

AMENDED THIS August 20, 2024 PURSUANT TO
MOI
① Electronically filed / Déposé par voie électronique : 14-Aug-2024
② Toronto Superior Court of Justice / Cour supérieure de justice
③ THE ORDER OF _____
L'ORDONNANCE DU _____
DATED/FAIT LE _____
REGISTRAR GREFFIER
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

Court File No./N° du dossier du greffe : CV-23-00710745-00CL

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Digitally signed by Hamza Mohammed
Date: 2024.08.20 10:16:54 -04'00'

REGISTRAR SUPERIOR COURT OF JUSTICE
GREFFIER COUR SUPÉRIEURE DE JUSTICE

BETWEEN:

(Court Seal)

**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

FRESH AS AMENDED 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

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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

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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

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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.

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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:

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- (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;

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- (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.

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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.

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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

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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, <i>inter alia</i> , 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.

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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.

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.

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

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(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;

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- (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.

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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.

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RESTRUCTURING INC.**
Plaintiffs

ADELAIDE SQUARE DEVELOPMENTS INC., et al.

Defendant

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**PROCEEDING COMMENCED AT
TORONTO**

FRESH AS AMENDED STATEMENT OF CLAIM

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