Court File No. CV-23-00710745-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

GO-TO SPADINA ADELAIDE SQUARE INC. and GO-TO SPADINA ADELAIDE SQUARE LP, each by its Receiver, KSV RESTRUCTURING INC.

Plaintiffs

and

ADELAIDE SQUARE DEVELOPMENTS INC., ALFREDO ITALO MALANCA a.k.a ALFREDO PALMERI, OSCAR FURTADO, GOLDMOUNT FINANCIAL GROUP CORPORATION, CONCORDE LAW PROFESSIONAL CORPORATION, LOUIS RAFFAGHELLO, MONTANA MANAGEMENT INC., AKM HOLDINGS CORP. and KATARZYNA PIKULA

Defendants

PLEADINGS BRIEF

Updated May 7, 2024

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Court File No.

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(Court Seal)

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Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO

DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date ______________________ Issued by ______________________________________
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue, 9th Floor
Toronto ON M5G 1R7

TO: ADELAIDE SQUARE DEVELOPMENTS INC.
21 Tynevale Drive
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AND TO: ALFREDO ITALO MALANCA a.k.a. ALFREDO PALMERI
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AND TO: KATARZYNA PIKULA
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CLAIM

1. The plaintiffs, Go-To Spadina Adelaide Square Inc. ("**Go-To Adelaide GP**") and Go-To Spadina Adelaide Square LP ("**Go-To Adelaide LP**" and, together with Go-To Adelaide GP, "**Go-To Adelaide**" or the "**Plaintiffs**"), each by its Court-appointed Receiver (defined below), claim as against the defendants, jointly and severally:

   (a) damages in the amount of $15,300,000 on account of funds paid during the course of the Scheme (defined below);

   (b) further damages in an amount to be particularized before trial, for damages, lost profits and lost opportunity with respect to the Adelaide Project (defined below), which was unable to proceed through the real estate development process as a result of the defendants' actions;

   (c) punitive damages in the amount of $1,000,000;

   (d) a declaration that Go-To Adelaide GP is a "complainant" for the purposes of advancing a claim under section 248 of the *Business Corporations Act*, R.S.O. 1990, c. B.16 (the "**OBCA**");

   (e) relief pursuant to section 248 of the OBCA that this Honourable Court deems fit;

   (f) orders for restitution, an accounting and disgorgement of all assets, properties and funds belonging to the Plaintiffs and improperly diverted by or to any of the defendants or any person, corporation or other entity on such defendant's behalf;

   (g) a declaration that the Plaintiffs are entitled to trace the assets, properties and funds of the Plaintiffs into the hands of any of the defendants, and a declaration that such

defendants hold those assets, properties and funds as constructive trustee for the Plaintiffs;

(h) a constructive trust and tracing or following order in respect of all assets, properties and funds belonging to the Plaintiffs and improperly diverted by or to any of the defendants or any person, corporation or entity on such defendant's behalf, and in respect of all the traceable products thereof;

(i) prejudgment and post-judgment interest accordance with sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(j) costs of this proceeding; and

(k) such further and other relief as this Honourable Court may deem just.

A. OVERVIEW OF THE CLAIM

2. In or around late-2018/early-2019, all of the defendants organized, participated in and/or profited from a scheme that defrauded the Plaintiffs and their investors of at least $15,300,000 (the "**Scheme**"). A breakdown of the amounts received by each of the defendants is set out below. The Plaintiffs claim the full amount of the Claim against each of the defendants, jointly and severally, based on their participation and roles in the Scheme.

B. THE PARTIES

(i) The Plaintiffs

3. The Plaintiff, Go-To Adelaide LP, is an Ontario limited partnership.

4. The Plaintiff, Go-To Adelaide GP, is an Ontario corporation. Its sole officer and director is the defendant, Oscar Furtado ("**Furtado**"). Go-To Adelaide GP is the general partner of Go-To Adelaide LP.

5. On December 10, 2021, on the application of the Ontario Securities Commission (the "**OSC**"), the Honourable Mr. Justice Pattillo of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") appointed KSV Restructuring Inc. ("**KSV**") as receiver and manager (in such capacity, the "**Receiver**") of the assets, undertakings and properties of the Plaintiffs, along with other entities (together with the Plaintiffs, "**Go-To**") and certain real property, pursuant to section 129 of the *Securities Act*, R.S.O. 1990, c. S.5.

(ii) The Defendants

6. Furtado is an individual living in Oakville, Ontario. Furtado is the founder and directing mind of Go-To Adelaide, as well as the other Go-To companies and partnerships. He is the sole officer and director of, without limitation, each of Go-To Adelaide GP and Go-To Development Holdings Inc. ("**GTDH**"), an Ontario corporation which is the parent company within the Go-To group of companies and partnerships (the "**Go-To Group**").

7. The defendant, Alfredo Italo Malanca (a.k.a. Alfredo Palmeri) ("**Malanca**") is an individual living in Palgrave, Ontario. Malanca is the directing mind of certain of the defendants, including Goldmount Financial Group Corporation ("**Goldmount**") and Adelaide Square Developments Inc. ("**ASD**"). At certain times with respect to the transactions and events described below, Malanca used the alias "Alfredo Palmeri".

8. The defendant, Goldmount, is an Ontario corporation. Malanca is its sole officer and director.

9. The defendant, ASD, is an Ontario corporation. The sole registered director of ASD is an individual named Angelo Pucci. However, Malanca controlled ASD at all material times.

10. Katarzyna Pikula (“**Pikula**”) is Malanca’s wife.

11. The defendant, AKM Holdings Corp. (“**AKM**”), is an Ontario company. Pikula is its sole officer and director.

12. The defendant, Louis Raffaghello (“**Raffaghello**”), is a licensed Ontario lawyer.

13. The defendant, Concorde Law Professional Corporation (“**Concorde**”), is an Ontario corporation. Raffaghello is one of Concorde’s two officers and directors.

14. The defendant, Montana Management Inc. (“**MMI**”), is an Ontario corporation. Raffaghello is its sole officer and director.

C. THE GO-TO PROJECTS, GO-TO ADELAIDE AND INITIAL INVESTMENTS

15. Between 2016 and 2020, Furtado and GTDH solicited investments from over 80 investors with respect to nine real estate projects in the Greater Toronto Area (“**GTA**”).

16. For eight of the nine projects, including, without limitation, the Adelaide Project, Furtado and GTDH set up eight corresponding limited partnerships and eight corresponding wholly-owned subsidiary corporations of GTDH, each of which would serve as a general partner of the limited partnership. This structure was also repeated for the ninth project, except that it featured two limited partnerships and two corresponding general partner subsidiary corporations.

17. This Claim concerns a real estate project involving two real properties located at the intersection of Adelaide Street West and Charlotte Street in Toronto (the “**Adelaide Project**”).

18. For the Adelaide Project, Furtado set up the Plaintiffs, Go-To Adelaide LP and Go-To Adelaide GP, in or around October 2018. Go-To Adelaide GP is the wholly-owned GTDH subsidiary which acted as the general partner of Go-To Adelaide LP.

19. Go-To Adelaide LP is governed by a limited partnership agreement dated April 4, 2019 (the "**LP Agreement**"). The business of Go-To Adelaide LP, as set out in the LP Agreement, is "purchasing, holding an interest in, conducting pre-development planning with respect to, development and construction of" the Properties (as defined below), up to obtaining site plan approval for the proposed Adelaide Project.

20. The LP Agreement provides, among other things:

(a) Section 4.1 – Distributions…

> Distributions under this section 4.1 to the Unitholders are to be made at such time or times and in such manner as the General Partner may determine as being in the best interests of the Partnership. Notwithstanding anything to the contrary herein:
>
> i. The General Partner has full and absolute discretion to delay the payment of distributions and/or the return of Capital Contributions to the Unitholders; and
>
> ii. It is acknowledged and agreed by the Partners that distributions and/or the return of Capital Contributions to the Unitholders may not occur until the completion of a future sale of the Property.

(b) Section 4.9 – Return of Capital: A Unitholder is only entitled to call for a return of its Capital Contribution upon the dissolution, winding-up or liquidation of the Partnership as provided for in Article 8.

(c) Section 5.3(h) – unitholder approval is required prior to incurring any non-arm's length broker commissions.

(d) Section 5.9 – Duties of General Partner: The General Partner shall exercise its powers and discharge its duties honestly, in good faith and in the best interests of the Partnership and shall exercise the care, diligence and skill of a reasonably prudent general partner in similar circumstances in managing the business, affairs and assets of the Partnership.

(e) Section 5.12 – the costs of any goods or services provided by an affiliated company/entity must be reasonable and competitive with the cost of similar goods and services if they were provided by a third-party.

(f) Sections 7.1 and 7.2 – Audited financial statements would be distributed to the Unitholders each year and unaudited quarterly financial statements would also be prepared and distributed to unitholders.

21. At all material times: (i) Furtado controlled and directed Go-To Adelaide GP, which in turn controlled and directed Go-To Adelaide LP; (ii) Malanca controlled and directed Goldmount and ASD (and, in or around April 2019, was given an email address with the Go-To entities under the alias Alfredo Palmeri and the title of Go-To's "business development manager"); (iii) Malanca's wife, Pikula, controlled and directed AKM; and (iv) Raffaghello controlled and directed MMI and was one of only two law partners at Concorde.

22. The LP Agreement permits Go-To Adelaide GP to be reimbursed for reasonable expenses and to provide services to the Go-To Adelaide LP, as long as the services are provided at reasonable and competitive costs, as compared to third parties.

23. The LP Agreement also requires Go-To Adelaide GP, and by extension its directors, officers and controlling minds, to act prudently, reasonably, honestly, in good faith and in the best interests of the limited partnership.

24. Under Go-To Adelaide's LP Agreement, investors would be paid returns on their investments, pro-rata, after all investors had received a return of their capital. No investor could require a return of their capital contributions until the sale, dissolution, winding up or liquidation of Go-To Adelaide LP and doing so was specifically precluded by section 4.1 of the LP Agreement.

D. THE GO-TO ADELAIDE PROPERTIES

(i) The Purchase of the Properties

25. The Adelaide Project involves two properties (the "**Properties**"):

(a) 355 Adelaide Street West, Toronto ("**355 Adelaide**"); and

(b) 46 Charlotte Street, Toronto ("**46 Charlotte**").

26. Prior to the events at issue in this proceeding, 355 Adelaide was owned by 1708305 Ontario Inc. ("**170**") and 46 Charlotte was owned by Fortress Charlotte 2014 Inc. ("**Fortress Charlotte**").

355 Adelaide

27. The defendant, AKM, entered into an agreement of purchase and sale dated February 14, 2018 to buy 355 Adelaide from 170, in trust for a new corporation to be named (the "**Original 355 Adelaide APS**"), which, as set out below, eventually became ASD. The purchase price at that time was $34 million.

28. The Original 355 Adelaide APS required that an initial deposit of $1 million be paid by the purchaser.

29. Malanca (including, without limitation, through the defendant Goldmount), and Furtado (in contemplation of the eventual incorporation of Go-To Adelaide GP and the eventual creation of

Go-To Adelaide LP), jointly marketed the Properties to potential investors of the Go-To Group, soliciting investment on the basis of a closing date of July 31, 2018 for 355 Adelaide, without making full and frank disclosure that ASD (and not a Go-To entity) was the purchaser of 355 Adelaide, the relationship between ASD and Malanca and that none of the Go-To entities had any interest in the Properties at the time.

30. ASD was incorporated on or about July 30, 2018.

31. The closing of the acquisition of 355 Adelaide did not occur on July 31, 2018, as was scheduled.

32. On or about February 25, 2019, 170 and ASD entered into an amended agreement of purchase and sale for the purchase of 355 Adelaide (the "**Amended 355 Adelaide APS**"). In the Amended 355 Adelaide APS: (i) ASD was listed as the purchaser instead of AKM; (ii) the purchase price was increased to $36 million; and (iii) the closing date was extended to March 26, 2019. The purchase price was later increased again to $36.8 million, in exchange for a further extension of the closing date, this time from March 26, 2019 to April 4, 2019.

46 Charlotte

33. Quantum Capital Developments Inc. ("**Quantum**") entered into an agreement of purchase and sale dated March 28, 2019 to purchase 46 Charlotte from Fortress Charlotte, in trust for a new corporation to be named (the "**46 Charlotte APS**"). The purchase price was $16.5 million (inclusive of a deposit of $150,000).

34. By way of an assignment agreement dated March 28, 2019, Quantum assigned its interest in the 46 Charlotte APS to ASD.

(ii) The Assignments to Go-To Adelaide LP

35. In March/April 2019, Go-To Adelaide LP and ASD entered into the following agreements with respect to the Properties:

(a) an assignment agreement dated March 26, 2019 pursuant to which ASD assigned its interest as purchaser in the Amended 355 Adelaide APS to Go-To Adelaide LP for $2;

(b) an assignment agreement dated March 29, 2019 pursuant to which ASD assigned its interest as purchaser in the 46 Charlotte APS to Go-To Adelaide LP "in consideration of the [p]roperty and of other good and valuable consideration"; and

(c) a separate assignment fee agreement, also dated March 29, 2019, pursuant to which Go-To Adelaide LP agreed to pay ASD $20.95 million (the "**Assignment Fee**") in exchange for receiving the assignment of ASD's interest in the 46 Charlotte APS.

36. On April 3, 2019, Furtado caused the Plaintiffs to irrevocably authorize and direct the Plaintiffs' counsel to transfer the Assignment Fee to Concorde, in trust for ASD, which occurred on April 4, 2019.

37. The collective purchase price for the Properties under the Amended 355 Adelaide APS and the 46 Charlotte APS was $53.3 million. However, once the Assignment Fee was added, the price paid by Go-To Adelaide LP was $74.25 million. The Assignment Fee, and Go-To Adelaide LP's 'agreement' to pay it, was a critical step in the Scheme as it ultimately allowed payments to be made to Furtado, Malanca and others without disclosure to investors, potential investors and other stakeholders as required pursuant to the LP Agreement, and as further set out below.

38. In addition to the above agreements, on April 4, 2019, Go-To Adelaide and ASD entered into a so-called "**Loan Agreement**", pursuant to which ASD 'loaned' $19.8 million of the Assignment Fee back to Go-To Adelaide, as follows:

> Lender's funds to be used to reimburse the bridge equity loan received from an equity investor who deposited directly to lawyer's trust account [Raffaghello] for closing of Adelaide Project. The Lender reimbursed the funds directly to the equity investor and set up a receivable from the Borrower.

39. On or about April 5, 2019, the transfers of the Properties to the Plaintiffs from 170 and Fortress Charlotte closed and were registered on title.

E. THE FIRST MAREK INVESTMENT

40. The foregoing transactions are steps in a complicated Scheme carefully orchestrated by Furtado and Malanca to siphon investor money from the Adelaide Project to themselves, their co-conspirators and their related companies, all without any disclosure to Limited Partners and other stakeholders.

41. The following section details how Go-To Adelaide sourced the funds to acquire the Properties, and what happened to the funds not paid directly to the vendors, 170 and Fortress Charlotte, namely the Assignment fee, the series of transactions giving rise to ASD receivable, its partial repayment and the distribution of those monies to Furtado and Malanca to the detriment of their stakeholders and the demise of the Adelaide Project.

42. Between February 2019 and June 2020, Furtado raised approximately $42 million from equity investors for the Adelaide Project.

43. Among the investors in Go-To Adelaide LP was an individual named Anthony Marek, who purchased Class 336 Class A units in Go-To Adelaide LP ("**Units**") personally and through his

companies West Maroak Developments Inc. ("**West Maroak**") and North Maroak Developments Inc. (collectively with Marek, the "**Marek Investors**")

44. On March 17, 2019, in the weeks leading up to Go-To Adelaide LP's purchase of the Properties, the Marek Investors invested $16.8 million in Units. The Marek Investors paid these amounts to Go-To Adelaide LP's counsel, Torkin Manes LLP.

45. Furtado and Malanca used the Marek Investors' investment to pay the Assignment Fee to ASD which ASD then loaned back to Go-To Adelaide so that it could redeem the Marek Investors' Units. This happened over the course of 2-3 weeks and included a substantial fee paid to the Marek Investors of $2.7 million, half of which was paid to MMI. The Assignment Fee of $20,950,000 was distributed to a number of parties, as follows:

Recipient	Amount
West Maroak	**$16.8 million**, being the return of the initial Marek Investors' investment
West Maroak	**$1.35 million**, being half of the Marek Investors' promised return on their investment
MMI (Raffaghello's company)	**$1.35 million**, being the other half of the Marek Investors' return
Concorde (Raffaghello's law firm)	**$115,500**
Goldmount (Malanca's company)	**$300,000**
AKM (Pikula's company)	**$446,413**
Furtado Holdings Inc. ("**FHI**") (an Ontario corporation, now in receivership, of which Furtado is the sole officer and director)	**$388,087**
RAR Litigation Lawyers	**$200,000**
Total	**$20,950,000**

46. In addition, in or around the time the Properties were purchased, Malanca and Furtado caused Go-To Adelaide LP to pay Malanca $1,115,000, on account of the purported deposits he paid for Go-To Adelaide LP's purchase of the Properties (although, as set out below, Malanca did not actually pay these deposits). The payment of $1,115,000 was made to Concorde, which paid the funds to another of Malanca's lawyers, Murray Maltz, who distributed the funds to Malanca (or as Malanca directed).

47. The Plaintiffs deny that Malanca in fact paid the deposit amounts in the first place and put Malanca to strict proof thereof.

F. THE FAKE LOAN

48. As described above, ASD purported to loan the sum of $19.8 million to Go-To Adelaide pursuant to the Loan Agreement.

49. ASD purported to advance $19.5 million of the so-called loan to Go-To Adelaide LP by paying the sum of $19.5 million on behalf of Go-To Adelaide LP to West Maroak (or as directed by West Maroak, in the case of the $1.35 million payment to MMI) by way of a redemption of the Marek Investors' Units. The remaining $300,000 was used to pay a "referral" fee to Goldmount.

50. This payment of funds to ASD was done in order to create a loan receivable owing from Go-To Adelaide to ASD (the "**Loan Receivable**") so that Malanca and Furtado could ultimately personally benefit through their ownership interests in ASD, as discussed further below. No disclosure of the ultimate beneficiaries of this Loan Receivable was made to Go-To Adelaide LP unitholders.

51. This phase of the Scheme worked like this:

(a) Furtado and Malanca directed the actions of Go-To Adelaide and ASD;

(b) the Marek Investors invested $16.8 million in 336 Class A Units;

(c) the Marek Investors' investment was used to pay the Assignment Fee, a $20.95 million non-arm's length transaction whereby Malanca and Furtado sold a property they purchased for $53 million to Go-To Adelaide LP for $73 million, without disclosing their connections to the property or vendor and which allowed them to set up the loan receivable discussed below;

(d) one day after the Marek Investors' investment was deposited with ASD's counsel, Concorde, ASD directed Concorde to use the Marek Investors' own money, plus additional money raised from other investors, to "loan" funds to Go-To Adelaide LP, which created the Loan Receivable. The Marek Investors' investment was never actually needed to close the purchase of the Properties, and was solely to benefit self-dealing by Malanca and Furtado, as an essential initial step in the scheme. The setting up of the receivable would later allow ASD to be "repaid", with the repayments then distributed to Malanca and Furtado;

(e) using the so-called "loan proceeds", Go-To Adelaide LP redeemed the Marek Investors' Units, together with a significant return ($2.7 million). However, only half of the Marek Investors' return ($1.35 million) was paid to them and the Marek Investors ended up keeping $18.15 million. The remaining $1.35 million was paid to MMI, a company wholly controlled by Raffaghello. Raffaghello received these funds for no consideration. His involvement only served to further harm the investors and increase the Assignment Fee, for his exclusive benefit and to the detriment of all investors. He received this payment for facilitating the transaction and nothing more;

(f) the remaining $2.6 million was divided up between Furtado, Malanca and his wife's and Raffaghello's companies, while $200,000 was paid to RAR Litigation Lawyers (whose significance is discussed below); and

(g) Malanca paid himself an additional $1.15 million on account of his purported deposits to buy the Properties.

52. On or about June 29, 2021, more than two years after the date of the Loan Agreement, Furtado caused a Charge by Partnership from Go-To Adelaide in favour of ASD to be registered on title to the Properties, supposedly to secure the remaining balance of the Loan Receivable, when, in fact: (i) the executed Loan Agreement provided to Go-To Adelaide's former auditors dated April 4, 2019 did not grant any such security; and (ii) Furtado and Malanca conspired to enter into a revised version of the Loan Agreement, long after the supposed loan had been 'advanced,' to grant ASD a charge on title in exchange for no consideration.

G. REORGANIZATION OF ASD

53. On April 10, 2019, the share structure of ASD was reorganized pursuant to articles of amendment. Previously, ASD only had one class of issued shares, which had all been issued to Pucci.

54. The articles of amendment deleted/cancelled all the existing shares. In their place, four classes of common shares were created, "A" through "D". The articles of amendment permitted dividends to be paid to holders of each class of shares (A through D).

55. The result of the reorganization was that dividends could be paid on a class-by-class basis, to the benefit of one class of common shares and the exclusion of the others.

56. The existing shares, previously issued to Pucci, were cancelled.

57. On April 15, 2019, ASD issued the following shares, for nominal consideration:

(a) 11 Class A shares to FHI;

(b) 11 Class B shares to AKM;

(c) 11 Class C shares to FIM Holdings Inc., a company wholly owned and controlled by Rocco Ruso, the founder of RAR Litigation, a law firm that represented certain members of the Go-To Group (including, without limitation, Go-To Adelaide) in connection with certain litigation matters; and

(d) 67 Class D shares to Pucci.

58. At or around the same time as FHI and AKM received these shares of ASD, ASD directed its counsel, Concorde, to pay $388,087 and $446,413 to FHI and AKM, respectively, from the funds that had been advanced on or about April 5, 2019 to Concorde from the Plaintiffs, none of which was disclosed to Go-To Adelaide LP's unitholders.

H. THE SECOND MAREK INVESTMENT

59. In the summer of 2019, the Adelaide Project needed additional funding to advance its development efforts. Furtado began soliciting further investments for Go-To Adelaide.

60. In order to solicit investors, Furtado and Malanca prepared an "Investment Opportunity Deck" (the "**Investor Information**"). The Investor Information was prepared solely to market Units to potential investors. The Investor Information represented that it was prepared as an Offering Memorandum, pursuant to OSC Rule 45-501, which enabled the sale of Units to accredited investors without a prospectus.

61. Furtado made a presentation to Marek to solicit his further investment in the Plaintiffs. Having already demonstrated to Marek that investing with Go-To Adelaide would result in healthy returns, Furtado approached Marek for a further investment. Marek was provided a copy of the Investor Information as part of the presentation.

62. In that presentation, Furtado mischaracterized the $19.8 million amount, recorded by Furtado and Malanca as the Loan Receivable, as an equity investment in Go-To Adelaide made by ASD ($16.8 million) and another company, Atria Developments ($3 million).

63. However, the Investor Information did not disclose the following material information:

(a) the 355 Adelaide and 46 Charlotte properties were acquired by the Adelaide LP further to a non-arm's length related party transaction with ASD for $74.3 million;

(b) Furtado and Malanca were shareholders of ASD;

(c) Malanca was the directing mind of ASD;

(d) Furtado had caused Go-To Adelaide LP to enter into a demand loan agreement (with unfavourable economic terms) with ASD whereby the Adelaide LP promised to pay $19.8 million to ASD;

(e) Furtado and Malanca intended to use $12 million of the $13 million invested by the Marek Investors to make a payment to ASD further to the demand loan; and

(f) of the $12 million payment to ASD, $6 million would be paid, directly or indirectly, to each of Furtado and Malanca as purported dividends.

64. Furtado and Malanca intentionally did not include the foregoing material information and intentionally misstated the extent of GTDH and others' investments in Go To-Adelaide, in order

to misrepresent the partnership's true financial picture and induce the Marek Investors and others into making investments.

65. Based on Furtado's misleading presentation, including the fraudulent (or, in the alternative, negligent) characterization of the so-called Loan Receivable as equity, the Marek Investors and others agreed to invest additional funds in Go-To Adelaide.

66. On or about September 26, 2019, the Marek Investors invested $12 million in exchange for additional Units. The purpose of the Marek Investors' further investment was to fund Go-To Adelaide LP to continue developing the Properties.

67. On or about September 26, 2019, instead of using the $12 million to develop the Properties, the second Marek investment was immediately paid by Go-To Adelaide to ASD's new counsel, Schneider Ruggiero Spencer Millman LLP, who in turn paid the funds to ASD. This resulted in a reduction of the Loan Receivable (the "**Loan Repayment**").

68. As set out above, the Loan Receivable was smoke and mirrors. It was created using funds from the Marek Investors, which were paid to buy Units in Go-To Adelaide LP, but which were redirected to ASD for the exorbitant, self-dealing Assignment Fee. Those same funds were immediately repaid to the Marek Investors (via Go-To Adelaide's redemption of the Marek Investors' Units, contrary to the LP Agreement, together with a $2.7 million fee). Each step was a precursor to the Loan Repayment, which Furtado and Malanca never disclosed to investors.

69. The Loan Repayment was improper, oppressive and a breach of Furtado and Malanca's fiduciary duties and duties as directors and officers of ASD and Go-To Adelaide, as follows:

(a) as set out above, the Loan Repayment funded the payment of the dividends, which were the payoff of the Scheme. The Loan Repayment and resulting dividend were

the result of months of work by Furtado and Malanca to create a $19.8 million Loan Receivable;

(b) there was no business reason or justification for the Loan Repayment:

(i) the Loan Agreement, while illegitimate in its own regard in that it was a non-arm's length agreement entered into in breach of the LP Agreement and in furtherance of the Scheme, permitted Go-To Adelaide to withhold paying ASD any interest or principal until at least April 2023, and there was accordingly no business justification for an early repayment;

(ii) the monthly interest charged under the Loan Agreement was fixed, regardless of whether any payments resulting in a reduction of principal amounts owing under loan were made prior to April 2023;

(iii) no demand had been made under the Loan Agreement; and

(iv) the Loan Repayment rendered Go-To Adelaide LP insolvent (if not already insolvent), making it impossible to advance the development of the Properties – notwithstanding the Furtado was purportedly raising money specifically for this purpose.

I. THE LOAN REPAYMENT WAS USED TO PAY DIVIDENDS TO FHI AND AKM

70. Within days of the Loan Repayment being made, ASD directed its counsel to pay the entire $12 million to FHI and AKM, $6 million each, as dividends.

71. Of the $6 million dividend received by FHI, $2.25 million was transferred to Furtado's personal bank account.

72. On October 3, 2019, Furtado and Malanca caused Go-To Adelaide LP to make a further payment of $700,000 to ASD, as a further Loan Repayment.

J. FURTHER INVESTMENT FROM MAREK INVESTORS

73. In January, 2020, after the Defendants had taken all of the foregoing steps, the Defendants provided the Marek Investors with a progress report on the Adelaide Project. The progress report did not include any information or indication that that $12 million in dividends had been paid by ASD to FHI and AKM. Instead, the progress report focused on the status of the outstanding applications for site plan approval and zoning by-law approval.

74. On May 11, 2020, Furtado contacted the Marek Investors and explained that the Adelaide Project needed to raise $3 million to begin the next phase of the development.

75. Between May 30 and June 12, 2020, the Defendants provided additional updates to investors, including the Marek Investors, regarding the status of the Adelaide Project. Those updates explained that complications had arisen with respect to the Adelaide Project's financing and the lender was not moving forward because of the pandemic. These updates were provided to investors in order to create a sense of urgency and induce them to invest further funds into the Adelaide Project, out of fear that their previous investments would be at risk if they did not inject additional funds.

76. Prior to making an additional investment, the Marek Investors requested up-to-date financial information for Go-To Adelaide LP. Furtado provided the Marek Investors with an excerpt from the general ledger, which indicated that $624,568.04 was owing since January 1, 2020. Furtado advised that additional bills and invoices were still pending. Importantly, Furtado did not disclose the dividend payments discussed above which had already been paid out to his and Malanca's companies.

77. Based on the incomplete information provided by Furtado, the Marek Investors subscribed for an additional 20 Units, for a total purchase price of $1 million.

78. The Marek Investors made a second investment for a further 20 Units, for the same purchase price of $1 million, but the second investment was later rescinded and returned to them.

79. The Marek Investors' further $1 million investment was not returned to them and no distributions were made with respect to the investment.

K. THE SCHEME SUMMARIZED

80. The forgoing actions, orchestrated by Furtado and Malanca, to their benefit as well as the benefit of the other defendants, is the "Scheme".

81. To summarize, the Scheme and the defendants' compensation worked like this:

Date	Step	Compensation/Effect
Early 2019	Furtado and Malanca solicited investors for Go-To Adelaide	Furtado and Malanca raised $42 million for Go-To Adelaide
March/April 2019	The Marek Investors invest $16.8 million in the Adelaide Project for Units	-
March/April 2019	Furtado and Malanca paper the purchase and assignment of the Properties, including the $20.95 million Assignment Fee	-
Early April 2019	Go-To Adelaide LP buys the Properties and pays the Assignment Fee to ASD	Go-To Adelaide pays a total of $74.25 million to ASD, notwithstanding only $53.3 million was required to purchase the property from Quantum and 170
April 4, 2019	ASD and Go-To Adelaide enter in the Loan Agreement ASD "loans" Go-To Adelaide $20.95 million to, *inter alia*, redeem the Marek Investors' Units, which early	$19.8 million Loan Receivable created in favour of ASD Of the $20.95 million, the Marek Investors received $18,150,000,

	redemption was contrary to the terms of the LP Agreement	while the defendants received the following: (a) MMI - $1.35 million (b) Concorde - $115,500 (c) Goldmount - $300,000 (d) AKM - $446,413 (e) FHI - $388,087
Early-April 2019	Malanca is paid $1,115,000 which is characterized as a purported return of funds allegedly paid by Malanca for deposits for the properties	Malanca's lawyer receives $1,115,000 from Go-To Adelaide LP for facilitating the transaction
April 15, 2019	ASD is reorganized	FHI and AKM each receive 11 shares of ASD
Sept. 26, 2019	The Marek Investors invest a further $12 million	
Oct. 1, 2019	Go-To Adelaide LP makes the Loan Repayment of $12 million, using the money invested by the Marek Investors	Go-To Adelaide LP pays $12 million to ASD, bringing the Loan Receivable down to $7.8 million
Oct. 1, 2019	The dividend payments are made to FHI and AKM	FHI and AKM each receive $6 million from ASD
Oct. 3, 2019	A further Loan Repayment is made for $700,000	Go-To Adelaide LP pays $700,000 to ASD, bringing the Loan Receivable down to $7.1 million

L. THE RECEIVERSHIP

82. On December 10, 2021, pursuant to an application commenced by the OSC, KSV was appointed as the Receiver of all Go-To entities, including the Plaintiffs (the "**Receivership**").

83. On May 12, 2022, as part of the claims process in the Receivership, ASD submitted a claim against Go-To Adelaide in the total amount of $11.1 million, $7.8 million of which was represented to be a secured claim (the "**ASD Claim**"). The ASD Claim has been disallowed by the Receiver.

84. The ASD Claim was prepared and submitted by an individual named Scott Corbett. To date, despite multiple inquiries, no explanation has been provided as to Corbett's position at ASD or role in its business, aside from ASD's counsel advising that Corbett (and not Malanca) paid the subject deposits on behalf of ASD. The Receiver is aware of Corbett having received, directly or indirectly, over $1.3 million from the purchase of real estate by other Go-To entities, under circumstances where the vendors themselves had purchased the same real estate on the same day but at lower prices. The Receiver is also aware of disciplinary proceedings taken by the Law Society of Upper Canada (as it was then known) against one of its members in connection with the member's dealings with Corbett (including, without limitation, "*property flips*"), in which it was found, amongst other things, that "*The evidence of fraud, particularly surrounding Mr. Corbett, became so overwhelming that any questions the member should have asked but did not were effectively answered for him*."[1]

85. The ASD Claim was supported by:

(a) a purported copy of the Loan Agreement. The enclosed copy of the Loan Agreement included an Acknowledgment and Direction to register a charge on the Properties. Attached to the Acknowledgment and Direction was a draft charge, which was dated October 17, 2020, approximately 1.5 years after the Loan Agreement was purportedly entered into; and

(b) a registered Charge by Partnership, in the principal amounts of $19.8 million, registered on June 29, 2021, more than two years after the Loan Agreement was entered into.

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[1] 2008 ONLSHP 10 (CanLII: https://canlii.ca/t/1vwp6) at paras. 32-34 and 63.

86. The Loan Agreement enclosed with the ASD Claim referred to the Charge, to be registered on the Property.

87. During the course of its investigations, the Receiver discovered that ASD had previously provided its auditor, PWC, with a completely different agreement. The copy of the Loan Agreement provided to PWC did not include any real property security and provided for a different payment structure.

88. The Receiver, together with the OSC, is still investigating the extent of the Scheme and the defendants' misconduct.

89. None of this was disclosed to Go-To Adelaide LP's unitholders.

M. CLAIMS

(i) Conspiracy

90. Another term for "scheme" is conspiracy. That is what the defendants engaged in here.

91. Each of the defendants conspired to profit from and harm the Plaintiffs. The particulars of the defendants' conduct are described above.

92. The defendants acted with the predominant purpose of harming the Plaintiffs and their investors. They:

(a) mapped out the Scheme in advance of closing, and reached an agreement on how to maximize the profits from the Scheme, while minimizing the chances of getting caught;

(b) acted with the predominant purpose of harming the Plaintiffs by stripping them of their funds; and

(c) caused actual damage to the Plaintiffs.

93. Similarly, the defendants' orchestrated, unlawful conduct constituted a conspiracy. They:

(a) came to an agreement on how to proceed with the Scheme and acted in combination with a common design of harming the Plaintiffs, while profiting themselves;

(b) acted unlawfully, as set out in the following sections;

(c) directed their unlawful conduct toward the Plaintiffs;

(d) knew they were harming the Plaintiffs; and

(e) did in fact harm the Plaintiffs.

94. Each of the defendants played key roles in the Scheme and conspiracy. While Furtado and Malanca were the puppeteers, the other defendants played important roles and are accordingly, jointly and severally liable for all damages resulting from the Scheme.

(ii) Breach of Contract

95. The actions taken by Furtado and Malanca, in furtherance of the Scheme, breached the LP Agreement, by, among other things:

(a) misappropriating partnership funds or using partnership funds in a manner inconsistent with the business of the partnership;

(b) co-mingling partnership funds and assets with the funds and assets of other Go-To entities or their personal funds;

(c) failing to act prudently, reasonably, honestly, in good faith and in the best interests of the limited partnership;

(d) failing to disclose all of the self-dealings and conflicts of interest, detailed above, to existing investors;

(e) causing the Assignment Fee to be paid, which fee far exceeded what would otherwise have been paid to a third party providing the same services, in breach of section 5.12 of the LP Agreement;

(f) repaying loans or investments they made before all other investors had received a return of their capital, in breach of section 4.9 of the LP Agreement;

(g) returning capital contributions to themselves prior to any dissolution, winding up or liquidation of Go-To Adelaide LP; and

(h) causing Go-To Adelaide LP to guarantee the obligations of or loan funds to an affiliate company;

96. The non-Furtado and Malanca defendants knew that Furtado and Malanca were breaching the LP Agreement by engaging in the Scheme. They actively assisted them in the Scheme, in order to generate profits for themselves.

(iii) Breach of Fiduciary Duty and Knowing Assistance

97. Furtado and Malanca controlled the Plaintiffs. The Plaintiffs were essentially at their mercy and Furtado and Malanca had the ability to control the Plaintiffs' finances and enter into agreements on behalf of the Plaintiffs.

98. In their roles, under both the LP Agreement and the common law, Furtado and Malanca had the obligation to act in the best interests of the Plaintiffs as well as make full and frank disclosure to investors and stakeholders. Instead, they developed a scheme to defraud the Plaintiffs of more than $15 million, paid to themselves, friends and family, while destroying the Adelaide Project, the Plaintiffs' only legitimate business, and leaving it with no cash to advance the Adelaide Project. Go-To Adelaide was essentially insolvent at the time of the second Marek investment, and the Loan Repayment made upon receipt of the second Marek Investors' investment left Go-To Adelaide without any money to advance the Adelaide Project (or to make the semi-annual distributions to Go-To Adelaide LP's unitholders, as contemplated by the LP Agreement).

99. None of the actions taken by Furtado and Malanca were in the best interests of the Plaintiffs. They were purely self-motivated.

100. The remaining defendants knew or ought to have known that Furtado and Malanca were acting in breach of their fiduciary duties to the Plaintiffs. Again, they assisted them in their breaches and profited from that assistance.

(iv) Breach of Trust and Knowing Receipt

101. The funds invested by outside investors were paid to Go-To Adelaide for the express purpose of investing in the continued development of the Adelaide Project.

102. The funds were trust funds, only to be used for the purpose for which they were paid.

103. By engaging in the Scheme, Furtado and Malanca, personally and through their companies, misused the investor funds for their own purposes and are liable for breach of trust.

104. As set out above, each of the defendants profited from the Scheme and improperly received funds from the Plaintiffs which were invested for a specific purpose (i.e., advancing the Adelaide Project).

105. Each of the defendants knew that the funds were invested for a specific purpose and were trust funds held by the Plaintiffs.

(v) Oppression

106. Go-To Adelaide GP is a complainant for the purposes of section 248 of the OBCA.

107. Furtado and Malanca's actions, as actual directors or as *de facto* directors of Go-To Adelaide GP have been oppressive and have unfairly disregarded the Plaintiffs' interests.

108. The Plaintiffs' business was the development of the Properties and the Plaintiffs always had the reasonable expectation that Furtado and Malanca would act in the Plaintiffs' best interest toward the development of the Properties.

109. Instead, Furtado and Malanca used their position as directors or controlling minds of the Plaintiffs to line their pockets with the Plaintiffs' funds. They have acted solely in their own interests, to the Plaintiffs' detriment.

(vi) Restitution and Tracing

110. The Plaintiffs plead that all the defendants have been unjustly enriched at the Plaintiffs' expense and are liable to the Plaintiffs for all amounts by which they have been unjustly enriched. The Plaintiffs have been correspondingly deprived of the benefit of these amounts, and there is no juristic reason for the defendants' enrichment. The Plaintiffs plead and rely upon the doctrine of unjust enrichment and claim that they are entitled to restitution from all the defendants.

111. The Plaintiffs plead that the defendants hold any amounts by which they have been unjustly enriched at the Plaintiffs' expense as trust funds and/or pursuant to a constructive trust, and that the Plaintiffs are the beneficiary of those funds. The Plaintiffs further plead that, given the circumstances, there are no factors that would render the imposition of a constructive trust in favour of the Plaintiffs unjust.

112. Any funds originating with or that should have been paid to the Plaintiffs and obtained by any of the defendants by way of fraud, breach of fiduciary duty, self-dealing, oppression or other improper conduct should be impressed with a trust in favour of the Plaintiffs.

113. The Plaintiffs seek such orders as may be necessary to trace such misappropriated funds, including any such funds or assets currently held by or transferred to any of the defendants, or transferred to individuals or entities not yet known to the Plaintiffs.

114. The Plaintiffs further seek orders requiring the defendants to disgorge and/or pay restitution in relation to any benefit obtained directly or indirectly as a consequences of the fraud, breach of fiduciary duty, self-dealing, oppression or other improper conduct as pleaded herein, including any assets obtained with funds originating with or that should have been paid to the Plaintiffs.

N. FRAUDULENT CONCEALMENT AND PUNITIVE DAMAGES

115. The defendants fraudulently concealed the Scheme from investors in the Adelaide Project and others. At all material times, the defendants had full control of the Plaintiffs and their operations, as well as ASD and its operations. The defendants took steps to conceal their conduct to outsiders, in particular investors in the Adelaide Project. The defendants' conduct was unconscionable and designed to hide their unlawful actions.

116. The defendants had control of the Plaintiffs until the Receivership. They were never going to commence a claim against themselves and the Plaintiffs were not in a position to commence a claim with respect to the Scheme until the Receiver was in place.

117. The defendants' conduct warrants punitive damages. The Scheme is sufficiently described above. However, for the sake of completeness:

(a) the defendants solicited investor funds for the purpose of furthering the Adelaide Project;

(b) the defendants papered a number of agreements between ASD and the Plaintiffs that allowed the defendants to use those investor funds as part of the Scheme to siphon millions of dollars away from the Plaintiffs; and

(c) the defendants took active steps to make the various transactions look legitimate, in order to conceal the Scheme.

118. These actions, among the many others described in the Claim, are independent, actionable wrongs, which were carefully designed to defraud the Plaintiffs and their investors. This calculated and fraudulent conduct should offend the court's sense of decency. Purely compensatory damages (i.e. making the defendants simply pay back what they took) is not enough. Punitive damages are necessary to denounce the defendants' conduct and deter future parties from devising and carrying out similar schemes.

119. The Plaintiffs propose that the trial of the action take place in the City of Toronto.

(Date of issue)

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Toronto Superior Court of Justice / Cour supérieure de justice

GO-TO SPADINA ADELAIDE SQUARE INC. and GO-TO SPADINA ADELAIDE SQUARE LP, each by its Receiver, KSV RESTRUCTURING INC.
Plaintiffs

-and-

ADELAIDE SQUARE DEVELOPMENTS INC., et al.
Defendants

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

STATEMENT OF CLAIM

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TAB “2”

Court File No. CV-23-00710745-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N :

GO-TO SPADINA ADELAIDE SQUARE INC. and GO-TO SPADINA ADELAIDE SQUARE LP, each by its Receiver, KSV RESTRUCTURING INC.

Plaintiffs

– and –

ADELAIDE SQUARE DEVELOPMENTS INC., ALFREDO ITALO MALANCA a.k.a ALFREDO PALMERI, OSCAR FURTADO, GOLDMOUNT FINANCIAL GROUP CORPORATION, CONCORDE LAW PROFESSIONAL CORPORATION, LOUIS RAFFAGHELLO, MONTANA MANAGEMENT INC., AKM HOLDINGS CORP. and KATARZYNA PIKULA

Defendants

STATEMENT OF DEFENCE, COUNTERCLAIM AND CROSSCLAIM OF THE DEFENDANTS ADELAIDE SQUARE DEVELOPMENTS INC., ALFREDO ITALO MALANCA and GOLDMOUNT FINANCIAL GROUP CORPORATION

1. The Defendants, Adelaide Square Developments Inc. (“**ASD**”), Alfredo Italo Malanca (“**Malanca**”) and Goldmount Financial Group Corporation (“**Goldmount Financial**”, collectively, the “**Adelaide Defendants**”) deny all of the allegations in the Statement of Claim, except to the extent that those allegations are expressly admitted herein.

2. Capitalized terms not defined herein have the meanings set out in the Statement of Claim.

A. OVERVIEW

3. The Plaintiffs, Go-To Spadina Adelaide Square Inc., Go-To Spadina Adelaide Square LP and Go-To Developments (collectively or each, "**Go-To**"), each by their receiver KSV Restructuring Inc. (the "**Receiver**"), inexplicably claim damages against, among others, the Adelaide Defendants in the amount of $15,300,000 plus punitive and other damages, when it is the Plaintiffs who owe ASD over $13,800,000 pursuant to a Loan Agreement (defined below) of which $7.8 million is the outstanding principal amount of the loan. The Plaintiffs and the Receiver have failed to posit a plausible story as to how it is that even though ASD advanced $19,800,000 in funds and has only been paid back $12,000,000, that it is Adelaide Defendants that owe the Plaintiffs over $15,000,000.

4. The Statement of Claim presents a sordid tale of a purported Scheme involving, among others, the Adelaide Defendants and Go-To, and more specifically Malanca and Oscar Furtado ("**Furtado**"). The Scheme is imagined and unsubstantiated. In reality, this was a situation in which (i) the Adelaide Defendants worked to put a land assembly (the "**Assembly**") of the Adelaide Property and the Charlotte Property (as defined below, collectively, the "**Properties**") together in downtown Toronto; (ii) then offered the assembly to the highest bidder, which turned out to be Go-To; and (iii) when Go-To was about to breach its agreement, which would have made ASD liable to damages to the vendors, the Adelaide Defendants worked to save the deal for Go-To. Thereafter, even after Go-To's receivership, the Properties were sold less than two years later and made an almost $19 million profit for Go-To. Despite all this, the Receiver now claims that the Adelaide Defendants' actions were all a premediated

conspiracy from the outset, despite that Go-To had no right to the Properties, and that somehow the Adelaide Defendants deprived Go-To's investors of over $15,000,000, when in fact Go-To made almost $19,000,000 profit in less than two years and it is ASD that is still owed over $13,800,000. Simply following through the simple chronology of events in this matter shows that the Receiver's claim has no basis in fact.

5. The Receiver's claim suffers from the fundamental problem that it is seeking to completely ignore the actual chronology of events and instead imagines that there was a pre-existing and elaborate Scheme between the Adelaide Defendants and Go-To that involved, among other things: (i) running a bidding process for the sale of the Properties; (ii) the perpetration of the Scheme by carrying out multiple meetings with various law firms; (iii) somehow convincing a court-appointed trustee (FAAN) to favour ASD as purchaser of the Charlotte Property; (iv) conducting litigation connected with the Assembly, specifically the Adelaide property; and (v) orchestrating the failure by a number of individuals to carry out their commitments that necessitated the urgent actions by the Adelaide Defendants that were taken to save the Assembly.

6. It was not until after Go-To had won the bidding process and was selected as the winner that the Adelaide Defendants and Furtado cooperated in two distinct matters: (i) Furtado, in his personal capacity, assisted ASD in negotiating changes to the agreements that resulted in savings of approximately $7.5 million to the ASD for which Furtado was compensated (the Adelaide Defendants not having any information to suggest that Furtado was unable to personally provide it with such assistance); and (ii) only after Go-To was selected as the winning bidder did Malanca assist Go-To with

respect to the project. This cooperation following the selection of Go-To as the winning bidder for the Assembly cannot be taken to mean that there was a pre-existing conspiracy as alleged by the Plaintiffs.

7. The simple reality is that the relationship between ASD and Go-To was between two independent commercial parties who were represented by separate legal counsel. The agreements and relationships between ASD and Go-To was fully set out in legal documents governing their relationship: (i) first, as vendor of the Assembly (ASD) and purchaser (Go-To) (under the Go-To APS, as defined below); (ii) second, as assignor (ASD) and assignee (Go-To) under their subsequent assignment of the Assembly through the assignment of APS agreements, as described below; and (iii) third, as lender (APS) and borrower (Go-To) (under their Loan Agreement, as described below) in order to assist Go-To to finance and close the purchase of the Assembly when it was otherwise going to breach on its agreements as a result of its failure to arrange capital to close the deal. The Adelaide Defendants had legitimate commercial reasons for pursuing the sale/assignment of the Assembly to Go-To – simply put, it was the highest bidder. The fact that the closing of that transaction become more complicated and necessitated ASD to finance part of the project was not the result of a pre-mediated conspiracy, but rather was the result of Go-To having failed to arrange the necessary capital to close the deal. The Adelaide Defendants, who were about to lose millions of dollars as a result of Go-To's inability to close the sale of the Assembly, instead reinvested its own money in the project through the Loan Agreement (defined below), which ultimately led to Go-To receiving almost $19 million on a project that it did not have the ability to close. And, yet, the Plaintiffs now not only seek to not repay

ASD the over $13.8 million owed to it, it also now claims an additional $15.3 million (plus punitive damages) from the Adelaide Defendants.

B. THE DEFENDANTS

8. The defendant ASD is an Ontario corporation. The principal of ASD is Scott Corbett.

9. The defendant Malanca is an individual residing in Ontario. Malanca is the owner and director of the defendant Goldmount Financial, a financing broker operating in Ontario.

C. BACKGROUND

i. The Land Assembly

10. In or about November 2017, Joe DiVita ("**DeVita**"), the head of the commercial division of Royal LePage Signature, brought a potential assembly opportunity to the attention of Malanca, who in turn brought the opportunity to Scott Corbett ("**Corbett**"), a long-time friend. The opportunity was the possibility to put together the land Assembly, which would be comprised of two (2) neighbouring properties in downtown Toronto, being 355 Adelaide Street West, Toronto, Ontario (the "**Adelaide Property**") and 46 Charlotte Street, Toronto, Ontario (the "**Charlotte Property**", collectively, the "**Properties**"). The intention in putting together the land assembly was to later sell or assign the Assembly for a profit to someone who would be interested in developing the Properties into a high-rise condominium (or similar) project. Given the prime location of the Properties in downtown Toronto, in an area already experiencing

substantial growth, the opportunity to put together the Assembly appeared to be a wise investment.

11. At that time, the Charlotte property was being sold by FAAN Advisors, the court-appointed trustee who was selling over 60 properties that had been owned by Fortress Real Developments Inc. ("**Fortress Real**") and were being liquidated after Fortress Real's collapse.

12. None of the Adelaide Defendants had any contact or discussion with Go-To or Furtado around this time about the Assembly opportunity.

13. In their efforts to put together the Assembly, ASD arranged for the preparation of purchase agreements for the Properties, and those agreement were entered into in 2018, as more particularly discussed below. The nominee purchaser in each purchase agreement was a corporation in trust for a company to be named.

14. On the advice of Corbett and Angelo Pucci, another individual who was working with ASD in the Assembly opportunity, each agreement of purchase and sale had a different nominee purchaser to avoid signaling to the vendors that the property being purchased was intended to be a part of the land Assembly. This is a common practice when putting together a land assembly as vendors are likely to increase the price if they know or believe that the land is being acquired for the purposes of a land assembly. For this reason, the identity of the beneficial owner of these purchases, Corbett, was not disclosed to the vendors of the Properties. The vendors of the Properties also did not require disclosure of the beneficiary of the sales.

15. In late July 2018, after purchase agreements for both Properties were entered into, a numbered company whose name was later changed to "Adelaide Square Developments Inc.", was incorporated to be the purchaser of the Properties further to the land Assembly.

ii. The Adelaide Property APS

16. On March 20, 2018, the defendant AKM Holdings Corporation ("**AKM**"), in trust for a corporation to be named, entered into an agreement of purchase and sale (the "**Adelaide APS**") with 1708305 Ontario Inc., to purchase the Adelaide Property for the purchase price of $34 million, with a $1 million deposit. The deposit was paid by ASD, with funds provided from ASD's lawyers' trust account to Royal LePage, the vendor's representative (on the direction of Mr. Corbett).

17. The nominee purchaser, AKM, is a company owned by Malanca's wife, Katarzyna (Kasia) Pikula ("**Pikula**"). It was not the intention that AKM would beneficially own the Adelaide Property, and it never did. Rather, it was simply providing a service as acting as a nominee purchaser, as was disclosed in the Adelaide APS.

18. During the due diligence period provided for in the Adelaide APS, a dispute arose with the vendor as to whether the purchaser could obtain a Phase 1 environmental report regarding the soil and groundwater of the property (the initial Phase 1 report the vendor provided was issued under incorrect guidelines, so an effective Phase 1 Report was required under Ministry of Environment Guidelines).

19. The vendor refused to permit a Phase 1 assessment under Ministry of Environment Guidelines and instead took the position that AKM was in breach of the Adelaide APS by not being willing to close without a Phase 1 report. As a result, the vendor purported to terminate the Adelaide APS.

20. AKM, as trustee, was forced to retain litigation counsel, and it commenced an action against the vendor for specific performance of the Adelaide APS.

21. In September 2018, AKM's counsel obtained an order from Master Graham for the issuance of a Certificate of Pending Litigation against the Adelaide Property. Master Graham also ordered that AKM was entitled to conduct water and soil testing at the property.

22. AKM engaged environmental consulting firms and obtained a Phase 1 environmental report.

23. In or about February 2019, AKM and the vendor settled their litigation, which settlement involved amending the Adelaide APS.

24. In particular, by amending agreement dated February 25, 2019, the Adelaide APS was amended as follows:

- The purchaser was now listed as ASD;
- The new purchase price was $36 million;
- The new closing date was March 26, 2019; and

- The $1 million deposit was to be released to the vendor on a non-refundable basis.

25. On March 26, 2019, the vendor agreed to extend the closing date to April 4, 2019, with the purchase price being increased by $800,000, and an additional $800,000 non-refundable deposit was paid to the vendor. Therefore, the purchase price became $36.8 million (including all non-refundable deposits payable to the vendor).

iii. The Charlotte Property APS

26. On March 26, 2018, Quantum Capital Developments Inc. ("**Quantum**"), in trust for a new corporation to be named, entered into an APS with Fortress Charlotte 2014 Inc. ("**Fortress**"), to purchase the Charlotte Property for the purchase price of $35 million.

27. The nominee purchaser, Quantum, was a company owned by DiVita.

28. As noted above, Fortress was represented by FAAN Advisory, who was appointed by the Ontario Superior Court of Justice as the trustee responsible for selling the various properties that were being liquidated as a result of the collapse of Fortress Real.

29. On May 23, 2018, the parties agreed to terminate that APS.

30. On July 6, 2018, Quantum, in trust for a new corporation to be named, entered into another APS with Fortress to purchase the Charlotte Property for the purchase price of $27 million. The decrease in the purchase price was based on Fortress being

unable to obtain municipal approvals for the development of the Charlotte Property on its own as a high-rise condominium.

31. In January 2019, the first mortgagee of the Charlotte Property, Diversified Capital Inc. ("**Diversified**"), issued a Notice of Sale Under Mortgage regarding approximately $10.2 million owing by the vendor, Fortress, under its mortgage.

32. Fortress tried, without success, to obtain refinancing to replace Diversified's mortgage.

33. Thereafter, Fortress contacted DiVita to advise that, without mortgage refinancing, Diversified would commence power of sale proceedings. If that happened, ASD would likely lose out on the land assembly it was attempting to acquire.

34. DiVita referred Fortress to Malanca's wife, Pikula, who owned and operated a commercial mortgage brokerage firm, Goldmount Capital Inc. ("**Goldmount Capital**"), for assistance in securing the needed mortgage refinancing.

35. Goldmount Capital managed to find a new mortgage lender that was prepared to advance approximately $12 million to refinance the Charlotte Property and pay out Diversified's mortgage. As a result, ASD's efforts to acquire the land assembly remained alive.

36. Given that positive outcome, Fortress was prepared to negotiate a fresh APS with Quantum in trust for a lower purchase price.

37. Following lengthy negotiations with Fortress and FAAN, a new purchase price of $16.5 million was agreed to.

38. As a result, in late March 2019, the prior APS was terminated, and a new APS (the "**Charlotte APS**") was entered into between the same parties for the new purchase price of $16.5 million inclusive of a $150,000 deposit. The deposit was paid by ASD, with funds provided from ASD's lawyers' trust account to the vendor (on the direction of Mr. Corbett).

39. As a result of the new financing arranged by Goldmount Capital and the new purchase agreement, the beneficiaries of Fortress were able to realize recoveries of $16.5 million in circumstances in which they were about to likely recover nothing as a result of the power of sale proceedings.

iv. Go-To and Furtado Had No Involvement With Undertaking the Assembly

40. Neither Furtado nor Go-To had any involvement or connection whatsoever with any of the foregoing events, including all of the extensive efforts and negotiations undertaken by ASD and its purchaser group in securing the rights to acquire the Properties of their land assembly.

41. In particular, at no point in time between March 2018 and March 2019, did Go-To or Furtado (or any of the their related companies) fund any of the costs that were being incurred during this period by the Adelaide Defendants to undertake the Assembly, fund the litigation regarding the Adelaide Property, undertake the work to arrange the refinancing of the Charlotte Property to save the Assembly, direct or

participate in the strategy related to the Assembly, or any other activities related thereto. Go-To's only "involvement" in the Assembly during this period was as a potential bidder for the Assembly, as discussed in the section immediately below. Nonetheless, the Plaintiffs' claim is based on the premise that there was a conspiracy between the Adelaide Defendants and Go-To and Furtado during this period to harm Go-To's investors.

v. ASD Runs Sales Process To Find Highest Bidder for the Assembly

42. As indicated above, it was always ASD's intention in undertaking the Assembly to sell or assign the Assembly for a profit to a developer. ASD's plan was to arrange the Assembly such that the closing of the purchase of the Adelaide Property and the Charlotte Property would occur at the same time, so that it would be the developer who would ultimately close the sales of the two Properties. ASD's profit would be dependant upon ASD being able to sell the completed Assembly for more than the purchase price of the two independent parcels of land. This process is a common form for a land assembly to take as the value of the assembled properties is typically higher than the individual parcels of land, particularly in areas where the assembled land can be used to develop larger types of projects (e.g., large condos, neighbourhoods) than what could be built on the individual parcels of land.

43. In order to implement this plan, both of the APSs for the Properties provided that ASD, the purchaser, had the right to assign the APSs to another purchaser such that it would be another entity that closed the deal.

44. In order to make the profit it sought to earn through the Assembly, throughout 2018, ASD, with the assistance of Malanca, approached various developers about the opportunity to purchase the Properties or to purchase an assignment of the APSs. The developers that were approached included:

- Fengate (to whom the Receiver later sold both properties for approximately <u>$90 million</u>, as discussed below);
- Aspen Ridge Developments;
- Capital Developments;
- Empire Communities;
- Parallax Development;
- Go-To;
- Broccolini Real Estate Group;
- Icarus Developments;
- Greybrook Developments;
- Tridel;
- Callian Capital;
- Breda Group; and
- Silver Group Hotels.

45. Go-To was only one of at least thirteen developers approached about the opportunity to by the Assembly. Malanca knew of Furtado as Malanca's wife's mortgage brokerage company, Goldmount Capital, had previously assisted Go-To in securing mortgage loans from lenders for a number of Go-To's various projects, just as it had secured mortgage loans for a number of other developers.

46. In order to support its efforts to find the highest bidder for the Assembly, throughout 2018, ASD reached out to numerous developers and provided them information about the Assembly (including by way of slide decks) and met with the developers in person and discussed the Assembly over the phone with them.

47. Neither Go-To nor Furtado were involved in any of the foregoing steps or activities, nor did they fund such activities in any way.

vi. Go-To Becomes the Highest Bidder

48. In or about spring or summer 2018, Furtado advised Malanca for the first time that Go-To was interested in the opportunity to acquire the Properties, but that Go-To would need to partner with another developer given the anticipated size of the development to be constructed at the Properties.

49. In order to be able to make a competitive bid for the Assembly, in or about December 2018, Go-To partnered with another real estate developer, Atria Development ("**Atria**"), which was owned by Hans Jain ("**Jain**"). Both Go-To and Atria were going to provide the equity capital for any bid that Go-To made, and that the rest of the purchase price would be funded through debt financing.

50. As a result of its efforts, ASD had received bids from five bidders. After various negotiations, Go-To's offer was the highest offer, beating the other offers by approximately $5.5 million.

51. On or about December 21, 2018, Go-To entered into an APS (the "**Go-To APS**") with ASD to purchase the Properties from ASD for a purchase price of $74.25 million.

The purchase was to either be completed as (i) a “back to back” transaction such that the sale of the Properties from the vendors to ASD would occur contemporaneously with the sale of the Properties from ASD to Go-To; or (ii) the APS between the vendors and ASD (or its nominees) would be assigned to Go-To.

52. The price to be paid by Go-To under the Go-To APS was lower than appraisals that had been previously obtained for the Properties. In June 2018 and June 2019, Colliers International had appraised both properties at between $82.34 million to $83.9 million. Both values were around $9 million higher than the $74.25 million purchase price agreed-to by Go-To.

vii. Atria Breaches Obligations; Go-To Scrambles to Find Financing, Resulting in the Marek Financing

53. In February 2019, Go-To secured a first mortgage loan commitment from Canadian Mortgage Servicing Corp. (a.k.a. Atrium Mortgage Investment Corporation) (“**CMSC/Atrium**”) for approximately $48 million to partly fund its purchase of the Properties from ASD. It was a condition of the CMSI/Atrium financing commitment that Go-To and Atria were to have, collectively, approximately $23 million in equity capital to contribute to the purchase price prior to closing.

54. According to the deal between Atria and Go-To, Atria was required to contribute to the purchase price of the Assembly by obtaining for closing both (i) a $10 million second mortgage loan to be used for the purchase price; and (ii) $16.8 million in equity capital investment. Go-To required Atria to contribute its $16.8 million capital injection in order to satisfy the condition under the CMSC/Atrium commitment that there was to

be $16.8 million in equity capital before CMSC/Atrium would advance the $48 million in purchase financing.

55. However, shortly before the closing date, Jain failed to obtain both the required $10 million second mortgage loan and did not have the required $16.8 million in equity capital. Jain's failure to provide the debt and equity financing was alleged to be a breach of the agreement between Go-To and Atria, and as a result Go-To commenced litigation against Atria (which litigation had Court File No. CV-21-00663547 (Toronto)).

56. As a result, in March 2019, with the closing date of the purchase transaction fast approaching (then scheduled for March 26, 2019), Go-To was scrambling to find replacement debt and equity financing to enable Go-To to complete its purchase of the Properties from ASD.

57. It was at this time that Furtado and Jain then asked Malanca, who through his company, Goldmount Financial, provides corporate finance brokerage services, for help to locate a lender to provide the immediate required financing. Malanca agreed to provide such assistance in exchange for a brokerage fee (which as described below, ending up amount to $300,000).

58. As a result, Goldmount Financial, through its contact Louis Raffaghello, introduced Go-To to Anthony Marek ("**Marek**"). Thereafter, Go-To and Marek engaged in negotiations regarding potential financing to replace the funds that Jain was supposed to provided. As a result of those negotiations, Go-To obtained short-term mezzanine financing of $16.8 million from Marek or one of his companies (the "**Marek Financing**") which was structured as a subscription to Go-To Spadina Adelaide

Square LP units. That mezzanine financing replaced the $16.8 million in equity capital that Atria was to provide.

59. Marek's company, West Maroak Developments Inc., wired the $16.8 million financing proceeds to Go-To's lawyers (Torkin Manes LLP) on or about March 17, 2019.

60. Goldmount Financial also brokered a second mortgage loan of approximately $13.7 million from Scarecrow Capital, at the interest rate of 15%, plus a 2% lender fee. As a result of arranging this financing, Goldmount Financial was entitled to a brokerage fee of $300,000, which fee amounted to approximately 2.2% of the financing advanced by Scarecrow.

61. Due to Go-To's challenges with raising the required debt and equity capital to complete the purchase of the Properties, the closing date for the sale of the Properties was extended for one week, from March 26 to April 4, 2019. As a condition to obtain the Adelaide Property vendor's consent to this extension, the purchase price was increased by $800,000, and an additional $800,000 non-refundable deposit was paid.

62. Furtado personally paid the further non-refundable deposit of $800,000 to the vendor to obtain this extension. Since he was assuming the risk of losing these additional non-refundable deposit monies in the event the purchase transaction would not close, ASD agreed to reimburse him around 50% of this additional deposit should the transaction successfully close. Following the closing, on about April 15, 2019, ASD paid Furtado's holding company $388,087 out of ASD's assignment purchase price monies, in satisfaction of this reimbursement obligation.

viii. Go-To's APS is Changed to an Assignment

63. As noted above, on December 21, 2018, Go-To had entered into the Go-To APS with ASD to purchase the Properties from ASD for a purchase price of $74.25 million. At that time, the transaction was structured as a "back to back" sale as opposed to an assignment of the Adelaide APS and the Charlotte APS. Accordingly, in order to accomplish the closing of the Go-To APS, two closings on the same day would have occurred – the first one in which ASD acquires title to the Properties from their respective vendors, followed by a second closing in which ASD transfers (or "flips") both Properties to Go-To.

64. Between December 22, 2018, and March 14, 2019, four amending agreements were entered into regarding the APS between Go-To and ASD. The purchase price ($74.25 million) remained unchanged.

65. However, shortly before the closing, in late March 2019, Go-To and ASD decided to conduct their purchase and sale transaction as an assignment of the Adelaide and Charlotte APSs instead of structuring the transaction as a flip. The purchase price remained the same. Go-To sought and obtained the approval of its first mortgage lender (CMSI/Atrium) and second mortgage lender (Scarecrow) for its purchase to proceed as an assignment as opposed to back-to-back sale.

66. As a result, in late March 2019, ASD, as assignor, entered into assignment agreements with Go-To, as assignee (the "**Assignment Agreements**"), by which:

- ASD assigned all of its right, title and interest in and to the Adelaide APS and Charlotte APS to Go-To; and

- Go-To agreed to pay to ASD, on the closing of the transaction, an assignment purchase price (also commonly referred to as a “lift” in pre-sale assignments) of $20.95 million.

67. The assignment purchase price under the Assignment Agreements, or lift, of $20.95 million, was not a newly negotiated amount but rather was already built into the Go-To APS dated December 21, 2018, in which Go-To had agreed to purchase the Properties from ASD for $74.25 million. Had that APS been completed, resulting in two closings taking place as described paragraph 63 above:

(a) ASD would first have had to pay the vendors of both Properties their purchase prices in the aggregate sum of $53.3 million (i.e., $16.5 million and $36.8 million); and

(b) ASD would then have flipped the Properties to Go-To for the agreed-upon sale price of $74.25 million.

68. The result of this transaction structure would have been ASD realizing a profit of $20.95 million (i.e., $74.25 million less $53.3 million), being the same amount of the price paid for the assignment purchase price. Contrary to the Plaintiffs’ allegations, there was nothing untoward in the $20.95 million price for the assignment as that was merely part of the amount that Go-To had already agreed to pay ASD following a sales process in which the market was canvassed. Also, if this amount had not been paid, ASD would have sold the Assembly to the next highest bidder.

ix. ASD Replaces Marek as Lender

69. The short-term Marek Financing of $16.8 million that Go-To was forced to obtain to complete its purchase transaction (due to Atria's failure to provide the promised debt and equity funding) required Go-To to:

- repay the Marek Financing the day after the closing of the purchase of the Properties (being April 5, 2019);
- pay Marek a "break fee" of $2.7 million, in addition to the $16.8 million principal;
- provide Marek collateral mortgages on properties owned by Furtado and Jain and/or their companies; and
- provide guarantees from Furtado and Jain to Marek (or his company).

70. In the days leading up to the closing date of April 4, 2019, Furtado contacted ASD to explain that Go-To had not been able to obtain new financing to repay the Marek Financing on the day after closing. Furtado was also concerned about the collateral mortgages that he and Jain had to provide to Marek.

71. As a result, Furtado pleaded for ASD to replace Marek as lender, to lower Go-To's risk and exposure under the Marek financing.

72. Ultimately, ASD agreed to do so. In that regard, ASD agreed to provide a loan to Go-To (the "**ASD Loan**") to pay off the Marek Financing in full. The loan proceeds were to come from the $20.95 million assignment purchase price that ASD was to receive from Go-To on closing. Thus, instead of the full amount of the $20.95 million

being paid to ASD as had been agreed, a significant portion of those funds were used to repay the $16.8 million Marek Financing that Go-To had received.

73. In this regard, on or about April 4, 2019, ASD (as Lender) and Go-To (as Borrower) executed a loan agreement (the "**Loan Agreement**") regarding the ASD Loan, which expressly provided, in part, that:

- the purpose of the loan was to allow the Borrower to repay the bridge equity loan (i.e., the mezzanine financing) it received from Marek to close the transaction;
- ASD provided the required funds to repay Marek directly;
- the principal amount of the loan was $19.8 million;
- monthly interest payments of $50,000 would be payable until January 1, 2020, and thereafter, the monthly interest payments would become $100,000 until April 4, 2023, and all interest payments could be capitalized and added to the outstanding principal;
- Go-To could prepay any part of the outstanding principal at anytime to the Lender;
- if an Event of Default occurs, ASD is permitted to register an equitable mortgage on title to the Properties for the total outstanding balance owing, in the form of the draft mortgage/charge that was attached to the Loan Agreement.

74. The interest payments of $50,000/month and $100,000/month set out in the Loan Agreement amounted to an annual interest rate of approximately 3% and 6%, respectively.

75. Of course, ASD had valid commercial reasons for entering into the Loan Agreement: it stood to earn hundreds of thousands of dollars in interest payments and given the evident equity in the Properties, the loan was not at significant risk. That ASD was willing to enter into the Loan Agreement with Go-To is also not at all remarkable – the Loan Agreement was merely a form or akin to a vendor takeback mortgage which are especially common in transactions involving the sale of vacant land.

76. The $19.8 million advance from the ASD Loan was intended for, and applied to, the following:

- $19.5 million to pay out the Marek Financing (i.e., $16.8 million principal plus the $2.7 million "break fee"); and
- the $300,000 brokerage fee payable by Go-To to Goldmount Financial for having brokered the Scarecrow second mortgage loan (discussed above).

x. FAAN and ASD Negotiate an Agreement re: Density Bonus

77. FAAN, the court-appointed Trustee for the second mortgagee of the Charlotte Property, BDMC, demanded a "bonus density" that would be payable following closing as a condition for FAAN to approve Fortress' sale of the Charlotte Property to ASD.

78. As a result, in the week or so leading up to the closing, Go-To and FAAN (and their respective lawyers) negotiated the terms of a potential bonus density that would

become payable by ASD to FAAN following closing and following site plan approval for the Properties.

79. On April 3, 2019, FAAN, ASD, Furtado, Jain, Go-To, and others, entered into a Memorandum of Understanding in connection with the amounts owing related to the potential density bonus.

xi. The Closing Took Place and ASD's Loan Was Advanced

80. On April 4, 2019, the closings of Go-To's purchases of the Properties took place, and title to the Properties was transferred to Go-To from the respective vendors.

81. The closing involved 7 or 8 sets of law firms, representing the many parties involved, including, among others, the vendors of the Properties, the purchaser Go-To, the assignor ASD, Jain as the equity partner of Go-To, the court appointed trustee FAAN, the investor group of Fortress, and the mortgage lenders CMSI/Atrium and Scarecrow. All of these parties were sophisticated, commercial arm's-length parties that had conducted extensive due diligence and underwriting for the various transactions prior to the closing, and had engaged such counsel and other professional advisors as they thought advisable.

82. All parties involved were fully aware that ASD had assigned its APSs to Go-To, and were fully aware of the assignment purchase price that was to be paid by Go-To to ASD in connection with the assignment, and that the total purchase price paid by Go-To on closing amounted to $74.25 million. None of these multiple law firms or parties suggest that there was anything untoward in the nature or structure of the transactions.

83. Further, Go-To obtained title insurance from First Canadian Title based on the purchase price of $74.25 million, as required by its mortgage lenders. The title insurer was also informed that Go-To's purchase of the Properties was proceeding by way of an assignment of APSs instead of a flip purchase and that the total acquisition price of $74.25 million remained the same. First Canadian Title did not raise any concerns about the nature or structure of the transaction.

84. On or about April 5, 2019, in accordance with the Loan Agreement, $19.5 million out of ASD's $20.95 million assignment purchase price monies were transferred to Marek's company (West Maroak Developments Inc.) in full repayment of the Marek Financing.

85. The balance of the Loan proceeds, being $300,000, was applied to pay the brokerage fee that was payable by Go-To to Goldmount Financial.

86. Accordingly, there is no issue that the entire $19.8 million Loan proceeds in the Loan Agreement were duly advanced by ASD to Go-To in accordance with the Loan Agreement and as contemplated by the parties.

87. A full appreciation of the facts that arose before closing reveals that there was nothing untoward happening from the perspective of the Adelaide Defendants. What the Plaintiffs are attempting to do in this case is to take the full benefit of the work and increase in value associated with the creation of the Assembly despite the fact that the Plaintiffs: (i) were not the ones who identified or took the risk in making the Assembly; (ii) did not undertake any work in connection with the Assembly; and (iii) did not expend any cost in respect of putting the Assembly together prior to closing. What the Plaintiffs

are seeking to do is to usurp the full value of the creation of the Assembly despite the fact that they had not been involved with or undertaken any of the work themselves. There is no reason why ASD, after years of work and expenses, would agree to sell the properties that it had purchased to Go-To for the very same price that it itself agreed to buy them for. Yet, this is the very result that the Plaintiffs ask for.

D. POST-CLOSING EVENTS

a. Malanca's Continued Involvement with the Properties and Go-To

88. Considering Malanca's role in the Assembly including his efforts to secure financing which kept the Assembly alive (as described above), Go-To wanted Malanca to continue to be involved with the project during the next phase of development. After Go-To was selected as the highest bidder, Malanca was given an email address under the name Alfredo Palmeri (Palmeri is Malanca's other family name). While Malanca conducted some work for Go-To related to the development of the Properties, at no time was he the "controlling mind" of Go-To. There is nothing remotely nefarious about Malanca obtaining a "Go-To" email address after Go-To was selected as the winning bidder as the Plaintiffs allege.

b. Go-To Makes Part Payment to ASD Regarding the Loan

89. In accordance with the Loan Agreement, Go-To opted to forego paying any monthly interest payments, and instead capitalized the interest payments by adding them to the $19.8 million principal balance of the Loan.

90. On or about October 1, 2019, Go-To made a part payment to ASD of $12 million towards the Loan balance. Shortly prior thereto, Furtado advised Malanca and ASD's

then-lawyers, SR Law, that Go-To was going to make the part-payment and that it needed to do so based on advice received from Go-To's auditors, PricewaterhouseCoopers LLP. ASD understood from Go-To that the advice had to do with Go-To reducing its debt and increase its equity in the Properties.

91. Of course, ASD did not care about the reason for the part payment and Go-To had the right to make the part payment. ASD was obviously content to receive the part payment on account of its Loan.

92. As indicated, the Loan Agreement expressly permitted Go-To to *"prepay all or any part of the principal amount outstanding herein at any time to the lender"*. Accordingly, ASD could not object to nor stop the part payment on the Loan.

93. Aside from the aforesaid part-payment of $12 million, Go-To has not made any other payments whatsoever on account of the Loan.

94. Out of the $19.8 million principal amount advanced under the Loan, $7.8 million in principal remains outstanding (accounting for the $12 million part payment). Interest is also due, owing and accruing under the Loan, with outstanding interest totaling $6.05 million as of March 1, 2024.

95. Go-To's audited financial statements disclosed the ASD Loan. Before issuing its audited financial statements of Go-To in 2020 and 2021, Go-To's auditors confirmed with ASD the outstanding balance payable under the ASD Loan. Go-To's auditors issue unqualified audit opinions in each of those years.

c. ASD's Dividend Payment to Furtado Holdings Inc.

96. As noted above, shortly prior to the closing of the purchase transaction, Go-To and FAAN had extensive negotiations regarding the terms of the density bonus to be paid to FAAN following the closing, which terms FAAN required in order to approve Fortress' sale of the Charlotte Property.

97. Depending on the negotiations, ASD would have to pay a density bonus to FAAN of up to $7.15 million, and at least $1.95 million. As matters stood then, based on the square footage of allowable Gross Floor Area (GFA) being contemplated for the Project, ASD would have been required to pay the full maximum density bonus amount of $7.15 million to FAAN.

98. Furtado advised ASD that he was prepared to attempt to negotiate the wording of the density bonus clause with FAAN to see if he could limit ASD's exposure to $1.95 million minimum. Furtado negotiated with ASD that, if he accomplished this objective, he would receive $6 million from ASD, out of which the minimum density bonus payment to FAAN would be made. Effectively, Furtado stated that he might be able to save ASD $5.2 million in density bonus charges (i.e., $7.15 million less the minimum $1.95 million amount), and should that happen, he expected a net fee of approximately $4 million (i.e., $6 million fee out of which the $1.95 million minimum density bonus would be paid). If this was successful, it would have provided certainty to ASD while at the same time guaranteeing it expected savings of over $1 million.

99. Furtado managed to successfully negotiate the density bonus clause with FAAN as he hoped. This was done by restricting the relevant definition of the GFA threshold

to “residential” GFA. This wording is contained in the aforesaid Memorandum of Understanding that was entered into with FAAN on April 3, 2019, which agreement was negotiated between the parties with the assistance of the parties’ lawyers.

100. Furtado later requested that the $6 million owing to him be paid by way of a dividend to his holding company, Furtado Holdings Inc., based on tax advice he received from legal counsel. For that to happen, Furtado Holdings had to become a shareholder of ASD, an arrangement that ASD was willing to accommodate.

101. As a result:

(a) on or about April 15, 2019, Furtado Holdings received 11 Class A common shares in ASD; and

(b) on or about October 1, 2019, ASD issued a dividend of $6 million to Furtado Holdings in consideration for the work that Furtado had undertaken and succeed on in reducing the costs to ASD.

102. Subsequently, in or about November 2019, the aforesaid minimum density bonus of $1.95 million was paid to FAAN, as agreed.

d. Go-To Refinances the Properties

103. In late May 2021, Go-To obtained a new second mortgage loan from Marek’s company, Northbridge Maroak Developments Inc. (the “**Northbridge Mortgage**”), to replace the Scarecrow second mortgage.

104. In early August 2021, Go-To obtained a new first mortgage loan from Cameron Stephens Mortgage Capital Ltd. ("**Cameron Stephens Mortgage**") to replace the CMSI/Atrium first mortgage.

e. ASD Registers its Equitable Mortgage

105. In or about May and June 2021, ASD learned that:

(a) Go-To was in default of its first mortgage in favour of CMSC/Atrium, which default could result in power of sale proceedings; and

(b) a lawsuit was commenced between Furtado/Go-To and Jain regarding the Properties and the Project.

106. These events triggered at least the following Events of Default under the Loan Agreement, including: (1) that Go-To's ability to repay its obligations to ASD under the Loan Agreement were impaired (in ASD's sole discretion); and (2) there was a breach by Go-To of its obligations under other loan agreements.

107. On June 29, 2021, as was permitted and contemplated under the Loan Agreement, ASD registered its equitable mortgage, in the form attached to the Loan Agreement, on title to the Properties.

108. Go-To was fully aware of ASD's registration of its mortgage, and it permitted the mortgage's registration without the need for any formal written notice of default being issued by ASD.

109. As noted above, over a month later, Go-To obtained the Cameron Stephens Mortgage to replace the CMSI/Atrium mortgage.

110. The Cameron Stephens Mortgage was conditional on ASD postponing its mortgage in favour of the Cameron Stephens Mortgage. Accordingly, Go-To asked ASD to postpone its mortgage accordingly. ASD agreed to do so based on Cushman & Wakefield's appraisal of the Properties in April 2021 showing the Properties as having a value of over $100 million.

111. Marek's company also agreed to postpone its second mortgage in favour of the Cameron Stephens Mortgage.

112. Several months later, in December 2021, the Receiver was appointed over Go-To's assets, which constituted a further Event of Default under the Loan Agreement.

f. The Receiver Sold the Properties and ASD's Claim for Repayment of its Loan

113. In July 2022, the Receiver sold the Properties to a developer, Fengate Capital Management Inc., for $90 million, plus a potential density bonus of up to $3 million. This sale price was between <u>$15.75 - $18.75 million more</u> than Go-To had purchased the Properties for in April 2019.

114. At the time, ASD's mortgage was third in priority, behind the first-ranking Cameron Stephens Mortgage, and the second-ranking Northbridge Mortgage.

115. On June 14, 2022, the Receiver sought and obtained an order approving the sale of the Properties to Fengate (order granted by the Honourable Madam Justice Conway on June 14, 2022) (the "**Sale Approval Order**"). The Sale Approval Order also authorized the Receiver to repay the Cameron Stephens Mortgage and the Northbridge Mortgage from the sale proceeds, with the balance of the net sale

proceeds to *"stand in the place and stead"* of the Properties with regard to the subsequent encumbrances, including ASD's third mortgage, as the Receiver's investigations were ongoing.

116. On May 19, 2022, ASD filed its Claim through its Proof of Claim ("**Proof of Claim**") filed with the Receiver regarding the outstanding ASD Loan.

117. On the same day, the Receiver confirmed receipt of ASD's Proof of Claim, and it asked ASD's lawyer to send supporting documentation such as any *"agreements, registration of charge, amendments, etc."*

118. On May 27, 2022, ASD's lawyer provided the Receiver a copy of the Loan Agreement and ASD's registered mortgage.

119. ASD's lawyers thereafter made repeated inquiries with the Receiver's counsel as to the status of the Claim. However, the Receiver's lawyers would only say that the response would be provided in due course.

120. While ASD awaited the Receiver's response to its Claim, neither the Receiver nor its lawyers made any requests for information or additional documents whatsoever from ASD or its lawyers.

g. The Receiver's Notice of Disallowance

121. On March 20, 2023, some 10 months after ASD filed its Proof of Claim form, the Receiver issued a Notice of Disallowance, disallowing ASD's Claim in its entirety.

E. RESPONSES TO SPECIFIC POSITIONS IN STATEMENT OF CLAIM

i. Version of the Loan Document Referenced at Paragraphs 52 and 87 of the Claim

122. The Adelaide Defendants deny the veracity of the version of the Loan Document referred to at paragraphs 52 and 87 of the Claim.

ii. No Conspiracy

123. The Adelaide Defendants deny that they engaged in a conspiracy as pled at paragraphs 90 to 94 of the Claim. At all times the Adelaide Defendants acted in their commercial interests and an arm's length commercial manner from Go-To.

iii. No Breach of Contract

124. The Adelaide Defendants deny that there was any breach of contract as pled at paragraphs 95 to 96 of the Claim. None of the Adelaide Defendants, including Malanca, were a party to the LP Agreement. There could not have been, and was not, a breach of the LP Agreement by any of the Adelaide Defendants.

iv. No Breach of Fiduciary Duty

125. The Adelaide Defendants deny that there was any breach of fiduciary duty as pled at paragraphs 97 to 100 of the Claim. The Adelaide Defendants deny that any of them, including Malanca, owed or breached fiduciary duties to Go-To. The commercial dealings between the Adelaide Defendants and Go-To were of an arms length commercial nature, and it is improper to characterize them as being in the nature of a fiduciary duty.

v. No Breach Trust or Knowing Receipt

126. The Adelaide Defendants deny that they were involved, or in the alternative knowingly involved, in any breach of trust or misuse of funds as pled at paragraphs 101 to 105 of the Claim. Any misuse of investor funds in Go-To had nothing to do with the Adelaide Defendants, who were at all material times arms length commercial parties from Go-To.

vi. No Oppression

127. Contrary to paragraphs 106 to 109 of the Claim, there was no oppression involving any of the Adelaide Defendants. Malanca was not an officer or director of Go-To nor was he a “de-facto” director. There was no oppression by Malanca, or any of the Adelaide Defendants, towards Go-To’s investors.

vii. No Unjust Enrichment

128. Contrary to paragraphs 110 to 114 of the Claim there was no unjust enrichment by any of the Adelaide Defendants and restitution and/or disgorgement is inappropriate. To the extent any misused or misappropriated funds by Go-To flowed-through to the Adelaide Defendants, their receipt of such funds was not known restitution and/or disgorgement is inappropriate.

viii. No Fraudulent Concealment or Punitive Damages

129. The Adelaide Defendants deny that the Plaintiffs are entitled to an award of punitive damages and deny that the conduct of the Adelaide Defendants in relation to any of the Plaintiffs was fraudulent or worthy of the denunciation of a punitive damages award.

ix. Set-Off

130. The Adelaide Defendants repeat and adopt the Proof of Claim filed in the receivership proceedings of Go-To, having Court File No. CV-21-00673521-00CL. The Adelaide Defendants rely on the law of set-off and set-off the amounts owed to it as set out in the Proof of Claim. ASD pleads that, if necessary, the stay of proceedings with respect to Go-To should be lifted and that the amounts owing to it as set out in the Proof of Claim should be considered and tried with this proceeding.

x. Costs

131. The Adelaide Defendants request that they be awarded costs on a full indemnity basis as a result of the Plaintiffs' and Receiver not being to prove the highly defamatory allegations of fraud, fraudulent concealment, conspiracy, breach of fiduciary duty and oppression.

132. The Adelaide Defendants request that they be awarded costs on a full indemnity scale as the within claim was brought for the improper and tactical purpose of attempting to prevent the Adelaide Defendants from advancing their claim through the Proof of Claims process. The Plaintiffs have not been content to simply deny ASD's claim in the claims process but have instead sought to claim in excess of $15 million against them in circumstances where there is no basis for such claim.

COUNTERCLAIM

133. ASD claims from the Plaintiffs:

(a) the amount of $13,850,000, as of March 1, 2024, on account of the unpaid Loan Agreement, including principal and accumulating interest;

(b) in the alternative, the return of the Properties or their market value, or, alternatively, the full amount of the proceeds received by the Receiver from the sale of the Properties on account of the failure of the Assignment Agreements for lack of consideration as alleged by the Plaintiffs, and a constructive trust over such amounts or proceeds;

(c) in the further alternative, in the event that it is found that the Adelaide Defendants were working on behalf of Go-To as alleged or inferred by the Plaintiffs in putting the Assembly together (which is denied), then *quantum meruit* for the such work;

(d) costs of its defence of the main action and the counterclaim on a full indemnity basis;

(e) Pre and post-interest judgment in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and

(f) such further and other relief as ASD may request and this Honourable Court permit.

134. ASD repeats and relies upon the allegations set out above in its Statement of Defence, and adopts such pleadings in this Counterclaim.

135. The Adelaide Defendants further repeat and adopt the allegations set out in the Proof of Claim filed in the receivership proceedings of Go-To, having Court File No. CV-21-00673521-00CL.

136. ASD states, and the fact is, that the Loan Agreement is a valid agreement under which the Plaintiffs are liable to pay ASD the principal amount of $7.8 million plus accrued interest as a result of the facts plead herein.

137. It is also inexplicable why the Receiver chose not to hold the Properties until site plan approval was obtained (which was clearly mere months away) and could undoubtedly have resulted in a higher sale price for the Properties. While the Adelaide Defendants are sympathetic to the non-secured creditors who rank below the secured loan obligations of ASD under the Loan Agreement, the potential losses these creditors face is a result of the Receiver's decision to sell the properties prior to site plan approval.

138. ASD states, and the fact is, that in the event that the Plaintiffs are correct that the there was no consideration for the Assignment Agreements, then the Assignment Agreements are void for lack of consideration. Accordingly, in such circumstances, ASD is entitled to rescission and is entitled to the return of the Properties or their market value, or, alternatively, the full amount of the proceeds received by the Receiver from the sale of the Properties. Furthermore, ASD is entitled to a constructive trust with respect to such amounts.

139. ASD states, and the fact is, if the Court finds that the Adelaide Defendants were working on behalf of Go-To as alleged or inferred by the Plaintiffs in putting the

Assembly together (which is denied), then the Plaintiffs' are liable to ASD on the basis of *quantum meruit* as the Plaintiffs never compensated ASD for the work that it undertook and the expenses that it incurred to put together the Assembly.

140. ASD pleads that, if necessary, the stay of proceedings with respect to Go-To should be lifted and that the amounts owing to it as set out in the Proof of Claim should be considered and tried with this proceeding.

CROSSCLAIM

141. In the event that the Adelaide Defendants are held liable for any amounts, the Adelaide Defendants claim against Oscar Furtado contribution and indemnity for any amounts awarded against them, including costs.

142. The Adelaide Defendants state that any amounts owing to the Plaintiff is as a result of the actions or inactions of Oscar Furtado. The Adelaide Defendants repeat and rely upon the allegations set out above in their Statement of Defence and Counterclaim, and claim from Oscar Furtado:

(a) costs of its defence of the main action, counterclaim and crossclaim on a full indemnity basis;

(b) Pre and post-interest judgment in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and

(c) such further and other relief as ASD may request and this Honourable Court permit.

March 8, 2024

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Court File No. CV-23-00710745-00CL

GO-TO SPADINA ADELAIDE SQUARE INC. et al. Plaintiffs	v.	ADELAIDE SQUARE DEVELOPMENTS INC., et al. Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at TORONTO

STATEMENT OF DEFENCE AND COUNTERCLAIM

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TAB “3”

Court File No. CV-23- 00710745-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

GO-TO SPADINA ADELAIDE SQUARE INC. and GO-TO SPADINA ADELAIDE SQUARE LP, each by its Receiver, KSV RESTRUCTURING INC.

Plaintiffs

\- and -

ADELAIDE SQUARE DEVELOPMENTS INC., ALFREDO ITALO MALANCA a.k.a ALFREDO PALMERI, OSCAR FURTADO, GOLDMOUNT FINANCIAL GROUP CORPORATION, CONCORDE LAW PROFESSIONAL CORPORATION, LOUIS RAFFAGHELLO, MONTANA MANAGEMENT INC., AKM HOLDINGS CORP. and KATARZYNA PIKULA

Defendants

STATEMENT OF DEFENCE OF MONTANA MANAGEMENT INC.

1. The defendant Montana Management Inc. ("MMI") admits only those allegations contained in the first two sentences of paragraphs 9, paragraphs 12, 13, 14, 25, 26, 30, 39 (regarding the registration date), 43 (regarding fact that Anthony Marek subscribed for 336 Class A units), 53, 54, 55, 56, and 57 (with the exception of the phrase 'for nominal consideration' which is denied) of the Statement of Claim.

2. MMI denies the allegations contained in paragraphs 1, 2, the third sentence of paragraph 9, paragraphs 37, 40, 41, 45, 46, 49, 50, 51, 68, 69, 80, 81, 90, 91, 92, 93, 94, 95, 96, 97, 98, 100, 104, 105, 110, 111, 112, 113, 114, 115, 116, 117 and 118 of the Statement of Claim.

3. MMI has no knowledge in respect of the balance of allegations contained in the Statement of Claim.

4. MMI is a non operating shelf company which the defendant Louis Raffaghello incorporated in 2002. MMI was not involved in any of the matters to which the within action relates, with one exception as set out in paragraph 5 below. However, the matters set out in paragraph 5 below are not material to the claim pleaded against MMI, they do not support any cause of action against MMI.

5. On April 8, 2019 West Maroak Development transferred $1,389,900.00 into MMI's bank account. By December 5, 2019 all of these funds were transferred from MMI"s bank account to Louis Raffaghello. Accordingly, MMI's only conduct regarding this matter was that MMI's bank account held the amount of $1,389,900.00 for approximately 7 months.

6. Without in any way limiting the generality of the foregoing denials (see paras 2 above), MMI specifically denies that the Plaintiffs or any of them are entitled to any of the relief claimed in paragraphs 1 and 2 of the Statement of Claim, as against any of the Defendants (whether directly, jointly or severally) or at all. Further, and also without limiting the generality of the foregoing denials, MMI specifically denies the notion and/or existence of the alleged conspiracy and and/or scheme, denies having any knowledge of same and/or denies having received any benefit to which it was not at law entitled. As such, MMI specifically denies the accuracy of the use/implication of the terms 'scheme', 'Scheme' and 'conspiracy' throughout that pleading, as well as the accuracy of any allegation that includes any such term.

7. MMI relies upon the *Limitations Act, 2002*, S.O. 2002, c.24, as a complete defence to this action.

8. In the alternative, if MMI is liable to the Plaintiff, the amounts claimed by the Plaintiff are excessive, remote and not recoverable in law. The plaintiff failed to mitigate its damages.

9. MMI requests that this action be dismissed, at least as against MMI, with costs payable to MMI on a substantial indemnity basis or, in the alternative, on a partial indemnity basis.

March 29, 2024

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GO-TO SPADINA ADELAIDE SQUARE INC. *et al*
Plaintiffs

-and-

ADELAIDE SQUARE DEVELOPMENTS INC. *et al*
Defendants

Court File No. CV-23- 00710745-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED ATTORONTO

STATEMENT OF DEFENCE OF
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TAB “4”

Court File No. CV-23-00710745-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

GO-TO SPADINA ADELAIDE SQUARE INC. and GO-TO SPADINA ADELAIDE SQUARE LP, each by its Receiver, KSV RESTRUCTURING INC.

Plaintiffs

and

ADELAIDE SQUARE DEVELOPMENTS INC., ALFREDO ITALO MALANCA a.k.a. ALFREDO PALMERI, OSCAR FURTADO, GOLDMOUNT FINANCIAL GROUP CORPORATION, CONCORDE LAW PROFESSIONAL CORPORATION, LOUIS RAFFAGHELLO, MONTANA MANAGEMENT INC., AKM HOLDINGS CORP. and KATARZYNA PIKULA

Defendants

STATEMENT OF DEFENCE, COUNTERCLAIM, AND CROSSCLAIM OF OSCAR FURTADO

1. The Defendant, Oscar Furtado, admits to the allegations contained in paragraphs 3 to 6 of the Statement of Claim. Except as expressly admitted herein, Mr. Furtado denies the remainder of the allegations made in the Statement of Claim and puts the Plaintiffs to the strict proof thereof. Mr. Furtado specifically denies that the Plaintiffs are entitled to the relief sought in paragraph 1 of the Statement of Claim.

Overview

2. Contrary to the Plaintiffs' highly prejudicial allegation that Mr. Furtado engaged in a "scheme" with some or all of the Defendants for the purpose of obtaining improper gains and

causing harm to the Plaintiffs, the agreements detailed in the Statement of Claim were valid and binding contracts between arms length commercial parties that were entered into for the legitimate business purpose of acquiring, developing, and reselling the properties at issue in this proceeding.

3. Mr. Furtado is by no means a fraudster. Mr. Furtado is a chartered professional accountant who, after a successful career in accounting and finance, spent nearly a decade building Go-To Developments (as herein defined) into a successful real estate acquisition and development business. Mr. Furtado, through Go-To Developments, has been successful in real estate ventures in Southern Ontario and the Greater Toronto Area. At all times, Mr. Furtado has worked diligently, with sound judgment, and in the best interests of Go-To Developments and the partnerships within that umbrella of companies. In so doing, Mr. Furtado has deferred his compensation and put his own assets at risk.

4. The two properties at issue in this proceeding (the “Properties” as herein defined) are located in downtown Toronto and were considered by many to be a “crown jewel” of development properties in Toronto due to, among other things, their location and tall-building classification. Given the highly competitive nature of the real estate and development industry in Toronto and a lack of available inventory, the opportunity to purchase both Properties as an assembled parcel represented a rare and valuable opportunity for a Go-To Development partnership to acquire prime real estate with significant development and resale potential in downtown Toronto.

5. As with past Go-To Developments projects, Mr. Furtado devoted his time, effort, and resources to the Go-To Adelaide LP (as herein defined) and the development of the Properties. Despite challenges brought on by, among other things, the COVID-19 pandemic, significant progress was made on the development. The Go-To Adelaide LP submitted a development

application to the City of Toronto, engaged in public consultations, and responded to the City of Toronto's inquiries in its application review process. The City of Toronto's approval of the Go-To Adelaide LP's development application was imminent, which would have significantly increased the value of the Properties and, in turn, allowed the Go-To Adelaide LP to develop or sell the Properties to the benefit of the partnership and its investors.

6. However, the Go-To Adelaide LP's successful completion of the project was ultimately disrupted by the abrupt and imprudent appointment of a receiver over various Go-To Developments entities and their assets, including the Go-To Adelaide LP and the Properties. Predictably, the appointment of a receiver over the Properties was the death knell for the Go-To-Adelaide LP and its investors, with the receiver proceeding to sell the Properties prior to obtaining development approvals and ignoring Mr. Furtado's good faith efforts to introduce the receiver to a potential purchaser that was willing to purchase the Property at a significantly higher price than was ultimately obtained by the receiver. Mr. Furtado is not liable for the damages caused by the fact of the appointment of the Receiver and/or its failure to take appropriate steps to realize the full value of the Properties.

The Parties

7. Mr. Furtado resides in Oakville, Ontario. He is the founder and directing mind of a company that operated as Go-To Developments Holdings Inc. ("**GTDH**") and carried on business as a property acquisition and development company. As discussed below, GTDH is the sole shareholder of the Plaintiff, Go-To Spadina Adelaide Square Inc. (the "**General Partner**"), which, in turn, is the general partner of the Plaintiff, Go-To Spadina Adelaide Square LP (the "**Go-To Adelaide LP**").

8. The Defendant, Alfredo Italo Malanca, resides in Ontario and, to the best of Mr. Furtado's knowledge, is the directing mind of the Defendant, Goldmount Financial Group Corporation ("**Goldmount**"). Prior to the events giving rise to this action, Mr. Furtado knew Mr. Malanca in a professional capacity and Goldmount had previously provided financing to GTDH.

9. In response to paragraphs 7, 9 and 21 of the Statement of Claim, Mr. Furtado has no knowledge of whether Mr. Malanca is the directing mind of, or otherwise controls, the Defendant Adelaide Square Developments Inc. ("**ASD**"). At all relevant times, Mr. Furtado believed that Angelo Pucci was the directing mind of ASD, and that Mr. Malanca was acting as a representative or agent of ASD.

10. The Defendant, Katarzyna Pikula, resides in Ontario and, to the best of Mr. Furtado's knowledge, is Mr. Malanca's spouse. Prior to the events giving rise to this action, Mr. Furtado was familiar with Ms. Pikula's company, the Defendant, AKM Holdings Corp. ("**AKM**"), which had provided mortgage brokerage services to GTDH.

11. The Defendant, Louis Raffaghello, resides in Toronto, Ontario and, to the best of Mr. Furtado's knowledge, served as Mr. Malanca's counsel at Concorde Law Professional Corporation ("**Concorde Law**"). Mr. Furtado has no knowledge of the defendant, Montana Management Inc. ("**MMI**"), and in response to paragraph 21 of the Statement of Claim, has no knowledge of whether Mr. Raffaghello controlled or directed MMI.

Background

Go-To Developments Holdings Inc.

12. Prior to the receivership order, GTDH operated its business through an organizational structure that included a series of project-specific limited liability partnerships (collectively, the "**Go-to-Partnerships**" and, with GTDH, "**Go-to-Developments**"). At its height, there were a total of ten Go-to-Partnerships for nine real estate developments located in Ontario.

13. GTDH is the sole shareholder of the general partner of each of the Go-to-Partnerships including the General Parter of the Go-To Adelaide LP. The limited partners of each Go-to-Partnership are comprised of investors who purchased units in the corresponding partnership.

14. GTDH's business strategy involved acquiring real property and generating profits by obtaining planning approvals and either: (a) engaging construction contractors to build residential or commercial properties for resale; or (b) reselling property to another developer before commencing construction. For clarity, the term "development" as used in this Statement of Defence includes the steps described in this paragraph, and does not strictly refer to "breaking ground" and constructing residential or commercial properties.

The Properties

15. The properties at issue in this action are located at 355 Adelaide Street West, Toronto (the "**Adelaide Property**") and 46 Charlotte Street, Toronto (the "**Charlotte Property**" and with the Adelaide Property, the "**Properties**").

16. The Properties were first brought to Mr. Furtado's attention by Mr. Malanca in 2018. In or around July 2018, Mr. Malanca advised Mr. Furtado that ASD had acquired the rights to purchase the Properties and asked if GTDH may be interested in acquiring the Properties as assembled. As part of this proposal, Mr. Malanca presented an individual named Hans Jain as being a potential partner for the project. At that time, Mr. Furtado knew Mr. Jain as the Principal of Atria Development Corp. ("**Atria**") and understood that Mr. Jain had access to financing, equity, and experience in real estate development.

17. Mr. Furtado agreed to acquire the Properties through a yet-to-be established Go-to-Development partnership with Mr. Jain or Atria serving as a limited partner. In particular, it was agreed that Atria would arrange for the second mortgage and provide equity financing to the limited partnership.

18. In addition, given Mr. Malanca's experience in the development industry, it was initially contemplated that Mr. Malanca may have some ongoing role in assisting with the development of the Properties. In response to paragraph 21 of the Statement of Claim, there was nothing improper about Mr. Furtado having provided Mr. Malanca with a Go-to Developments email address in the circumstances.

The Partnership Agreement

19. On October 19, 2018, Mr. Furtado incorporated the General Partner and formed the Go-To Adelaide LP for the purpose of acquiring the Properties from ASD.

20. The Go-To Adelaide LP was governed by a Partnership Agreement between the General Partner, GTDH, and the future limited partners of the Go-To Adelaide LP and was made effective

on April 4, 2019 (the "**Partnership Agreement**"). Mr. Furtado was not a party to the Partnership Agreement, was not personally bound by the Partnership Agreement, and did not make any guarantees or assume any other personal liabilities under the Partnership Agreement.

21. The purpose of the Go-To Adelaide LP was defined in section 1.11 of the Partnership Agreement as follows: "The Partnership has been formed for the purpose of purchasing, holding an interest in, conducting pre-development planning with respect to, development and construction of the [Properties], and the sale or other disposition of the [Properties] (or part thereof). […]"

22. The Partnership Agreement provided the General Partner with authority over the management of the Go-To Adelaide LP. Article 5.1 of the Partnership Agreement states:

> […] the General Partner will control and have full and exclusive power, authority and responsibility for the business of the [Go-To Adelaide LP] and will do or cause to be done in a prudent and reasonable manner any and all acts necessary, appropriate or incidental to the business of the [Go-To Adelaide LP]. […]

23. Section 5.3 of the Partnership Agreement defines the General Partner's specific powers to act without further authorization from the limited partners, which includes, among other things, the powers to:

(a) Execute, deliver and carry out all agreements and other instruments or documents which require execution by or on behalf of the Go-To Adelaide LP;

(b) In relation to the purchase, ownership, financing, management, development, sale or other disposition of the Property (or a part thereof), to enter into and perform its or the Go-To Adelaide LP's obligations under any agreements contemplated therein, and any other agreement of purchase and sale, joint venture agreement, co-ownership agreement or management agreement that, in the opinion of the General Partner is required in connection with the ownership and development of the Property;

(c) Make all payments relating to the purchase and development of the Property including, without limitation, all of its costs and expenses incurred in connection with the purchase, and development of the Property; and

(d) Make such determinations, attend meetings, vote, pass such resolutions and exercise all rights of and on behalf of the Go-To Adelaide LP, as the General Partner may deem necessary or desirable for the Go-To Adelaide LP.

24. Pursuant to the Partnership Agreement, the limited partners were entitled to a return of capital and a fixed rate of return on their capital investment. However, the limited partners were not entitled to receive any form of profit sharing with respect to the Properties in excess of or in addition to a fixed rate of return. The only exception was Anthony Marek who, as detailed below, agreed to a fixed rate of return and a spilt of profits.

The Acquisition Agreements

25. By agreement of purchase and sale dated December 21, 2018, ASD agreed to sell both Properties to the Go-To Adelaide LP for the total purchase price of $74.25 million. It was Mr. Furtado's understanding that this purchase price – which, was commercially reasonable in light of the appraised value of the Properties at the time and the fact that the Properties were being purchased as an assembly of prime real estate in downtown Toronto – was non-negotiable.

26. The agreement of purchase and sale between ASD and the Go-To Adelaide LP was contingent on ASD successfully acquiring both Properties from the original owners through separate agreements of purchase and sale. Mr. Furtado was not a party to any of the underlying agreements of purchase and sale between ASD or its nominee corporations and the original owners

of the Properties. More generally, Mr. Furtado did not have any contact with the original owners of the Properties and was not involved in any negotiations with the original owners of the Properties with respect to those agreements of purchase and sale.

27. The underlying agreements of purchase and sale between ASD and the original owners of the Properties were amended and extended from time to time, which precipitated amendments to the agreement of purchase and sale between ASD and the Go-To Adelaide LP. On March 26, 2019, the agreement of purchase and sale between ASD and the original owner of the Adelaide Property was amended to extend the closing date to April 4, 2019. This amendment was required as a result of Atria's failure to meet its obligations to arrange for a second mortgage and equity financing prior to the scheduled closing date.

28. As a condition of this amendment, ASD was required to pay an additional non-refundable deposit of $800,000 (the "**Non-Refundable Deposit**"). However, by Memorandum of Agreement between Mr. Furtado, the Go-To Adelaide LP, and ASD, dated March 26, 2019, the Go-To Adelaide LP agreed to pay the Non-Refundable Deposit.

29. By corresponding Memorandum of Agreement of the same date between Mr. Furtado, Mr. Furtado's personal holding company, Furtado Holdings Inc. ("**Furtado Holdings")**, and the Go-To Adelaide LP, (with the above memorandum of agreement, the "**Memorandums of Agreement**"), Furtado Holdings agreed to incur the expense of any loss of the Non-Refundable Deposit if the Go-To Adelaide LP did not complete its acquisition of the Properties. As consideration for taking on the risk associated with the Non-Refundable Deposit, ASD also agreed to pay Furtado Holdings a fee upon the Go-To Adelaide LP's successful acquisition of the Properties (the "**Deposit Fee**").

30. Following this amendment, the Go-To Adelaide LP and ASD resolved to complete the transaction by taking an assignment of the existing agreements of purchase and sale between ASD and the original owners of the Properties As a result, the Go-To Adelaide LP and ASD entered into the following agreements:

(a) By Assignment Agreement dated March 26, 2019, the Go-To Adelaide LP took an assignment of the agreement of purchase and sale between ASD and the original owner of the Adelaide Property, as amended, pursuant to which ASD had agreed to purchase the Adelaide Property for $36,800,000 inclusive of the Non-Refundable Deposit;

(b) By Assignment Agreement dated March 29, 2019, the Go-To Adelaide LP took an assignment of the agreement of purchase and sale between ASD and the original owner of the Charlotte Property, as amended pursuant to which ASD had agreed to purchase the Charlotte Property for $16,500,000; and

(c) By a corresponding Assignment Fee Agreement dated March 29, 2019 (the "**Assignment Fee Agreement**"), the Go-To Adelaide LP agreed to pay ASD an assignment fee of $20.95 million (the "**Assignment Fee**").

31. In addition to the foregoing, on April 3, 2019, the Go-To Adelaide LP, ASD, and FAAN Mortgage Administrators Inc. ("**FAAN**"), entered into a Memorandum of Understanding, pursuant to which the purchaser of the Charlotte Property was required to pay a "density bonus" (the "**Density Bonus**") based on the approved gross residential floor space of the Properties. FAAN was the court appointed receiver of the owner of the Charlotte Property and made its sale of the Charlotte Property to ASD conditional on the payment of a density bonus to FAAN as the receiver.

32. In consideration for Mr. Malanca's efforts in bringing the opportunity to purchase the assembled Properties to Go-To Developments attention, and for Mr. Malanca's efforts in helping to arrange for mortgage financing to acquire the Properties, the Go-To Adelaide LP agreed to pay a fee to Goldmount (the "**Finders Fee**").

33. The Go-To Adelaide LP completed its acquisition of the Properties on April 4, 2019, with title to both Properties transferred to the Go-To Adelaide LP on April 5, 2019. In response to paragraph 81 of the Statement of Claim, the Go-To Adelaide LP's acquisition of the Properties was not part of any "scheme".

34. In particular, in response to paragraphs 37, 51(e), and 95(e) of the Statement of Claim, Mr. Furtado denies that the Assignment Fee was part of any "scheme", that it breached the Partnership Agreement, or was otherwise improper or unlawful. The Assignment Fee Agreement was an arm-length agreement, and the Assignment Fee was validly charged as consideration for assigning purchase rights for the assembled Properties to the Go-To Adelaide LP. The total purchase price for the Properties pursuant to the above agreements – $74.25 million – was the same as the purchase price under the original agreement of purchase and sale between the Go-To Adelaide LP and ASD.

The Acquisition Financing

35. The total closing cost for the Go-To Adelaide LP's acquisition of the Properties was approximately $76,595,119, including the balance owing to the vendors and the Assignment Fee owing to ASD. All closing costs were validly charged in relation to the Go-To Adelaide LP's acquisition of the Properties.

36. The majority of the Go-To Adelaide LP's closing costs were financed through a loan from Canadian Mortgage Services Corporation, secured by a first ranking mortgage registered on title to the Properties, and a loan from Scarecrow Capital Incorporated, secured by a second ranking mortgage registered on title to the Properties. Mr. Furtado provided personal guarantees for both of these mortgages and, in connection with doing so, entered into a guarantee fee agreement (the "**Guarantee Fee Agreement**") with the Go-To Adelaide LP, pursuant to which the partnership agreed to pay Mr. Furtado a fee for taking on the risk associated with guaranteeing the partnership's mortgage debt.

37. The remaining closing costs were raised from investors in the Go-To Adelaide LP. All investors executed a subscription agreement (the "**Subscription Agreement**"), pursuant to which they agreed to purchase a specified number of Class A or Class B units in the Go-To Adelaide LP for a set price of $50,000 per unit and an annualized rate of return. None of those investors were solicited until early 2019 after Atria failed to meet its equity financing commitments. In response to paragraph 29 of the Statement of Claim, Mr. Furtado had absolutely no involvement in marketing the Properties or soliciting investors in July 2018, or at any point until early 2019.

38. The largest investor was Mr. Marek, who was introduced to the Go-To Adelaide LP by Mr. Malanca and Mr. Raffaghello. Mr. Marek agreed to provide short-term bridge financing to allow the Go-To Adelaide LP to complete its acquisition of the Properties. On March 17, 2019, Mr. Marek executed a Subscription Agreement pursuant to which he subscribed to purchase a total of 336 Class A Units of the Go-To Adelaide LP at $50,000 per unit for a total purchase price of $16.8 million (the "**Bridge Loan**"). It was agreed that Mr. Marek would be repaid following the Go-To Adelaide LP's successful acquisition of the Properties and receive a flat fee of $2.7 million.

39. In response to paragraph 51(d) of the Statement of Claim, the allegation that “the Marek Investors’ investment was never actually needed to close the purchase of the Properties” is false. Without Mr. Marek’s investment, the Go-To Adelaide LP would not have had sufficient funds to complete the transaction. In response to paragraph 81 of the Statement of Claim, Mr. Marek’s Bridge Loan was not part of any “scheme” between the Defendants.

The Demand Loan Agreement

40. Prior to the closing date of April 4, 2019, the Go-To Adelaide LP was unable to identify a source of financing to repay Mr. Marek’s Bridge Loan and/or to pay the Finder’s Fee owing to Goldmount after closing. As such, Go-To Adelaide LP entered into a demand loan agreement with ASD on April 4, 2019 (the “**Demand Loan Agreement**”), pursuant to which ASD agreed to loan $19.8 million to the Go-To Adelaide LP (the “**Demand Loan**”) to repay the $19.5 million owing to Mr. Marek for the Bridge Loan and flat fee plus the $300,000 Finder’s Fee owing to Goldmount.

41. In response to paragraphs 48 to 52 and 69(b)(i) of the Statement of Claim, the Demand Loan Agreement was not “fake” or “illegitimate”. Rather, the Demand Loan Agreement was an arms length agreement entered into for the valid purpose of satisfying the Go-To Adelaide LP’s obligations to Mr. Marek and Goldmount after closing.

42. At all material times, Mr. Furtado’s understanding was that the full amount of the Bridge Loan was being repaid to Mr. Marek by ASD pursuant to the Demand Loan Agreement. Mr. Furtado had no prior knowledge of the payments being made to Concorde Law, AKM, MMI, or RAR Litigation as outlined in paragraph 45 of the Statement of Claim.

43. On April 15, 2019, Mr. Marek acknowledged his receipt of payment in the amount of $16.8 million for his returned capital. In response to paragraph 51(e) of the Statement of Claim, to the best of Mr. Furtado's knowledge, Mr. Marek was paid in full.

44. In response to paragraph 52 of the Statement of Claim, Mr. Furtado did not consent and was not provided with notice that ASD had registered any charge on the Properties in relation to the Demand Loan.

Payment of Deposit Fee

45. After the Go-To Adelaide LP acquired the Properties, Mr. Malanca advised Mr. Furtado that ASD had decided to issue shares to Furtado Holdings so that ASD could pay the Deposit Fee owing to Furtado Holdings by way of dividend for tax purposes.

46. In response to paragraphs 53 to 56 and 58 of the Statement of Claim, Mr. Furtado had no prior knowledge of ASD's "reorganization" and was not aware of any decision by ASD to amend its articles of incorporation or cancel shares. Moreover, in response to paragraphs 57(b), (c), and (d) of the Statement of Claim, Mr. Furtado had no prior knowledge of the circumstances of ASD's issuance of shares to AKM, FIM Holdings Inc., and/or Mr. Pucci.

47. On April 15, 2019, Furtado Holdings received a cheque from ASD's counsel at Concorde Law in the amount of $388,087.33 as a dividend payment from ASD (the "**First Dividend Payment**"), which was received as payment for the Deposit Fee pursuant to the Memorandums of Agreement. Contrary to paragraph 81 of the Statement of Claim, the First Dividend Payment was not part of any improper "scheme" between the Defendants.

48. The payment of the Deposit Fee to Furtado Holdings was commercially reasonable given the risk associated with making the Non-Refundable Deposit. If the Go-To Adeliade LP had not successfully completed its acquisition of the Properties, Furtado Holdings would have been responsible for repaying the Non-Refundable Deposit to the Go-To Adelaide LP pursuant to the Memorandums of Agreement.

Subsequent Investments in the Go-To Adelaide LP

49. Following the Go-To Adelaide LP's acquisition of the Properties, the Go-To Adelaide LP continued to raise funds from investors to finance ongoing development costs and other costs associated with the Properties. Contrary to paragraph 60 of the Statement of Claim, Mr. Furtado did not "prepare" the "Investment Opportunity Deck" referenced in that paragraph.

A. The September 2019 Investments

50. In September 2019, Mr. Marek agreed to invest an additional $12 million in the Go-To Adelaide LP through his companies, North Maroak Developments and West Maroak Developments (the "**September 2019 Investments**"). Mr. Marek's September 2019 Investments were made through the following subscription agreements:

(a) By agreement dated September 26, 2019, North Maroak Developments subscribed to purchase 120 Class A Units of the Go-To Adelaide LP at $50,000 per unit for a total purchase price of $6 million and a targeted annual return of 20%; and

(b) By agreement dated September 26, 2019, West Maroak Developments subscribed to purchase 120 Class A Units of the Go-To Adelaide LP at $50,000 per unit for a total purchase price of $6 million and a targeted annual return of 20%.

51. Mr. Marek later requested that the Go-To Adelaide LP reissue the above Subscription Agreements as a single subscription in Mr. Marek's own name for tax purposes. The Go-To Adelaide LP complied, and Mr. Marek executed a revised Subscription Agreement post-dated as September 26, 2019.

52. In response to paragraphs 66, 67, and 69(b)(iv) of the Statement of Claim, at no time did Mr. Marek request or Mr. Furtado represent that Mr. Marke's September 2019 Investments would be used for any specific cost or payment related to the Properties. Mr. Marek's only concern was his anticipated rate of return.

53. The Go-To Adelaide LP used the funds received from Mr. Marek's September 2019 Investments to pay down the Demand Loan owing to ASD. On October 1, 2019, the General Partner caused the Go-To Adelaide LP to wire $12 million to ASD's counsel as a partial payment under the Demand Loan Agreement (the "**Loan Payment**").

54. The General Partner had authority and discretion to make the Loan Payment under section 5.3(h) of the Partnership Agreement and, in response to paragraph 69 of the Statement of Claim, the decision to make the Loan Payment was made for the valid business purpose of reducing the Go-To Adelaide LP's debts and liabilities.

55. Although no formal demand had been made under the Demand Loan Agreement, ASD had the right to demand repayment at any time, which represented a significant contingent liability for the Go-To Adelaide LP that would interfere with the partnership's ability to secure any additional financing and mortgage refinancing for the Properties.

56. In addition, the Demand Loan was accruing substantial interest at the rate of $50,000 per month, which was set to increase to $100,000 per month in January of 2020. It was in the Go-To Adelaide LP's best interests to pay off the Demand Loan as soon as possible to eliminate that debt liability and avoid the possibility of ASD calling the Demand Laon.

57. The Loan Repayment was a reasonable and rationale commercial action and was not part of any scheme.

B. The June 2020 Investments

58. In or around June 2020, Mr. Marek agreed to invest an additional $2 million in the Go-To Adelaide LP (the "**June 2020 Investments**") to finance ongoing costs associated with the Properties. Mr. Marek's June 2020 Investments were made through the following agreements:

(a) By subscription agreement dated June 12, 2020, Mr. Marek subscribed to purchase a total of 20 Class A Units of the Go-To Adelaide LP at $50,000 per unit for a total purchase price of $1 million; and

(b) By subscription agreement dated June 18, 2020, Mr. Marek subscribed to purchase an additional 20 Class A Units of the Go-To Adelaide LP at $50,000 per unit for a total purchase price of $1 million.

59. Both of the above subscription agreements provided for a targeted annual return of 20% plus an additional 0.833% of the balance of any profits after distributions for Mr. Marek.

60. The Go-To Adelaide LP used the funds received from Mr. Marek's June 2020 investments to further develop the Properties by financing development costs including, among other things, amounts due to consultants and other professional services providers and by reducing the Go-To

Adelaide LP's liabilities. Mr. Furtado provided Mr. Marek with full and complete disclosure of the Go-To Adelaide LP's use of Mr. Marek's June 2020 Investments.

61. In response to paragraph 81 of the Statement of Claim, Mr. Furtado denies that Mr. Marek's June 2020 Investments formed part of any improper "scheme" between the Defendants.

Receipt of the Second Dividend Payment

62. On October 1, 2019, Furtado Holdings received a dividend payment of $6 million from ASD (the "**Second Dividend Payment**"). Furtado Holdings received the Second Dividend Payment as consideration for Mr. Furtado's significant efforts in completing the Go-To Adelaide LP's acquisition of the Properties as described herein. There was nothing unlawful or improper about Furtado Holdings' receipt of the Second Dividend Payment.

63. Further, the majority of the Second Dividend Payment funds were used to advance various Go-To Developments projects and to the direct and indirect benefit of the Go-To Adelaide LP.

Receivership Interrupts Development Progress

64. After acquiring the Properties, the Go-To Adelaide LP made significant progress towards obtaining planning approvals for a consolidated parcel, which would have significantly increased the value of the Properties and allowed the Go-To Adelaide LP to either arrange for construction on the Properties or resell the Properties to another developer prior to commencing construction.

65. On or about June 29, 2020, the Go-To Adelaide LP submitted a zoning bylaw application and supporting studies to the City of Toronto for the construction of a 50-storey building that would include office, retail, and residential units. On November 9, 2020, the City of Toronto held

a public consultation on the application and, in the months that followed, the Go-To Adelaide LP responded to comments from the City of Toronto and submitted a revised application.

66. By all indications, the Go-To Adelaide LP's pending application would ultimately have been approved by the City of Toronto. However, by order dated December 10, 2021, (the "**Receivership Order**", which commenced the "**Receivership Proceedings**") KSV Restructuring Inc. was appointed as receiver of the Go-to-Development entities, including the General Partner and the Go-To Adelaide LP, which halted all progress on the development of the Properties.

67. Following the Receivership Order, Mr. Furtado put the Receiver in contact with a reputable third-party developer, Fieldgate Commercial Developments Limited ("**Fieldgate**"), that was willing to purchase the Properties for upwards of $116 million. It is Mr. Furtado's understanding that the Receiver refused to engage with that prospective purchaser.

68. By order dated February 9, 2022, the Court approved a sales process for the Properties and by Approval and Vesting Order dated July 7, 2022, the Court approved the sale of the Properties to Fengate Capital Management Inc. Despite the fact that development approvals had yet to be obtained, the Properties were nonetheless sold for $90 million, which significantly exceeded the Go-To Adelaide LP's purchase price for the Properties.

Misuse of Compelled Evidence

69. The Receivership proceedings were commenced by the Ontario Securities Commission (the "**OSC**") following its investigation into the events at issue in this proceeding. The OSC's investigation involved the collection of compelled evidence. In the record filed by the OSC in support of the Receivership Order, the OSC publicly filed and disclosed confidential compelled

evidence. Such disclosure was made in breach of the confidentiality provisions of the Ontario *Securities Act*, R.S.O. 1990, c. S.5 and Mr. Furtado's rights under the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982.

70. The allegations made by the Receiver in the within action give rise to concerns that this action is predicated on the misuse of compelled evidence. Mr. Furtado reserves all rights in this regard.

No Liability

71. Mr. Furtado does not bear any personal liability for the damages sought in the Statement of Claim. The transactions at issue in this action were undertaken by corporate entities and partnerships. There is no basis to pierce the corporate veil and hold Mr. Furtado personally liable for the alleged actions or inactions described in the Statement of Claim. In any event, and as discussed below, there is no basis to hold Mr. Furtado liable for any of the causes of action in the Statement of Claim.

No Conspiracy

72. Mr. Furtado did not engage in any conspiracy with any of the Defendants. In particular, Mr. Furtado did not conspire with any of the Defendants to harm the General Partner and/or the Go-To Adelaide LP. Mr. Furtado specifically denies, as alleged at paragraph 94 of the Statement of Claim that he was a "puppeteer" of any conspiracy related to the Properties.

73. In response to paragraph 92 of the Statement of Claim, Mr. Furtado denies that he mapped out any improper "scheme" with the Defendants prior to closing, and/or that he acted with the purpose of causing harm to the Plaintiffs by stripping the Go-To Adelaide LP of funds or

otherwise. Similarly, in response to paragraph 93 of the Statement of Claim, Mr. Furtado denies that he reached any improper agreement with any of the Defendants, that he acted unlawfully, and/or that he intended to cause or did in fact cause any harm to the Plaintiffs.

No Breach of Fiduciary Duties

74. Mr. Furtado is not liable to either the General Partner or the Go-To Adelaide LP for breach of fiduciary duties. As noted above, Mr. Furtado was not a party to the Partnership Agreement. Mr. Furtado denies that he owed any fiduciary duties to the Plaintiffs as alleged in paragraphs 97 to 100 of the Statement of Claim, or at all.

75. In any event, Mr. Furtado at all times acted in good faith and in the best interest of the Plaintiffs and demonstrated the skill, care, and diligence expected of a director and officer in similar circumstances. In response to paragraph 98 of the Statement of Claim, Mr. Furtado vehemently denies that he and Mr. Malanca developed any scheme to "defraud the Plaintiffs" while "destroying the Adelaide Project".

76. Contrary to the Plaintiffs' allegations, many of Mr. Furtado's friends, business associates, and community members were investors in other Go-to-Partnerships and Mr. Furtado's only interest was in the successful resale or development of the Properties. Despite the barrage of criticism Mr. Furtado has faced from the Receiver and the OSC, he has continued to work in the best interests of the Plaintiffs by, for example, introducing the Receiver to a potential buyer for the Properties.

No Breach of Contract

77. Mr. Furtado is not liable for breach of contract. As noted above, the Partnership Agreement was entered into by the General Partner, GTDH, and the Limited Partners. Mr. Furtado is not a party to the Partnership Agreement.

78. In any event, Mr. Furtado denies that the General Partner and/or GTDH breached any terms of the Partnership Agreement. As a matter of fact, Mr. Furtado denies that he committed any of the acts described in paragraph 95 of the Statement of Claim and specifically denies that any such actions amount to a breach of contract.

No Oppression

79. The General Partner, by its Receiver, is not a “complainant” for the purposes of section 248 of the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16, and does not have any standing to commence an oppression claim against Mr. Furtado. Moreover, the General Partner, by its Receiver, does not have any standing to advance an oppression claim grounded in the “reasonable expectations” of the Go-To Adelaide LP or any investors.

80. In any event, at no time did Mr. Furtado act in a manner that was prejudicial to or unfairly disregarded the rights or reasonable expectations of the General Partner. In response to paragraphs 108 and 109 of the Statement of Claim, Mr. Furtado exercised reasonable business judgment and at all times acted in the best interests of the General Partner, which aligned with the interest of the Go-To Adelaide LP. Mr. Furtado expressly denies having “lined his pockets” with the General Partner’s funds, as alleged or at all.

No Breach of Trust or Knowing Receipt

81. In response to paragraphs 101, 102, and 105 of the Statement of Claim, there was no misuse of investor funds or breach of trust.

82. Mr. Furtado did not commit any breach of trust with respect to investor funds for his own benefit or otherwise. All investor funds were used in a manner that was commercially reasonable and consistent with the applicable contractual terms. In specific response to paragraph 104 of the Statement of Claim, Mr. Furtado denies that he improperly received any funds from either of the Plaintiffs.

No Unjust Enrichment

83. Mr. Furtado was not unjustly enriched. To the contrary, as discussed below, Mr. Furtado has suffered personal losses in relation to the Properties. In response to paragraph 110 of the Statement of Claim, any funds received by Mr. Furtado were commercially reasonable and received in accordance with the parties' contractual arrangements. They were received as of right. Mr. Furtado denies that either of the Plaintiffs have been deprived as a result of any of Mr. Furtado's conduct.

84. In response to paragraph 114 of the Statement of Claim, Mr. Furtado has not been unjustly enriched and, therefore, the Plaintiffs are not entitled to any disgorgement of funds. Moreover, in response to paragraphs 111 to 113 of the Statement of Claim, the Plaintiffs are not entitled to a tracing order or an order imposing a trust on any funds that Mr. Furtado received in relation to the Properties.

No Damages

85. Mr. Furtado denies that either the General Partner or the Go-To Adelaide LP have suffered any losses and puts the Plaintiffs to the strict proof thereof.

86. As indicated above, the Receiver sold the Properties for $90 million which exceeds the Go-To Adelaide LP's purchase price for the Properties. Neither the Go-To Adelaide LP nor the General Partner suffered any discernable form of damages in connection with the Properties.

87. To the extent that the Plaintiffs have suffered a loss, which is not admitted but denied, Mr. Furtado submits that the Plaintiffs' claim for damages is excessive, remote, and not recoverable at law. Moreover, there is no basis to claim punitive damages as against Mr. Furtado. Mr. Furtado did not engage in any conduct warranting the imposition of punitive damages in this action.

Set-Off

88. If Mr. Furtado is liable to the Plaintiffs and the Plaintiffs have suffered damages, which is denied, the amount of those damages should be reduced to account for the amounts owing to Mr. Furtado by the Plaintiffs, including guarantee fees and outstanding shareholder loans. Mr. Furtado relies on the law of set-off with respect to the amounts owed to him by the Plaintiffs, the full extent of which will be determined at trial.

89. Mr. Furtado repeats and relies on his Proof of Claim against the Go-To Adelaide LP filed in the Receivership Proceedings with respect to his losses.

Contributory Negligence

90. If Mr. Furtado is liable to the Plaintiffs and the Plaintiffs have suffered damages, which is denied, the amount of those damages should be reduced to account for the Receiver's contributory negligence. The Receiver ignored the opportunity to sell the Properties to Fieldgate for upwards of $116 million and proceeded to sell the Properties at a lower price. Moreover, the Receiver elected to market and sell the Properties prior to obtaining planning approvals, which were already submitted and under review by the City of Toronto. Those approvals, which were pending, would have significantly increased the sale value of the Properties.

91. The Receiver failed in its obligations when marketing and selling the Properties and, in so doing, caused, or contributed to the Plaintiffs' damages as claimed in this action.

92. Mr. Furtado relies on the doctrine of *ex turpi causa* in defence of the Plaintiffs' claims.

93. Mr. Furtado asks that this action be dismissed with costs payable to him by the Plaintiffs.

COUNTERCLAIM

94. The Plaintiff by counterclaim, Oscar Furtado, claims:

(a) As against Go-To Spadina Adelaide Square LP (the "**Go-To Adelaide LP**"), damages for unpaid guarantee fees owing to Mr. Furtado, the amount of which will be proven at trial;

(b) As against Go-To Adelaide Square Inc. (the "**General Partner**"), damages in the amount of all shareholder loans advanced by Mr. Furtado to the General Partner plus accrued interests, the total amount of which will be proven at trial;

(c) As against both Go-To Adelaide LP and the General Partner:

(i) Costs of this counterclaim on a full indemnity basis;

(ii) Prejudgment and postjudgment interest in accordance with section 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and

(iii) Such other relief as Mr. Furtado may request and this Honourable Court deems just.

95. Mr. Furtado repeats and relies on his Statement of Defence for the purposes of this Counterclaim. In addition, Mr. Furtado repeats and relies on his Proof of Claim filed in the Receivership Proceedings.

96. In addition to providing valuable services to the Plaintiffs, Mr. Furtado guaranteed certain of the Go-To Adelaide LP's debts and, pursuant to the Guarantee Fee Agreement, the Go-To Adelaide LP agreed to pay Mr. Furtado guarantee fees as consideration for taking on the risk of those guarantees. Mr. Furtado also advanced shareholder loans to the General Partner, which are due and owing.

97. The Go-To Adelaide LP has not paid the full amount of the guarantee fees owing to Mr. Furtado, the full amount of which will be proven at trial.

98. The General Partner has not paid the full amount of the shareholder loans owing to Mr. Furtado, the full amount of which will be proven at trial.

99. Mr. Furtado pleads that, if necessary, the stay of proceedings against the Plaintiffs should be lifted to allow this counterclaim to proceed.

CROSSCLAIM

100. The Plaintiff, by crossclaim, Oscar Furtado, makes the following claims against Alfredo Italo Malanca, Adelaide Square Developments Inc. (“**ASD**”), and Goldmount Financial Group (“**Goldmount**”):

(a) Contribution and indemnity for any amounts for which Mr. Furtado is held liable to the Plaintiffs in this action including costs;

(b) The costs of this crossclaim on a full indemnity basis;

(c) Prejudgment and postjudgment interest in accordance with section 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and

(d) Such other relief as Mr. Furtado may request and this Honourable Court deems just.

101. In the event that Mr. Furtado is held liable to the Plaintiffs, and the Plaintiffs have suffered damages, which is not admitted but denied, any such damages were the result of the actions and inactions of Mr. Malanca, Goldmount, and/or ASD, the particulars of which are not known to Mr. Furtado but will be proven at trial.

102. Mr. Furtado repeats and relies on the allegations made in his Statement of Defence.

103. Mr. Furtado relies on the provision of the *Negligence Act*, R.S.O. 1990, c. N. 1.

April 5, 2024

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Defendant

GO-TO SPADINA ADELAIDE SQUARE INC. et al. -and- ADELAIDE SQUARE DEVELOPMENTS INC. et al.
Plaintiffs Defendants

Court File No. CV-23-00710745-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF DEFENCE, COUNTERCLAIM, AND CROSSCLAIM OF OSCAR FURTADO

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TAB “5”

Court File No. CV-23-00710745-00CL

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B E T W E EN:

GO-TO SPADINA ADELAIDE SQUARE INC. and GO-TO SPADINA ADELAIDE SQUARE LP, each by its Receiver, KSV RESTRUCTURING INC.

Plaintiffs

\- and -

ADELAIDE SQUARE DEVELOPMENTS INC., ALFREDO ITALO MALANCA a.k.a ALFREDO PALMERI, OSCAR FURTADO, GOLDMOUNT FINANCIAL GROUP CORPORATION, CONCORDE LAW PROFESSIONAL CORPORATION, LOUIS RAFFAGHELLO, MONTANA MANAGEMENT INC., AKM HOLDINGS CORP. and KATARZVNA PIKULA

Defendants

STATEMENT OF DEFENCE OF LOUIS RAFFAGHELLO AND CONCORDE LAW PROFESSIONAL CORPORATION

1. In January 2019, Adelaide Square Developments, Inc. (“ASDI”) retained Louis Raffaghello (“Raffaghello”) and Concorde Law Professional Corporations (“Concorde Law”) (collectively the “Lawyers”) to act on its behalf with respect to the sale of the Adelaide/Charlotte Properties (as that term is defined below).

2. With respect to allegations involving the Lawyers’ representation of ASDI, the Lawyers can neither admit nor deny the allegations contained in the Statement of Claim, because there has been no waiver of solicitor-client privilege by ASDI.

3. With respect to the allegations in the Statement of Claim alleging wrongful conduct by the Lawyers, directly, indirectly or by implication, outside of their role as counsel for ASDI and therefore outside the ambit of solicitor client privilege between the Lawyers and ASDI, the Lawyers:

   (a) admit the truth of the allegations contained in the following paragraphs of the Statement of Claim: 5, 9 (first two sentences only), 12, 13, 14, 25, 26, 30, *53, 54, 55, 56, 57,* 82 and 119, and

   (b) deny the balance of the allegations contained in the Statement of Claim, unless otherwise expressly indicated below.

The Incorporation Retainer

4. In or about July 2018, the Lawyers were requested to incorporate a company - Adelaide Square Developments Inc. ("ASDI").

5. Further to instructions received from Anthony Pucci ("Pucci") and Alfredo Malanca ("Malanca"), the Lawyers took steps to prepare Articles of Incorporation and incorporated ASDI on July 30, 2018.

6. Further to the Articles of Incorporation, Pucci was ASDI's sole officer and director.

7. Malanca was described as ASDI's developer and fundraiser who could provide instructions to the Lawyers on ASDI's behalf. Pucci, as ASDI's sole authorized signing officer, could execute documents on behalf of ASDI.

8. Pucci was also ASDI's sole shareholder from incorporation until mid-April 2019.

ASDI and the Adelaide/Charlotte Properties

9. In or about January 2019, Malanca provided the Lawyers with a copy of an executed Agreement of Purchase and Sale between ASDI, as vendor, and Go-To Spadina Adelaide Square LP ("Go-To LP") as purchaser dated December 18, 2018 pursuant to which ASDI agreed to sell and Go-To LP agreed to buy a portion of lands municipally known as 355 Adelaide Street West and 46 Charlote Street (the "Adelaide/Charlotte Properties") for $74.25 million (the "APS") and requested that the Lawyers act on ASDI's behalf to assist with the completion of the sale transaction with Go-To LP.

10. Pucci signed the APS on ASDI's behalf and Oscar Furtado ("Furtado") signed the APS on behalf of Go-To LP.

11. As reflected in the APS, ASDI was acquiring the Adelaide/Charlotte Properties from third-party vendors for sale to Go-To LP.

12. The Lawyers were not involved in negotiating or drafting the various agreements and amendments respecting acquisition of the Adelaide/Charlotte Properties from the third-party vendors.

13. The Lawyers were not involved in the negotiation of the APS, nor did they have any involvement with matters involving the Adelaide/Charlotte Properties before January 2019.

14. Further to and following their receipt of the executed APS, the Lawyers learned that:

    (a) an experienced real estate and corporate lawyer, Davide Di Iulio ("Di Iulio"), had been acting on the acquisition of the Adelaide/Charlotte Properties,

    (b) the Adelaide/Charlotte Properties were being acquired for approximately $53.0 million,

    (c) because of, inter alia, efforts to substantively assemble the lands coupled with the passage of time, the Adelaide/Charlotte Properties had increased in value substantially and had an appraised value greater than approximately $74.0 million,

    (d) Go-To LP had obtained a first mortgage financing commitment from an arms-length lender, Canadian Mortgage Servicing Corporation ("CMSC") (represented by Harris Shaeffer LLP), for $51.975 million, expressly conditional on the lender receiving an appraisal confirming the as is value of the Adelaide/Charlotte Properties to be a minimum of $74.25 million.

15. In all these circumstances, the APS (which the Lawyers observe is not even mentioned in the Statement of Claim) and the surrounding circumstances, including a mortgage financing commitment to Go-To LP for more than $51.0 million, reflected a *bona fide* arms-length back-to-back purchase and sale transaction for fair market value.

Angel Funding from Anthony Marek

16. In or about February 2019, ASDI advised the Lawyers that Go-To LP was experiencing difficulties in raising sufficient investments in the limited partnership to enable it to complete the purchase of the Adelaide/Charlotte Properties and inquired if the Lawyers could assist in finding approximately $13.0 million in short-term funding to enable Go-To LP to complete the deal. The amount of the funding shortfall was later determined to be $16.8 million.

17. In or about February 2019, Raffaghello contacted Anthony Marek ("Marek") and then met with Marek. Marek was known to Raffaghello as a wealthy individual receptive to private lending or investment opportunities.

18. By e-mail correspondence dated February 28, 2019, Raffaghello summarized the transaction involving ASDI, Go-To LP, and the Adelaide/Charlotte Properties (including the possibility that the APS might be revoked and replaced by assignments of ASDI's purchase agreements to Go-To LP to save on Land Transfer Tax), the funding requirements, and the proposed basis for Marek's advance of funds:

> *Go-To is looking for your client to advance approx. $13,000,000 to facilitate the deal. The funds will be paid to Go-To's solicitors in trust (Torkin Manes) on the specific agreement that the funds will only be used to close the transaction. If for any reason the deal does not close, these funds are to be returned immediately without deduction.*
>
> *If the deal closes, the assignment price will be paid to my firm (we are acting for Adelaide Square) on the strict agreement that from these funds, the principal amount advanced and interest/fees, etc., are to be paid back to your client without deduction. Adelaide will take security from Go-To in exchange for the release of the funds, but the timing of the registration or adequacy of the security will not affect the release of funds back to your client.*
>
> *As additional security for the repayment to your client, Go-To, or a related company will provide a second mortgage against 100 Bond Street, Oshawa, Ontario. I am advised this property is a newly built 249 unit residential building (fully tenanted). We are advised that the property is valued at $80,000,000. It is currently subject to a first mortgage of $50,000,000. Upon payment of the loan, this collateral security will be discharged.*
>
> *I hope I have explained the deal so it makes sense. Please let me know if your client is interested as we need to act on this asap*

(the "Go-To LP Funding Opportunity").

19. Marek responded and indicated that he was prepared to advance the requested amount in consideration of payment of an additional fee of $2.7 million.

20. Marek's terms were accepted.

21. Thereafter, Torkin Manes proposed that Marek's advance of $16.8 million be structured as a subscription for limited partnership units.

22. Provided that Marek was repaid the full amount of his advance, plus the $2.7 million fee on closing, Marek had no objection to subscribing for limited partnership units.

23. Marek provided $16.8 million to Torkin Manes, in trust.

24. The Lawyers never acted for Go-To LP and owed no duties to Go-To LP that could give rise to any claim by the Plaintiffs against the Lawyers in respect of Marek's involvement with Go-To LP, including taking steps to ensure that Go-To LP's constating documents appropriately reported the funding arrangement between Marek and Go-To LP to the other limited partners.

25. Since Torkin Manes was acting as counsel for Go-To LP, the Lawyers reasonably relied on Torkin Manes to ensure that Go-To LP's and Marek's agreement complied with all requirements, including disclosure requirements, of Go-To LP's constating documents.

26. As anticipated, to attempt to save on Land Transfer Tax, ASDI and Go-To LP agreed to terminate the APS and replace it with assignments of ASDI's purchase agreements.

27. The Lawyers were not directly involved in the discussions respecting termination of the APS but understood that the purchase price reflected in the APS would be preserved and that the difference between ASDI's acquisition price (approximately $53.0 million) and the $74.25 million that Go-To LP had agreed to pay to ASDI further to the APS (initially described as the Assignment Purchase Price but later changed to Assignment Fee at Go-To LP's request) would be paid to the Lawyers on closing.

28. The Lawyers drafted a form of the Assignment Agreement (which contemplated execution by Pucci on behalf of ASDI) and circulated the draft for review and approval or comment by Torkin Manes and ASDI.

29. Torkin Manes then redrafted the Assignment Agreement and related documents.

30. In or about April 2019, Pucci executed an agreement terminating the APS (effective April 1, 2019) and Torkin Manes' form of the Assignment Agreement on behalf of ASDI.

31. At all material times, the efforts to attempt to save on Land Transfer Tax by changing the way Go-To LP acquired the Adelaide/Charlotte Properties was commercially reasonable.

32. Go-To LP's acquisition of the Adelaide/Charlotte Properties was completed on or about April 5, 2019, and further to a direction executed by Pucci on behalf ASDI dated April 3, 2019, Torkin Manes paid the $20.950 million Assignment Fee to the Lawyers.

33. Thereafter, further to instructions from ASDI, the Lawyers paid $19.5 million to Marek's company West Maroak Developments Inc. ("West Maroak").

34. The Lawyers were not involved in the negotiation or preparation of the demand loan agreement between ASDI and Go-To LP but understood that Go-To LP lacked funds to enable it to repay Marek's advance and the agreed $2.7 million fee on closing as agreed and that ASDI was prepared to repay Marek on Go-To LP's behalf to enable the deal to be completed.

35. At all material times, the loan agreement between ASDI and Go-To LP made with the benefit of legal advice appeared to the Lawyers as a bona fide arms-length transaction that enabled the Adelaide/Charlotte Properties deal to close to the benefit of both ASDI and Go-To LP.

Compensation for the Lawyers' and Raffaghello's Involvement

36. The Lawyers acted for ASDI in respect of the purchase and transfer of the Adelaide/Charlotte Properties.

37. Given the size and the apparent complexity of the transaction, at the outset of the retainer the Lawyers and ASDI agreed that the Lawyers would be entitled to a fixed fee of $100,000, plus disbursements and applicable taxes for their services involving the Adelaide/Charlotte Properties.

38. Further to the fixed fee agreement, $115,500.00 was paid to Concorde Law from the $20.950 million closing proceeds received from Torkin Manes.

39. Other disbursements were made from the monies received further to directions provided to the Lawyers by ASDI (signed by Pucci on behalf of ASDI), including $300,000 paid to Malanca's company, Goldmount Financial Group Corporation ("Goldmount").

40. The Lawyers had no reason to question that ASDI's payment to Goldmount was anything other than a bona fide payment for services provided by Malanca in connection with the purchase and assignment transactions involving ASDI and the Adelaide/Charlotte Properties.

41. Raffaghello and Marek agreed that Marek would pay a portion of his $2.7 million fee to Raffaghello.

42. Raffaghello's agreement with Marek had nothing to do with Go-To LP and its agreement to pay a $2.7 million fee to Marek.

43. Following closing, Marek transferred $1,389,900 to the Lawyers, by depositing this amount to Raffaghello's company, Montana Management Inc. ("MMI") to hold funds until they could be disbursed as directed.

44. Raffaghello and Marek agreed that if the fee paid was not subject to HST, $159,900 would be repaid to Marek.

45. In or about May 2020, $159,900 was repaid to Marek.

46. In addition, when Marek's accountant, whom Raffaghello first contacted to present the Go-To LP Funding Opportunity to Marek, learned that Marek was paying a portion of his $2.7 million loan fee to Raffaghello, he requested a portion of Raffaghello's fee.

47. $150,000 from the fee paid by Marek to Raffaghello was later paid to Marek's accountant.

Reorganization of ASDI

48. After Go-To LP's acquisition of the Adelaide/Charlotte Properties, Raffaghello received instructions to reorganize ASDI's share structure, which he did pursuant to Articles of Amendment dated April 12, 2019.

49. As reflected in the April 12, 2019, Articles of Amendment, the existing shares held by Pucci were cancelled and four (4) classes of common shares ("A" through "D") were created with each class having the right to receive dividends.

50. Shares were then issued to Pucci, and three (3) corporations and the Lawyers received a direction from ASDI to pay dividends to two (2) classes of shareholders from the remaining closing proceeds, which they did.

51. The Lawyers deny that payment of monies from the closing proceeds further to a Direction from ASDI was improper or part of a scheme as alleged in the Statement of Claim.

The Lawyers' Involvement Ceased in April 2019

52. The Lawyers had no further involvement with ASDI and/or Malanca after ASDI's April 2019 reorganization.

53. The Lawyers had no further involvement with Marek and Go-To LP after April 2019, including Marek's subsequent investments in the Go-To LP as pleaded in the Statement of Claim.

The Lawyers Did Not Conspire to Injure the Plaintiffs

54. The Lawyers deny they participated in a conspiracy to injure, or any conspiracy or scheme, as alleged by the Plaintiffs and put the Plaintiff to the strict proof thereof.

55. At all times, the Lawyers' role was as ASDI's counsel and in that capacity acted properly and in accordance with their obligations to their client. The Lawyers' conduct as counsel to ASDI does not give rise to a cognizable conspiracy to injure claim, or any claim, by the Plaintiffs against the Lawyers.

56. There is no viable cause of action against the Lawyers.

Limitations

57. Go-To LP's acquisition of the Adelaide/Charlotte Properties, the Assignment Agreement, and related agreements with ASDI, including the demand loan agreement, were all concluded, and the proceeds disbursed by April 2019.

58. By virtue of the foregoing, the Plaintiffs, on whose behalf this claim is brought, knew, or with the exercise of reasonable diligence ought to have known, the facts giving rise to all claims pleaded herein more than two years prior to the commencement of this action on December 4, 2023; therefore, the Plaintiffs' claim against the Lawyers is statute-barred.

No Unjust Enrichment

59. The Lawyers were not unjustly enriched, and the payments received by the Lawyers for legal services rendered were commercially reasonable and in accordance with the agreement with ASDI.

60. The Plaintiffs were not unjustly deprived by ASDI's payment of legal fees to its Lawyers from the closing proceeds.

61. The Plaintiffs are not entitled to disgorgement of funds from the Lawyers.

No Damages

62. The Lawyers deny that the Plaintiffs have suffered the damages alleged, or any damages, and put the Plaintiffs to the strict proof thereof.

63. In addition, the Receiver sold the Adelaide/Charlotte Properties for $90.0 million, which sum exceeds Go-To LP's acquisition costs of the Adelaide/Charlotte Properties; therefore, the Plaintiffs did not suffer any compensable damages in connection with the Adelaide/Charlotte Properties.

64. In addition, the damages claimed by the Plaintiffs are excessive, remote and/or not recoverable at law.

65. In the alternative, if the Plaintiffs suffered any damages, which are not admitted but expressly denied, none of the damages claimed were caused by anything the Lawyers allegedly did or failed to do in their capacity as counsel for ASDI.

66. Separately, the Lawyers did not engage in any conduct warranting the imposition of punitive damages against them.

67. By virtue of the foregoing, the Lawyers submit that the Plaintiffs' claimed should be dismissed, with costs on full indemnification basis considering the unjustified allegations that the Lawyers participated in an unlawful conspiracy to injure the Plaintiffs.

Date: April 23, 2024

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GO-TO SPADINA ADELAIDE SQUARE INC., et al - and - **ADELAIDE SQUARE DEVELOPMENTS INC., et al**
Plaintiffs Defendants

Court File No. CV-23-00710745-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at TORONTO

STATEMENT OF DEFENCE OF LOUIS RAFFAGHELLO AND CONCORDE LAW PROFESSIONAL CORPORATION.

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TAB “6”

Court File No. CV-23-00710745-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

GO-TO SPADINA ADELAIDE SQUARE INC. and GO-TO SPADINA ADELAIDE SQUARE LP, each by its Receiver, KSV RESTRUCTURING INC.

Plaintiffs

and

ADELAIDE SQUARE DEVELOPMENTS INC., ALFREDO ITALO MALANCA, a.k.a. ALFREDO PALMERI, OSCAR FURTADO, GOLDMOUNT FINANCIAL GROUP CORPORATION, CONCORDE LAW PROFESSIONAL CORPORATION, LOUIS RAFFAGHELLO, MONTANA MANAGEMENT INC., AKM HOLDINGS CORP. and KATARZYNA PIKULA

Defendants

STATEMENT OF DEFENCE

1. The Defendants, AKM Holdings Corp. ("**AKM**") and Katarzyna Pikula (collectively, the "**Pikula Defendants**"), admit the allegations contained in paragraphs 10 and 11 of the Statement of Claim.

2. Unless otherwise admitted herein, the Pikula Defendants deny each and every other allegation in the Statement of Claim and the Response to Demand for Particulars.

Overview

3. Katarzyna Pikula is an individual residing in Ontario. She is married to the Defendant Alfredo Malanca. The Defendant AKM is an Ontario corporation used as a holding company.

4. The Plaintiffs have failed to plead any or sufficient material facts against the Pikula Defendants. By the Plaintiffs' own admission, the Pikula Defendants are not alleged to have been involved in any of the communications with investors that are the heart of the Plaintiffs' claim, and the Plaintiffs have no knowledge of any facts to support an allegation that the Pikula Defendants were aware of, let alone participated in, any "scheme".

5. The Plaintiffs have brought this meritless action, accusing Ms. Pikula of fraud, on the basis of no facts, and pure speculation.

The Land Assembly

6. In or around the end of 2017, Ms. Pikula was advised by her husband Mr. Malanca of a potential land assembly opportunity involving two neighbouring properties in downtown Toronto: 355 Adelaide Street West (the "**Adelaide Property**") and 46 Charlotte Street (the "**Charlotte Property**"). The purpose of the land assembly was to acquire two adjoining properties and to later sell or assign them to a developer for a profit.

7. Ms. Pikula was not involved in the incorporation of the Defendant Adelaide Square Developments Inc. ("**ASD**") but understood that it had been incorporated for the purpose of the land assembly project. As is common in land assembly projects, ASD used different companies as nominee purchasers for the purchase of the Adelaide Property and the Charlotte Property. AKM agreed to serve as the nominee purchaser for the Adelaide Property and on March 20, 2018, entered into an agreement of purchase and sale with the vendor for that property, in trust for a corporation to be named.

8. During the course of the due diligence required for the sale, a dispute arose with the vendor over deficiencies in the Phase 1 environmental report for the Adelaide Property, which was issued under incorrect guidelines. As AKM was not prepared to close the sale without a proper Phase 1 report, the vendor purported to terminate the Agreement of Purchase and Sale. AKM was forced to retain counsel and commence litigation against the vendor for specific performance in order to save the land assembly project.

9. AKM obtained a court order allowing it to perform the required environmental assessments itself. AKM retained consultants to perform the work and the cleanup, and obtained the necessary report, at its own expense.

10. With the proper Phase 1 report in-hand, AKM and the vendor settled their dispute, and amended the Agreement of Purchase and Sale. By this time, ASD had been incorporated, and there was no further need for AKM to serve as a nominee purchaser. ASD was listed as the new purchaser in the amended Agreement of Purchase and Sale. AKM had no further involvement with the Adelaide Property after this date.

11. It was agreed and understood that AKM would be reimbursed for the legal and consulting fees it incurred in the litigation and on the Phase 1 report, and that it would receive a share of the profits of the land assembly project, for services rendered (and risk undertaken) as the nominee purchaser. This agreement did not involve any of the Plaintiffs, Oscar Furtado, or any of his companies—none of whom were in the picture when AKM agreed to serve as nominee purchaser for the Adelaide Property.

12. AKM was not involved in any way whatsoever in the purchase of the Charlotte Property, which was being sold by FAAN Advisory, a court-appointed trustee for the owner Fortress Charlotte 2014 Inc.

13. In January 2019, the first mortgagee of the Charlotte Property issued a Notice of Sale Under Mortgage against that property, threatening the sale of that property and the land assembly project. Fortress was referred to Ms. Pikula, who at the time owned and operated a mortgage brokerage firm called Goldmount Capital Inc. ("**Goldmount Capital**"). Goldmount Capital found a new mortgage lender for Fortress to refinance the Charlotte Property and avoid the Power of Sale. This was a service provided by Goldmount Capital to Fortress, neither of whom is a party to these proceedings. It had nothing to do with the Plaintiffs and is not the alleged basis of this lawsuit.

Reimbursement and Share of Proceeds

14. AKM received funds from ASD on account of (1) reimbursement for legal and consulting expenses incurred by AKM in the land assembly process (which did not involve the Plaintiffs); and (2) AKM's share of the profits from the land assembly process (which did not involve the Plaintiffs), in consideration for services AKM rendered as nominee purchaser of the Adelaide Property. These funds were paid pursuant to a bona fide commercial arrangement that did not involve the Plaintiffs in any way whatsoever. A portion of the funds received was structured as a dividend from ASD for legitimate tax purposes.

No Other Involvement

15. Apart from the activities described above, all of which are legitimate business activities that do not involve the Plaintiffs, the Pikula Defendants had no other involvement in any of the matters raised in the Statement of Claim.

16. While Ms. Pikula was generally aware of the bidding process that Mr. Malanca had undertaken to market the land assembly to potential buyers, the Pikula Defendants were not directly involved.

17. Contrary to the allegation in paragraph 3 of the Plaintiff's Response to Demand for Particulars, Ms. Pikula has no relationship with and has never provided services through the Defendant Goldmount, which is a completely separate company from her former brokerage company Goldmount Capital. Apart from the Fortress refinancing above, neither Ms. Pikula nor Goldmount Capital brokered any financing or lending transactions for the Plaintiffs, Mr. Furtado or any of his companies in relation to the Adelaide Property or the Charlotte Property. The Pikula Defendants have no relationship whatsoever with Mr. Marek or his companies.

18. Contrary to the bald allegation in the Response to Demand for Particulars, Ms. Pikula never facilitated any of the "at-issue transactions", nor did she assist Furtado and Malanca design or structure the alleged "scheme". To the knowledge of the Pikula Defendants, there was no such scheme.

19. At no time have the Pikula Defendants had or exercised any control or direction over the actions of the Plaintiff companies. At no time have the Pikula Defendants had or exercised any direction or control over ASD. The Pikula Defendants had no involvement in soliciting funds from

the Plaintiffs' investors. The Pikula Defendants had no involvement in papering any of the agreements at issue.

Responses to Specific Claims

Conspiracy

20. The Pikula Defendants deny that they engaged in a conspiracy as pleaded or at all. The Pikula Defendants deny that they had any knowledge of any alleged conspiracy or that they participated in any alleged conspiracy. The Plaintiffs have failed to plead any facts in support of this bald allegation.

Assisting Breach of Contract

21. The Pikula Defendants deny that they were aware of, assisted in, or knowingly assisted in any breach of contract as alleged. The Pikula Defendants have no knowledge of any contract that existed between the Plaintiffs and the Adelaide Defendants that could have been or was breached.

Knowing Assistance in Breach of Fiduciary Duty

22. The Pikula Defendants deny that they assisted in or knowingly assisted in any breach of fiduciary duty. The Pikula Defendants are not aware of any facts that would suggest that the Adelaide Defendants owed any of the Plaintiffs any such fiduciary duty. To the extent that there was a breach of fiduciary duty by any defendants, the Pikula Defendants were not aware and not involved whatsoever.

23. As stated above, the Pikula Defendants received funds from ASD pursuant to a *bona fide* commercial arrangement that did not involve the Plaintiffs. The Pikula Defendants plead that ASD was entitled to the funds it received, or in the alternative, that the Pikula Defendants had no knowledge of any improprieties in ASD receiving the funds that it did.

Breach of Trust and Knowing Receipt

24. The Pikula Defendants deny that they knew of or were involved in any breach of trust or misuse of trust funds as alleged or otherwise. Any misuse of funds by others had nothing to do with the Pikula Defendants.

Unjust Enrichment

25. The Pikula Defendants deny that they were unjustly enriched, as alleged or otherwise, that the Plaintiffs suffered any corresponding detriment, or that the Plaintiffs are entitled to restitution, disgorgement, or a tracing order. Any funds received by the Pikula Defendants from ASD were received for a juristic reason, namely, the *bona fide* commercial arrangement related to the land assembly, as reimbursement for legitimate expense incurred as part of the land assembly process and for services rendered as the nominee purchaser of the Adelaide Property. To the extent that any of the Plaintiffs' funds were misused or misappropriated by others, it was not known by the Pikula Defendants.

Fraudulent Concealment

26. The Pikula Defendants deny that they fraudulently concealed any of their conduct from outsiders, as alleged. Specifically, the Pikula Defendants deny that they fraudulently concealed

AKM's receipt of funds from the Plaintiffs' investors. The Pikula Defendants owed no duty to the Plaintiffs' investors to disclose a private commercial arrangement that did not involve them. Even so, the Pikula Defendants took no steps to conceal their receipt of funds, or the shares that ASD issued to AKM, which was properly arranged through a reputable law firm for legitimate tax purposes.

<u>No Damages</u>

27. The Pikula Defendants plead that the Plaintiffs have not suffered any damages as alleged or at all. To the contrary, the Plaintiffs appear to have profited handsomely from the sale of the Adelaide Property and the Charlotte Property.

28. In the alternative, any damages suffered by the Plaintiffs were not caused by any wrongful act on the part of the Pikula Defendants. To the contrary, Plaintiffs have reaped the benefit of the work performed by the Pikula Defendants in the land assembly process. Far from amounting to participation in a "scheme", the only activities of the Pikula Defendants (*i.e.,* AKM serving and taking on the risk as a nominee purchaser, conducting litigation and performing environmental assessments, and Ms. Pikula's brokerage services to Fortress through Goldmount Capital) were completely above-board and made the Plaintiffs' profits possible.

29. In the alternative, the damages claimed by the Plaintiffs are excessive, remote and/or not recoverable at all.

30. The Pikula Defendants deny that the Plaintiffs are entitled to punitive damages or that they have done anything to warrant any award of punitive damages against them.

Costs

31. The Pikula Defendants ask that this action be dismissed with full indemnity costs to the Pikula Defendants. The Plaintiffs have baselessly pleaded fraud, fraudulent concealment, conspiracy and knowing assistance in breach of fiduciary duty against the Pikula Defendants, without a single material fact to support these claims.

May 2, 2024

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GO-TO SPADINA ADELAIDE et al. and ADELAIDE SQUARE et al. Court File No. CV-23-00710745-00CL

Plaintiffs Defendants

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GO-TO SPADINA ADELAIDE SQUARE INC., et al. -and- **KATARZYNA PIKULA, et al.**

Plaintiffs Defendants

Court File No. CV-23-00710745-00CL

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