

**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 VILAFRANCA

Defendants

STATEMENT OF DEFENCE

1. Except as specifically admitted below, the Defendants, Irina Gross and Mark Craig Gross Holdings Inc. (“**MCGH**” and, together with Ms. Gross, the “**Irina Defendants**”) deny the allegations against them in the Statement of Claim (the “**Claim**”). They further deny that the allegations in the Claim would, if true, establish liability against them. The Plaintiffs have failed to plead a legally cognizable claim against the Irina Defendants, and the Irina Defendants reserve the right to strike the claim against them on this basis.
2. The Plaintiff has pleaded an extensive claim against a broad swath of Defendants relating to (among other things) business carried on by Gross Capital Inc. (“**Gross Capital**”).

The Irina Defendants were not involved in, and have no knowledge of, the events alleged in the Claim.

3. Ms. Gross admits the allegation at paragraph 15 that she is an individual resident in Toronto, and that she is the sole shareholder of MCGH. MCGH admits that it was incorporated pursuant to the laws of Ontario.
4. The Irina Defendants specifically deny that they have been unjustly enriched as alleged, or at all. The primary allegation against Irina is that she owned a home in Forest Hill, Ontario (the “**Forest Hill Home**”) and that Mark Gross or entities related to him made payments on mortgages registered against the Forest Hill Home. These allegations are based on a fundamental misunderstanding of how Ms. Gross acquired the Forest Hill Home and the purpose of the mortgages registered against that home.
5. Ms. Gross, together with Mr. Gross, owned a successful telecommunications company that was sold for a substantial sum. Ms. Gross used the proceeds from this sale to purchase a home on Northdale Road in Toronto in or around 2006 (the “**Northdale Home**”). Ms. Gross sold the Northdale Home for a considerable profit in 2012 and bought the Forest Hill Home.
6. The Plaintiff alleges that Ms. Gross did not really own the Forest Hill Home because she allowed mortgages to be registered against the Forest Hill Home. The Plaintiff says that this is evidence of unjust enrichment. But exactly the opposite is true. Ms. Gross allowed the mortgages to be registered against the Forest Hill Home to *benefit* Gross Capital and its stakeholders. This reduced the equity that would otherwise have been available to Ms. Gross.

7. Similarly, the Plaintiff's allegation that Mr. Gross paid amounts owed on mortgages registered against the Forest Hill Home does not (and cannot) establish a viable claim against Ms. Gross. Mr. Gross was the principal of Gross Capital, and received salary from it together with dividends and distributions from its business. The Plaintiff has not alleged that any of the amounts paid towards the Forest Hill Home were wrongfully obtained or that there was anything improper about Mr. Gross making the payments that he did.
8. The Plaintiff also alleges that Mr. Gross is the real owner of MCGH. He is not. Ms. Gross is, and has always been, the sole shareholder of MCGC.
9. Mr. Gross is the director and officer of MCGH. The allegation that this made him the owner of MCGH is contrary to the basic tenets of corporate law. Ms. Gross, as the sole shareholder of MCGH, appointed Mr. Gross as the director. Mr. Gross fulfilled this role. Nothing about this entirely ordinary corporate structure provides a basis for liability against Ms. Gross or MCGH.
10. The Plaintiff has made various allegations against Mr. Gross. Ms. Gross and MCGH do not have knowledge of the facts alleged by the Plaintiff, and do not admit them. In any event, Ms. Gross is not liable for Mr. Gross' alleged acts because she is his wife. MCGH is not liable for Mr. Gross' acts because he was its director and officer. The Plaintiff's claim is an attempt to extend liability for Mr. Gross' alleged wrongdoing without any basis for doing so. It should be dismissed with costs.

May 24, 2024

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

- and - **MARK CRAIG GROSS, et al.**

Court File No. CV-23-00701647-0000

Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at Toronto

STATEMENT OF DEFENCE

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