

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E 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 VILLAFRANCA**

**STATEMENT OF DEFENCE AND CROSSCLAIM OF THE  
DEFENDANTS WERNER DINGFELD AND P. H. JORY, LIMITED**

1. The Defendants Werner Dingfeld (“Dingfeld”) and P. H. Jory, Limited (“Jory”) deny each and every allegation in the Statement of Claim except as hereinafter may be admitted and puts the Plaintiff to the strict proof thereof.
2. The Defendant Dingfeld is an individual and resides in the Province of Ontario.
3. The Defendant Jory is a corporation incorporated under the laws of the Province of Ontario.

4. The Defendant Dingfeld is the sole officer and shareholder of the Defendant Jory.
5. The Defendant Dingfeld is a director of the Defendant Medica One Ltd.
6. The only corporation with which the Defendant Jory ever had a lease is a corporation known as Southmount Healthcare Centre Inc. which corporation was previously known as Carriage Gate Group Inc.
7. Southmount Healthcare Centre Inc. (“Southmount”), a corporation incorporated under the laws of the Province of Ontario, had its name changed by Articles of Amendment dated February 2, 2018, from Carriage Gate Group Inc.
8. On January 20, 2015, the Defendant Jory entered into a Lease Agreement with Carriage Gate Group Inc., subsequently known as Southmount as hereinbefore set out, for the premises municipally known as 35 Upper Centennial Parkway, Stoney Creek, Ontario.
9. The Defendant Jory never entered into a Lease Agreement, written or otherwise, for any of the real properties referred to in the Statement of Claim other than 35 Upper Centennial Parkway, Stoney Creek, Ontario, nor did it ever enter into any Lease Agreement, written or otherwise, with any of the Defendants named in the Statement of Claim.
10. On June 29, 2021, KPMG Inc. (“KPMG:”) was appointed Receiver of all of the assets of Southmount and on December 20, 2021, KPMG made a demand on the Defendant Jory for payment of rent arrears under its lease at 35 Upper Centennial Parkway, Stoney Creek, Ontario, owed to Southmount.

11. The claim by KPMG as Receiver of Southmount settled by way of a Settlement Agreement and Release dated January 18, 2022, all claims for arrears of rent owed by the Defendant Jory to Southmount were released and the Lease Agreement between the Defendant Jory and Southmount was terminated.

12. On August 29, 2022, Southmount made an Assignment for the Benefit of Creditors under the *Bankruptcy and Insolvency Act* and KPMG was appointed its Trustee in Bankruptcy.

13. Although the Plaintiff alleges in its Response to Demand for Particulars dated December 22, 2023, that the Plaintiff held a controlling shareholder interest in Southmount, of which these Defendants have no knowledge, the Plaintiff had no standing as a shareholder of Southmount to make any claim for monies owed to Southmount, which claim was owned solely by Southmount and such claim was properly made and settled by the Receiver of Southmount who has since gone bankrupt. There is no claim against the Defendant Jory in this action for any lease arrears owing with respect to 35 Upper Centennial Parkway, Stoney Creek, or with respect to any other property.

14. The Plaintiff alleges in paragraph 66 of the Statement of Claim that it had material ownership in various corporations, which corporations in which it held ownership had entered into leases or assumed leases of real property locations referred to in the Statement of Claim. The Plaintiff did not hold any leases as landlord itself of any of the real properties referred to in the Statement of Claim and, in particular, was not the landlord under any Lease Agreement with the Defendant, Medica One Ltd.

15. These Defendants have no knowledge of whether or not the Plaintiff had an ownership interest in any of the corporations it has defined as Gross Capital Corporations in paragraph 66 of the Statement of Claim. If it did, which is not admitted, a claim for arrears of rent that may have been owing were claims of the actual landlord and not that of the Plaintiff.

16. The Plaintiff did not and has not obtained leave to commence this action as a derivative action pursuant to the provisions of the *Ontario Business Corporations Act*, Section 246, and to the extent that any claims being made in this action are for rent arrears by corporations of which the Plaintiff was a shareholder, those claims are improper and there are no such causes of action available to the Plaintiff.

17. In addition, even if there was a cause of action available to the Plaintiff, which these Defendants deny, such claims are being made more than two years after the Plaintiff knew or ought to have known such causes of action may exist and are, therefore, statute barred. The Defendants rely upon Sections 4 and 5 of the *Limitations Act*, 2002 c.24.

18. The Defendant Dingfeld did not direct or participate in the entering into any Lease Agreements on behalf of any corporation named as a Defendant in this action other than the Defendant Jory.

19. In particular, the Defendant Dingfeld did not participate, was not involved in, nor did he make any representations with respect to any leases that may or may not have been entered into by the Defendant Medica One Ltd. as a tenant with respect to any of the real properties referred to in this action.

20. Although the Defendant Dingfeld was a director of the Defendant Medica One Ltd. he did not and was not involved in or participate in any of the day-to-day operations of the Defendant Medica One Ltd. The day-to-day- operations of the Defendant Medica One Ltd. were handled and controlled completely by the Defendants Fausto Carnicelli and Mark Gross. To the best of his acknowledge and belief, the Defendant Dingfeld is not aware of any directors meetings ever having been called or of any decisions made with respect to entering into any leases or the making of any representations with respect to leases that were intended to be entered into by the Defendant Medica One Ltd.

21. The Defendant Dingfeld has no knowledge as to whether or not the Plaintiff was a shareholder of the Defendant Medica One Ltd., and any actions or conduct which the Plaintiff alleges in this action is the conduct of the Defendant Medica One Ltd., not the conduct of the Defendant Dingfeld. The Plaintiff has no such a cause of action available to it if it was not a shareholder of Medica One Ltd.

22. Any claim against the Defendant Dingfeld in his personal capacity must allege specific acts of the Defendant Dingfeld in his personal capacity and there is no cause of action simply because he was a director of a corporation against which it is alleged that the corporation acted improperly. There are no such allegations in the Statement of Claim and no cause of action against the Defendant Dingfeld has been pleaded.

23. The Defendants submit that this action against them be dismissed with costs on a substantial indemnity basis.

**AND BY WAY OF CROSSCLAIM**

24. The Defendant Werner Dingfeld claims against the Defendant Mark Craig Gross,

a) Contribution and indemnity for any and all amounts for damages, interest and costs for which the Plaintiff may recover against the Defendant Werner Dingfeld;

b) Prejudgment interest and postjudgment interest on the sums aforesaid pursuant to the *Courts of Justice Act*;

c) Costs of this action and crossclaim on a substantial indemnity basis; and

d) Such further and other relief as to this Honourable Court deems just.

25. The Defendant Werner Dingfeld repeats and relies upon his allegations in his Statement of Defence.

26. The Defendant Fausto Carnicelli and the Defendant Mark Craig Gross operated and conducted all the day-to-day operations of the Defendant Medica One Ltd.

27. The Defendant Mark Craig Gross did not disclose to the Defendant Werner Dingfeld that, in fact, the Defendant Medica One Ltd. was entering into leases for properties which are the subject matter of this action and failed to advise the terms and conditions of those leases nor did he disclose the representations being made to the proposed landlords.

28. No Directors meetings were ever called of which the Defendant Werner Dingfeld was advised and if there were Directors Resolutions or Authorizations decided upon by the Defendant Mark Craig Gross and the Defendant Fausto Carnicelli, they were never disclosed to the Defendant Werner Dingfeld.

29. If, in fact, the Defendant Werner Dingfeld is found liable to the Plaintiff for the actions and conduct of the Defendant Mark Craig Gross then the Defendant Werner Dingfeld is entitled to be compensated in full by the Defendant Mark Craig Gross by way of contribution and indemnity.

Date: January 17, 2024

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Mark Craig Gross



**GROSS CAPITAL INC.**  
**Plaintiff**

- and -

**MARK CRAIG GROSS ET AL.**  
**Defendants**  
**Court File No. CV-23-00701647-0000**

ONTARIO  
**SUPERIOR COURT OF JUSTICE**

Proceedings commenced  
at TORONTO

**STATEMENT OF DEFENCE AND CROSSCLAIM  
OF THE DEFENDANTS WERNER DINGFELD  
AND P. H. JORY, LIMITED**

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