

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E N:

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

Plaintiff

- and -

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

Defendants

**AMENDED STATEMENT OF DEFENCE
AND CROSSCLAIM OF THE DEFENDANTS,
MAURO CARNICELLI AND DOMINIC CARNICELLI**

1. The Defendants, Mauro Carnicelli and Dominic Carnicelli (“**These Defendants**”) admit the allegations pleaded in paragraphs 2 and 138 of the Statement of Claim (the “**Claim**”).
2. These Defendants deny the allegations pleaded in paragraphs 9, 10, 80, 81, 82, 83, 91, 93, 94, 95, 96, 97, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 115, 126, 131, 132, 133, and 134 of the Claim. These Defendants deny that the Plaintiff is entitled to the relief claimed against them in paragraph 1 (d) and (i) of the Claim.

3. These Defendants have no knowledge of the balance of the allegations pleaded in the Claim.

OVERVIEW

4. These Defendants are the brothers of Fausto Carnicelli (“**Fausto**”). In or about 2012, Fausto approached These Defendants and requested their assistance in obtaining financing and constructing a medical building at premises municipally known as 35 Upper Centennial Parkway, Stoney Creek, Ontario (the “**Property**”).

5. In 2012, when they were approached by Fausto, These Defendants owned a company, Carriage Gate Group Inc. (“**Carriage Gate**”).

6. These Defendants assisted Fausto in obtaining financing for the construction of the building on the Property. These Defendants, through Carriage Gate, also assisted with the construction of the building.

7. The construction of the first two floors of the four-storey building on the Property was completed in or about 2014. The construction loan was repaid in 2016. These Defendants had minimal involvement with the Property after 2014 and were completely removed from the Property by early 2016.

8. These Defendants were not involved in Southmount Healthcare Centre Inc. (“**Southmount**”).

9. These Defendants did not participate with Fausto in the management of the building on the Property. These Defendants were not involved with Mark Gross, Sheldon Gross, or any of their companies pleaded in the Claim in relation to the Property. These Defendants have no knowledge of the vast majority of the allegations pleaded in the Claim.

10. There is no factual or legal basis for a claim against These Defendants. The allegations against them are scandalous and should be censured with a dismissal of the action against them with costs on a substantial indemnity basis.

THESE DEFENDANTS

11. Mauro Carnicelli (“**Mauro**”) Dominic Carnicelli (“**Dominic**”) are siblings. As noted, Fausto is their brother. Mauro and Nick have carried on business as residential builders and developers for approximately 35 years. Mauro retired in May 2021.

12. To These Defendant’s knowledge, at all material times, Fausto carried on business developing and building medical office buildings and clinics. In addition, he located tenants and negotiated leases for the buildings. Fausto also provided administrative services to medical practitioners who leased space at his buildings.

13. Neither Mauro or Dominic had involvement with Fausto in his business operations as described in the preceding paragraph. They were not shareholders, directors or officers of any of Fausto’s companies which carried on business in the development of medical buildings and the operation and administration of medical/health clinics.

THE PROPERTY

14. The Property was purchased by Fausto through a numbered company 2266793 Ontario Ltd. (“**2266793**”) in November 2012 for approximately \$3.5 million.

15. In or about 2012, Fausto approached Mauro and Dominic and requested their assistance in constructing a medical building on and developing the Property. As brothers, Mauro and Dominic agreed to help Fausto.

16. Mauro and Dominic obtained financing from Laurentian Bank of Canada (“**Laurentian**”). They procured a loan commitment in the amount of \$17,750,000.00 from Laurentian with Carriage Gate as borrower. Laurentian registered a first mortgage as security for the loan against title to the Property on November 26, 2012. These Defendants personally guaranteed the Laurentian loan.

17. Carriage Gate also constructed the building on the Property.

18. At the time Fausto approached These Defendants and requested their assistance to finance and construct the building, he had entered into certain leases for the building between 2266793. The leases were negotiated without any involvement of These Defendants.

19. The leases were assigned by 2266793 to Carriage Gate. Carriage Gate provided Laurentian with an Assignment of Rents and Leases as part of its security for the Laurentian loan. These Defendants had no role in the negotiation of the leases with 2266793 and have no knowledge that the leases were not negotiated at fair market value and on reasonable terms.

20. Contrary to the allegations in paragraph 80 to 83 of the Claim, Mauro and Dominic were not involved nor did they participate in the negotiation of leases with tenants at the building. If they signed any leases, which is not admitted, they did so in reliance on representations by Fausto that the leases were arms-length and market value.

21. Mauro and Dominic had no reason to suspect that the tenants were not paying rent in accordance with the terms of the leases or that the leases were not at market rates. Mauro and Dominic were not provided with any records of the tenant payments at the building.

THESE DEFENDANTS EXIT FROM THE PROPERTY

22. Mauro and Dominic never intended to have a long-term investment or participation in the Property. They agreed to help their brother construct the building. Once the building was constructed, they always intended to and did terminate their involvement with the Project. Mauro and Dominic played no role in the administration of the business operation at the Property.

23. The Laurentian charge was refinanced and deleted from title to the Property on June 29, 2016.

24. In or about the first quarter of 2016, Mauro and Dominic's involvement with the Property ended. To These Defendants' knowledge based on information received from Fausto, after their departure from the Property, Fausto and Mark Gross managed the building and negotiated leases with tenants. They changed the name of the owner of the Property from Carriage Gate to Southmount.

THE SPECIFIC ALLEGATIONS AGAINST THESE DEFENDANTS

25. These Defendants deny the allegations pleaded in paragraphs 91 to 115 of the Claim. These Defendants reiterate that they were not aware of nor were they a party to any intentional concealment of alleged fabricated lease agreements and rent rolls.

26. As noted, these Defendants concluded their participation in the Property in 2016 and did not have any role in lease negotiations either before or after their exit from the Property.

27. These Defendants strongly deny that they made fraudulent misrepresentations or used dishonest and deceptive practices to obtain and benefit from the use of leased premises owned by Gross Capital Corporations as alleged or at all. These Defendants received no such benefit.

28. These Defendants loaned substantial funds to Fausto or his companies in relation to the Property which have not been repaid. These payments concern paying third parties for work done at the Property payment of ongoing expenses relating to the Property and payment of fees for the construction for the building all of which should have been paid by Southmount and/or Fausto.

29. As to paragraph 105 of the Claim, These Defendants deny that they owed a duty of care or any duty to Gross Capital and deny breaching such duty.

30. As to paragraph 107 of the Claim, These Defendants repeat that they were not involved in the negotiation of leases with tenants at the Property. They further deny that they owed a legal or

equitable duty to the Gross Capital Corporations concerning the representations in the leases as alleged or at all.

31. As to paragraphs 109 and 110 of the Claim, These Defendants deny that they made ongoing and repeated false misrepresentations to conceal the lack of revenue being generated at the properties as alleged or at all. These Defendants had no contact with anyone at Gross Capital concerning the terms of the leases at the Property.

32. These Defendants deny the allegations pleaded at paragraphs 111 to 115 of the Claim. These Defendants did not enter into agreements on behalf of Southmount. They did not improperly direct funds from Southmount as alleged or at all.

33. These Defendants deny that the Plaintiff has suffered damages as alleged or at all. If the Plaintiff has suffered damages, which is not admitted and which is denied, the damages suffered are excessive, remote and unmitigated. There is no act or omission by These Defendants which caused or contributed to the damages.

34. The Plaintiff's Claim is statute barred by virtue of the applicable provisions of the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B, as the Plaintiff knew or ought reasonably to have known the material facts underlying its cause of action more than two years prior to the issuance of the Statement of Claim.

35. For the reasons pleaded herein, the action should be dismissed against These Defendants with costs on a substantial indemnity basis.

CROSSCLAIM

36. These Defendants crossclaim against the Defendants, Mark Craig Gross; and Sheldon Gross; ~~Werner Dingfeld and Fausto Carnicelli~~:

- (a) contribution and indemnity with respect to any judgment, cost award or contribution to a settlement recovered by the Plaintiff against Mark Craig Gross; and Sheldon Gross; ~~Werner Dingfeld and Fausto Carnicelli~~;
- (b) costs of the defence in the main action;
- (c) costs of the crossclaim;
- (d) pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, Ch. C-43; and
- (e) such further and other relief as this honourable court deems just and the nature of the case requires.

37. These Defendants repeat and rely upon the allegations set out in the Statement of Defence.

38. These Defendants request that this Crossclaim be tried together with or immediately following the trial of the main action.

~~January 22~~ February 13, 2024

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Plaintiff

-and- MARK CRAIG GROSS et al.

Defendants

Court File No. CV-23-00701647-0000

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SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

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RCP-F 4C (September 1, 2020)