



ESTATE FILE NO.: 31-2747949

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

**TRUSTEE'S REPORT TO CREDITORS ON
PRELIMINARY ADMINISTRATION**

1.0 Introduction

1. On June 25, 2021, Gross Capital Inc. (the "Company") filed an assignment in bankruptcy under the *Bankruptcy and Insolvency Act* (the "BIA") and KSV Restructuring Inc. ("KSV") was appointed Licensed Insolvency Trustee (the "Trustee") by the Office of the Superintendent of Bankruptcy (Canada). The appointment of KSV as Trustee is subject to affirmation by creditors at the first meeting of creditors on July 15, 2021.

1.1 Restrictions

1. In preparing this report ("Report"), the Trustee has relied upon financial and other information supplied by representatives of the Company and the Company's books and records.
2. The Trustee has not audited or otherwise attempted to verify the accuracy or completeness of the financial information relied upon to prepare this Report in a manner that complies with Canadian Auditing Standards ("CAS") pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Trustee expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own diligence.

2.0 Background

1. The Company was incorporated under the *Business Corporations Act* (Ontario) in 2003, and was known as Gross Holdings Inc. from August 28, 2009 to October 13, 2010. The Company is privately owned.
2. The directors and officers of the Company at the time of its bankruptcy were Mark Gross and Sheldon Gross.
3. The Company was a real estate investment firm, and appears to have identified, invested in and managed commercial real estate assets on behalf of investors.

4. The Company appears to have an indirect interest in various properties and/or property holding companies. As at the date of this Report, the Company's corporate chart is being prepared by its legal counsel, Weisz Fell Kour LLP. The Trustee has been provided with a working draft of the corporate chart. Based on this draft chart, the Trustee understands that the bankrupt estate owns several nominee entities (collectively, the "Nominees"). The Trustee has been advised that the Nominees are (or were) registered owners of real property which hold (or held) registered title as bare trustee and nominee for and on behalf of co-tenants, subject to nominee agreements.
5. At the date of its bankruptcy, the Company 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 Trustee understands that 200 Ronson is managed by Prime Real Estate Group ("Prime"), an entity 50% owned by the bankrupt estate. The Trustee will not be occupying or paying rent for the Head Office during these proceedings.
6. On the date of bankruptcy, the Company had three employees, including Mark Gross. By virtue of the bankruptcy, all employees were terminated as of the date of bankruptcy.

2.1 Financial Difficulties

1. The Company's income statements for its two most recent fiscal years ended August 31, 2019 and 2020 are summarized in the table below.

(Unaudited)	Fiscal 2020 (\$000s)	Fiscal 2019 (\$000s)
<u>Revenue</u>		
Management fees	202	202
Interest income	2,072	1,414
Income from joint ventures	-	1,749
Gain on sale of investments	-	150
	<u>2,274</u>	<u>3,515</u>
<u>Expenses</u>		
Interest	(4,710)	(5,017)
Wages	(551)	(791)
Professional fees	(255)	(280)
Other	(217)	(340)
	<u>(5,733)</u>	<u>(6,428)</u>
Net Income	<u>(3,459)</u>	<u>(2,913)</u>

2. The Company's income statements reflect total losses for a two-year period of approximately \$6.4 million. Accrued interest of approximately \$9.7 million on the Company's obligations owing to its investors represents most of the Company's total annual expenses.

3.0 Financial Position

1. Based on the Company's internal financial statements as at August 31, 2020, the book value of the Company's assets is summarized in the table below. The Trustee is attempting to obtain more current balance sheet information.

(unaudited; \$000s)	Amount
Intercompany loans receivable	20,391
Accounts receivable	4,124
Shareholder loans	2,547
Interest in Co-Tenancies	1,758
Investments	783
Deferred financing costs	621
Prepaid expenses	219
Fixed assets	24
Total Assets	30,467

2. The Trustee intends to work with the Company's stakeholders in an attempt to quantify the realizable value of the assets of the bankrupt estate, including obtaining further information regarding the intercompany loans receivable, its interest in co-tenancies, its 50% interest in Prime (the property management company referenced earlier in this Report) and the properties managed by Prime.
3. The books and records reflect shareholder loans outstanding from Mark and Sheldon Gross and their holding companies in the amount of approximately \$2.5 million. The Trustee intends to take steps to collect any funds owing to the bankrupt estate from related parties, including directors and officers.

3.1 Interest in Co-Tenancies

1. Certain Nominees are the registered owners of 11 real properties, in respect of which the books and records reflect co-tenancy arrangements. The co-tenancy arrangements are not necessarily reflected on title. The ownership percentages and the book values presented in the table below are based on the co-tenancies' December 31, 2020 year-end financial statements.

Registered Owner	No. of Properties	Ownership %	Book Value
Daycare Property Holdings Inc.	5	14.81	1,183,116
Kornwood Investments Limited	2	7.30	353,835
200 Ronson Drive Inc.	1	2.47	268,360
Richard Ruston Holdings Inc.	1	2.99	93,452
30 Cedar Holdings Inc.	1	1.35	71,046
1700 Bassett Avenue South Inc.	1	1.58	42,597
Total¹	11		2,012,406

¹ The book value does not reconcile with the value reflected in Section 3.0(1) as: (i) the values in Section 3.0(1) are based on the Company's most recent internal financial statements as at August 31, 2020 (i.e. not the co-tenancies' December 31, 2020 year-end financial statements); and (ii) certain properties have been sold since August 31, 2020, including properties reflected on the financial statements as 348 Lacroix, 111 Grangeway and Medical Properties.

2. The Trustee has in its possession the most recent financial statements as at December 31, 2020 for each of these co-tenancies, which can be shared with the inspectors and/or creditors in due course.

4.0 Creditors

4.1 Secured Creditors

1. A search under the Personal Property Security Registration System (Ontario) identified 13 registrants against the Company as of June 24, 2021 under the *Personal Property Security Act* (“PPSA”). The PPSA registrants are listed below.
 - 1592106 Ontario Inc.
 - ADD Capital Corp.
 - BMW Canada Inc.
 - Business Development Bank of Canada
 - Canadian Imperial Bank of Commerce
 - Computershare Trust Company of Canada
 - GM Financial Canada Leasing Ltd.
 - Irina Gross
 - Meridian Onecap Credit Corp.
 - MGZ Holdings Inc.
 - Nikolas Antropov
 - SGZ Holdings Inc.
 - WS Leasing Ltd. (registration discharged on June 30, 2021)
2. The Trustee has not reviewed the nature of these registrations or the underlying security. The Trustee provided each of the PPSA registrants with notice of the bankruptcy and a Proof of Claim form.
3. It should also be noted that certain of the Company’s investors have filed claims on a secured basis. There appears to be some confusion about the basis on which investors advanced funds to the Company and certain investors do not have all of the loan and related documentation given that these advances date back many years. At this time, the Trustee has not instructed its legal counsel to review the validity and enforceability of any party’s security.

4.2 Unsecured Creditors

1. According to the Company’s books and records, amounts owing to the Company’s 127 unsecured creditors totaled approximately \$43.1 million as at the date of bankruptcy. The Trustee understands that most of these unsecured obligations relate to loans/advances made by investors to the Company to invest in real estate. The Trustee does not currently have information on how investor monies were used – the investigative exercise discussed in Section 7 of this Report is required for this purpose.

2. The Trustee understands that there may be further unsecured obligations owing to parties with guarantee claims against the Company. Those creditors were not included in the Company's list of creditors appended to the Statement of Affairs.

4.3 Property of the Bankrupt Not Divisible Amongst Creditors

1. At this time, the Trustee is not aware of any property that would not be divisible among the Company's creditors by virtue of Section 67(1) of the BIA or otherwise.

5.0 Books and Records

1. Immediately upon the Company's filing of the assignment in bankruptcy, the Trustee arranged for a backup/image of the Company's server to secure the data stored thereon.
2. The Trustee has also taken steps to secure the Company's physical books and records, and has access to the Company's books and records required to complete its duties and obligations under the BIA. In addition, the Trustee is corresponding with the Company's legal counsel to take possession of its minute books.

6.0 Preferences and Transfers at Undervalue

1. On or around June 29, 2021, certain creditors of the bankrupt estate (the "Applicants") commenced an application (the "Application") in the Ontario Superior Court of Justice (Commercial List) (the "Court") naming the Company, several Nominees 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 the respondents' properties and businesses. After consultation with stakeholders, including the Trustee and the Receiver (as defined below), the Applicants narrowed the scope of the relief that was sought on July 5, 2021.
2. It being agreeable to both the Trustee and the Receiver, the Applicants obtained an Order on July 5, 2021, which, *inter alia*:
 - a) lifts the stay of proceedings under the BIA to allow the Applicants to pursue Judgment against the Company (such that, for greater certainty, the enforcement of any Judgment obtained by the Applicants as against the bankrupt estate remains stayed pending further Order of the Court); and
 - b) provides the Applicants with access to a certain scope of documents subject to the Applicants paying the Trustee's costs in connection with compiling any information pursuant to the Applicants' information requests.
3. The Trustee understands that the Applicants are not seeking any further relief against or in respect of the bankrupt estate at this time under the Application. The Trustee further understands that the Application as against certain other respondents (not the Company) consists of the proposed appointment of an investigative receiver ("IR"), is being opposed by several remaining responding parties and is now scheduled to be heard on October 12, 2021.

4. The Trustee is conducting its statutory review for potential preferences and transfers at undervalue. The Trustee intends to report its findings to the estate inspectors (once appointed at the first meeting of creditors), and to consult with and seek instruction from the inspectors in regards to other related matters, including, without limitation, the scope of the Investigation (as defined below) and whether to examine Mr. Gross under oath pursuant to Section 163(1) of the BIA.

7.0 Anticipated Realization and Projected Distribution

1. The Trustee is not in a position to estimate creditor recoveries at this time. As at the date of bankruptcy, there was limited cash on deposit in the Company's four TD bank accounts (approximately \$12,000), which the Trustee has transferred to its estate account. The Trustee has since received an additional \$36,000 in distributions from co-tenancies which it has transferred to its estate account.
2. In order to determine creditor recoveries, if any, the Trustee requires:
 - a) an understanding of the value of the estate's interest in the co-tenancies, by reviewing and/or commissioning real estate appraisals or otherwise; and
 - b) the outcome of an investigation into the sources and uses of investor funds (the "Investigation"). This exercise will enable the Trustee to pursue any amounts owing from related parties, including directors and officers, to the extent those potential assets are recoverable.
3. The Investigation is a critical analysis in these proceedings. The source of funding for the Investigation is unknown at this time and will be addressed with the inspectors, once appointed. In this regard, the Trustee intends to work with the inspectors to:
 - a) determine the scope of the work to be performed by the Trustee;
 - b) identify the funding source(s) for this exercise; and
 - c) ensure that there is no duplication in the mandates of the Trustee and IR (if appointed) as it relates to the Investigation, to the extent possible.

8.0 Other Matters

1. In consideration of KSV agreeing to act as Trustee in these bankruptcy proceedings, Mark Gross guaranteed the Trustee's fees, expenses and costs of administration of the bankrupt estate up to the amount of \$50,000, which funds have been deposited with the Trustee. Any further funding required by the Trustee to perform the Investigation or otherwise will need to be sourced from other parties.
2. On July 2, 2021, one of the Company's subsidiaries, Claireville Property Holdings Inc. ("Claireville"), filed a Notice of Intention to Make a Proposal ("NOI") under the BIA. KSV is acting as Proposal Trustee in Claireville's NOI proceedings.

3. Pursuant to a Court order made on June 29, 2021, KPMG Inc. was appointed receiver and manager ("Receiver") of certain of the Company's subsidiaries, being: i) Southmount Healthcare Centre Inc., 180 Vine Inc., 2478658 Ontario Ltd., 2009 Long Lake Holdings Inc., 65 Larch Holdings Inc., 100 Colborne Holdings Inc. and 240 Old Penetanguish Holdings Inc. (collectively, the "Legal Owners"), and ii) Gross Properties Inc., 180 Vine Purchaser Inc. and 2413667 Ontario Inc. (collectively, the "Beneficial Owners"), solely in respect of all of the Beneficial Owners' right, title and interest in and to the Legal Owners' property, pursuant to Section 243 of the BIA and Section 101 of the Courts of Justice Act. On July 13, 2021, the Receiver filed a "placeholder" proof of claim of \$1.00 against the bankrupt estate.
4. There are no other matters to be discussed at this time.

* * *

DATED at Toronto, Ontario, this 14th day of July, 2021.

KSV Restructuring Inc.

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