



Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**GROSS CAPITAL INC., by its Licensed Insolvency Trustee,  
KSV RESTRUCTURING INC.**

Plaintiff

and

**MARK CRAIG GROSS, SHELDON GROSS, FAUSTO CARNICELLI, MEDICA ONE LTD.,  
MAURO CARNICELLI, DOMINIC CARNICELLI, 2771837 ONTARIO INC., 2771839 ONTARIO  
LIMITED, 2771840 ONTARIO LTD., 2771849 ONTARIO CORP., BURLINGTON  
HEALTHCARE CENTRE INC., ALLEN SHELDON GREENSPOON, NANCY GREENSPOON,  
WERNER DINGFELD, DENNIS DIVALENTINO, IRINA GROSS, MARK CRAIG GROSS  
HOLDINGS INC., MGZ HOLDINGS INC., SGZ HOLDINGS INC., WELLINGTON X-RAY &  
ULTRASOUND LIMITED, BARCLAY DIAGNOSTIC IMAGING INC., P. H. JORY, LIMITED,  
MED. CLINIC 2000 CORPORATION, DOCTORS NATURAE SOUTHMOUNT INC., AVIVA  
MEDICAL DIAGNOSTICS & SPECIALIST CLINIC INC., AVIVA MEDICAL INC., ATMA  
MEDICAL INC., INTEGRATED MEDICAL OFFICE SERVICES INC. and MARCIA  
VILAFRANCA**

Defendants

**NOTICE OF ACTION**

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff.  
The Claim made against you is set out in the Statement of Claim served with this Notice of  
Action.

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 Notice of Action 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 June 23, 2023

Issued by Local Registrar

Address of court office: Superior Court of Justice  
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**MARCIA VILAFRANCA**

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## CLAIM

1. The plaintiff KSV Restructuring Inc., solely in its capacity as the licensed insolvency trustee of Gross Capital Inc. (in such capacity, the “**Trustee**”), makes the following claims as against the defendants:

- (a) as against Mark Craig Gross (“**Mark Gross**”), Sheldon Gross, Fausto Carnicelli, Allen Sheldon Greenspoon (“**Allen Greenspoon**”), Dennis Divalentino, 2771873 Ontario Inc. (“**837 Ontario**”), 2771839 Ontario Limited (“**839 Ontario**”), 2771840 Ontario Ltd. (“**840 Ontario**”) and 2771841 Ontario Corp. (“**841 Ontario**” and, together with 837 Ontario, 839 Ontario and 840 Ontario, the “**Four Companies**”), a constructive trust and/or damages in an amount to be quantified for fraud, misrepresentation, breach of fiduciary duty, self-dealing, negligence and/or an improper preference and/or transfer at undervalue pursuant to sections 95 and/or 96 of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”), arising out of the improper discharge of one or more mortgages previously granted in favour of Gross Capital Inc. (“**Gross Capital**”) on title to the Four Properties (defined below);
- (b) as against Mark Gross, Sheldon Gross, Fausto Carnicelli and Burlington Healthcare Centre Inc. (“**BHCI**”), a constructive trust and/or damages in an amount to be quantified for fraud, misrepresentation, breach of fiduciary duty, self-dealing, negligence and/or an improper preference and/or transfer at undervalue pursuant to sections 95 and/or 96 of the BIA, arising out of the improper discharge of a mortgage previously granted in favour of Gross Capital on title to the John Street Properties (defined below);
- (c) as against Mark Gross, Sheldon Gross, Fausto Carnicelli, Mauro Carnicelli, Dominic Carnicelli, Allen Greenspoon, Nancy Greenspoon, Werner Dingfeld,

Marcia Villafranca, Medica One Ltd. ("**Medica One**"), Doctors Naturae Southmount Inc. ("**Doctors Naturae**"), Integrated Medical Office Services Inc. ("**Integrated Medical**"), Atma Medical Inc. ("**Atma Medical**"), Aviva Medical Inc. ("**Aviva Medical**"), Aviva Medical Diagnostics & Specialist Clinic Inc. ("**Aviva Medical Diagnostics**"), Wellington X-Ray & Ultrasound Limited ("**Wellington X-Ray**"), Barclay Diagnostic Imaging Inc. ("**Barclay**"), Med. Clinic 2000 Corporation ("**Med Clinic 2000**") and P. H. Jory, Limited ("**PH Jory**"), a constructive trust and/or damages in an amount to be quantified for fraud, misrepresentation, breach of fiduciary duty, self-dealing, negligence, breach of contract and/or unjust enrichment relating to rent arrears;

- (d) as against Mark Gross, Sheldon Gross, Fausto Carnicelli, Mauro Carnicelli and Dominic Carnicelli, a constructive trust and/or damages in an amount to be quantified for fraud, misrepresentation, breach of fiduciary duty, self-dealing and/or negligence arising out of the payment of loans out of Southmount Healthcare Centre Inc. previously known as Carriage Gate Group Inc. (collectively, "**Southmount**");
- (e) as against Mark Gross, Sheldon Gross, MGZ Holdings Inc. ("**MGZ**") and SGZ Holdings Inc. ("**SGZ**"), a constructive trust and/or damages in an amount to be quantified for fraud, misrepresentation, breach of fiduciary duty, self-dealing and/or negligence arising out of their dealings with Zedd Customer Solutions Inc. and the business known more generally as Zedd (collectively, "**Zedd**");
- (f) as against Mark Gross, Sheldon Gross and Fausto Carnicelli, a constructive trust and/or damages in an amount to be quantified for negligent and/or fraudulent misrepresentation, breach of fiduciary duty and self-dealing generally;

- (g) as against Fausto Carnicelli and Medica One, damages in the amount of \$2.8 million for breach of contract and/or unjust enrichment;
- (h) as against Fausto Carnicelli, damages in the amount of \$1 million for breach of contract and/or unjust enrichment;
- (i) as against all defendants:
  - (i) orders for restitution, an accounting and disgorgement of all assets, properties and funds belonging to Gross Capital and improperly diverted by or to any of the defendants or any person, corporation or other entity on such defendant's behalf;
  - (ii) a declaration that the Trustee is entitled to trace the assets, properties and funds of Gross Capital 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 Trustee;
  - (iii) a constructive trust and tracing or following order in respect of all assets, properties and funds belonging to Gross Capital 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;
  - (iv) pre and post-judgment interest in accordance with the *Courts of Justice Act*, RSO 1990, c. C 43, as amended; and
  - (v) costs of this action on a full indemnity basis; and
- (j) such further and other relief as to this Honourable Court seems just.

## **The Parties**

### ***Gross Capital***

2. The Trustee was appointed upon Gross Capital filing an assignment in bankruptcy on June 25, 2021.

3. Prior to its bankruptcy, Gross Capital was a real estate investment firm, incorporated pursuant to the laws of Ontario, owned and operated from Toronto by Mark Gross and Sheldon Gross, whose sole officers and directors were Mark Gross and Sheldon Gross. At the direction of Mark Gross and Sheldon Gross, Gross Capital raised funds from investors to invest and hold interests, directly and indirectly, in various properties.

4. In the course of its business, Gross Capital acquired ownership interests in real properties directly, and through holding corporations, nominee corporations and/or co-tenancy agreements, as applicable.

5. In the course of its business, Gross Capital also provided secured real property financing.

### ***The Defendants***

6. Mark Gross is an individual resident in Toronto. At all relevant times, including, without limitation, immediately prior Gross Capital's bankruptcy, he was one of the two officers and directors of Gross Capital. He is also a director of the defendant, Medica One, the sole officer and director of the defendant, Mark Craig Gross Holdings Inc. ("**MCGH**"), an officer and director of the defendant, MGZ, and an officer and/or director of certain other companies which had dealings with Gross Capital, including, without limitation, Zedd.



7. Sheldon Gross is an individual resident in Ontario, and is Mark Gross' father. At all relevant times, including, without limitation, immediately prior to Gross Capital's bankruptcy, Sheldon Gross was one of the two officers and directors of Gross Capital. He is also an officer and director of the defendant, SGZ, and an officer and/or director of certain other companies which had dealings with Gross Capital, including, without limitation, Zedd.

8. Fausto Carnicelli is an individual resident in Ontario. He is the sole officer and director of the defendants, BHCI, Doctors Naturae and Integrated Medical, an officer and director of the defendants, Medica One, Aviva Medical Diagnostics and the Four Companies, and an officer and/or director (or, as applicable, held himself out to have authority to act on behalf) of certain other companies which had dealings with Gross Capital, including, without limitation, certain other tenants that leased space from real property owned directly or indirectly by Gross Capital.

9. Mauro Carnicelli is an individual resident in Ontario. He is the brother of Fausto Carnicelli and Dominic Carnicelli. He was also an officer and/or director of one or more companies which had dealings with Gross Capital, including, without limitation, Southmount.

10. Dominic Carnicelli is an individual resident in Ontario. He is the brother of Fausto Carnicelli and Mauro Carnicelli. He was also an officer and/or director of one or more companies which had dealings with Gross Capital, including, without limitation, Southmount.

11. Marcia Villafranca is an individual resident in Ontario. She is an officer and/or director of certain companies which had dealings with Gross Capital, including, without limitation, the defendants Atma Medical Inc. ("**Atma Medical**"), Aviva Medical Inc. ("**Aviva Medical**") and Aviva Medical Diagnostics.

12. Allan Greenspoon is an individual resident in Ontario. He is an officer and director of certain companies which had dealings with Gross Capital, including, without limitation, the defendants, 837 Ontario, 839 Ontario, Wellington X-Ray, Barclay and Med Clinic 2000.

13. Nancy Greenspoon is an individual resident in Ontario, and is Allen Greenspoon's wife. She is an officer and director of certain companies which had dealings with Gross Capital, including, without limitation, the defendant Wellington X-Ray.

14. Werner Dingfeld is an individual resident in Ontario. He is an officer and/or director of certain companies which had dealings with Gross Capital, including, without limitation, the defendants Medica One and PH Jory.

15. Dennis Divalentino is an individual resident in Ontario. He is an officer and/or director of certain companies which had dealings with Gross Capital, including, without limitation, the defendants 837, 839 and 840.

16. Irina Gross is an individual resident in Toronto. She is Mark Gross' wife.

17. MCGH is a company incorporated pursuant to the laws of Ontario. Its sole officer and director is Mark Gross, and its sole shareholder is Irina Gross.

18. MGZ is a company incorporated pursuant to the laws of Ontario. Its sole officer and director is Mark Gross.

19. SGZ is a company incorporated pursuant to the laws of Ontario. Its sole officer and director is Sheldon Gross.

20. Medica One is a corporation incorporated pursuant to the laws of Ontario. Its directors and officers include the defendants, Fausto Carnicelli, Mark Gross and Werner Dingfeld.

21. 837 Ontario is a corporation incorporated pursuant to the laws of Ontario. Its directors and officers are the defendants, Fausto Carnicelli, Dennis Divalentino and Allen Greenspoon.

22. 839 Ontario is a corporation incorporated pursuant to the laws of Ontario. Its directors and officers are the defendants, Fausto Carnicelli, Dennis Divalentino and Allen Greenspoon.

23. 840 Ontario is a corporation incorporated pursuant to the laws of Ontario. Its directors and officers are the defendants, Fausto Carnicelli and Dennis Divalentino.

24. 841 Ontario is a corporation incorporated pursuant to the laws of Ontario. Its sole director and officer is the defendant, Fausto Carnicelli.

25. BHCI is a corporation incorporated pursuant to the laws of Ontario. Its sole director and officer is the defendant, Fausto Carnicelli.

26. Doctors Naturae is a corporation incorporated pursuant to the laws of Ontario. Its sole director and officer is the defendant, Fausto Carnicelli.

27. Integrated Medical is a corporation incorporated pursuant to the laws of Ontario. Its sole director and officer is the defendant, Fausto Carnicelli.

28. Avia Medical Diagnostics is a corporation incorporated pursuant to the laws of Ontario. Its directors and officers are the defendants, Fausto Carnicelli and Marcia Villafranca.

29. Aviva Medical is a corporation incorporated pursuant to the laws of Ontario. Its sole director is the defendant, Marcia Villafranca.

30. Atma Medical is a corporation incorporated pursuant to the laws of Ontario. Its sole director is the defendant, Marcia Villafranca.

31. Wellington X-Ray is a corporation incorporated pursuant to the laws of Ontario. Its directors and officers include the defendant, Allen Greenspoon.

32. Med Clinic 2000 is a corporation incorporated pursuant to the laws of Ontario. Its directors and officers include the defendant, Allen Greenspoon.

33. Barclay is a corporation incorporated pursuant to the laws of Ontario. Its sole director and officer is the defendant, Allen Greenspoon.

34. PH Jory is a corporation incorporated pursuant to the laws of Ontario. Its sole officer and former director is the defendant, Werner Dingfeld.

### **Discharge of Mortgages – Four Properties**

35. Gross Capital held registered mortgages in the principal registered amounts of \$6 million (the “**Gross Capital Mortgages**”) in its favour on title to the real properties located at 800 Princess Street, Kingston (the “**Princess Street Property**”), 6453 Morrison Street, Niagara Falls (the “**Morrison Street Property**”), 4256 Portage Road, Niagara Falls (the “**Portage Road Property**”) and 132 Second Street East, Cornwall (the “**Second Street Property**” and, together with the Princess Street Property, the Morrison Street Property and the Portage Road Property, the “**Four Properties**”).

36. At all relevant times during which the Gross Capital Mortgages were registered on title to the Four Properties, the Four Properties were owned by corporations of which Fausto Carnicelli and Mark Gross were the sole officers and directors.

37. On August 26, 2020, each of the Gross Capital Mortgages was discharged from title, without consideration, by Gross Capital at the direction of Mark Gross and/or Sheldon Gross.

38. On September 14, 2020, the Four Properties were transferred to the Four Companies. Fausto Carnicelli was an officer and/or director, as applicable, of each of the transferors and each of the transferees. The Four Companies received credits totalling almost \$10 million, which were applied against the purchase prices of the Four Properties. The credits were in respect of obligations that factually did not exist, or, in the alternative, would have ranked in

priority behind the Gross Capital Mortgages, had the Gross Capital Mortgages not been improperly discharged from title without consideration a few weeks earlier.

39. In addition to Fausto Carnicelli, Dennis Divalentino and/or Allen Greenspoon were also officers and/or directors of certain of the Four Companies, and they caused new mortgages in favour of third parties to be registered on title to each of the Four Properties on the same day as the aforementioned transfers. Certain of these new mortgages were for registered amounts well in excess of the corresponding transfer prices from earlier that day.

40. Mark Gross, Sheldon Gross, Fausto Carnicelli, Dennis Divalentino, Allen Greenspoon and/or the Four Companies are liable to Gross Capital for their improper actions relating to the foregoing.

#### **Discharge of Mortgages – John Street Property**

41. Gross Capital, together with an individual named Andre Papadakos, jointly held a registered mortgage in their favour (the “**Joint Mortgage**”) on title to the real property located at 511 and 515 John Street, Burlington (collectively, the “**John Street Property**”).

42. At all relevant times during which the Joint Mortgage was registered on title to the John Street Property, the John Street Property was owned by BHCI, a corporation of which Fausto Carnicelli is the sole officer and director.

43. On December 21, 2018, Gross Capital’s interest in the Joint Mortgage was discharged from title, without consideration, by Gross Capital at the direction of Mark Gross and/or Sheldon Gross.

44. Three days later, on December 24, 2018, the John Street Property was encumbered with a new mortgage on title in favour of third parties, and has since been further encumbered.

45. Mark Gross, Sheldon Gross, Fausto Carnicelli and/or BHCI are liable to Gross Capital for their improper actions relating to the foregoing.

### **Lease Misrepresentations**

46. As part of its business, Gross Capital or its nominee/holding corporations entered into leases with tenants for premises located in buildings in which Gross Capital had an ownership interest.

47. In certain cases, Gross Capital acquired its ownership interest in real property from entities owned and/or controlled by Fausto Carnicelli. Entities owned and/or controlled by Fausto Carnicelli also leased premises in buildings in which Gross Capital had an ownership interest.

48. At the direction of Mark Gross and/or Sheldon Gross, Gross Capital or its nominee/holding corporations entered into lease agreements and/or received assignments of lease agreements in respect of these buildings which Mark Gross and/or Sheldon Gross knew or ought to have known contained misrepresentations. Mark Gross and/or Sheldon Gross further directed that Gross Capital or its nominee/holding corporations maintain records in respect of these buildings which contained misrepresentations. Without in any way limiting the generality of the foregoing, leases and rent rolls relating to Gross Capital's operations and those of its nominee/holding corporations reflected higher rents than were actually paid by tenants, thereby misrepresenting the value and profitability of the applicable real property investment.

49. Fausto Carnicelli, Mauro Carnicelli, Dominic Carnicelli, Marcia Villafranca, Allen Greenspoon, Nancy Greenspoon and Werner Dingfeld directed or participated in entering into lease agreements on behalf of their corporations that they knew or ought to have known contained misrepresentations.

50. As a result of these misrepresentations, Gross Capital directly and/or indirectly paid inflated sale prices for certain real properties when such real properties were purchased from the applicable vendor.

51. Further, Gross Capital directly and/or indirectly received lower income from tenants (or, in some cases, no material income at all) than ought to have been received over the term of the applicable leases. Certain of these underpaying or non-paying tenants are also controlled by one or more of Fausto Carnicelli, Marcia Villafranca, Mark Gross, Allen Greenspoon, Nancy Greenspoon and/or Werner Dingfeld, as applicable, including, without limitation, Medica One, Doctors Naturae, Integrated Medical, Aviva Medical Diagnostics, Avia Medical, Atma Medical, Wellington X-Ray, Med Clinic 2000, Barclay and PH Jory.

52. Mark Gross and Sheldon Gross knowingly or negligently allowed the non-payment of rent and/or chronic underpayment of rent to occur for years, sometimes in respect of the same tenant at multiple locations, notwithstanding that the primary metric for Gross Capital in investing in real property was cash flow from rental income from high-quality tenants.

53. Mark Gross, Sheldon Gross, Fausto Carnicelli, Mauro Carnicelli, Dominic Carnicelli, Marcia Villafranca, Allen Greenspoon, Nancy Greenspoon, Werner Dingfeld, Medica One, Doctors Naturae, Integrated Medical, Aviva Medical Diagnostics, Avia Medical, Atma Medical, Wellington X-Ray, Med Clinic 2000, Barclay and PH Jory are liable to Gross Capital for their improper actions relating to the foregoing.

#### **Improperly Diverting Monies from Southmount**

54. At all relevant times, Southmount was the owner of the real property at 35 Upper Centennial Parkway, Stoney Creek. Gross Capital had, by far, the largest co-tenancy interest in Southmount (being approximately 78% as of December 31, 2020).

55. Fausto Carnicelli, Dominic Carnicelli and Mauro Carnicelli purported to enter into agreements on behalf of Southmount.

56. Fausto Carnicelli, Dominic Carnicelli and/or Mauro Carnicelli improperly directed the use of funds belonging to Southmount to pay obligations relating to certain other corporations, for which they ought to be held liable.

57. Following the commencement of receivership proceedings against Southmount, it was assigned into bankruptcy by its Court-appointed receiver on August 29, 2022. Prior to its bankruptcy, the officers and directors of Southmount were Fausto Carnicelli and Mark Gross.

58. Prior to Southmount's receivership and bankruptcy, Mark Gross and Sheldon Gross knowingly or negligently allowed Fausto Carnicelli, Dominic Carnicelli and/or Mauro Carnicelli to cause Southmount to divert monies to other corporations, to the detriment of Gross Capital.

#### **Zedd**

59. Mark Gross and Sheldon Gross are two of Zedd Customer Solutions Inc.'s officers, and its two directors.

60. Zedd's business was previously owned, in full or in part, by Gross Capital. Mark Gross and/or Sheldon Gross then caused Gross Capital's interest in Zedd to be transferred to them personally and/or to their holding companies, MGZ and/or SGZ, without adequate or any disclosure to Gross Capital's stakeholders, all to the detriment of Gross Capital.

61. In addition, Mark Gross and/or Sheldon Gross improperly directed the use of funds belonging to Gross Capital to pay obligations relating to Zedd.

62. Mark Gross, Sheldon Gross, MGZ and SGZ are liable to Gross Capital for their improper actions relating to the foregoing.



### **Misrepresentations and Self-Dealing Generally**

63. In the course of operating the business of Gross Capital, Mark Gross and Sheldon Gross made negligent and/or fraudulent misrepresentations, engaged in self-dealing and failed to recognize obvious conflicts of interest. They ought to be held liable for the foregoing.

### **Restitution and Tracing**

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

65. The Trustee seeks 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 Trustee.

66. The Trustee further seeks 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, misrepresentation, breach of fiduciary duty, self-dealing, negligence, or other improper conduct, including any assets obtained with funds originating with or that should have been paid to Gross Capital.

### **Additional Indebtedness**

67. In or around 2009, Medica One borrowed the sum of \$2.8 million from Gross Capital. Fausto Carnicelli acknowledged this indebtedness in writing on August 6, 2021. To date, and despite demand being issued, Medica One has failed or refused to repay this indebtedness.

68. On October 4, 2021, Fausto Carnicelli acknowledged in writing that he personally owes a debt of at least \$1 million to Gross Capital. To date, and despite demand being issued, Fausto Carnicelli has failed or refused to repay this indebtedness.

69. The Trustee proposes that this action be tried in the City of Toronto.

Date: June 23, 2023

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Plaintiff

and

**Court File No./N° du dossier du greffe : CV-23-00701647-0000**

**MARK CRAIG CROSS et al.**

Defendants

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
PROCEEDING COMMENCED AT TORONTO**

**NOTICE OF ACTION**

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