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

October 31, 2022

Contents

Appendices

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 Fund[3]

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 Ciano[4] 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.

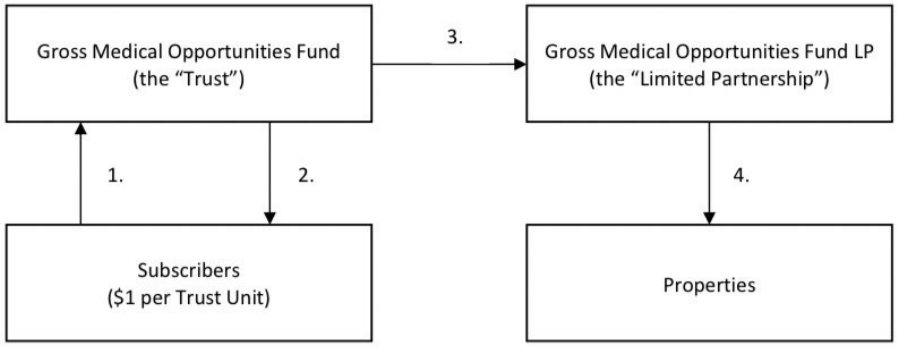
[4] The Most Recent Offering Memorandum states that Justin Di Ciano is a former trustee of the Trust Fund. The Bankruptcy Trustee understands that Justin Di Ciano also became the day-to-day operator of Prime Real Estate Group Inc. ("Prime") subsequent to the date of the Most Recent Offering Memorandum. 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:

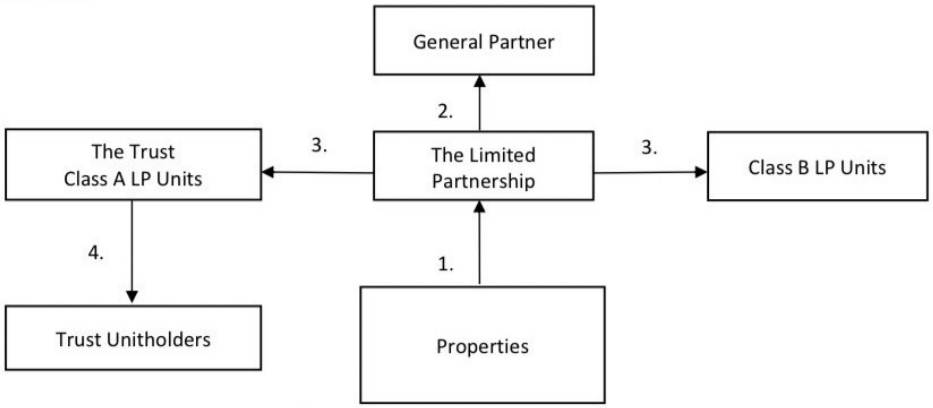
Investment Flow Charts

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.

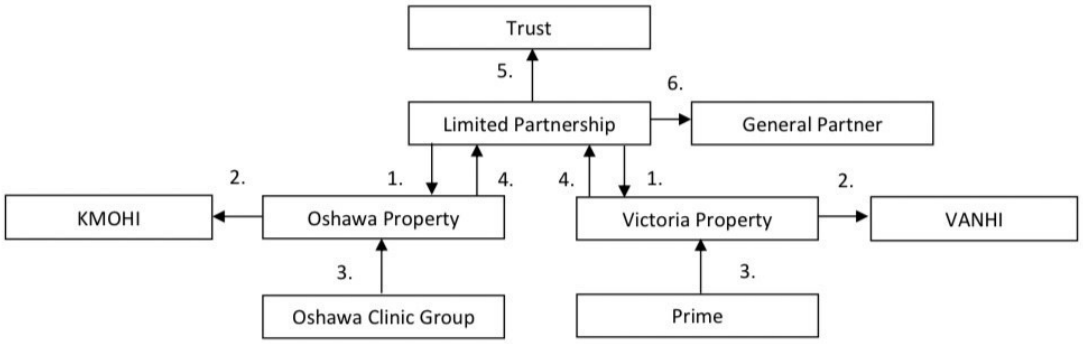
The following chart represents the proposed distribution of funds from the acquisition of the Properties to holders of LP Units and Trust Units:



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