

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
[IN BANKRUPTCY AND INSOLVENCY]**

**IN THE MATTER OF THE BANKRUPTCY OF GROSS CAPITAL INC.,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**MOTION RECORD
(returnable on a date to be scheduled)
VOLUME 1 OF 3**

Date: October 31, 2022

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TO: SERVICE LIST

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Court File No. 31-2747949

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
[IN BANKRUPTCY AND INSOLVENCY]**

**IN THE MATTER OF THE BANKRUPTCY OF GROSS CAPITAL INC.,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**NOTICE OF MOTION
(returnable on a date to be scheduled)**

KSV Restructuring Inc. (“**KSV**”), in its capacity as the Licensed Insolvency Trustee (in such capacity, the “**Bankruptcy Trustee**”) of Gross Capital Inc. (the “**Bankrupt**”), will make a motion to a Judge of the Commercial List on a date to be scheduled, or as soon after that time as the motion can be heard, via Zoom coordinates to be provided.

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

THE MOTION IS FOR an Order for, in substance:

- (a) if necessary, abridging the time for service and filing of this notice of motion and the motion record or, in the alternative, dispensing with same;
- (b) approving the First Report of the Bankruptcy Trustee dated on or about September 2022 (the “**First Report**”);
- (c) timetabling an advice and directions motion to determine whether there are grounds to believe that Mark and/or Sheldon Gross is guilty of an offence under the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”), and, if there are such grounds, whether the Bankruptcy Trustee ought to proceed to initiate proceedings for the prosecution of Mark and/or Sheldon Gross for such offence, or whether such a decision should be deferred until later in this bankruptcy proceeding;

- (d) in the interim, directing Mark and Sheldon Gross¹ to cause the sum of \$453,240 (the “**Audited Indebtedness**”)² to be released to the Bankruptcy Trustee from the pool of approximately \$1.1 million that is being held in trust by Fogler Rubinoff LLP (“**Fogler**”) on behalf of Gross Medical Opportunities Fund (the “**Fund**”);
- (e) costs of this motion; and
- (f) such further and other relief as counsel may advise and this Court may permit.

THE GROUNDS FOR THE MOTION ARE:

- (a) the Bankrupt filed an assignment in bankruptcy on June 25, 2021, and the appointment of the Bankruptcy Trustee was affirmed at the Bankrupt’s first meeting of creditors on July 15, 2021;
- (b) Mark and Sheldon Gross were the sole directors and officers of the Bankrupt on the date of bankruptcy;
- (c) Mark and Sheldon Gross are also the sole trustees of the Fund, according to the most recently available audited consolidated financial statements of the Fund for the fiscal year ended December 31, 2019 (the “**Most Recent Audited Consolidated Financial Statements**”);
- (d) the Most Recent Audited Consolidated Financial Statements reflect that:
 - (i) they were approved by Mark and Sheldon Gross (the Fund’s trustees); and
 - (ii) the Audited Indebtedness is “*due on demand*” to the Bankrupt;
- (e) despite the above facts having been brought to the Fund’s attention on multiple occasions by the Bankruptcy Trustee in support of its request for payment of the Audited Indebtedness, and despite the Fund appearing to have more than sufficient funds to pay the Audited Indebtedness, the Fund has failed to do so;

¹ And, for greater certainty, any other trustee(s) of the Fund who may be appointed in their place.

² The Audited Indebtedness excludes a further \$189,904 plus interest at 9% per annum from January 1, 2020, which is owing to the Bankrupt’s co-tenancies according to the Most Recent Audited Consolidated Financial Statements.

- (f) specifically, the Fund has refused to direct Fogler to release the Audited Indebtedness to the Bankruptcy Trustee from a larger pool of approximately \$1.1 million that is being held in trust by Fogler, on the Fund's behalf, from the sale of real property in which the Fund had an interest;
- (g) in refusing to honour the Bankruptcy Trustee's request, and in refusing to direct Fogler to release the Audited Indebtedness to the Bankruptcy Trustee, the Fund and Mark Gross have caused their counsel to express several untenable positions to the Bankruptcy Trustee and its counsel, including, most notably (and without limitation):
 - (i) a purported undocumented intention between the common management of the Fund and the Bankrupt (i.e., Mark Gross and himself) that the Audited Indebtedness "*would not be due and payable until the unit holders of [the Fund] were ensured that their principal would be returned to them*" (i.e., equity somehow gets repaid before debt), when, in fact, the Most Recent Audited Consolidated Financial Statements approved by the Fund's trustees (Mark and Sheldon Gross) reflect the Audited Indebtedness as a liability of the Fund that would need to be satisfied before any of the Fund's net assets are available for distribution to unit holders (i.e., debt gets repaid before equity); and
 - (ii) that "*the financial statements of [the Fund] were prepared for the purposes of [the Fund] for its own internal reporting purposes,*" when, in fact, the Fund's prior years' audited financial statements are appended to the Fund's offering memoranda made available to the investing public (the "**Offering Memoranda**"). The Offering Memoranda (which remain posted on SEDAR) include certificates, signed by both Mark and Sheldon Gross, certifying that the Offering Memoranda do "*not contain a misrepresentation,*" and the audited consolidated financial statements appended thereto also reflect the Audited Indebtedness as "*due on demand*" to the Bankrupt;

- (h) the Bankruptcy Trustee intends to file its First Report, which will describe the foregoing in more detail;
- (i) the First Report will be filed (and the within motion is brought) in light of section 205(1) of the BIA, which, amongst other things, imposes a duty on the Bankruptcy Trustee to report any matter to Court if there are grounds to believe that an offence under the BIA has been committed with respect to the Bankrupt's estate, including, without limitation, the Bankrupt's officers or controlling persons having failed to do any of the things required of them pursuant to sections 158 and 159 of the BIA, including, without limitation, the failure to:
 - (i) *"make discovery of and deliver all [the Bankrupt's] property that is under his possession or control to the trustee"* pursuant to section 158(a) of the BIA;
 - (ii) *"make or give all the assistance within his power to the trustee in making an inventory of [the Bankrupt's] assets"* pursuant to section 158(e) of the BIA;
 - (iii) *"aid to the utmost of his power in the realization of [the Bankrupt's] property and the distribution of the proceeds among [the Bankrupt's] creditors"* pursuant to section 158(k) of the BIA; and
 - (iv) *"generally do all such acts and things in relation to [the Bankrupt's] property and the distribution of the proceeds among his creditors as may be reasonably required by the trustee"* pursuant to section 158(o) of the BIA;
- (j) while the Bankruptcy Trustee is statutorily obligated to report when it has grounds to believe that an offence under the BIA has been committed, section 205(3) of the BIA provides that decisions regarding prosecution of any such offence (if one has been committed) are discretionary;
- (k) at this juncture, the Bankruptcy Trustee believes that the interests of justice would be best served by:

- (i) affording Mark and Sheldon Gross a further limited opportunity to take the necessary steps to ensure compliance with their duties under the BIA, including, without limitation, by: (1) acknowledging the existence of the Audited Indebtedness as due and payable; and (2) causing the Fund to take all necessary steps to release the Audited Indebtedness to the Bankruptcy Trustee;
 - (ii) for greater certainty, directing Mark and Sheldon Gross to cause the Fund to take all necessary steps to release the Audited Indebtedness to the Bankruptcy Trustee; and
 - (iii) timetabling a motion for advice and directions to address the matters raised in section 205 of the BIA, which motion may be deferred until later in this bankruptcy proceeding if so warranted by the go-forward conduct of Mark and Sheldon Gross in this bankruptcy proceeding;
- (l) the other grounds set out in the First Report;
 - (m) sections 16, 17, 67, 71, 158, 159, 198 and 205 of the BIA;
 - (n) the general rules made under the BIA;
 - (o) rules 1.04, 2.03, 3.02, 30 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
 - (p) such further and other grounds as counsel may advise and this Court may permit.

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

- (a) the First Report; and
- (b) such further and other material as counsel may submit and this Court may permit.

Date: August 24, 2022

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Lawyers for the Bankruptcy Trustee

TO: SERVICE LIST

**IN THE MATTER OF THE BANKRUPTCY OF GROSS CAPITAL INC.,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

Court File No. 31-2747949

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
[IN BANKRUPTCY AND INSOLVENCY]**

Proceedings commenced at Toronto

NOTICE OF MOTION
(returnable on a date to be scheduled)

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Lawyers for the Bankruptcy Trustee

TAB 2

Court File No. 31-2747949

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
[IN BANKRUPTCY AND INSOLVENCY]**

THE HONOURABLE)	<*>DAY, THE <*>
)	
)	
JUSTICE)	DAY OF <*>, 202<*>

**IN THE MATTER OF THE BANKRUPTCY OF GROSS CAPITAL INC.,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

ORDER

THIS MOTION, made by KSV Restructuring Inc. (“**KSV**”), in its capacity as the Licensed Insolvency Trustee (in such capacity, the “**Bankruptcy Trustee**”) of Gross Capital Inc. (the “**Bankrupt**”), for an order, in substance: (i) approving the First Report of the Bankruptcy Trustee dated October <*>, 2022 (the “**First Report**”); (ii) timetabling an advice and directions motion to determine whether there are grounds to believe that Mark and/or Sheldon Gross is guilty of an offence under the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”), and, if there are such grounds, whether the Bankruptcy Trustee ought to proceed to initiate proceedings for the prosecution of Mark and/or Sheldon Gross for such offence, or whether such a decision should be deferred until later in this bankruptcy proceeding; (iii) in the interim, directing Mark and Sheldon Gross (and, for greater certainty, any other trustee(s) of the Trust Fund (as defined below) who may be appointed in their place) to cause the sum of \$453,240 to be released to the Bankruptcy Trustee from the pool of funds that is being held in trust by Fogler Rubinoff LLP (“**Fogler**”) on behalf of Gross Medical Opportunities Fund (the “**Trust Fund**”); and (vi) costs of this motion, was heard this day via video-conference.

ON READING the First Report, and on hearing the submissions of counsel for the Bankruptcy Trustee and such other counsel as were present, no one appearing for any other person on the Service List, as appears from the affidavit of service of <*> sworn October <*>, 2022,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record of the Bankruptcy Trustee is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the First Report and the actions and activities of the Bankruptcy Trustee and its counsel described therein be and are hereby approved.
3. **THIS COURT ORDERS** that an advice and directions motion be and is hereby scheduled for [INSERT DATE] to determine whether there are grounds to believe that Mark and/or Sheldon Gross is guilty of an offence under the BIA, and, if there are such grounds, whether the Bankruptcy Trustee ought to proceed to initiate proceedings for the prosecution of Mark and/or Sheldon Gross for such offence, or whether such a decision should be deferred until later in this bankruptcy proceeding;
4. **THIS COURT ORDERS** that Mark and Sheldon Gross (and, for greater certainty, any other trustee(s) of the Trust Fund who may be appointed in their place) be and are hereby required, within one calendar day of the date of this Order, to irrevocably direct Fogler to release the sum of \$453,240 to the Bankruptcy Trustee from the pool of funds that is being held in trust by Fogler on behalf of the Trust Fund.
5. **THIS COURT ORDERS** the following in respect of costs: _____.
6. **THIS COURT ORDERS** that the Bankruptcy Trustee be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.
7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any other Canadian and foreign court, tribunal, regulatory or administrative body (“**Judicial Bodies**”) to give effect to this Order and to assist the Bankruptcy Trustee and its respective agents in carrying out the terms of this Order. All Judicial Bodies are hereby respectfully requested to make such orders and to provide such assistance to the Bankruptcy Trustee as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Bankruptcy Trustee in

any foreign proceeding or to assist the Bankruptcy Trustee and its respective agents in carrying out the terms of this Order.

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

**IN THE MATTER OF THE BANKRUPTCY OF GROSS CAPITAL INC.,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

Court File No. 31-2747949

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
[IN BANKRUPTCY AND INSOLVENCY]**

Proceedings commenced at Toronto

ORDER

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Lawyers for the Bankruptcy Trustee

TAB 3



**First Report of
KSV Restructuring Inc.
as Licensed Insolvency Trustee of
Gross Capital Inc.**

October 31, 2022

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COURT FILE NO.: 31-2747949

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
[IN BANKRUPTCY AND INSOLVENCY]**

**IN THE MATTER OF THE BANKRUPTCY OF GROSS CAPITAL INC.,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**FIRST REPORT OF KSV RESTRUCTURING INC.
AS LICENSED INSOLVENCY TRUSTEE**

OCTOBER 31, 2022

1.0 Introduction

1. On June 25, 2021, Gross Capital Inc. (the “Bankrupt”) filed an assignment in bankruptcy (the “Assignment”) under the *Bankruptcy and Insolvency Act* (the “BIA”) and KSV Restructuring Inc. (“KSV”) was appointed Licensed Insolvency Trustee (in such capacity, the “Bankruptcy Trustee”) by the Office of the Superintendent of Bankruptcy (Canada) (the “OSB”). A copy of the OSB’s Certificate of Appointment is attached as Appendix “A”.
2. The appointment of KSV as Bankruptcy Trustee was affirmed by the Bankrupt’s creditors at the first meeting of creditors held on July 15, 2021 (the “First Meeting of Creditors”).
3. On the date of bankruptcy, the Bankrupt’s directors and officers were Mark Gross and Sheldon Gross. These same individuals are also the sole trustees of a trust (which is not bankrupt) called Gross Medical Opportunities Fund (the “Trust Fund”).¹
4. This report (the “Report”) is filed by KSV in its capacity as Bankruptcy Trustee of the Bankrupt’s estate. The Report is filed pursuant to section 205(1) of the BIA, which, amongst other things, imposes a duty on the Bankruptcy Trustee to report any matter to Court if there are grounds to believe that an offence under the BIA has been committed with respect to the Bankrupt’s estate, including, without limitation, the Bankrupt’s officers or controlling persons having failed to do any of the things required of them pursuant to sections 158 and 159 of the BIA, including, without limitation, the failure to:
 - a. *“make discovery of and deliver all [the Bankrupt’s] property that is under his possession or control to the trustee”* pursuant to section 158(a) of the BIA;

¹ Certain documents refer to the Trust Fund simply as the “Trust” (or the “Fund”) and the Bankruptcy Trustee simply as the “Trustee”. This Report uses the terms the “Trust Fund” and the “Bankruptcy Trustee” to emphasize that the Bankruptcy Trustee is not the trustee of the Trust Fund.

- b. *“make or give all the assistance within his power to the trustee in making an inventory of [the Bankrupt’s] assets”* pursuant to section 158(e) of the BIA;
- c. *“aid to the utmost of his power in the realization of [the Bankrupt’s] property and the distribution of the proceeds among [the Bankrupt’s] creditors”* pursuant to section 158(k) of the BIA; and
- d. *“generally do all such acts and things in relation to [the Bankrupt’s] property and the distribution of the proceeds among his creditors as may be reasonably required by the trustee”* pursuant to section 158(o) of the BIA.

1.1 Purposes of this Report

1. The purposes of this Report are to:

- a) provide background information about the Bankrupt and these proceedings;
- b) fulfill the Bankruptcy Trustee’s reporting duties in connection with section 205(1) of the BIA, given that there appear to be objective grounds to believe that one or both of Mark and Sheldon Gross may be guilty of an offence under the BIA by, in substance, causing the Trust Fund to misstate facts to the Bankruptcy Trustee for the purpose of mischaracterizing and withholding monies that ought to be delivered from the Trust Fund to the Bankruptcy Trustee for the benefit of the Bankrupt’s estate; and
- c) recommend that the Court issue an order, in substance:
 - i. approving this Report and the Bankruptcy Trustee’s activities described herein;
 - ii. scheduling a motion for advice and directions to determine whether there are grounds to believe that Mark and/or Sheldon Gross is guilty of an offence under the BIA, and if there are such grounds, whether the Bankruptcy Trustee ought to initiate proceedings for the prosecution of Mark and/or Sheldon Gross for such offence at this time, or whether such a decision should be deferred until later in this bankruptcy proceeding, all as contemplated by section 205 of the BIA;
 - iii. in the interim, directing Mark and Sheldon Gross (and, for greater certainty, any other trustee(s) of the Trust Fund who may be appointed in their place) to cause the sum of \$453,240 (the “Audited Indebtedness”), which is owing by the Trust Fund to the Bankrupt according to the Trust Fund’s most recent audited consolidated financial statements (the “Most Recent Audited Consolidated Financial Statements”), to be released to the Bankruptcy Trustee from a pool of over \$1 million that is being held in trust by Fogler Rubinoff LLP (“Fogler”) for the benefit of the Trust Fund; and
 - iv. granting costs of this motion in favour of the Bankruptcy Trustee.

1.2 Restrictions

1. In preparing this Report, the Bankruptcy Trustee has relied upon the Trust Fund's financial information made available to the Bankruptcy Trustee (including, without limitation, the Most Recent Audited Consolidated Financial Statements) and upon the Bankrupt's unaudited financial information made available to the Bankruptcy Trustee. Neither KSV nor the Bankruptcy Trustee has audited, reviewed or otherwise verified the accuracy or completeness of the information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants Canada Handbook.
2. Neither the Bankruptcy Trustee nor KSV expresses any opinion or other form of assurance with respect to the financial information presented in this Report or relied upon by the Bankruptcy Trustee in preparing this Report. Neither the Bankruptcy Trustee nor KSV shall have any responsibility for any reliance placed on the financial information presented in this Report by any of the Bankrupt's present or future creditors or other stakeholders.

1.3 Currency

1. Unless otherwise noted, all currency references in this Report are in Canadian dollars.

2.0 Background

1. The Bankrupt is a privately owned company that was incorporated under the *Business Corporations Act* (Ontario) in 2003. It was known as Gross Holdings Inc. from August 28, 2009 to October 13, 2010, and as Gross Capital Inc. thereafter.
2. The Bankrupt was a real estate investment firm, which identified, invested in and managed commercial real estate assets on behalf of investors.
3. The Bankrupt raised funds from creditors to indirectly invest and hold interests in various properties and/or property holding companies. The Bankrupt's estate owns several nominee entities (collectively, the "Nominees"). The Nominees are (or were) registered owners of real property which hold (or held) registered title as nominee for and on behalf of co-tenants, subject to nominee agreements.
4. On the date of bankruptcy, the Bankrupt's directors and officers were Mark Gross and Sheldon Gross. For the purposes of filing the Assignment, Mark Gross was the "designated officer" under the BIA. Mark Gross swore the Statement of Affairs and provided the Bankruptcy Trustee with the information necessary to file the Assignment. A copy of the Statement of Affairs is attached as Appendix "B".
5. At the date of its bankruptcy, the Bankrupt operated from leased premises located at 200 Ronson Drive, Suite #201 in Toronto, Ontario (the "Head Office"). The property located at 200 Ronson Drive is owned by 200 Ronson Drive Inc., a Nominee entity. The Bankruptcy Trustee vacated the Head Office shortly following its appointment.

6. As at the date of this Report, there have been 152 proofs of claim filed with the Bankruptcy Trustee in the aggregate amount of approximately \$51.6 million. The Bankruptcy Trustee and its legal counsel, Aird & Berlis LLP ("A&B"), have not yet commenced a detailed review of the claims filed to-date (other than disallowing a purported secured claim filed by Mark Gross' wife, Irina Gross). Until recently, the Bankruptcy Trustee had limited funding available in the estate.
7. As at the date of this Report, there is approximately \$2.6 million in the Bankruptcy Trustee's estate account. These funds were largely generated from the sale in June, 2022 of a group of properties known as the "Daycare Properties", in which the Bankrupt held a 14.81% interest. An interim statement of receipts and disbursements for the period June 25, 2021 to October 30, 2022 is attached as Appendix "C".
8. Copies of Court materials filed in the bankruptcy proceedings are available on the Bankruptcy Trustee's website at <https://www.ksvadvisory.com/experience/case/gross-capital-inc>.

2.1 Bankruptcy Trustee's Investigation

1. As part of its mandate, the Bankruptcy Trustee is investigating the pre-bankruptcy operations of the Bankrupt. This investigation was commenced due to, amongst other things, accusations made by investors of misappropriation of investor funds by Mark Gross, Sheldon Gross and/or entities controlled by them.
2. In respect of these allegations, on or around June 29, 2021, certain stakeholders of the Bankrupt (and/or its related parties, as applicable) commenced a Court application (the "Application") naming Mark Gross, Sheldon Gross, the Bankrupt and other parties as respondents. The Application was originally returnable in Court on July 5, 2021 and sought various branches of relief against the respondents and in respect of their properties and businesses, including the appointment of an investigative receiver. The substance of the Application was opposed by Mark Gross, Sheldon Gross and several other respondents.
3. The Bankrupt voluntarily filed for bankruptcy four days before the Application was issued. The Bankruptcy Trustee did not oppose the lifting of the stay to permit the Application to continue against the Bankrupt (provided that enforcement of any Judgment against the Bankrupt remained stayed, the Bankruptcy Trustee was not required to defend the Application and certain protections were requested and put in place in favour of the Bankruptcy Trustee, all of which were granted). A copy of the Order of The Honourable Mr. Justice Pattillo dated July 5, 2021, together with His Honour's accompanying endorsement dated July 8, 2021, is attached as Appendix "D".
4. The Bankruptcy Trustee understands that the Application was amended and adjourned to a date to be set. A motion was heard on October 12, 2021 by The Honourable Mr. Justice Cavanagh, the substance of which was for leave for the applicants to issue and register a Certificate of Pending Litigation on title to two of the multiple properties in which the Bankrupt (and related parties of the Bankrupt) formerly held an interest, being 511 and 515 John Street, in Burlington, Ontario (jointly, the "John Street Properties"). The Bankruptcy Trustee understands that Certificates of Pending Litigation have since been registered against the John Street Properties pursuant to a decision rendered by Justice Cavanagh dated December 22, 2021. A copy of His Honour's decision is attached as Appendix "E".

5. As at the date of this Report, the Bankruptcy Trustee's investigation of the Bankrupt's pre-bankruptcy operations is ongoing. In accordance with directions received from the inspectors of the Bankrupt's estate (the "Inspectors"),² the Bankruptcy Trustee has examined four parties believed to have knowledge of the Bankrupt's affairs pursuant to section 163 of the BIA. In due course, the Bankruptcy Trustee intends to examine certain additional parties under section 163 of the BIA, including, without limitation, Mark Gross and Sheldon Gross.

3.0 The Trust Fund³

1. According to the Trust Fund's most recent offering memorandum dated May 25, 2017, which was filed on SEDAR on July 21, 2017 (the "Most Recent Offering Memorandum"), the Trust Fund is an unincorporated, open-ended investment trust established pursuant to a declaration of trust dated March 11, 2015 and amended on September 9, 2016, and a "mutual fund trust" for the purposes of the *Income Tax Act* (Canada). A copy of the Most Recent Offering Memorandum is attached as Appendix "F".
2. The Most Recent Offering Memorandum further confirms that: (i) the Trust Fund is the sole holder of the Class A limited partnership units of Gross Medical Opportunities Fund LP (the "Limited Partnership"); (ii) holding companies controlled by Mark Gross, Sheldon Gross and Justin Di Ciano⁴ are the holders of all the Class B limited partnership units of the Limited Partnership; and (iii) Mark Gross and Sheldon Gross are: (1) the trustees of the Trust Fund; (2) control the Limited Partnership's general partner, Gross Medical Opportunities Fund GP Inc. (the "General Partner"); and (3) control the exempt market dealer, Gross Securities Corp. ("Gross Securities"), which is featured on the front page of the Most Recent Offering Memorandum and was expected to sell "*the majority, if not all, of the Trust Units*" to investors.⁵
3. The Most Recent Offering Memorandum reflects several investment objectives of the Trust Fund, including, without limitation, the following:
 - i. to "*indirectly acquire, own and lease through the Limited Partnership a portfolio of medical related revenue-producing commercial real estate properties ('Properties') in the Province of Ontario and elsewhere in Canada;*" and
 - ii. to "*make distributions of Cash Flow of the Trust [Fund] to Trust Unitholders resulting indirectly from the revenue produced by the Properties acquired by the Limited Partnership.*"

² Five individuals were appointed as estate inspectors at the First Meeting of Creditors. On August 23, 2022, these Inspectors also unanimously authorized and directed the Bankruptcy Trustee to bring the motion that accompanies this Report.

³ Capitalized terms not otherwise defined in this section are defined as they appear in the Most Recent Offering Memorandum.

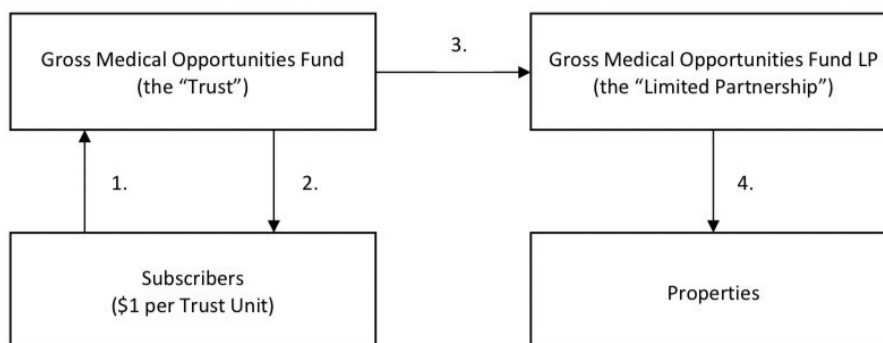
⁴ The Most Recent Offering Memorandum states that Justin Di Ciano is a former trustee of the Trust Fund. The Bankruptcy Trustee understands that Justin Di Ciano also became the day-to-day operator of Prime Real Estate Group Inc. ("Prime") subsequent to the date of the Most Recent Offering Memorandum. Per page 15 of the Most Recent Offering Memorandum, "*The Limited Partnership may contract with a related party, Prime, to manage the ongoing day-to-day management of the Properties.*" Both Mark Gross and Sheldon Gross are Prime's registered directors.

⁵ See, for example, items 2.1.3 and 7 of the Most Recent Offering Memorandum and the definition of "General Partner" in the Most Recent Offering Memorandum.

4. The Most Recent Offering Memorandum contains multiple diagrams illustrating the relationship and flow of funds between and amongst the Trust Fund, the Limited Partnership, the General Partner, the Properties, Prime (being the manager of one of the Properties) and the unitholders/subscribers of the Trust Fund. Three of these diagrams are reproduced directly below and on the next page of this Report, together with the explanatory notes that accompanied these diagrams in the Most Recent Offering Memorandum:

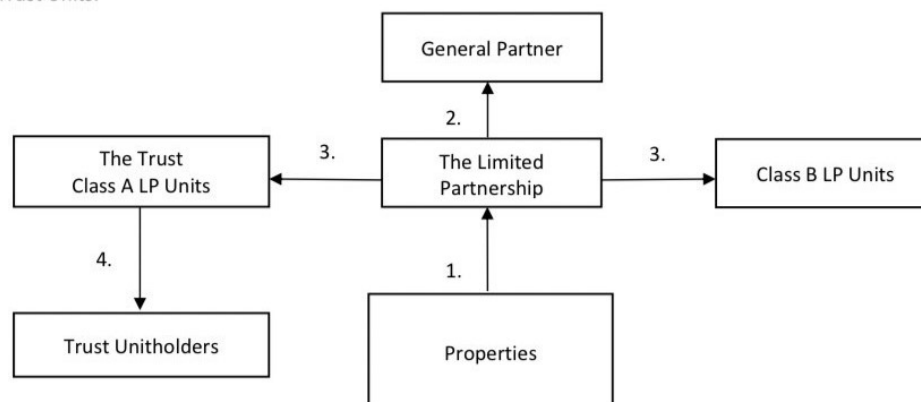
Investment Flow Charts

The following chart represents the proposed use of subscription proceeds of this Offering by the Trust and the Limited Partnership in the acquisition of the Properties:



1. Subscribers to this Offering advance subscription funds to the Trust using funds from Deferred Plans or cash.
2. The Trust issues Trust Units to Subscribers.
3. The Trust uses the Available Funds from this Offering to purchase Class A LP Units in the Limited Partnership.
4. The Limited Partnership uses funds received from the Trust, after the payment of the Offering costs and Selling Commissions associated with this Offering, to acquire Properties.

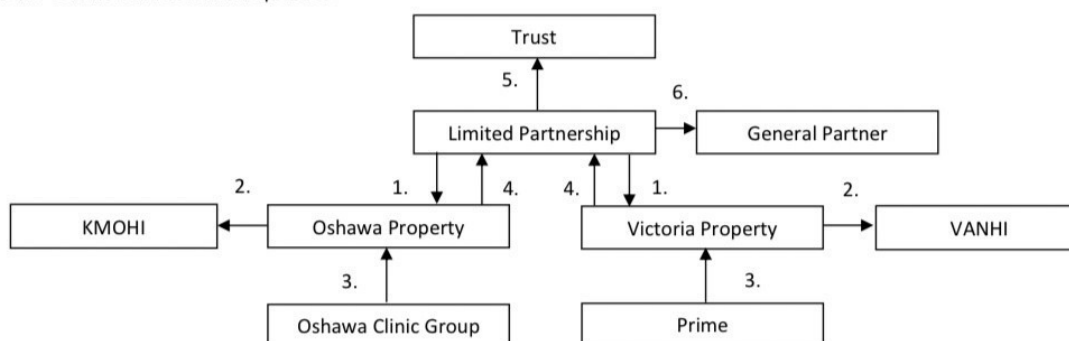
The following chart represents the proposed distribution of funds from the acquisition of the Properties to holders of LP Units and Trust Units:



1. Revenue arising from the acquisition of Properties is received by the Limited Partnership.
2. The Limited Partnership pays the Management Fee to the General Partner.
3. The Limited Partnership makes a distribution of Distributable Cash to the Limited Partners of the Limited Partnership pursuant to the terms of the Limited Partnership Agreement.
4. The Trust makes a distribution of Cash Flow of the Trust to the Trust Unitholders.

Investment Chart with respect to the Oshawa and Victoria Properties

The following is an illustration of the relationship between the Trust, the Limited Partnership and the Partnership Interest in the Oshawa and Victoria Properties:



1. The Limited Partnership owns a 12.5% Co-Tenancy Interest in the Oshawa Property and a 4.8564% interest in the Victoria Property.
2. Title to the Oshawa Property is held in the name of KMOHI and title to the Victoria Property is held in the name of VANHI.
3. Oshawa Clinic Group is the Property Manager of the Oshawa Property. Prime is the Property Manager of the Victoria Property.
4. The Limited Partnership's share of income from the Oshawa Property and the Victoria Property is distributed to the Limited Partnership by the managers of the respective properties.
5. The Limited Partnership distributes the above funds to investors as Cash Flow of the Trust after payment of the operating expenses of the Trust and the Limited Partnership.
6. The Limited Partnership pays the Victoria Asset Management Fee to the General Partner on a quarterly basis from the funds referenced in point 4 above.

5. As noted in explanatory note #5 in the above diagram, and as noted elsewhere in the Most Recent Offering Memorandum, the operating expenses of both the Trust Fund and the Limited Partnership are to be paid before investors of the Trust Fund are entitled to receive monetary distributions. The Most Recent Offering Memorandum cautions that *"If the Trust [Fund] defaults in the repayment of any indebtedness that it may incur, the creditors holding such indebtedness will be entitled to exercise available legal remedies against the Trust [Fund]. There is no assurance that there will be assets available to recover any portion of a Trust Unitholder's investment."*⁶

4.0 Audited Consolidated Obligations of the Trust Fund to the Bankrupt

1. Attached to the Most Recent Offering Memorandum are audited consolidated financial statements for the Trust Fund as at December 31, 2016 and December 31, 2015,⁷ and attached as Appendix "G" to this Report are the Most Recent Audited Consolidated Financial Statements for the Trust Fund as at December 31, 2019 (collectively, the "Audited Consolidated Financial Statements"). The Bankruptcy Trustee understands that December 31, 2019 is the last fiscal year for which audited statements were prepared.

⁶ See the "Default on Indebtedness" section under item 8 of the Most Recent Offering Memorandum.

⁷ Also appended to the Most Recent Offering Memorandum are audited financial statements for the General Partner as at these same dates.

2. The Audited Consolidated Financial Statements reflect, amongst other things, that they were each:
 - i. audited by Segal LLP, a Toronto, Ontario based licensed accounting firm;
 - ii. “*approved by the Trustees [i.e., Mark Gross and Sheldon Gross];*” and
 - iii. prepared on a consolidated basis, in that they “*include the accounts of the Trust [Fund] and the [Limited] Partnership. The Trust [Fund] owns 100% of the Class A LP units of the [Limited] Partnership. All inter-company accounts and transactions have been eliminated on consolidation.*”
3. Amongst other things, the balance sheets in the Audited Consolidated Financial Statements reflect two line items of current liabilities owing to the Bankrupt by the Trust Fund on a consolidated basis, as follows:
 - i. first, an amount described as “*Due to Gross Capital Inc.,*” which is “*unsecured, non-interest bearing and due on demand.*” The balance sheet in the Most Recent Audited Consolidated Financial Statements reflects this obligation in the amount of \$453,240, which is the Audited Indebtedness that the Bankruptcy Trustee has demanded upon (as discussed below). The responses to this demand have given rise to this Report and the Bankruptcy Trustee’s corresponding motion; and
 - ii. second, a further amount described as “*Loan from Gross Capital Inc. (Co-tenancies),*” which is “*unsecured, bear[s] interest at 9% per annum and [is] due on demand.*” The balance sheet in the Most Recent Audited Consolidated Financial Statements reflects this obligation in the amount of \$189,904 (the “Second Audited Indebtedness”), of which \$164,812 is described as “*Loan from Gross Capital Inc. – Victoria Co-tenancy*” and \$25,092 is described as “*Loan from Gross Capital Inc. – King Oshawa Co-tenancy.*” The Second Audited Indebtedness is not part of the Bankruptcy Trustee’s motion at this time, but, like the Audited Indebtedness, has been demanded upon by the Bankruptcy Trustee. The Bankruptcy Trustee reserves all its rights and remedies in connection with the Second Audited Indebtedness.

5.0 Grounds to Believe that an Offence under the BIA Has Occurred

1. On March 8, 2022, the Bankruptcy Trustee spoke with Mark Gross’ counsel (Tyr LLP), during which conversation the Bankruptcy Trustee was advised that Mark Gross believed certain monies reflected in the Most Recent Audited Consolidated Financial Statements were not owing to the Bankrupt. The following day, the Bankruptcy Trustee sent a follow-up email, attaching the Most Recent Audited Consolidated Financial Statements and asking for an explanation from Mark Gross as to why monies would not be owing. A copy of this email is attached as Appendix “H”.
2. On March 22, 2022, the Bankruptcy Trustee received a responding letter from Mark Gross’ counsel, marked “without prejudice”.
3. Not satisfied with the response provided on behalf of Mark Gross, the Bankruptcy Trustee proceeded to make formal demand on the Trust Fund in respect of both the Audited Indebtedness and the Second Audited Indebtedness on April 11, 2022. A copy of this demand letter is attached as Appendix “I”.

4. On April 18, 2022, counsel for Mark Gross advised that it was also now representing the Trust Fund and provided a formal response to the Bankruptcy Trustee's demand. A copy of this response is attached as Appendix "J". As noted on the face of the response, it restated the substantive content of the earlier purported "without prejudice" communication that was not satisfactory to the Bankruptcy Trustee, including, without limitation, the following positions that the Bankruptcy Trustee considers to be untenable:
 - i. a purported undocumented intention between the common management of the Trust Fund and the Bankrupt (i.e., Mark Gross and himself) that *"the amounts owing directly from [the Trust Fund] to the Bankrupt, if any, would not become due and payable until the unitholders of [the Trust Fund] were ensured that their principal would be returned to them"* (i.e., equity somehow gets repaid before the debt owing to the Bankrupt), when, in fact, both the Most Recent Offering Memorandum and the Audited Consolidated Financial Statements confirm the exact opposite (i.e., the debt owing to the Bankrupt gets repaid in priority to investors' equity in the Trust Fund);
 - ii. *"the financial statements of [the Trust Fund] were prepared for the purposes of [the Trust Fund] for its own internal reporting purposes,"* when, in fact, the Trust Fund's prior years' audited financial statements are appended to the Trust Fund's offering memoranda made available to the investing public, as previously noted in this Report. These offering memoranda (including the Most Recent Offering Memorandum) contain certificates from Mark Gross and Sheldon Gross certifying that the offering memoranda do *"not contain a misrepresentation"*; and
 - iii. accusing the Bankruptcy Trustee of *"attempting to get execution before judgment by interfering with the [Trust Fund]'s relationship with its counsel, Fogler[s], by writing to them directly and asking them not to give [the Trust Fund] its own money"* and purporting to reserve *"all rights with respect to any damages arising from the [Bankruptcy] Trustee's attempt to prevent [the Trust Fund]'s counsel from transferring [the Trust Fund]'s funds to it,"* when, in fact, the Bankruptcy Trustee did no such thing (as is evident on the face of the demand letter).⁸
5. The Bankruptcy Trustee, via its counsel, identified the aforementioned concerns to counsel for Mark Gross and the Trust Fund by way of a reply letter dated April 22, 2022, which included a reminder of the duties owed under the BIA. A response was received on May 1, 2022, but did not modify or retract the positions of concern identified by the Bankruptcy Trustee. Indeed, the response continued to advance the theory that investors of the Trust Fund are entitled to a return of their equity investment in priority to the debt owing to the Bankrupt, and that their clients' concern was *"ensuring that [the Trust Fund]'s investors are not disadvantaged by the clever arguments raised after the fact that do not reflect the understanding and intention between those entities at the time"*. Copies of the correspondence of April 22, 2022 and May 1, 2022 are attached as Appendices "K" and "L", respectively.

⁸ The accusations and purported reservation of rights against the Bankruptcy Trustee comprising item (iii) was a new development that had not previously been raised in the March 22, 2022 letter marked "without prejudice".

6. Subsequent without prejudice discussions and communications over several months amongst the Bankruptcy Trustee, its counsel and counsel for Mark Gross and the Trust Fund did not result in a modification or retraction of the positions of concern identified by the Bankruptcy Trustee.
7. In light of all the foregoing, the Bankruptcy Trustee is of the view that its duty pursuant to section 205(1) of the BIA has been triggered, requiring the Bankruptcy Trustee to report this matter to Court. As noted at the outset of this Report, the Bankruptcy Trustee believes the aforementioned conduct to constitute objective grounds to believe that one or both of Mark and Sheldon Gross have failed to do the things required of them pursuant to sections 158 and 159 of the BIA, including, without limitation, the failure to:
 - i. *“make discovery of and deliver all [the Bankrupt’s] property that is under his possession or control to the trustee”* pursuant to section 158(a) of the BIA;
 - ii. *“make or give all the assistance within his power to the trustee in making an inventory of [the Bankrupt’s] assets”* pursuant to section 158(e) of the BIA;
 - iii. *“aid to the utmost of his power in the realization of [the Bankrupt’s] property and the distribution of the proceeds among [the Bankrupt’s] creditors”* pursuant to section 158(k) of the BIA; and
 - iv. *“generally do all such acts and things in relation to [the Bankrupt’s] property and the distribution of the proceeds among his creditors as may be reasonably required by the trustee”* pursuant to section 158(o) of the BIA.
8. On August 24, 2022, the Bankruptcy Trustee served its notice of motion on counsel for Mark Gross and the Trust Fund, advising that the Report would be provided once it was ready and enquiring whether Sheldon Gross was also being represented by the same counsel (which has not been answered as of the date of this Report). A copy of that communication is attached as Appendix “M”.
9. On September 21, 2022, counsel for Mark Gross and the Trust Fund delivered the letter and enclosure attached collectively as Appendix “N”. In substance, the letter:
 - i. refers to the Trust Fund in quotation marks, as if it does not exist, and falsely substitutes it for the General Partner;
 - ii. purports to advise that the Limited Partnership *“cannot pay the amounts owing to [the Bankrupt] by a different entity, [the General Partner]”*;
 - iii. offers payment, for the first time, of the full amount owing by the Limited Partnership only, being \$355,357 (i.e., approximately \$100,000 less than the Audited Indebtedness owing by the Trust Fund and the Limited Partnership at the consolidated Trust Fund level);
 - iv. fails to acknowledge the existence of the Audited Indebtedness owing on a consolidated basis at the Trust Fund level (which, as set out in the Audited Consolidated Financial Statements that Mark Gross and Sheldon Gross approved, constitute *“Liabilities before net assets attributable to redeemable Trust Unitholders”*); and

- v. fails to acknowledge the express responsibility of the Limited Partnership in the Most Recent Offering Memorandum (which Mark Gross and Sheldon Gross also certified) that the *“Limited Partnership distributes the above funds [in the diagram on page 7 of this Report] to investors as Cash Flow of the Trust [Fund] after payment of the operating expenses of the Trust [Fund] and the Limited Partnership”* [emphasis added].
10. The Bankruptcy Trustee is concerned that, notwithstanding repeated opportunities given to the Bankrupt’s principals and the Trust Fund’s trustees to comply with their duties under the BIA, such persons continue to advance untenable positions and misstatements to the Bankruptcy Trustee (both before and after being advised of the motion pursuant to section 205(1) of the BIA and being served with the corresponding notice of motion).
 11. The Bankruptcy Trustee further notes that:
 - i. Mark Gross failed to disclose any of the Audited Indebtedness on the Bankrupt’s Statement of Affairs that he swore at the outset of these bankruptcy proceedings on June 25, 2021 (see Appendix “B”); and
 - ii. also on June 25, 2021, Mark Gross executed an acknowledgement entitled *“Notice to Officer of Bankrupt Corporation of Duties,”* a copy of which is attached as Appendix “O” and which includes the following: *“You are hereby notified of the duties imposed upon you by the [BIA] and other features of the [BIA] that affect you in your capacity as the designated officer. You are expected to study carefully the documents you have received, namely copies of Sections 67, 158, 159, 178, 198, 199 and 200 of the [BIA], as a breach of your duties could make you liable to prosecution”* [emphasis added].
 12. The Bankruptcy Trustee also notes that, on September 16, 2022, one of the Nominee entities, 200 Ronson Drive Inc. (which, as set out above, owns the property from which the Bankrupt previously operated), commenced an action on behalf of its 50 co-tenants against Mark Gross, Sheldon Gross, Prime and other connected parties, alleging, amongst other things, *“breach of trust, fraud, and inducing breach of contract.”* A copy of the statement of claim is attached as Appendix “P”.⁹

6.0 Conclusion and Recommendation

1. The Bankruptcy Trustee is statutorily obligated to report when it has grounds to believe that an offence under the BIA has been committed, but section 205(3) of the BIA provides that decisions regarding prosecution of any such offence (if one has been committed) are discretionary.
2. The Bankruptcy Trustee respectfully recommends that the Court make an Order granting the relief detailed in section 1.1(1)(c) of this Report.

⁹ See, in particular, section 3.2 entitled “FRAUDULENT PAYMENTS TO RELATED COMPANIES: FRAUD AND CONSPIRACY”.

3. As described in the notice of motion, the Bankruptcy Trustee: (i) is desirous of Mark Gross and Sheldon Gross complying with their duties under the BIA; and (ii) subject to the Court's views, would be prepared to defer the motion for advice and directions detailed in section 1.1(1)(c)(ii) of this Report until later in this bankruptcy proceeding if so warranted by the go-forward conduct of Mark Gross and Sheldon Gross in this bankruptcy proceeding.
4. As part of the Bankruptcy Trustee's reporting duties under section 205(1) of the BIA, the Bankruptcy Trustee is to state "*the names of the witnesses who should in his opinion be examined*" in connection with the alleged offence(s). Should the matter proceed to prosecution, it is the Bankruptcy Trustee's opinion that Mark Gross, Sheldon Gross and the applicable auditor at Segal LLP should be examined as witnesses as part of any such prosecution. As noted earlier in this Report, the Bankruptcy Trustee intends to examine Mark Gross and Sheldon Gross under section 163 of the BIA (which, for greater certainty, would be conducted prior to the Bankruptcy Trustee recommending their prosecution, if such recommendation is ultimately made).

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
IN ITS CAPACITY AS LICENSED INSOLVENCY TRUSTEE OF
GROSS CAPITAL INC.
AND NOT IN ITS PERSONAL CAPACITY**

TAB A



Industry Canada
Office of the Superintendent
of Bankruptcy Canada

Industrie Canada
Bureau du surintendant
des faillites Canada

District of: Ontario
Division No.: 09 - Toronto
Court No.: 31-2747949
Estate No.: 31-2747949

In the Matter of the Bankruptcy of:

Gross Capital Inc.

Debtor

KSV RESTRUCTURING INC.

Licensed Insolvency Trustee

Ordinary Administration

Date and time of bankruptcy:	June 25, 2021, 13:25	Security:	\$0.00
Date of trustee appointment:	June 25, 2021		
Meeting of creditors:	July 15, 2021, 14:00 Meeting to be held by Zoom Meeting ID: 922 5806 1115 Passcode #: tzHVT7, Ontario Canada,		
Chair:	Trustee		

CERTIFICATE OF APPOINTMENT - Section 49 of the Act; Rule 85

I, the undersigned, official receiver in and for this bankruptcy district, do hereby certify that:

- the aforementioned debtor filed an assignment under section 49 of the *Bankruptcy and Insolvency Act*;
- the aforementioned trustee was duly appointed trustee of the estate of the debtor.

The said trustee is required:

- to provide to me, without delay, security in the aforementioned amount;
- to send to all creditors, within five days after the date of the trustee's appointment, a notice of the bankruptcy; and
- when applicable, to call in the prescribed manner a first meeting of creditors, to be held at the aforementioned time and place or at any other time and place that may be later requested by the official receiver.

Date: June 25, 2021, 13:29

E-File/Dépôt Electronique

Official Receiver

151 Yonge Street, 4th Floor, Toronto, Ontario, Canada, M5C2W7, (877)376-9902

Canada

TAB B

District of: Ontario
 Division No. 09 - Toronto
 Court No.
 Estate No.

☒ Original ☐ Amended

-- Form 78 --

Statement of Affairs (Business Bankruptcy) made by an entity
 (Subsection 49(2) and Paragraph 158(d) of the Act / Subsections 50(2) and 62(1) of the Act)

In the Matter of the Bankruptcy of
 Gross Capital Inc.
 of the City of Toronto, in the Province of Ontario

To the bankrupt:

You are required to carefully and accurately complete this form and the applicable attachments showing the state of your affairs on the date of the bankruptcy, on the 25th day of June 2021. When completed, this form and the applicable attachments will constitute the Statement of Affairs and must be verified by oath or solemn declaration.

LIABILITIES (as stated and estimated by the officer)		ASSETS (as stated and estimated by the officer)	
1. Unsecured creditors as per list "A"	43,127,504.00	1. Inventory	0.00
Balance of secured claims as per list "B"	0.00	2. Trade fixtures, etc.	0.00
Total unsecured creditors	43,127,504.00	3. Accounts receivable and other receivables, as per list "E"	
2. Secured creditors as per list "B"	11.00	Good	100,000.00
3. Preferred creditors as per list "C"	0.00	Doubtful	0.00
4. Contingent, trust claims or other liabilities as per list "D"		Bad	492,000.00
estimated to be reclaimable for	0.00	Estimated to produce	100,000.00
Total liabilities	43,127,515.00	4. Bills of exchange, promissory note, etc., as per list "F" ...	0.00
Surplus	NIL	5. Deposits in financial institutions	0.00
		6. Cash	0.00
		7. Livestock	0.00
		8. Machinery, equipment and plant	0.00
		9. Real property or immovable as per list "G"	1,810,000.00
		10. Furniture	1,000.00
		11. RRSPs, RRIFs, life insurance, etc.	0.00
		12. Securities (shares, bonds, debentures, etc.)	50,000.00
		13. Interests under wills	0.00
		14. Vehicles	0.00
		15. Other property, as per list "H"	0.00
		If bankrupt is a corporation, add:	
		Amount of subscribed capital	0.00
		Amount paid on capital	0.00
		Balance subscribed and unpaid	0.00
		Estimated to produce	0.00
		Total assets	1,961,000.00
		Deficiency	41,166,515.00

I, Mark Craig Gross, of the City of Toronto in the Province of Ontario, do swear (or solemnly declare) that the above statement and the attached lists are to the best of my knowledge, based on the information available to me, a full, true and complete statement of the affairs of Gross Capital Inc. on June 25, 2021, and fully disclose all of its property of every description in its possession or that may devolve on it in accordance with Section 67 of the Bankruptcy and Insolvency Act.

Sworn (or solemnly declared) before me at
 the City of Toronto, in the Province of Ontario,
 this 25 day of June, 2021.

A Commissioner, etc.

Mark Craig Gross

Rajinder Kashyap, a Commissioner, etc.,
 Province of Ontario, for KSV Restructuring Inc.
 Expires January 27, 2024.

District of: Ontario
 Division No. 09 - Toronto
 Court No.
 Estate No.

FORM 78 -- Continued

List "A"
 Unsecured Creditors

Gross Capital Inc.

No.	Name of creditor	Address	Unsecured claim	Balance of claim	Total claim
1	1068014 ON	3 Nathan Court Thornhill ON L4J6Z7	150,000.00	0.00	150,000.00
2	1442927 ON INC.	46 Dufflaw Road Toronto ON M6A2W1	350,000.00	0.00	350,000.00
3	1593401 ON Ltd.	7050 Weston Road, Suite 501 Vaughan ON L4L8G7	150,000.00	0.00	150,000.00
4	1649750 ON INC	853 Main St. East Hamilton ON L8M 1L8	325,000.00	0.00	325,000.00
5	1818019 ON Limited	236 Glen Park Ave. Toronto ON M6B2E3	50,000.00	0.00	50,000.00
6	1884340 ON	853 Main St E. Hamilton ON L8M1L8	740,000.00	0.00	740,000.00
7	1984121 ON INC.	853 Main St. East Hamilton ON L8M 1L8	450,000.00	0.00	450,000.00
8	2543209 ON	74 Walterscot Crescent Markham ON L6C 0E7	200,000.00	0.00	200,000.00
9	4539591 Canada Inc.	255 Duncan Mill Road Suite 408 Toronto ON M3B 3H9	1,000,000.00	0.00	1,000,000.00
10	497227 ON LTD.	853 Main St. East Hamilton ON L8M 1L8	250,000.00	0.00	250,000.00
11	783305 ON LTD.	853 Main St. East Hamilton ON L8M 1L8	550,000.00	0.00	550,000.00
12	9556290 CANADA INC	51 Dove Lane Thornhill ON L3T1W1	2,500,000.00	0.00	2,500,000.00
13	AITCO LIMITED	10 Glen Edyth Dr. Toronto ON M4V 2V7	430,000.00	0.00	430,000.00
14	Allan Gross	600 University Ave. Suite 476A Toronto ON M5G1X5	597,500.00	0.00	597,500.00
15	ANDREA AND ERROL YIM	1288 Ala Moana BLVD#17G Honolulu HI 96814	200,000.00	0.00	200,000.00
16	Ava Gross	PH18-3800 Yonge St Toronto ON M4N3P7	650,000.00	0.00	650,000.00
17	Avery Gobbo	376 Meadow Wood Lane Mississauga ON L5J2S9	10,000.00	0.00	10,000.00
18	AVI BARBALAT	74 Brickstone Circle Thornhill ON L4J6M4	100,000.00	0.00	100,000.00
19	AWEI LIU AND YI JIN	3310 Alpaca Ave Mississauga ON L5M7V3	225,000.00	0.00	225,000.00
20	Bace Holdings Inc.	18 Napa Hill CRT Thornhill ON L4J8S1	200,000.00	0.00	200,000.00
21	BING YANG	73 Ava Crescent Richmond Hill ON L4B2X5	200,000.00	0.00	200,000.00
22	BMW CANADA INC	50 ULTIMATE DRIVE Richmond Hill ON L4S 0C8	1.00	0.00	1.00
23	Brownlor Ltd.	100-1 Evergreen Place Winnipeg MB R3L0E9	300,000.00	0.00	300,000.00
24	BRUCE BUCKY	60 Poipu Drive Honolulu HI 96825	400,000.00	0.00	400,000.00

25-Jun-2021

Date


 Mark Craig Gross

District of: Ontario
 Division No. 09 - Toronto
 Court No.
 Estate No.

FORM 78 -- Continued

List "A"
 Unsecured Creditors

Gross Capital Inc.

No.	Name of creditor	Address	Unsecured claim	Balance of claim	Total claim
25	Bruce Yanagihara	3312 Ala Ilima St. Honolulu HI 96818	120,000.00	0.00	120,000.00
26	Carmela Spadafora	7 Madron Cres Downsview ON M3J1H8	125,000.00	0.00	125,000.00
27	Charlyn Masini	828 Moaniala ST. Honolulu HI 96821	365,000.00	0.00	365,000.00
28	Christopher John Valenzano	87 Bell Harbour Place. Woodbridge ON L4L6W6	150,000.00	0.00	150,000.00
29	CHUL WAN PARK	132 Clarendon Drive Richmond Hill ON L4B 3W1	120,000.00	0.00	120,000.00
30	CHWALKA/EVELEIGH	38 Duplex Avenue Toronto ON M5P2A3	100,000.00	0.00	100,000.00
31	CHWALKA/OVERHOLT	38 Duplex Avenue Toronto ON M5P2A3	650,000.00	0.00	650,000.00
32	CITY DRILL	138 Teefy Ave. Richmond Hill ON L4C8C4	100,000.00	0.00	100,000.00
33	CKO IRA LLC	1118 Ala Moana Blvd. Suite 606 Honolulu HI 96814	100,000.00	0.00	100,000.00
34	Daniel Strasser/Julianna Strasser	2183 Hikino Street Honolulu HI 96821	100,000.00	0.00	100,000.00
35	DAVID DI IORIO	324 Hillsdale Avenue East Toronto ON M4S 1T8	287,500.00	0.00	287,500.00
36	DAVID LAVINE	120 Ava Rd Toronto ON M6C1W1	500,000.00	0.00	500,000.00
37	DU SHA/ 4539591 CAN	255 Duncan Mill Road Suite 408 Toronto ON M3B 3H9	1,500,000.00	0.00	1,500,000.00
38	EARL LEVY	10 Glen Edyth Drive Toronto ON M4V2V7	100,000.00	0.00	100,000.00
39	EARL LEVY HOLDINGS	10 Glen Edyth Drive Toronto ON M4V2V7	200,000.00	0.00	200,000.00
40	Ellen K. Fleishman	100-1 Evergreen Place Winnipeg MB R3L0E9	250,000.00	0.00	250,000.00
41	Eric Cravit	97 St. Germain Toronto ON M5M 1V9	1.00	0.00	1.00
42	EVELEIGH	38 Duplex Avenue Toronto ON M5P2A3	100,000.00	0.00	100,000.00
43	Fabrizio Toni and Sandra Toni	19 Torvista Lane Maple ON L6A0C7	200,000.00	0.00	200,000.00
44	Feng Li	1442 Edenrose St. Mississauga ON L5V1H3	50,000.00	0.00	50,000.00
45	Fibex Window Coverings Ltd.	23 Hinda Lane Thornhill ON L4J6S1	300,000.00	0.00	300,000.00
46	Gabriel Joseph Valenzano	87 Bell Harbour Place Woodbridge ON L4L6W6	150,000.00	0.00	150,000.00
47	Giuseppe Pace/Barbara Pace	1211 West Shore Dr Mississauga ON L5E3H8	95,000.00	0.00	95,000.00
48	GLOBAL GATEWAY HOLDINGS	73 Ava Crescent Richmond Hill ON L4B2X5	650,000.00	0.00	650,000.00

25-Jun-2021

Date



Mark Craig Gross

District of: Ontario
 Division No. 09 - Toronto
 Court No.
 Estate No.

FORM 78 -- Continued


List "A"
 Unsecured Creditors

Gross Capital Inc.

No.	Name of creditor	Address	Unsecured claim	Balance of claim	Total claim
49	Global Shutter Investments Ltd.	502 - 383 Sorauren Ave. Toronto ON M6R0A4	500,000.00	0.00	500,000.00
50	GM FINANCIAL CANADA LEASING LTD.	2001 SHEPPARD AVE. STE 600 Toronto ON M2J 4Z8	1.00	0.00	1.00
51	Hongwei Su	2291 Robin Drive Mississauga ON L5K1S7	50,000.00	0.00	50,000.00
52	Huiwen Corp.	7 Tiglio Road Woodbridge ON L4H0M1	150,000.00	0.00	150,000.00
53	Igor Favelyukis/Eleonora Favelyukis	23 Hinda Lane Thornhill ON L4J6S1	150,000.00	0.00	150,000.00
54	Iosif Freyger	104 Durie Lane Thornhill ON L3T5H5	100,000.00	0.00	100,000.00
55	ISR Management Inc.	11322 La Madre Ridge Drive Las Vegas NV 89135	250,000.00	0.00	250,000.00
56	J. Jones	4096 Piedmont Avenue #166 Oakland CA 94611	250,000.00	0.00	250,000.00
57	Jasen Takei	1080 S Beretania St, Apt 803 Honolulu HI 96814	75,000.00	0.00	75,000.00
58	JEAN MOREL	4999 Kahala Ave. Unit 432 Honolulu HI 96816	420,000.00	0.00	420,000.00
59	Jeff Herszkowicz	19 Foxwood Rd Thornhill ON L4J 9C4	1.00	0.00	1.00
60	Jeff Layton	41 McKenzie Ave Toronto ON M4W1K1	100,000.00	0.00	100,000.00
61	JERRY AND LOUISE DI IORIO	92 McClure DR King City ON L7B1C3	2,100,000.00	0.00	2,100,000.00
62	Jian Zhang	513 Tyrone Cres Milton ON L9T8J5	75,000.00	0.00	75,000.00
63	Jianzhong Xing	2556 Advent Court Mississauga ON L5M5L4	100,000.00	0.00	100,000.00
64	Jill Lavine	120 Ava Road Toronto ON M6C1W1	100,000.00	0.00	100,000.00
65	Jing Miao	950 Drysdale Cres Milton ON L9T8J2	100,000.00	0.00	100,000.00
66	JJ DICIANO HOLDINGS	32 Thistle Ridge Drive Vaughan ON L4L3K4	300,000.00	0.00	300,000.00
67	Johann Strasser	1314 S. King St. Suite 1261 Honolulu HI 96814	500,000.00	0.00	500,000.00
68	JONATHAN GROSS	2500 Bathurst Apr 608 Toronto ON M6B2Y8	400,000.00	0.00	400,000.00
69	Jules Gross Limited	268 Ridley Blvd Ste 1712 Toronto ON M5M4N3	2,550,000.00	0.00	2,550,000.00
70	Junhua Huang	916 Seventh St. Mississauga ON L5E1P3	100,000.00	0.00	100,000.00
71	Ka Heng Carline Au	1038 Sherman Brock Circle Newmarket ON L3X0B4	100,000.00	0.00	100,000.00
72	Kathryn Ann Chesler Revocable Trust	6000 Island Blvd. Apt. 2402 Aventura FL 33160	200,000.00	0.00	200,000.00

25-Jun-2021

Date


 Mark Craig Gross

District of: Ontario
 Division No. 09 - Toronto
 Court No.
 Estate No.

FORM 78 -- Continued

List "A"
 Unsecured Creditors

Gross Capital Inc.

No.	Name of creditor	Address	Unsecured claim	Balance of claim	Total claim
73	KAZIMIRSKI #2	2505 Aha Aina Place Honolulu HI 96821	100,000.00	0.00	100,000.00
74	Lino Di Iorio/Lynne Di Iorio	138 Teefy Ave. Richmond Hill ON L4C8C4	700,000.00	0.00	700,000.00
75	LINODI INVESTMENTS	138 Teefy Ave. Richmond Hill ON L4C8C4	400,000.00	0.00	400,000.00
76	MADELEINE GROSS	1815 Yonge street Unit 503 Toronto ON M4T 2A4	300,000.00	0.00	300,000.00
77	MARGIE DUNCAN	48 Sutherland Street Lane Cove NSW 2066 Australia	100,000.00	0.00	100,000.00
78	MARIA MIAO	457 Dalmuir Mews Mississauga ON L4Z3W2	250,000.00	0.00	250,000.00
79	Martin Unger	2181 Yonge St.Suite #3103 Toronto ON M4S3H7	400,000.00	0.00	400,000.00
80	MARTY KELMAN	38 Avenue Rd. Apt 414, North Toronto ON M5R2G2	250,000.00	0.00	250,000.00
81	Melvin Shigeta Revocable Living Trust/Jane Shigeta Revocable Living Trust	1204 Kahili St Kailua HI 96734	100,000.00	0.00	100,000.00
82	MICHAEL DI IORIO	81 Sutherland Drive Toronto ON M4G1H6	487,500.00	0.00	487,500.00
83	Michael Steirman Medicine Professional Corporation	22 Wentworth Court Markham ON L3R7N7	50,000.00	0.00	50,000.00
84	MICHELE ATLIN	10 Glen Edyth Drive Toronto ON M4V2V7	1,700,000.00	0.00	1,700,000.00
85	MIN HONG MAO	170 Petworth Cres. Scarborough ON M1S3M5	460,000.00	0.00	460,000.00
86	MWU HOLDINGS INC	30A Oriole Road Toronto ON M4V2E8	1,000,000.00	0.00	1,000,000.00
87	Nahum Scheide	4266 Bathurst St. Apt. 516 Toronto ON M3H5Y7	50,000.00	0.00	50,000.00
88	Oshawa Holdings LLC	10064 Clifton Forge Ave Las Vegas NV 89148	250,000.00	0.00	250,000.00
89	Pia Gobbo	376 Meadow Wood Lane Mississauga ON L5J2S9	100,000.00	0.00	100,000.00
90	QUI PING CHEN	457 Dalmuir Mews Mississauga ON L4Z3W2	70,000.00	0.00	70,000.00
91	Randall Ho	3876 Nikolo St. Honolulu HI 96815	200,000.00	0.00	200,000.00
92	RMK IRA LLC	1027 Haailio Street#95 Mililani HI 96789	100,000.00	0.00	100,000.00
93	Robert Atkinson	603 Ahakea St Honolulu HI 96816	100,000.00	0.00	100,000.00
94	Roberta Sunahara/Paul Sunahara	1388 Ala Moana Blvd. #2703 Honolulu HI 96814	100,000.00	0.00	100,000.00
95	Ronald B. Jones	16 Lehman CR Markham ON L3P5X1	100,000.00	0.00	100,000.00
96	Ronald Gagel	2260 Chancery Lane West Oakville ON L6J 6A3	300,000.00	0.00	300,000.00

25-Jun-2021

Date



Mark Craig Gross

District of: Ontario
 Division No. 09 - Toronto
 Court No.
 Estate No.

FORM 78 -- Continued

List "A"
 Unsecured Creditors

Gross Capital Inc.

No.	Name of creditor	Address	Unsecured claim	Balance of claim	Total claim
97	SANLIN SHAO	2556 Advent Court Mississauga ON L5M5L4	210,000.00	0.00	210,000.00
98	Scott Taylor/Bonnie Taylor	25 Hambly Court Barrie ON L4N5J6	200,000.00	0.00	200,000.00
99	SEYMOUR KAZIMIRSKI	2505 Aha Aina Place Honolulu HI 96821	240,000.00	0.00	240,000.00
100	SHELBY MINOR	56 Portsmouth Drive Scarborough ON M1C5C9	100,000.00	0.00	100,000.00
101	SHELDON GROSS LTD	1610 Ladywood Way Innisfil ON L9S2T7	1,000,000.00	0.00	1,000,000.00
102	Sonya Lederer	3201 Northeast 183rd StApt: 1401 Aventura FL 33160	100,000.00	0.00	100,000.00
103	SSI INC	243 Lonsdale Rd Toronto ON M4V1W9	1,000,000.00	0.00	1,000,000.00
104	STEPHAN STRASSER	16600 N Thompson Peak PkwyUnit 1072 Scottsdale AZ 85260	700,000.00	0.00	700,000.00
105	Tanview Investments Limited	101-10 Director Court Woodbridge ON L4L7E8	400,000.00	0.00	400,000.00
106	The Dr. Harold And Mrs. Brownie Fleishman Family Trust	100-1 Evergreen Place Winnipeg MB R3L0E9	650,000.00	0.00	650,000.00
107	The Xuezhang Family Trust	62 Great Lakes Blvd. Oakville ON L6L0A3	300,000.00	0.00	300,000.00
108	THOMAS PITTS	6825 Windy Hill Way Reno NV 89511	145,000.00	0.00	145,000.00
109	TINA TCHAPLIA	3 Nathan Court Thornhill ON L4J6Z7	250,000.00	0.00	250,000.00
110	Tovit Fortinsky	243 Yorkhill Blvd. Thornhill ON L4J3L5	125,000.00	0.00	125,000.00
111	Tricia Kamikawa	95-1027 Haalilo St Mililani HI 96789	100,000.00	0.00	100,000.00
112	Urban-Line Enterprises Inc.	86 Grand Vista Cres. Woodbridge ON L4H3J6	120,000.00	0.00	120,000.00
113	VICKI HO RLT	3876 Nikolo St. Honolulu HI 96815	200,000.00	0.00	200,000.00
114	VINCE NAPOLITANO	53-6 Leonard St. Richmond Hill ON L4C0L6	100,000.00	0.00	100,000.00
115	Vishwanath Ramkissoon/Sabrina Ramkissoon	16 Janessa Court Maple ON L6A 0C8	200,000.00	0.00	200,000.00
116	Wallace K. Tsuha Trust of Oct. 14, 1991 as Amended April 10, 2000	146 S Kalaheo Ave Kailua HI 96734	2,000,000.00	0.00	2,000,000.00
117	Wen Xue/Yan Peng	6134 Red Willows Dr Gloucester ON K1C 7J8	250,000.00	0.00	250,000.00
118	Wen Yao Zhang/Zhenhua Lu	1 Amanda Court Richmond Hill ON L4B3C2	50,000.00	0.00	50,000.00
119	West Psychology Professional Corporation	300 Earl Grey Drive, Suite 459 Kanata ON K2T1C1	120,000.00	0.00	120,000.00
120	Xie 2018 Family Trust	880 Centre Road Hamilton ON L8N 2Z7	450,000.00	0.00	450,000.00

25-Jun-2021

Date



Mark Craig Gross

District of: Ontario
 Division No. 09 - Toronto
 Court No.
 Estate No.

FORM 78 -- Continued

List "A"
 Unsecured Creditors

Gross Capital Inc.

No.	Name of creditor	Address	Unsecured claim	Balance of claim	Total claim
121	Yicun Du	1405 - 608 Richmond Street West Toronto ON M5V 0N9	100,000.00	0.00	100,000.00
122	Yuchuan Shao/Sanlin Shao	2556 Advent Court Mississauga ON L5M5L4	100,000.00	0.00	100,000.00
123	YUDEL HOLDINGS LTD	2 Car Westmount Apt: 902 Westmount QC H3Z2S4	500,000.00	0.00	500,000.00
124	YUN ZUO	62 Great Lakes Boulevard Oakville ON L6L0A3	100,000.00	0.00	100,000.00
125	Zhengyi Miao	457 Dalmuir Mews Mississauga ON L4Z3W2	370,000.00	0.00	370,000.00
126	ZHIWEI LU AND LUPING SHAO	39 Gloxinia Cres. Scarborough ON M1W2C5	200,000.00	0.00	200,000.00
127	Zhongxia Cheng/Zhengchu Miao	950 Drysdale Cres Milton ON L9T8J2	70,000.00	0.00	70,000.00
Total:			43,127,504.00	0.00	43,127,504.00

25-Jun-2021

Date



Mark Craig Gross

District of: Ontario
 Division No. 09 - Toronto
 Court No.
 Estate No.

FORM 78 -- Continued

List "B"
 Secured Creditors

Gross Capital Inc.

No.	Name of creditor	Address	Amount of claim	Particulars of security	When given	Estimated value of security	Estimated surplus from security	Balance of claim
1	1592106 ONTARIO INC.	83 NAVY WHARF COURT Toronto ON M5V 3S3	1.00	Securities - Other	24-Jun-2021	1.00		
2	ADD CAPITAL CORP.	500 COCHRANE DRIVE, UNIT 2 Markham ON L3R 8E2	1.00	Securities - Other	24-Jun-2021	1.00		
3	BUSINESS DEVELOPMENT BANK OF CANADA	121 KING STREET WEST, SUITE 1200 Toronto ON M5H 3T9	1.00	Securities - Other	24-Jun-2021	1.00		
4	CANADIAN IMPERIAL BANK OF COMMERCE	305 MILNER 6TH FLOOR Scarborough ON M1B 3V4	1.00	Securities - Other	24-Jun-2021	1.00		
5	COMPUTERSHARE TRUST COMPANY OF CANADA	100 UNIVERSITY AVENUE, SOUTH TOWER 8TH FLOOR Toronto ON M5J 2Y1	1.00	Securities - Other	24-Jun-2021	1.00		
6	IRINA GROSS	110 KILBARRY ROAD Toronto ON M5P 1K9	1.00	Securities - Other	24-Jun-2021	1.00		
7	MERIDIAN ONECAP CREDIT CORP.	SUITE 1500, 4710 KINGSWAY Burnaby BC V5H 4M2	1.00	Securities - Other	24-Jun-2021	1.00		
8	MGZ HOLDINGS INC.	200 RONSON DRIVE, SUITE 103 Toronto ON M9W 5Z9	1.00	Securities - Other	24-Jun-2021	1.00		
9	NIKOLAS ANTROPOV	29 JUNEWOOD CRESCENT North York ON M2L 2C3	1.00	Securities - Other	24-Jun-2021	1.00		
10	SGZ HOLDINGS INC.	200 RONSON DRIVE, SUITE 103 Toronto ON M9W 5Z9	1.00	Securities - Other	24-Jun-2021	1.00		
11	WS LEASING LTD	1900 13450 102 AVE Surrey BC V3T 5Y1	1.00	Securities - Other	24-Jun-2021	1.00	49,989.00	
Total:			11.00			11.00	49,989.00	0.00

25-Jun-2021

Date



Mark Craig Gross

District of: Ontario
Division No. 09 - Toronto
Court No.
Estate No.

FORM 78 -- Continued

List "C"
Preferred Creditors for Wages, Rent, etc.

Gross Capital Inc.

No.	Name of creditor	Address and occupation	Nature of claim	Period during which claim accrued	Amount of claim	Amount payable in full	Difference ranking for dividend
Total:					0.00	0.00	0.00

25-Jun-2021

Date



Mark Craig Gross

District of: Ontario
Division No. 09 - Toronto
Court No.
Estate No.

FORM 78 -- Continued

List "D"
Contingent or Other Liabilities

Gross Capital Inc.

No.	Name of creditor or claimant	Address and occupation	Amount of liability or claim	Amount expected to rank for dividend	Date when liability incurred	Nature of liability
Total:			0.00	0.00		

25-Jun-2021

Date



Mark Craig Gross

District of: Ontario
 Division No. 09 - Toronto
 Court No.
 Estate No.

FORM 78 -- Continued

List "E"
 Debts Due to the Bankrupt

Gross Capital Inc.

No.	Name of debtor	Address and occupation	Nature of debt	Amount of debt (good, doubtful, bad)	Folio of ledgers or other book where particulars to be found	When contracted	Estimated to produce	Particulars of any securities held for debt
1	Accounts Receivable	. ON Various	Receivables	100,000.00 0.00 492,000.00		20-Aug-2020	100,000.00	Various
Total:				100,000.00 0.00 492,000.00			100,000.00	

25-Jun-2021

Date



Mark Craig Gross

District of: Ontario
 Division No. 09 - Toronto
 Court No.
 Estate No.

FORM 78 -- Continued

List "F"

Bills of Exchange, Promissory Notes, Lien Notes, Chattel
 Mortgages, etc., Available as Assets

Gross Capital Inc.

No.	Name of all promissory, acceptors, endorsers, mortgagors, and guarantors	Address	Occupation	Amount of bill or note, etc.	Date when due	Estimated to produce	Particulars of any property held as security for payment of bill or note, etc.
1	40 King West Holdings Inc.	40 King St W Oshawa ON L1H 1A3		0.00	25-Jun-2021	0.00	Advance of funds
Total:				0.00		0.00	

25-Jun-2021

Date



Mark Craig Gross

District of: Ontario
 Division No. 09 - Toronto
 Court No.
 Estate No.

FORM 78 -- Continued

List "G"
 Real Property or Immovables Owned by Bankrupt

Gross Capital Inc.

Description of property	Nature of bankrupt interest	In whose name does title stand	Total value	Particulars of mortgages, hypothecs, or other encumbrances (name, address, amount)	Equity or surplus
1700 Bassett	Owner	1700 Bassett	40,000.00		0.00
200 Ronson	Owner	200 Ronson	280,000.00		0.00
30 Cedar	Owner	30 Cedar	30,000.00		0.00
Claireville Prop	Owner	Claireville Prop	280,000.00		0.00
Daycare	Owner	Daycare	1,000,000.00		0.00
Richard Ruston	Owner	Richard Ruston	180,000.00		0.00
Total:			1,810,000.00		0.00

25-Jun-2021

Date

Mark Craig Gross

District of: Ontario
 Division No. 09 - Toronto
 Court No.
 Estate No.

FORM 78 -- Concluded

List "H"
 Property

Gross Capital Inc.

FULL STATEMENT OF PROPERTY

Nature of property	Location	Details of property	Original cost	Estimated to produce
(a) Stock-in-trade			0.00	0.00
(b) Trade fixtures, etc.			0.00	0.00
(c) Cash in financial institutions			0.00	0.00
(d) Cash on hand			0.00	0.00
(e) Livestock			0.00	0.00
(f) Machinery, equipment and plant			0.00	0.00
(g) Furniture		Furniture	1,000.00	1,000.00
(h) Life insurance policies, RRSPs, etc.			0.00	0.00
(i) Securities		Other	50,000.00	50,000.00
(j) Interests under wills, etc.			0.00	0.00
(k) Vehicles			0.00	0.00
(l) Taxes			0.00	0.00
(m) Other			0.00	0.00
			Total:	51,000.00

25-Jun-2021

Date



Mark Craig Gross

Court No.

File No.

In the Matter of the Bankruptcy of
Gross Capital Inc.
of the City of Toronto, in the Province of Ontario

Form 78 (Bill C-12)
Statement of affairs (Business bankruptcy)

Trustee: Noah Goldstein

License: 3625

Email:

KSV Restructuring Inc. - Licensed Insolvency Trustee
Per:

Noah Goldstein - Licensed Insolvency Trustee
150 King Street West, Suite 2308
Toronto ON M5H 1J9
Phone: (416) 932-6262 Fax: (416) 932-6266

TAB C

Gross Capital Inc.

Interim Statement of Receipts and Disbursements

For the Period Ended October 30, 2022

(CAD\$; unaudited)

Receipts

Creditor priority funding	62,713
Cash in bank	50,599
Distributions from Co-Tenancies	414,285
Sale proceeds	2,636,093
Third party guarantee	50,000
Interest income	11,582
	<u>3,225,272</u>

Disbursements

Repayment of creditor priority funding	62,713
Professional fees	
Trustee	294,269
Legal	82,699
Other	64,889
HST paid on disbursements	61,527
Appraisal	10,772
Miscellaneous expenses	10,992
IT expenses	9,307
	<u>597,168</u>

Balance in Estate Account	<u><u>2,628,104</u></u>
---------------------------	-------------------------

TAB D

Court File No. CV-21-00664789-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

)

MONDAY, THE 5TH

MR. JUSTICE PATTILLO

)

DAY OF JULY, 2021

B E T W E E N:

497227 ONTARIO LIMITED, 1884340 ONTARIO INC.,
1649750 ONTARIO INC. and 783305 ONTARIO LIMITED

Applicants

-and-

GROSS CAPITAL INC., GROSS PROPERTIES INC., SHELDON GROSS
LIMITED, SGZ HOLDINGS INC., MGZ HOLDINGS INC., JOHN
MORTGAGE CORP., 503 JOHN MORTGAGE CORP., 511 JOHN
MORTGAGE CORP., 515 JOHN STREET INC., 1314244 ONTARIO
LIMITED, CANAMED (MORRISON STREET) LIMITED, CANAMED
(STAMFORD) LIMITED, 65 LARCH HOLDINGS INC., 2009 LONG LAKE
HOLDINGS INC., BURLINGTON HEALTHCARE CENTRE INC.,
CARRIAGE GATE BERKELEY INC., PORTAGE ROAD HOLDINGS
LIMITED, MORRISON STREET HOLDINGS LIMITED, 800 PRINCESS
STREET HOLDINGS LIMITED, 132 SECOND STREET HOLDINGS INC.,
2771839 ONTARIO LIMITED, 132 SECOND STREET PURCHASER
LIMITED, PICTON CLINIC CORPORATION, PINE TRAIL PICTON INC.,
M1 HEALTHCARE PROPERTIES INC., CANNECT INTERNATIONAL
MORTGAGE CORPORATION, formerly known as 1592106 Ontario Inc.,
FAUSTO CARNICELLI, DOMENIC CARNICELLI, MAURO CARNICELLI,
MARK GROSS, SHELDON GROSS and WERNER DINGFELD

Respondents

APPLICATION UNDER Section 248 of the *Business Corporations Act*, R.S.O. 1990, c. B-16,
Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and
Rule 40.01 of the *Rules of Civil Procedure*

AND

Court File No. 31-2747949

IN THE MATTER OF THE BANKRUPTCY OF GROSS CAPITAL INC.

-2-

ORDER

THIS MOTION made by the Applicants for an Order pursuant to section 248(1) of the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended (the "OBCA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing RSM Canada Limited as investigative receiver (in such capacity, the "Receiver") without security, of certain of the Respondents, was heard this day before a Judge of the Commercial List via zoom videoconference. at 330 University Avenue, Toronto, Ontario.

ON READING the Application Record of the Applicants and the Exhibits thereto and on hearing the submissions of counsel for the Applicants, counsel for the Respondents 515 John Street Inc., 1314244 Ontario Limited, Burlington Healthcare Centre Inc., 2771839 Ontario Limited, M1 Healthcare Properties Inc., Fausto Carnicelli, Werner Dingfeld, Carriage Gate Berkeley Inc. Domenic Carnicelli, Mauro Carnicelli, Mark Gross, MGZ Holdings Inc., and counsel for KSV Restructuring Inc in its capacity as trustee in bankruptcy for Gross Capital Inc. and counsel for KPMG Inc. in its capacity as court-appointed receiver and manager of 65 Larch Holdings Inc., 2009 Long Lake Holdings Inc. and certain assets of Gross Properties Inc., and on hearing the consent of RSM Canada Limited to act as the Receiver,

1. THIS COURT ORDERS AND DECLARES:

- (a) the Applicants are hereby authorized to commence seeking and continue seeking Judgment against Gross Capital Inc. (the "**Bankrupt**") in the Application having Court File No. CV-21-00664789-00CL (the "**Application**") and the stay of proceedings pursuant to s.69 of the Bankruptcy and Insolvency Act, R.S.C., 1985,

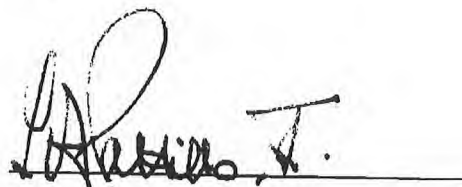
-3-

- c. B-3 in respect of proceedings against the Bankrupt no longer operates in respect of the Applicants for such purpose only, subject to further order of the Court;
- (b) such authorization does not extend to Gross Properties Inc., 2009 Long Lake Holdings Inc. and/or 65 Larch Holdings Inc. to the extent that the relief sought concerns any "Legal Owners", "Property" or "Records" as such terms are defined in the Order of Justice Dunphy granted on June 29, 2021 in the receivership proceedings bearing Court File No. CV-21-00664273-00CL.
2. THIS COURT ORDERS that the Applicants' pursuit of Judgment in the Application as against the Bankrupt shall be for the purpose only of establishing the amount for which the Applicants are entitled to prove in the bankruptcy of the Bankrupt as an unsecured claim, such that, for greater certainty, the enforcement of any Judgment obtained by the Applicants as against the Bankrupt remains stayed pending further Order of this Court.
3. THIS COURT ORDERS that nothing in this Order shall be deemed to require KSV Restructuring Inc. ("KSV"), in its capacity as the bankruptcy trustee of the Bankrupt (in such capacity, the "Trustee"), to defend the Application or the Judgment sought therein, or to take any other steps in respect of the Application or the Judgment sought therein, including, without limitation, production of documents or participating in any discovery proceedings or similar proceedings, except as expressly ordered below, and that neither KSV nor the Trustee shall be liable for any costs with respect to the Application or the Judgment sought therein.
4. THIS COURT ORDERS that the Trustee be and is hereby authorized and directed, upon payment by the Applicants to the Trustee as set out below, to examine the Bankrupt's electronic

-4-

and physical records that are within the Trustee's control and provide to the Applicants any such records: (i) to which both the Applicants (or any of them) and the Respondents (or any of them) are parties; or (ii) that in the view of the Trustee, acting reasonably, appear to constitute any of the security or guarantees (if any) referenced in any of the records in (i). All reasonable fees and expenses incurred by the Trustee in connection with attempting to locate, locating and/or providing the foregoing documents, as applicable, shall be paid jointly and severally by the Applicants to the Trustee, including, without limitation, at the regular hourly rates of those representatives of the Trustee engaged with such tasks and any reasonable disbursements in connection with same, and neither KSV nor the Trustee shall incur any liability in connection with any such records.

5. THIS COURT ORDERS that the balance of the relief sought on the Application be adjourned to Thursday July 8, 2021 at 9:00 A.M. for scheduling



497227 ONTARIO LIMITED et al.
Applicants

-and- GROSS CAPITAL INC. et al.
Respondents

Court File No. CV-21-00664789-00C

-and-

IN THE MATTER OF THE BANKRUPTCY OF GROSS CAPITAL INC.

Court File No. 31-2747949

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

ORDER

TORKIN MANES LLP
Barristers & Solicitors
151 Yonge Street, Suite 1500
Toronto ON M5C 2W7

Stewart Thom (55695C)
sthom@torkinmanes.com
Tel: 416-777-5197

Lawyers for the Applicants

RCP-F 4C (September 1, 2020)

Court File Number: CW-21-00664781-0051Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

497227 Ontario et al.

AND

~~Plaintiff(s)~~

Applicants

Gross Capital et al.~~Defendant(s)~~

Respondents

Case Management ☐ Yes ☐ No by Judge: _____

Counsel	Telephone No:	Facsimile No:
See Appendix 'A'		

- ☐ Order ☐ Direction for Registrar (No formal order need be taken out)
☐ Above action transferred to the Commercial List at Toronto (No formal order need be taken out)

- ☐ Adjourned to: _____
☐ Time Table approved (as follows):

The following timetable is set for the applicants' motion for an investigative receiver:

1. Motion Record by July 15, 2021;
2. Responding Materials by August 6, 2021;
3. Reply Material by August 20, 2021;
4. Cross-examinations August 24, 25, September 1 & 2, 2021 (as needed) & subject to witness availability;
5. Factums in accord with the Rules;
6. Hearing, October 12, 2021 (1 day)

July 8, 2021
 Date

[Signature]
 Judge's Signature

☐ Additional Pages _____

ONTARIO SUPERIOR COURT OF JUSTICE

Participant Information

Please upload a completed participant information form into the CaseLines event folder/bundle. Where possible, the moving party for the event is asked to coordinate with other parties to complete one form for the hearing.¹ In criminal matters, each party may upload their own form. The participant information form must be saved using the court's document naming convention (e.g. Participant Information – All Parties – 01-JUN-2021 or Participant Information – Defendant Smith – 01-JUN-2021).

CASE INFORMATION

Court File Number	CV-21-00664789-00CL
Court Location (e.g. Hamilton)	Toronto
Case Name	497227 Ontario, et al v Gross Capital, et al
Date of Hearing	July 8, 2021

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing (and how they wish to be addressed, e.g. preferred pronouns)	Name of Party	Phone Number ²	Email Address
Stewart Thom	Applicants	416-777-5197	sthom@torkinmanes.com

For Defendant, Responding Party, Defence:

Name of Person Appearing (and how they wish to be addressed, e.g. preferred pronouns)	Name of Party	Phone Number	Email Address
Stephen Schwartz and Darren Marr	515 John Street Inc., 1314244 Ontario Limited, Burlington Healthcare Centre Inc., 2771839 Ontario Limited, M1 Healthcare Properties Inc., Fausto Carnicelli & Werner Dingfeld	416.218.1132	Stephen@chaitons.com
Bart Sarsh	Carriage Gate Berkeley Inc., Domenic Carnicelli and Mauro Carnicelli	905-528-8412	sarshb@simpsonwagle.com

¹ The Participant Information Form replaces the Counsel Slip.

² Please provide a phone number where you can be reached during the hearing, if necessary.

James Bunting	Mark Gross, MGZ Holdings Inc., Sheldon Gross, Sheldon Gross Limited and SGZ Holdings Inc."	647.519.6607	jbunting@tyrllp.com
Sharon Kour	Gross Properties Inc., except to the extent that the relief sought concerns any "Property" or "Records" as such terms are defined in the Order of Justice Dunphy granted on June 29, 2021 in the receivership proceedings bearing Court File No. CV-21-00664273-00C, 503 John Mortgage Corp., 511 John Mortgage Corp., Portage Road Holdings Limited, Morrison Street Holdings Limited, 132 Second Street Purchaser Limited, 800 Princess Street Holdings Limited;	416.613.8283	skour@wfkllaw.ca

For Other:

Name of Person Appearing (and how they wish to be addressed, e.g. preferred pronouns)	Name of Party/ Organization	Phone Number	Email Address
Jeremy Nemers	KSV Advisory Inc.	416-863-1500	jnemers@airdberlis.com

TAB E

Court File Number: CV-21-00664789-00CL

**Superior Court of Justice
Commercial List**

FILE/DIRECTION/ORDER

**497227 ONTARIO LIMITED, 1884340 ONTARIO INC., 1649750 ONTARIO INC. and
783305 ONTARIO LIMITED**

Applicant

AND

**GROSS CAPITAL INC., GROSSPROPERTIES INC., SHELDON GROSS LIMITED,
SGZ HOLDINGS INC., MGZ HOLDINGS INC., JOHN MORTGAGE CORP., 503
JOHN MORTGAGE CORP., 511 JOHN MORTGAGE CORP., 515 JOHN STREET
INC., 1314244 ONTARIO LIMITED, CANAMED (MORRISON STREET) LIMITED,
CANAMED (STAMFORD) LIMITED, 65 LARCH HOLDINGS INC., 2009 LONG
LAKE HOLDINGS INC., BURLINGTON HEALTHCARE CENTRE INC., CARRIAGE
GATE BERLELEY INC., PORTAGE ROAD HOLDINGS LIMITED, MORRISON
STREET HOLDINGS LIMITED, 800 PRINCESS STREET HOLDINGS LIMITED, 132
SECOND STREET HOLDINGS INC., 2771839 ONTARIO LIMITED, 132 SECOND
STREET PURCHASER LIMITED, PICTON CLINIC CORPORATION, PINE TRIAL
PICTON INC., M1 HEALTHCARE PROPERTIES INC., CANNECT INTERNATIONAL
MORTGAGE CORPORATION formerly known as 1592106 Ontario Inc., FAUSTO
CARNICELLI, DOMENIC CARNICELLI, MAURO CARNICELLI, MARK GROSS,
SHELDON GROSS and WERNER DINGFELD**

Respondents

Case Management ☐ Yes ☐ No by Judge:

Counsel	Telephone No:	Email/Facsimile No:
Stewart Thom for Applicants		
Stephen Schwartz and Darren Mann for		

Respondents 515 John Street Inc., 1314244 Ontario Limited, Burlington Healthcare Centre Inc., 2771839 Ontario Limited, M1 Healthcare Properties Inc., Fausto Carnicelli and Werner Dingfeld		
Jeremy Nemers for KSV Restructuring Inc.		
Jane Dietrich for Jerry Di Lorio		
Abhishek Vaidyanathan for Mark gross, MGZ Holdings Inc., Sheldon Gross, Sheldon Gross Limited and SGZ Holdings Inc.		
Jules Monteyne for KPMG		

☐ Order ☐ Direction for Registrar **(No formal order need be taken out)**
☐ Above action transferred to the Commercial List at Toronto **(No formal order need be taken out)**

☐ Adjourned to: _____
☐ Time Table approved (as follows): _____

Date of Hearing:

October 12, 2021

ENDORSEMENT

Introduction

[1] The Applicants bring a motion for an order for leave to issue a Certificate of Pending Litigation ("CPL") and to register the CPL against title to two properties. The Trustee in bankruptcy of Gross Capital Inc. supports the Applicants' motion.

[2] The responding parties to this motion are Fausto Carnicelli, Werner Dingfeld, 515 John Street Inc., 1314244 Ontario Limited, Burlington Healthcare Centre Inc., 2771839 Ontario Limited, and M1 Healthcare Properties (the "Responding Parties"). The Responding Parties oppose this motion.

Commercial List File/Direction/Order

Background Facts

Parties

[3] The Applicants are Ontario corporations which function as vehicles for investments and/or loans made by the shareholders and principals of the Applicants.

[4] Gross Capital Inc. ("Gross Capital") is an Ontario corporation. The principals of Gross Capital are Mark Gross and Sheldon Gross.

[5] The Applicants advanced funds to Gross Capital for the purpose of acquiring interests in real property. This motion arises from the circumstances surrounding discharges of two mortgages (the "Mortgages") registered on title to two adjacent commercial properties located at 511 John Street and 515 John Street (the "John Street Properties").

[6] The Mortgages were held in trust for the Applicants, and others, by trustee corporations, John Mortgage Corp. and 511 John Mortgage Corp., holding companies related to Gross Capital. The sole officer and director of both trustee corporations is Mark Gross.

[7] 515 John Street Inc. is an Ontario corporation which operated as a real property holding company and formerly held title to 515 John Street, Burlington. The officers and directors of 515 John Street Inc. are Mark Gross, Fausto Carnicelli, and Werner Dingfield. Mr. Carnicelli and Mr. Dingfield have had a business relationship involving twenty-five companies in which they were involved going back to the early 2000's.

[8] 1314244 Ontario Inc. ("131") is another Ontario corporation which operated as a real property holding company and formerly held title to 511 John Street, Burlington. Werner Dingfield is the sole officer and director of 131.

[9] Burlington Healthcare Centre Inc. ("BHCI") is an Ontario corporation. Title to the John Street Properties was transferred to BHCI on August 2, 2017. Fausto Carnicelli is the sole officer and director of BHCI.

The John Street Development

[10] Fausto Carnicelli is a principal of 515 John Street Inc., BHCI, 2771839 Ontario Limited and M1 Healthcare Properties Inc.

[11] Mr. Carnicelli's evidence is that in or around 2008, he moved forward with development of the John Street Properties with the intention to construct an eight-storey medical building. The development also included 503 John Street, an adjacent property site, which was to have a parking garage for use by the medical building and other uses (collectively, the "John Street Development").

[12] Mr. Carnicelli's company, 1600670 Ontario Ltd. ("160"), was the owner of 515 John Street, having acquired this property in 2004.

[13] On September 25, 2008, 160, Gross 515 Inc., and other parties entered into a Partnership Agreement creating a partnership (the "Partnership") that was to be the beneficial owner of the John

Street Development. 160 received a 60% interest in the Partnership and Gross 515 Inc. (whose principal is Mark Gross) received a 23% interest.

[14] Pursuant to the Partnership Agreement, the Partnership purchased 515 John Street from 160 for a purchase price of \$4 million. The Partnership entered into a trust agreement with 515 John Street Inc. ("515 Inc.") (the directors are Mr. Carnicelli, Mark Gross, and Mr. Dingfeld), whereby 515 Inc. was appointed as trustee for the Partnership and took title to 515 John Street. The Partnership, through 515 Inc. as trustee, assumed the first mortgage on the 515 John Property held by Loring Developments Limited ("Loring") (the "515 First Mortgage") in the amount of approximately \$2 million.

[15] On March 24, 2010, 131 (Mr. Dingfeld's company) purchased 511 John Street. Financing for the purchase was obtained by a loan from Dorothy Freedman ("Freedman") and secured by a first mortgage (the "511 First Mortgage").

[16] Freedman and Loring are related.

Mortgages held in trust for the Applicants

[17] To finance the purchase of 515 John Street for development as part of the John Street Development, Gross Capital arranged for a \$4 million loan to be advanced by John Mortgage Corp. and secured by a second mortgage registered against title to 515 John Street (the "515 Second Mortgage"). The 515 Second Mortgage had a term of two years with interest at 12% per annum. Mr. Carnicelli's evidence is that 160 received \$2,011,163.28 as payment for the transfer of title to 515 Inc. and the balance of the 515 Second Mortgage was not advanced and was retained by the lender to pay interest on the 515 First Mortgage and the 515 Second Mortgage.

[18] Mr. Carnicelli's evidence is that the Partnership subsequently provided additional security for the John Mortgage Corp. loan.

[19] On September 29, 2011, 131 granted 511 John Mortgage Corp. a mortgage registered against 511 John Street in the amount of \$2,500,000 (the "511 Second Mortgage"). Mr. Carnicelli's evidence is that the 511 Second Mortgage was intended as additional security for the indebtedness secured by the 515 Second Mortgage and ranked behind the 511 First Mortgage.

[20] I refer to the 515 Second Mortgage and the 511 Second Mortgage, together, as the "Mortgages".

The First Mortgagee makes demand

[21] Mr. Carnicelli's evidence is that on August 31, 2016, counsel for Loring and for Freedman sent a demand letter in respect of the 515 First Mortgage and the 511 First Mortgage and related debt obligations. The total sum owed pursuant to the demand as of August 24, 2016 was \$5,369,365.37.

[22] Mr. Carnicelli's evidence is that following receipt of this demand, "our goal was to avoid the John Street Development being sold under power of sale. If this occurred, our ability to complete the John Street Development would have been lost. This would not only result in the loss of our investment, but the second mortgages held against the properties would suffer a complete or substantial deficiency".

[23] Mr. Carnicelli's evidence is that he began pursuing new lenders to refinance both properties which was a difficult task. Conventional lenders were not interested in the project. Mr. Carnicelli succeeded in

finding a new lender with Clifton Blake Capital Corp. ("Clifton") in July 2017. Under the commitment letter issued by Clifton to BHCI on July 13, 2017, Clifton agreed to make a loan BHCI for \$5 million. Clifton required personal guarantees from Mr. Carnicelli's brothers. Clifton was not prepared to permit the second mortgages to remain registered on title as part of the financing. Mr. Carnicelli was unable to obtain additional financing to repay the indebtedness secured by the 515 Second Mortgage and the 511 Second Mortgage.

[24] As security for its loan, Clifton received a first mortgage registered against title to 511 John Street and 515 John Street.

[25] Both of the John Street Properties were transferred on August 2, 2017, to BHCI. On the same day that ownership of the John Street Properties was transferred to BHCI, both the 515 Second Mortgage and the 511 Second Mortgage were discharged from title to the John Street Properties. The Applicants received no payment at the time the discharge of the Mortgages.

[26] Mr. Carnicelli's evidence is that Mark Gross, representing Gross Capital, agreed to discharge the Mortgages. Mr. Carnicelli's evidence is that one of the reasons he agreed to do so without any payment in cash was because Gross Capital had earlier received consideration for the loan in the form of equity interests in two companies, one of which owned a medical building in Stoney Creek, and the other of which owned a medical building in Peterborough. Mr. Carnicelli's evidence is that he and Mark Gross agreed that the equity acquired by Gross Capital in the companies that owned the two medical buildings would reduce the amount owing under the 515 Second Mortgage which, by agreement, would be between \$1 million and \$1.5 million, with no final due date for repayment agreed upon. Mr. Carnicelli's evidence is that this obligation was owed by him to Gross Capital and was to be secured by a pledge of his shares in BHCI.

[27] As part of the Clifton refinancing, Mr. Carnicelli obtained an appraisal dated July 12, 2017 for 511 and 515 John Street from Colliers International. The appraisal valued 511 and 515 John Street as having an "as is" property value of \$8,190,000.

Applicants learn that Mortgages discharged

[28] From the time the Mortgages were discharged to June 2021, the Applicants continue to receive account statements regarding their investments with Gross Capital and its related entities which continued to list the Mortgages as active investments.

[29] In preparing June 2021 demands for payment following default and servicing of the Mortgages, the Applicants learned (through a search of title) that the Mortgages were no longer registered on title.

[30] On June 17, 2021, the Applicants demanded payment and an explanation as to the discharge of the Mortgages, failing which they would proceed with an application to the Court for relief. On June 25, 2021, Gross Capital made an assignment in bankruptcy.

[31] The Statement of Affairs for Gross Capital discloses assets of \$1,961,000 and liabilities of \$43,127,515. The value of all real estate interests listed on Gross Capital's Statement of Affairs is \$1,810,000.

Applicants' Claims

[32] The Applicants claim an interest in the John Street Properties.

[33] The Applicants, with others, are parties to Mortgage Participation Agreements by which they acquired ownership of a percentage interest in 515 Second Mortgage and the 511 Second Mortgage which, pursuant to the terms of the Mortgage Participation Agreement, were held in trust for the benefit of the Applicants, among others. Neither John Mortgage Corp. nor 515 John Mortgage Corp. had any beneficial ownership interest in the Mortgages which were held in trust for the Applicants and others.

[34] In the Amended Notice of Application, the Applicants seek various relief including:

- a. An order declaring the transfers of 515 John Street and 511 John Street to BHCI to be void pursuant to the *Fraudulent Conveyances Act*;
- b. The appointment of a Receiver in respect of the John Street Properties;
- c. The re-registration, or setting aside discharges, of the Mortgages.
- d. An order granting the Applicants equitable mortgages in respect of the John Street Properties, a declaration of constructive trust in favour of the Applicants in respect thereof, and/or an order pursuant to section 248 of the *OBCA* granting the Applicants an interest in the John Street Properties.

Analysis

[35] Rule 42.01 of the *Rules of Civil Procedure* provides that a certificate of pending litigation under section 103 of the *Courts of Justice Act* may be issued under an order of the court. Section 103 of the *Courts of Justice Act* allows issuance of a certificate of pending litigation where a proceeding is commenced in which an interest in land is in question.

[36] The test to be applied on a motion, with notice, for leave to issue a CPL is the same as the test to be applied on a motion to discharge a CPL pursuant to subsection 103 (6) of the *Courts of Justice Act*.

[37] The Court must first consider the threshold issue of whether there is a reasonable claim to an interest in land. The question is whether there is a triable issue with respect to such interest, not whether the plaintiff will likely succeed. The onus is on the party opposing the CPL to demonstrate that there is no triable issue with respect to whether the party seeking the CPL has a reasonable claim to the interest in the land claimed: *Perruzza v. Spatone*, [2010] O.J. No. 493, at para. 20.

[38] An action to set aside a fraudulent conveyance has been found to be an action in which title to or interest in land is brought into question. It is not necessary that the plaintiff claim an interest in the land for itself: *Bank of Montreal v. Ewing* 1982 CarswellOnt 1383, at para. 1.

[39] The entitlement to a CPL does not necessarily require that the interest in land in question be claimed directly by the plaintiff for itself. What is required is that an interest in land be in question in the proceeding. This would, almost invariably, be in the form of a claim which, if substantiated, would adversely affect the defendant's interest in the land: *Chilian v. Augdome Corp.*, [1991] O.J. No. 414 (C.A.), at para. 55.

[40] In *Bank of Nova Scotia v. Fulchini*, 2016 CarswellOnt 6718, Master Wiebe explained the test to be applied where the claim is that land was obtained from a fraudulent conveyance:

It is well-established law that a creditor can have a reasonable claim to an interest in land (and therefore a CPL) where the land has been obtained from a fraudulent conveyance of money; see *Transmaris Farms Ltd. v. Sieber*, 1999 CarswellOnt 234 (Ont. Gen. Div. [Commercial List]) at paragraph 62. The test to be applied in such a case is summarized by Justice Blair in the *Transmaris* decision (which concerned alleged fraudulent conveyances) at paragraph 62 as follows: "The party seeking the certificate need not prove its case at this point. The test is met where there is sufficient evidence to establish a reasonable claim to an interest in the land based upon the facts, and on which the plaintiff could succeed at trial."

[41] In *Fernandes v. Khalid*, 2021 ONSC 190 the motion judge, at paras. 33, confirmed that a CPL may be issued if an interest in land is in question. An action to set aside a fraudulent conveyance is an action in which an interest in land is brought into question. The standard to meet for obtaining a CPL in an action to set aside a fraudulent conveyance is a *prima facie* case of fraud. In the absence of direct evidence of an intent to defraud, courts have relied on surrounding circumstances as establishing *prima facie* the intent to defraud based on suspicious fact situations. Proof of one or more of these "badges of fraud" will not necessarily result in a finding for the plaintiff, but may raise a *prima facie* evidentiary case that the defendant should rebut. See *Fernandes*, at paras. 34-37.

[42] Where the interest claimed is a constructive trust, the question is whether there is a triable issue in respect of such interest claimed, not whether the plaintiff will likely succeed ultimately at trial. It is enough to establish that a constructive trust is a possible remedy at trial based on the evidentiary record. The Court does not assess the credibility of deponents or decide disputed issues of fact at the juncture of an interlocutory motion for a CPL. see *First Leaside Wealth Management Inc. v. Phillips*, 2012 CarswellOnt 12086 (S.C.J.), at para. 21.

[43] The Applicants submit that they have satisfied their onus to show that the claims made in their application are ones which, if substantiated, would adversely affect the Responding Parties' interest in the John Street Properties.

Have the Applicants shown a *prima facie* case that the transfers of 511 John Street and 515 John Street were fraudulent conveyances?

[44] Section 2 and 3 of the *Fraudulent Conveyances Act* provide:

2. Every conveyance of real property or personal property and every bond, suit, judgment and execution heretofore or hereafter made with the intent to defeat, hinder, delay or defraud creditors or others of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures are void as against such persons and their assigns.

3. Section 2 does not apply to an estate or interest in real property or personal property conveyed upon good consideration and in good

faith to a person not having at the time of the conveyance to the person notice or knowledge of the intent set forth in that section.

[45] In *DBDC Spadina Ltd. v. Walton*, 2014 ONSC 3052, Brown J., as he then was, summarized the legal principles of concerning the issue of intent in respect of a transfer or conveyance, noting that it is unusual to find direct proof of intent to defeat, hinder or delay creditors. It is more common to find evidence of suspicious facts or circumstances from which the court infers a fraudulent intent. The suspicious facts or circumstances are sometimes referred to as the “badges of fraud”: *DBDC*, at para. 65, citing Rouleau J. in *Conte (Executrix and trustee of) v. Alessandro*, 2002 CanLII 20177 (Ont. S.C.), at paras. 20-22.

[46] The Applicants submit that the following circumstances support an inference that the transfers of 515 John Street and 511 John Street to BHCI were made with the intention to defeat, hinder, delay or defraud them:

- a. The transferor of 515 John Street, 515 Inc., was a company whose directors were Mr. Carnicelli, Mark Gross and Mr. Dingfeld. The transferor of 511 John Street was 131, whose director is Mr. Dingfeld. The transferee of each property, BHCI, is controlled by Mr. Carnicelli. The transfers appear to have been made between related parties not at arm’s length.
- b. The 515 Second Mortgage and the 511 Second Mortgage were discharged at the time of the conveyance of these properties to BHCI, without any payment made to the mortgagees at the time of the discharges. The discharge transactions between mortgagees acting through Mark Gross and the mortgagors, companies that owned the John Street Properties, were not arm’s length transactions.
- c. The properties were not exposed to the market, and were sold for less than fair market value, based on the Colliers appraisal which valued the properties on an “as-is” basis at \$8,190,000, almost \$3 million more than the total consideration of \$5.2 million.
- d. After the transfers to BHCI, second mortgages were registered against each of 515 John Street and 511 John Street in December 2018, each securing payment of \$3.9 million.
- e. After the transfers until June 2021, Gross Capital continued to report to the Applicants as to the performance of the Mortgages, creating the false impression that the Mortgages had not been discharged.
- f. In addition to the John Street Properties, four other properties were transferred by companies in which Mr. Carnicelli and Mark Gross were directors to companies in which Mr. Carnicelli appears to have an interest because he, but not Mark Gross, is a director. Mortgages registered in the name of Gross Capital were discharged on the transfers without payment. After the transfers and the discharges of the Gross Capital mortgages, additional mortgages were registered. The property registers show that at the time of or shortly after the transfers, mortgages are registered that are close to or exceed the transfer price.

[47] These circumstances involving transfers of the John Street Properties between related parties for, apparently, less than fair market value, with no payments made upon the discharges of the Mortgages, and additional mortgages registered later, raise suspicions. These circumstances are such that, taking

them at face value, a trial judge would be entitled to draw an inference that the transfers were made with the intent to defeat, hinder, delay, or defraud the Applicants. The Applicants have tendered evidence that is sufficient to show a *prima facie* case that there was a fraudulent conveyance of the John Street Properties. The Responding Parties have an evidentiary burden to rebut this *prima facie* case.

[48] The Responding Parties submit that the only reliable evidence of the intentions of the transferors of the John Street Properties is the evidence provided by Mr. Carnicelli, and that his evidence is reasonable and sensible. The Responding Parties submit that Mark Gross represented that he had authority to deal with the Mortgages, and they had no reason to question his authority. The Responding Parties submit that the debt secured by the Mortgages was assumed by Mr. Carnicelli who provided an alternative form of security in the form of a share pledge for shares he owned in BHCI.

[49] Mr. Carnicelli's evidence given in his first affidavit is that when demands were made for repayment the indebtedness secured by first mortgages against the John Street Properties, Mark Gross and Sheldon Gross agreed to discharge the Mortgages registered against the John Street Properties without repayment in circumstances where no financing was available to do so. Mr. Carnicelli states that in recognition of this, he agreed with Mark Gross that if the John Street Development moved forward, future consideration would be paid to Gross Capital as payment for outstanding loans, the amount of which was not determined. He states that this agreement was not documented.

[50] In his subsequent affidavit, Mr. Carnicelli states that Gross Capital received consideration for the mortgage loans in the form of an equity interest in two properties, medical buildings in Stoney Creek, Ontario and in Peterborough, Ontario. Mr. Carnicelli states that Gross Capital received 40% of the shares of the company which owned the Stoney Creek property and 80% of the shares of the company which owned the Peterborough property. Mr. Carnicelli states that he cannot locate share transfer agreements with respect to these equity transfers. He attaches to his affidavit a nomination agreement dated September 22, 2015 by which 2478658 Ontario Ltd., the owner of the Peterborough property, states that it has or is about to acquire an interest in the Peterborough property as bare trustee and will hold its legal interest in trust for and on behalf of 2413667 Ontario Inc. and Gross Properties Inc., with Gross Properties having an 80% interest.

[51] Mr. Carnicelli states that he agreed with Mark Gross that the acquisition of equity in these properties by Gross Capital would reduce the amount owing under the 515 Second Mortgage and the 511 Second Mortgage and other obligations, and they agreed that the remaining amount owing was between \$1 million to \$1.5 million with no final amount or due date for repayment agreed upon. Mr. Carnicelli states that at the time that BHCI took title, he agreed to provide Gross Capital with a pledge of shares owned by M1 Healthcare Properties in BHCI to secure the remaining debt. He states that he cannot find a copy of the share pledge and he is not certain if it was prepared. Mr. Carnicelli states that he is now willing to sign a share pledge in favour of Gross Capital subject to agreement on its terms.

[52] I am not satisfied that Mr. Carnicelli's evidence proves that there was good consideration for the discharges of the second mortgages. For one thing, Mr. Carnicelli states that the equity transfers were made to Gross Capital, whereas the mortgagees which held the Mortgages are different corporations. Mr. Carnicelli has provided no evidence that the equity transfers were actually made. There are no documents that evidence the agreements with Mark Gross to which Mr. Carnicelli refers in his affidavits. There is no correspondence with Mark Gross referring to the equity transfers. No evidence was provided concerning the value of the equity interests in the Stoney Creek and Peterborough properties. There is no evidence of any pledge of shares in BHCI.

[53] The Responding Parties also challenge the Applicants' submission that the John Street Properties were transferred to BHCI for \$5,200,000 through the assumption of first mortgages, an amount that was substantially lower than the appraisal value of \$8,190,000 based on the Colliers appraisal dated July 12, 2017.

[54] Mr. Carnicelli states that the "as is" value in the appraisal was based on an assumption that a 6-storey parking deck would be built on 503 John Street and form part of the project. Mr. Carnicelli states that Colliers determined that the best use of the John Street Properties was for construction of a medical office development and that without sufficient parking built on 503 John Street, a medical building could not be developed and the John Street Properties would have far less value. Mr. Carnicelli states in his second affidavit that the 515 Partnership agreed to build the necessary parking for the project in the form of a six-story aboveground parking garage at 503 John Street and that the right to purchase the above-grade rights at this location were obtained for the purchase price of \$1,100,000.

[55] Mr. Carnicelli states in his affidavit that Carriage Gate Berkeley Inc., a company owned by his brothers, made an agreement with 515 Inc. (acting on behalf of the 515 Partnership) in respect of the development of 503 John Street. He states that Carriage Gate incurred expenditures relating to the development of 503 John Street and that 515 Inc. agreed to reimburse it for all expenses associated with (or proportionate to) the project's interest in this property. He states that the amount required to be reimbursed by BHCI to Carriage Gate is approximately \$3 million which has not yet been paid. Mr. Carnicelli states that, for these reasons, the \$5.2 million consideration for the transfer of the John Street Properties to BHCI was not below fair market value.

[56] I am not satisfied that Mr. Carnicelli has shown that the Colliers appraisal of the "as is" value of the John Street Properties is inaccurate, or must be adjusted, because there is an implicit assumption that the appraised value must take into account the cost of acquiring parking at an adjacent building for the medical building to be constructed. The appraisal makes no reference to 503 John Street and does not state that there is an assumption that expenditures for parking at another site affect the market value of the property. The Colliers appraisal is clear that the opinion of market value of \$8,190,000 is done on an "as-is and where-is" basis "without any contingent agreements or caveats". The appraisal states that the appraisers assumed that the property is developed as a medical office development "with approximately 308 underground and covered parking spaces". There was no assumption that external parking would be needed through another property.

[57] The Responding Parties submit that the person with knowledge of the discharges of the mortgages without any payment is Mark Gross, who did not give evidence. The Responding Parties submit that it was incumbent on the Applicants to examine Mark Gross as a witness and, not having done so, an adverse inference should be drawn. I do not agree. The Applicants tendered evidence of circumstances, including the transfer of the John Street Properties in an apparently non-arm's length sale for consideration, assumption of the first mortgages, which is substantially less than the appraised value. This was done in circumstances where the second mortgages were discharged without any payment, where available financing was insufficient to pay the mortgage debts. Other than Mr. Carnicelli's own statements in his second affidavit, there is a paucity of documentary evidence to support his assertion that good consideration was given for the discharges of the Mortgages.

[58] As I have held, the evidence of suspicious circumstances is sufficient to raise a *prima facie* case that there was a fraudulent conveyance. Having met their initial burden through evidence of "badges of fraud", I do not agree that it was incumbent on the Applicants to examine Mark Gross, who was allegedly

involved in the alleged fraudulent conveyance, or that an adverse inference should be drawn from the Applicants' failure to do so.

[59] For reasons I have given, I do not agree that the Responding Parties have discharged their evidentiary burden to rebut the *prima facie* case presented by the Applicants based on evidence of suspicious circumstances.

[60] Where the claimant has shown a reasonable claim to an interest in land and the defendant has not shown that there is no triable issue with respect to such claim, the Court must exercise its discretion in equity and look at all relevant matters between the parties in determining whether leave to issue a CPL should be granted: *Perruzza v. Spatone*, [2010] O.J. No. 493, at para. 20(i). The primary factor to consider is the harm done to the defendants if the certificate is issued or to the plaintiff if the certificate is not issued: *Ambassador Electric Inc. v. Fernwood Builders (London) Ltd.*, 2014 CarswellOnt 3738, at para. 127.

[61] The Applicants submit that if a CPL is not issued and registered against title to the John Street Properties, they will be prejudiced because, if the John Street properties are further encumbered or sold, they stand to lose any recourse against the John Street Properties to secure payment of the mortgage debt that had been secured by the Mortgages.

[62] The Responding Parties submit that they have invested significant amounts in the development of the project and will be prejudiced if a CPL is registered because their financing has matured and the registration of a CPL will prevent them from obtaining further financing for the development and jeopardize the entire project. Mr. Carnicelli's evidence is that a lender will not provide financing or will be reluctant to do so if a CPL is registered.

[63] The evidence that a lender will not be willing to provide financing for the project if a CPL is registered is a declaratory statement by Mr. Carnicelli. Mr. Carnicelli has not told his lender about the motion for the CPL, and he has not asked whether registration of a CPL would cause the lender not to renew financing for the project. I am not satisfied that the Responding Parties have shown that the registration of a CPL will prevent them from obtaining financing.

[64] The Responding Parties rely on their assurance that they are willing to give the Applicants alternative security in the form of a pledge of shares in BHCI held by one of Mr. Carnicelli's companies. There was no evidence given of the value of such security, and I am not satisfied that a pledge of shares in a private company would stand as reasonable security such that the equities favour the Responding Parties.

[65] Upon considering the relevant matters between the parties, I conclude that the equities favour the Applicants.

Disposition

[66] For these reasons, I grant the Applicants' motion and grant leave to the Applicants to issue a CPL and register it against title to the John Street Properties.

[67] The Applicants also request leave to amend their Notice of Application in the form provided to me. This motion is on consent. I grant leave to the Applicants to amend the Notice of Application in the form of the Amended Notice of Application provided to me.

[68] If the parties are unable to resolve costs, the Applicants may send written submissions (not exceeding 4 pages excluding costs outline) within 15 days. The Responding Parties may send responding submissions (also not to exceed 4 pages) within 15 days thereafter. The Applicants may send brief reply submissions (not exceeding 2 pages) within 5 days thereafter.



Digitally signed by
Mr. Justice Cavanagh

Cavanagh J.

December 22, 2021

**IN THE MATTER OF THE BANKRUPTCY OF GROSS CAPITAL INC.,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

Court File No. 31-2747949

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
[IN BANKRUPTCY AND INSOLVENCY]**

Proceedings commenced at Toronto

**MOTION RECORD
(returnable on a date to be scheduled)
VOLUME 1 OF 3**

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