tel: 416.865.7724

Email: jnemers@airdberlis.com

Lawyers for the Receiver