

**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

**KATARZYNA PIKULA, 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., and AKM HOLDINGS  
CORP.**

Defendants

**PLAINTIFFS' REPLY AND DEFENCE TO COUNTERCLAIM OF OSCAR FURTADO**

1. Unless otherwise admitted herein, the Plaintiffs<sup>1</sup> deny each and every allegation in the Statement of Defence, Counterclaim and Crossclaim of Oscar Furtado (the "**Furtado Counterclaim**"). The Plaintiffs deny that Furtado is entitled to any of the relief sought at paragraphs 94-99 of the Furtado Counterclaim.

2. The Furtado Counterclaim seeks payment with respect to two general claims by Furtado:

- (a) Payment by Go-To Adelaide LP for unpaid guarantee fees purportedly owing to Furtado; and

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<sup>1</sup> Capitalized terms not defined herein have the same meaning attributed to them in the Statement of Claim dated December 4, 2023 (the "**Claim**").

- (b) Payment by Go-To Adelaide GP for shareholder loans purportedly advanced by Furtado to Go-To Adelaide GP.

3. This Reply and Defence to Counterclaim primarily addresses these two claims for payment by Furtado. With respect to Furtado's general denials and defence that he was not involved in the Scheme, the Plaintiffs repeat and rely on the allegations as set out in the Claim. Furtado is liable for the amounts set out in the Claim as a result of, among other things, his and the other Defendants' self-dealing and failure to disclose material information to investors and other interested parties.

#### **A. THE CLAIMS PROCEDURE AND FURTADO PROOF OF CLAIM**

4. As set out in the Claim, pursuant to the Court order of Justice Patillo, KSV was appointed as Receiver of the Plaintiffs on December 10, 2021.

5. On April 7, 2022, the Court approved a "**Claims Procedure**" for parties to submit claims with respect to the various Go-To entities, including the Plaintiffs. The Claims Procedure required that creditors submit proofs of claim, together with all supporting documents, by no later than June 2, 2022, (the "**Claims Bar Date**") failing which the claim would be extinguished, released and discharged.

6. On May 30, 2022, Furtado submitted a proof of claim (the "**Furtado Proof of Claim**"), which sought, among other things:

- (a) payment of \$3,607,226 in guarantee fees from nine Go-To entities, including \$1,661,203 from Go-To Adelaide LP; and
- (b) payment of shareholder loans from all Go-To entities in the amount of \$117,358, including \$9,473 from Go-To Adelaide LP.

**B. DISALLOWANCES OF PORTIONS OF THE FURTADO CLAIM HAVE BEEN UPHELD BY THE COURT**

7. On March 28, 2023, the Receiver issued a Notice of Disallowance to Furtado, with respect to \$867,021 in guarantee fees and \$748 in shareholder loans claimed by Furtado with respect to Go-To Stoney Creek LP (the “**Stoney Creek Disallowance**”). In short, the Receiver disallowed the guarantee fees and shareholder loans on the bases that:

(a) the purported guarantee fees were between Furtado and the Go-To Stoney Creek entities, for which Furtado was the only director and signing officer, as a result of which Furtado was the only party who knew about or signed the Stoney Creek guarantee agreements. The Receiver concluded that the guarantee agreements constituted undisclosed, related-party agreements made by Furtado, as a fiduciary, in breach of his fiduciary duties. Neither the Stoney Creek partnership agreement nor the investment opportunity brochure disclosed that Furtado was entitled to any guarantee fees. Alternatively, payment of any guarantee fees would breach the Stoney Creek limited partnership agreement as unreasonable fees which were not competitive with the same services provided by a third party. Finally, in the further alternative, Furtado failed to provide any evidence that he could pay the subject guarantees for which he purported to receive a fee; and

(b) Furtado failed to substantiate his claim for payment of \$748 in shareholder loans.

8. On April 11, 2023, Furtado served a Notice of Dispute with respect to the Stoney Creek Disallowance.

9. On October 31, 2023, the Court heard a motion by the Receiver to uphold the Stoney Creek Disallowance. The Court upheld the Stoney Creek Disallowance, and found:

- (a) Furtado, as a fiduciary of the Stoney Creek entities, was required to disclose the guarantee fees. He was the sole director and president of Stoney Creek GP and owed it fiduciary duties. He similarly owed Stoney Creek LP the same fiduciary duty, as the sole director and officer of its general partner;
  - (b) The Stoney Creek limited partnership agreement required the general partner to discharge its duties honestly, in good faith and in the partnership's best interests; and
  - (c) The Receiver correctly disallowed the Furtado Proof of Claim based on Furtado's duty to disclose the guarantee fee to investors and his failure to do so.
10. The Court did not address the \$748 in disallowed shareholder loans.
11. On May 30, 2024, the Receiver issued two additional notices of disallowance with respect to Furtado's Proof of Claim:
- (a) The Receiver disallowed Furtado's claim for \$23,880 in guarantee fees and \$10,241 in shareholder loans, with respect to Go-To Chippawa; and
  - (b) The Receiver disallowed Furtado's claim for \$104,604 in guarantee fees and \$11,782 in shareholder loans, with respect to Go-To Glendale.
12. Pursuant to the Claims Procedure, claimants were required to file a notice of dispute within 14 days of a notice of disallowance being issued. Furtado failed to file a notice of dispute within 14 days of the Chippawa and Glendale disallowances being issued and, accordingly, they are now binding.

13. The Receiver has not yet issued notices of disallowance with respect to the other Go-To entities and projects. Pursuant to the Claims Procedure, the Receiver still has the right to issue notices of disallowance for claims filed with respect to the other Go-To entities, including Go-To Adelaide.

**C. ALLEGED GUARANTEE FEES**

14. The guarantee fees claimed by Furtado in the Furtado Counterclaim are not payable for the same reasons set out in the Stoney Creek Disallowance, which reasons were approved by the Court:

- (a) the guarantee fees claimed by Furtado constitute an undisclosed, related-party agreement made by Furtado, as a fiduciary of both Go-To Adelaide LP and Go-To Adelaide GP, in breach of his fiduciary duties to the Plaintiffs. Furtado failed to disclose the guarantee fee agreement to investors. The undisclosed guarantee fees are simply another example of Furtado using his position as the controlling mind of the Plaintiffs to further his own interests at the expense of the Plaintiffs and their investors;
- (b) alternatively, the guarantee fees were not reasonable and competitive with the cost of similar services from third parties, in breach of section 5.12 of the LP Agreement;  
and
- (c) in the further alternative, Furtado provided no evidence that he had or has the ability to pay the guarantees for which he claims he is entitled to the guarantee fees and, accordingly, provided no consideration for the guarantee fee agreement.

**D. ALLEGED SHAREHOLDER LOANS**

15. Furtado was required to file proofs of claim, with all underlying supporting documents pursuant to the Claims Procedure. Furtado failed to substantiate that he made shareholder loans to the Plaintiffs in the Claims Procedure and the time for doing so has expired. He cannot shoehorn a claim required to be made pursuant to the Claims Procedure in this proceeding. In any event, the Plaintiffs deny that Furtado made any shareholder loans to them and hold him to the strict proof thereof.

16. In any event, any loans which Furtado did make to the Plaintiffs were not adequately disclosed to investors as required and are, accordingly, not repayable until or unless all investor funds are repaid. Any interest and/or fees owing on loans by Furtado is a further example of Furtado's improper self-dealing and are not payable, for the same reasons the guarantee fees are not payable.

**E. MISCELLANEOUS**

17. With respect to the allegations at paragraphs 66-68 of the Furtado Claim, the Properties were sold pursuant to a Court-ordered and supervised sale process. Furtado had the opportunity, but chose not to, object to the sales process. Any opposition or complaint he raises now regarding potential alternative transactions are of no moment and a collateral attack on the sale process already approved by the Court.

18. The Furtado Counterclaim should be dismissed, with costs.

August 2, 2024

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-and-

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

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PROCEEDING COMMENCED AT  
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