

ONTARIO  
SUPERIOR COURT OF JUSTICE

**BETWEEN:**

**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 expressly admitted herein, the Defendant, Marcia Villafranca (“**Villafranca**”) denies each and all of the allegations against her in the Statement of Claim of Gross Capital Inc., by its Licensed Insolvency Trustee, KSV Restructuring Inc. (“**Gross Capital**” or the “**Plaintiff**”) and puts the Plaintiff to the strict proof thereof.

2. In particular and without limitation, Villafranca denies, with respect to claims as against her, the allegations in paragraphs 1(c)(iv), 1(c)(v), 1(c)(viii), 1(i), 27, 28, 31, 78, 79, 81, 83, 87, 89, 91, 93 through 96, 100, 105, 107, 109, 110, 126, 131 of the Statement of Claim, and puts the Plaintiff to the strict proof thereof.

3. Villafranca admits the allegations in paragraphs 3, 4, and 6 through 10 of the Statement of Claim.

4. Villafranca has no knowledge in respect of the allegations against the other defendants and/or the allegations in paragraphs 2, 5, 12 through 26, 29, 30, 32 through 76, 80, 82, 85, 86, 88, 90, 92, 98, 99 through 104, 106, 108, 111 through 125, 127 through 130, 135 or 136 of the Statement of Claim.

5. Villafranca accepts the statements of the Plaintiff at paragraphs 97 and 132 through 134 of the Statement of Claim, as they pertain to any actionable conduct.

6. Villafranca admits that she is an individual resident in Ontario and that she was the founding Director of Atma Medical Inc. (“**Atma Medical**”) and the founding Director of Aviva Medical Inc. (“**Aviva Medical**”), but denies that she is currently a Director of either Atma Medical or Aviva Medical and denies that she is or was an Officer of Atma Medical or Aviva Medical, all as alleged in Paragraphs 11, 27 and 28 of the Statement of Claim.

7. Villafranca admits that she is recorded as the founding Director and recorded as an Officer of Enlightened Health Care Network Inc. (“**EHN**”), but denies being a Director and/or Officer

of EHN now and denies having served as a Director and/or Officer of EHN at any material time, all as alleged in Paragraph 31 of the Statement of Claim.

8. Villafranca admits that she was the founding Director of Atma Medical and the founding Aviva Medical, and admits that she is recorded as the founding Director and recorded as an Officer of EHN, but denies that she is or was a Director of any of Medica One Ltd. (“**Medica One**”) or Barclay Diagnostic Imaging Inc. (“**Barclay**”) or P.H. Jory, Limited (“**PH Jory**”), denies that she is or was an Officer of any of Medica One, Barclay, PH Jory, Aviva Medical or Atma Medical, denies serving as an Officer of EHN at any material time, and denies being a shareholder of any of Medica One, Barclay, PH Jory, Aviva Medical, Atma Medical and/or EHN, all as alleged in Paragraph 77 of the Statement of Claim.

9. Villafranca admits that she countersigned certain leases on behalf of certain corporations, but denies that those leases contained any misrepresentations as alleged in Paragraph 84 of the Statement of Claim and/or that she knew or should have known that they contained any misrepresentations, denies that she made any representations prior to and/or as part of entering into the subject leases, and denies any meaningful involvement in any negotiations or preparations of any of the subject leases, as alleged in Paragraphs 77, 81, 84, 91, 95, 96 of the Statement of Claim and/or otherwise.

10. Villafranca admits that she is recorded as the founding Director of Aviva Medical Diagnostics & Specialist Clinic Inc. (“**AMDSCI**”), but denies being a Director now and denies having served as a Director of AMDSCI at any material time.

11. Villafranca denies being a shareholder of any of the defendant corporations at any material time.

12. Villafranca denies receiving any personal benefit from the entering into any of the subject leases.

### **The Parties**

13. Villafranca is an individual residing in the Province of Ontario. She is a former employee of Medica One, and as such performed certain services for Medica One and some of its related businesses, including Aviva Medical and AMDSC.

14. Gross Capital Inc. is an Ontario corporation owned and/or controlled by the defendants, Mark Gross and Sheldon Gross.

### **The Facts**

15. Villafranca did not at any material time control any of the defendant corporations, did not at any material time have the power or authority to enter into any leases without express instructions from management and did not at any material time have the power to decide to make or withhold any payments under any leases involving any of the defendant corporations.

16. Villafranca was not involved in, and was not obligated to be involved or aware of, the negotiation and/or substance of any leases to which any of the defendant corporations were a party.

17. Villafranca did not prepare or meaningfully contribute to any reports or provide any

representations of any kind in connection with any leases to which any of the defendant corporations were a party.

18. Any leases to which any of the defendant corporations were a party which may have been signed by Villafranca was/were signed by Villafranca on behalf of the applicable corporation(s) and not in her personal capacity, at the direction of management to whom she reported and without any meaningful involvement in their preparation and/or any review thereof.

19. At no material time was Villafranca aware of any misrepresentation in any lease to which any of the defendant corporations were a party, or privy to any financial or other information or materials regarding any of the defendant corporations that would have caused her to know or to have reasonably be expected to know of any misrepresentations in any leases to which any of the defendant corporations were a party.

20. Villafranca was not involved in decisions regarding payment and/or non-payment and did not at any material time have the power or authority to make such decisions and/or to make or refrain from making such payments.

21. Villafranca acted properly, honestly, fairly, reasonably and in good faith in the performance of her duties as an employee and/or subcontractor of the defendant corporations and with respect to the Plaintiff, as and when applicable.

22. At no time was Villafranca, as a Director of any of the defendant corporations, required or reasonably expected to know or be involved in the negotiation or preparation of any leases

to which any of the defendant corporations were a party and/or in the performance of any obligations of any of the defendant corporations thereunder.

23. Villafranca's terms of compensation as an employee of Medica One Ltd. were fair and reasonable and commensurate with her duties as an employee.

24. At no time was Villafranca unjustly enriched to the detriment of the Plaintiff.

**No Claims / No Damages**

25. Villafranca submits that the Plaintiff's claims as against Villafranca are frivolous, vexatious and completely without merit.

26. Villafranca submits that the Plaintiff's claims as against Villafranca fail to disclose a cause of action as against Villafranca.

27. There are no contracts between Villafranca personally and the Plaintiff, and as such Villafranca did not, and does not, have any personal contractual obligations with respect to the Plaintiff.

28. Villafranca submits that she did not at any time owe a duty of care to the Plaintiff, and puts the Plaintiff to the strict proof thereof.

29. If Villafranca did owe a duty of care to the Plaintiff, which is denied, Villafranca submits that she met the standard of reasonable skill, care and diligence with respect to any such duty.

30. Villafranca submits that the Plaintiff has not suffered damages as alleged in the Statement of Claim, and puts the Plaintiff to the strict proof thereof.

31. Further and in the alternative, the Defendants submit that the Plaintiff has failed to sufficiently mitigate any alleged damages, which are denied, and puts the Plaintiff to the strict proof thereof.

32. Further and in the alternative, Villafranca submits that any alleged damages suffered by the Plaintiff, which are denied, were caused by the Plaintiff's own negligence and/or wilful misconduct.

33. Further and in the alternative, Villafranca submits that any alleged damages, which are denied, were and are exaggerated, remote, unforeseeable and otherwise unrecoverable at law.

### **Relief Sought**

34. For the reasons aforesaid, Villafranca submits and requests that the Plaintiff's claims as against Villafranca be dismissed with costs against the Plaintiff on a full indemnity scale, or, in the alternative, with costs set at an amount as may be requested at trial and as this Honourable Court may deem just.

35. The Defendant pleads and relies upon:

(a) *Courts of Justice Act*, R.S.O. 1990, c. C43;

(b) *Negligence Act*, R.S.O. 1990, c. N.1;

(c) *Rules of Civil Procedure*, R.R.O. 1990, Regulation 194; and

(d) such other legislation and law as may be applicable.

**Date:** January 11, 2024

**SOBLE & ASSOCIATES**

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GROSS CAPITAL INC.                      and  
Plaintiff

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**

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