

**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., INTERGRATED MEDICAL OFFICE SERVICES
INC. and MARCIA VILAFRANCA**

Defendants

**STATEMENT OF DEFENCE OF THE DEFENDANTS,
2771837 ONTARIO INC., 2771839 ONTARIO LIMITED, 2771840
ONTARIO LTD., 2771841 ONTARIO CORP., INCORRECTLY NAMED AS
2771849 ONTARIO CORP., ALLEN SHELDON GREENSPOON, AND
DENNIS DIVALENTINO**

1. The Defendants, 2771837 Ontario Inc. ("**837**"), 2771839 Ontario Limited ("**839**") and 2771840 Ontario Ltd. ("**840**"), 2771841 Ontario Corp. ("**841**"), incorrectly named as 2771849 Ontario Corp. (hereinafter collectively referred to as the "**277 Companies**"), Allen Sheldon Greenspoon, and Dennis DiValentino, deny each and every allegation

contained in the Statement of Claim, save and except as expressly admitted herein, and deny that the Plaintiff is entitled to the relief claimed therein.

2. The 277 Companies, Dr. Greenspoon, and Dr. DiValentino are hereinafter collectively referred to as the “**277 Defendants**”.

Parties

3. The 277 Companies are incorporated pursuant to the laws of Ontario.

4. Dr. Greenspoon is an individual residing in Ontario.

5. Dr. DiValentino is an individual residing in Ontario.

Background

6. The 277 Companies were incorporated for the purpose of purchasing and improving medical buildings that had fallen into a state of disrepair, transforming the medical buildings into well-run medical establishments and creating a system of integrated health care services across different geographical locations.

7. Between June 1, 2020 and September 14, 2020, the 277 Companies engaged in the following purchase transactions:

- a) 837 purchased the property municipally known as 4256 Portage Road, Niagara Falls, Ontario (the “**Portage Property**”) from the former registered owner of the property, Portage Road Holdings Limited. Immediately prior to

the purchase of the Portage Property by 837, the Portage Property was subject to a first-ranking loan and security agreement with American General Life Insurance Company (“**AIG**”). The Portage Property was sold with the consent of AIG.

- b) 839 purchased the property municipally known as 6453 Morrison Street, Niagara Falls, Ontario (the “**Morrison Property**”) from the former registered owner of the property, Morrison Street Holdings Limited. Immediately prior to the purchase of the Morrison Property by 839, the Morrison Property was subject to a first-ranking loan and security agreement with AIG. The Morrison Property was sold with the consent of AIG.
- c) 840 purchased the property municipally known as 800 Princess Street, Kingston, Ontario (the “**Princess Property**”) from the former registered owner of the property, 800 Princess Street Holdings Limited. Immediately prior to the purchase of the Princess Property by 840, the Princess Property was subject to a first-ranking loan and security agreement with AIG. The Princess Property was sold with the consent of AIG.
- d) 841 purchased the property municipally known as 132 Second Street, Cornwall, Ontario (the “**Second Street Property**”) from the former registered owner of the property, 132 Second Street Purchase Limited. Immediately prior to the purchase of the Second Street Property by 841, the Second Street Property was subject to a first-ranking loan and security

agreement with AIG. The Second Street Property was sold with the consent of AIG.

8. The Portage Property, Morrison Property, Princess Property and Second Street Property will hereinafter collectively be referred to as the “**277 Properties.**”

9. At the time that the 277 Properties were purchased by the 277 Companies, each of the 277 Properties required substantial repair work due to lack of maintenance. In addition, the AIG loans were in default, and AIG was threatening to appoint a receiver. The 277 Properties were purchased at fair market value, taking into account the state of disrepair of the buildings. The purchase price of each of the 277 Properties was negotiated based on advice from commercial real estate brokerage Cushman & Wakefield.

10. The respective sellers of the 277 Properties are not affiliated with the 277 Companies. On each purchase and sale transaction, the 277 Companies and sellers were represented by their own independent lawyers.

11. The Agreement of Purchase and Sale for each of the above-noted purchase transactions identifies a credit from the purchase price in favour of the purchaser. The credit was included to take into account the state of disrepair of the 277 Properties. The 277 Defendants deny that the credits were fictitious or preferential credits as alleged by the Plaintiff.

12. All funds that were raised by the 277 Companies from investors and lenders were exhausted in payments made to the sellers' solicitor, Fogler, Rubinoff LLP in trust, and closing costs. There were no funds remaining available to the 277 Companies. The purchase and sale transactions were monitored by the solicitors of the lenders as well as the solicitors representing AIG.

No Improper Conduct in respect of the purchase of the 277 Properties

13. The 277 Properties were purchased for valid business purposes and for fair market value. The 277 Defendants deny any allegation that the sales of the 277 Properties to the 277 Companies were improvident sales or that the 277 Companies purchased the 277 Properties for the purpose of concealing any self-dealing and conflicts of interests.

14. The 277 Companies state that they were at all material times innocent, *bona fide* purchasers for value and for good consideration.

15. The 277 Companies deny that Gross Capital Inc. has a claim against the 277 Companies. The 277 Companies vehemently deny that they are involved in or participated in any scheme in relation to the 277 Properties, and further deny that they benefited from any such scheme to Gross Capital Inc.'s detriment.

Lease Agreements in relation to the Medical Properties

16. Dr. Greenspoon and Dr. DiValentino deny that they engaged in any improper conduct in respect of the lease agreements relating to the Medical Properties (as defined in the Statement of Claim), and deny that they made any misrepresentations, were involved in the making of any misrepresentations, and had any knowledge of any such misrepresentations in relation to the lease agreements.

17. With respect to Barclay Diagnostic Imaging Inc. ("**Barclay**"), Barclay entered into a lease agreement with 65 Larch Street Holdings Inc. dated March 15, 2018 for a ten-year lease of suites 402, 407 & 410 at the property located at 65 Larch Street, Sudbury, Ontario ("**65 Larch**"), commencing July 1, 2018.

18. Dr. Greenspoon denies that he made any fraudulent misrepresentations, that he and/or Barclay breached their contractual duties under the lease agreement entered into by Barclay in respect of 65 Larch, or that he used any dishonest and deceptive practices to obtain and/or benefit from the use of the leased premises at 65 Larch.

19. Dr. Greenspoon states that the landlord of 65 Larch failed to maintain the condition of 65 Larch and mismanaged the property. Any rental arrears of Barclay, which are denied, are as a result of the landlord's failure to provide premises for Barclay's use and to comply with its obligations pursuant to the lease agreement with Barclay.

20. With respect to Enlightened Health Care Network Inc. (“EHN”), EHN entered into a lease agreement with 65 Larch Street Holdings Inc. dated February 21, 2020 for a five-year lease of suite 301 at 65 Larch, commencing January 1, 2021.

21. Dr. DiValentino denies that he made any fraudulent misrepresentations, that he and/or EHN breached their contractual duties under the lease agreement entered into by EHN in respect of 65 Larch, or that he used any dishonest or deceptive practices to obtain and/or benefit from the use of the leased premises at 65 Larch.

22. Dr. DiValentino states that the landlord of 65 Larch failed to maintain the condition of 65 Larch and mismanaged the property. Any rental arrears of EHN, which are denied, are a result of the landlord’s failure to provide premises for EHN’s use and to comply with its obligations pursuant to the lease agreement with EHN.

23. Dr. Greenspoon and Dr. DiValentino deny that they made, had knowledge of, or were involved in, any misrepresentations to Gross Capital Inc. and its stakeholders regarding the units and tenancies of the Medical Properties. Dr. Greenspoon and Dr. DiValentino deny that they owed a duty of care to Gross Capital Inc., and that even if they did, that they breached any such duty of care. Dr. Greenspoon and Dr. DiValentino further deny that they engaged in any conduct, as directors and officers of Barclay and EHN respectively, that caused damages to Gross Capital Inc. and deny that they are personally liable for any such damages.

Damages

24. The 277 Defendants deny that the Plaintiff has suffered any damages. In the event that the Plaintiff has suffered damages (which is denied), the 277 Defendants state that the Plaintiff's claims are exaggerated, too remote, and/or not recoverable at law as against the 277 Defendants.

25. In the alternative, the 277 Defendants state that any losses sustained by Gross Capital Inc. were caused and/or contributed to by Gross Capital Inc.'s own conduct. The 277 Companies further state that Gross Capital Inc. has failed to mitigate any such damages.

26. The 277 Defendants ask that this action be dismissed as against them and, in light of the serious, unsubstantiated allegations of fraud, with costs on a full or substantial indemnity basis.

May 3, 2024

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Court File No. CV-23-00701647-0000

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PROCEEDING COMMENCED AT
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