Court File No. CV-23-00701647-0000

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

Defendants

STATEMENT OF DEFENCE AND CROSS-CLAIM OF THE DEFENDANTS MARK GROSS AND MGZ HOLDINGS INC.

1. The Defendants Mark Gross ("**Mark**") and MGZ Holdings Inc. ("**MGZ**"), deny all of the allegations in the Statement of Claim, except to the extent that those allegations are expressly admitted herein. Mark and MGZ specifically deny that the Plaintiff are entitled to the relief claimed in paragraph 1 of the Statement of Claim.

A. MARK AND MGZ

2. Mark is an individual residing in the province of Ontario. Mark was the President and a director of Gross Capital Inc. (“**GCI**”).

3. MGZ is a corporation incorporated under the laws of the province of Ontario. Mark is the sole shareholder of MGZ. MGZ was incorporated for the purposes of holding the shares of Zedd Customer Solutions Inc.

B. OVERVIEW

4. Mark states, and the fact is, that the claims alleged by the Plaintiff have no merit and, in alternative, if any of the other defendants have any liability to the Plaintiff (which is denied), Mark and MGZ have no liability to the Plaintiff with respect to such independent actionable wrong by them or any other theory at law including, but not limited to, any theory of joint and several liability, vicarious liability, piercing corporate veil, or other analogous theory of liability.

5. At all material times, Mark carried out his duties as an officer and director of the Plaintiff to the standard of care required of an officer or director in similar circumstances and in the diligent exercise of his business judgment and fiduciary duties.

6. In particular, Mark denies that he made any negligent misrepresentation, fraudulent misrepresentation, or engaged in any deceit towards the Plaintiff, and puts the Plaintiff to strict proof thereof. Furthermore, all or most of the misrepresentations alleged to have been made to the Plaintiff, if made, were not made by Mark or with his knowledge of consent.

7. Mark further states, and the fact is, that he did not improperly receive funds from GCI, otherwise profit from the alleged misconduct, or did cause any harm to GCI.

8. Further, Mark and MGZ further deny that the Plaintiff is entitled to a constructive trust, disgorgement, tracing, accounting, or any such other remedy.

9. MGZ did not receive any improper payments from the Plaintiff, and any payments received by MGZ were on account of funds properly owing to Mark and directed by him to be transferred to MGZ.

10. Accordingly, for these reasons and the reasons further explained below, neither Mark nor MGZ are liable to the Plaintiff.

C. GCI

11. GCI was a company incorporated pursuant to the laws of Ontario. GCI developed, managed, and owned real property assets and investments.

12. On June 25, 2021, GCI made an assignment into bankruptcy and KSV Advisory Inc. was appointed as the bankruptcy trustee.

13. GCI was founded in or about May 2003 following the sale of Para Inc. (proprietor of Para Paints), which was a business owned by Mark's father, the defendant Sheldon Gross ("**Sheldon**"), and one of his business partners since in or about 1980. In addition to his ownership of Para Paints, Sheldon was the previous Chairman and a shareholder of Equitable Trust (now Equitable Bank); an owner of National Fibretech (a manufacturing company that went into receivership due to a back acquisition in 1996); and an investor in restaurants and real estate, including the properties located at 481 University Ave., Toronto and 425 University Ave., Toronto.

14. Following the sale of Para Paints, Sheldon and Mark discussed the creation of a new company to leverage their experience buying and selling properties, which they had done as part of the investment of Sheldon's assets and the assets of Sheldon's siblings. As a result, GCI was created.

15. GCI's business focussed on putting together investors who wished to invest in the real estate sector. These investors were mostly family and friends of Sheldon and Mark, as well as a small number of other individuals who were introduced to GCI through word of mouth.

16. GCI had a number of successful years. At some point, GCI had a portfolio of over 50 properties valued at a total of over $500 million. In most of those investments, GCI's investors realized expected or better than expected profits.

17. For certain of the projects GCI put together, GCI provided guarantees to the investors for the project. Until the date of the bankruptcy, GCI honoured such guarantees.

18. However, in or about 2012, the real estate market changed such that potential new investments became scarcer and not as lucrative. Accordingly, GCI began to look for further opportunities in the real estate market, and more specifically in the medical buildings space.

19. In and around 2008, Mark and Sheldon were introduced to the defendant Fausto Carnicelli ("**Fausto**"). Fausto had successfully completed the development a medical facility located at 2951 Walkers Line, Burlington, Ontario (the "**Walkers Line Clinic**"), which GCI then purchased.

20. The business model that Fausto implemented at the Walkers Line Clinic was one where the developer was not merely a passive landlord, but also offered certain services to the medical tenants to create a synergistic eco-system for the various medical-services tenants (the "**Walkers Line Model**"). This model differed from the typical model for medical buildings in which space was offered to any medical providers on essentially a first-come first-served basis, and instead the tenants were actively curated so that there were a number of services that could support and augment one another (for example, a walk-in medical clinic could be supported by on-site x-ray and pharmacy services). Mark understood that the Walkers Line Model was also successfully implemented by a large, well-known healthcare investment firm, Northwest Healthcare Properties REIT.

21. In addition, Fausto represented to Mark and GCI that he had companies, such as the defendants Medica One and P.H. Jory, who that provided back-office and support services for medical professionals in the Walkers Line Clinic looking to ease their administrative burden. Through these companies, Fausto charged medical professionals a single rate that included both their rent and back-office support.

22. From GCI's perspective, it was expected and believed that its investors would benefit from the application of the Walkers Line Model on the medical buildings that GCI would invest in as the model would provide differentiated and increased services to potential tenants. Accordingly, the rent that the owners would receive under this model would be higher than if the rent was solely based on traditional metrics and would, by extension, increase the value of the buildings overall which could lead to capital gains on a later sale of the buildings. As part of this strategy, the understanding was that Fausto (or his companies) would occupy the certain portions of the premises and pay rent once he secured the necessary medical professional tenants.

23. With this strategy in place, GCI began to work with Fausto on several different projects, including the Four Properties discussed below. Unfortunately for the other projects, Fausto was not able to secure the necessary tenancies and finalize other matters in the anticipated timelines.

24. Starting in or about 2016, GCI experienced a couple events that put a strain on its cash flow, then in early 2020, the onset of the COVID-19 pandemic crisis ("**COVID-19**" or the "**pandemic**") further adversely impacted GCI. One significant revenue source for the medical buildings is the parking revenues, which immediately evaporated in March 2020 at the outset of the COVID-19.

25. GCI considered various strategies to turn around its business, address its cash-flow crisis, and monetize its assets repay the various investors. For example, GCI engaged investment banks and brokers, including Industrial Alliance Insurance and Financial Services Inc. ("**Industrial Alliance**") and real estate broker Huy Lam, to determine if a sale of GCI's entire portfolio could be completed in order unlock the value of the assets. As a result of these efforts, GCI had negotiations with Invesque Inc. (2018), Fosun Health Group (2019), Reichmann International Developments (2019), and Omnia Global (2020). Omnia Global came to tour the properties in March 2020, only to have to leave immediately due to the start of the pandemic. Some of these purchasers underwent significant discussions with GCI. Contrary to the Plaintiff's submissions, the retaining of brokers and investment banks and the efforts to sell the assets were not part of a grand scheme to hide any misconduct, but rather was an appropriate step to take to address GCI's issues. Indeed, many of GCI's investors were aware of these efforts.

26. In early 2020, Mark, on behalf of GCI, agreed to have KPMG monitor GCI's business and operations on behalf of certain creditors. As part of this monitorship, KPMG was required to approve all of GCI's financial activity. GCI worked cooperatively with KPMG as it continued to look for a solution for its issues.

27. By late June 2021, as the pandemic continued and it became clear that no immediate solution was forthcoming, GCI made an assignment into bankruptcy.

D. THE FOUR PROPERTIES

28. In response to paragraphs 32 to 56 of the Statement of Claim, Mark states as follows regarding the allegations concerning the mortgages at the Princess Street Property, Morrison Street Property, Portage Road Property, and the Second Street Property (all as defined in the Statement of Claim) (collectively, the "**Four Properties**"). In those paragraphs, the Plaintiff claims that the sale of the Four Properties was done by Mark and others because he was motivated to enter into the transactions to sell the Four Properties in order to conceal improper self-dealing or conflicts of interest. This is not true.

29. The Four Properties were each acquired to develop a synergistic medical centre as described above. However, as time passed and Fausto was unable to secure tenants for the buildings, the Four Properties did not return a profit, and with the pandemic continuing for months by that point, it became clear that the projects would not be successful and that GCI needed to exit the projects.

30. Contrary to the Plaintiff's allegations, neither Mark nor GCI permitted Fausto or his companies to divert or withhold millions of dollars from these properties. As described above, in keeping with the intended strategy, Fausto or his companies were to take occupancy of certain parts of the premises once he secured the necessary tenants.

Unfortunately, that never happened. Importantly, at no time did Fausto or any company working with him take occupancy of any premises and then not pay rent with Mark's knowledge or consent. As noted below, during KPMG's monitorship, it advised Mark that Fausto or his companies had taken possession of some premises and that the rent that was owing was then collected by KPMG.

31. Moreover, the sale of the Four Properties was mandated by the first ranking secured creditor of the Four Properties, American International Group Inc. ("**AIG**"). In or about January 2020, AIG had issued a default notice to GCI. AIG advised GCI that it would commence receivership proceedings unless GCI agreed to have KPMG act as a consensual monitor. Accordingly, as noted above, KPMG acted as monitor of GCI starting in January 2020, and its representatives were in GCI's office every day until the start of COVID-19, after which they continued to monitor GCI remotely.

32. By mid-way through 2020, months after KPMG had been monitoring GCI's business and in the face of the on-going COVID-19 crisis, AIG advised GCI that it was going to commence receivership proceedings if GCI did not sell begin the sale process of all of the properties over which AIG had security, including the Four Properties. The financial position of the properties was worsening given that, as mentioned above, there was an immediate loss of essentially all parking revenues. Further, many of the tenants, who were physicians, had asked for rent deferrals which requests were being accommodated (with the consent of KPMG).

33. Given that it did not have an alternative recovery strategy at that time, GCI decided that it would be better for all stakeholders to avoid the costs of a formal receivership and agree to the sale of the Four Properties.

34. The process to find a buyer for the Four Properties was conducted under the watch of KPMG. As a result of that process, it was determined that the offer made by the purchasers, including Fausto and others, was the superior bid. The purchasers included one or more doctors for whom the buildings would have more strategic value, and therefore, their bid was higher than the other potential bids at the time.

35. The amount offered by these purchasers was sufficient to pay out AIG. This was a benefit to GCI as GCI had guaranteed the AIG debt; accordingly, having AIG paid out reduced the number of claims against GCI, which was a benefit to GCI and all of its stakeholders. Thus, even though GCI was not being paid out on its subordinate ranking mortgage, it reduced the current liabilities against it or those that would have continued to accrue had the AIG mortgage not been paid off or if receivership or other similar costs would have continued to accrue.

36. Furthermore, the following demonstrates that the sale of the Four Properties was reasonable: (i) first, AIG's financing was cross-collateralized against, among other medical properties, the Four Properties, and given that they were facing a short-fall, would not have agreed to the sale of the Four Properties if they thought that the price being obtained was below what could have been obtained at that time; (ii) second, Mark was advised by KPMG that the price that the purchasers were willing to pay for these properties was greater than the appraised values that KPMG had obtained; and (iii) third, Cannect Mortgage Investment Corporation ("**Cannect**"), the second ranking secured creditor on some of GCI's medical properties, including the Four Properties, did not object to the sale, which it would have done had it thought it had an opportunity to recover on its debt. The fact that AIG and Cannect agreed to the sale of the Four Properties demonstrates that the

sale was reasonable, given that both parties had mortgages on the properties that had to be discharged.

37. The preparation of the documentation for the sale of the Four Properties was overseen by and done with the assistance of KPMG and its counsel, Blakes Cassels & Graydon LLP. GCI's counsel for the transaction was Folger Rubinoff LLP.

38. The original agreements for the sale of the Four Properties set out the Four Properties' purchase price. When the request was made by the purchasers to inflate the purchase price and introduce the concept of the rebate, these professionals were also fully aware of the purchasers' request, and it was they who carried out the amendments in the agreements to give effect to the purchasers' request. The request to make these changes was not communicated directly to Mark by Fausto or the other purchasers, and Mark did not know why they were asking for changes. Given that the sales were being carried out at the insistence of AIG, the fact that sale otherwise would have proceeded by way of a receivership sale, that KPMG was involved in the negotiations and GCI was represented by counsel in the sale, and none of them objected to the request and were fine with including it in the sale documents, Mark deferred to them based on the fact that none of them advised that it was a problem to do so. Accordingly, the sale documents were amended accordingly.

39. The Plaintiff is not correct when it alleges that the purchasers' request to increase the purchase price in the documents and then to have an off-setting rebate shows that the actual value of the Four Properties was higher than what was obtained in the sales process. The actual price that was to be paid by the purchasers was the highest price that

was could be obtained, as described as above. Furthermore, the purchasers themselves were not able to make the Four Properties viable and each of those projects failed.

40. In addition, Mark denies, and the fact is, that the mortgage on the Four Properties were not improperly discharged. The mortgages were discharged in accordance with AIG's mandated sale process and was implemented with the assistance of the appropriate professional advisors.

41. Mark further denies that GCI's efforts to engage an investment banking firm to explore avenues for monetizing GCI's projects was part of an attempt hide any misconduct. The Plaintiff's description of the reverse take-over ("**RTO**") transaction proposed by the investment bank as described in paragraphs 47 to 49 of the Statement of Claim is wrong. The fact is, there was a potential buyer for GCI's assets who wished to structure the deal as an RTO as the purchase of GCI's properties were part of a larger transaction in which other medical properties were going to be purchased from other companies in the US concurrently. The RTO transaction would have resulted in Mark and Sheldon no longer being in control of the investments or the publicly traded company.

E. JOHN STREET

42. In response to paragraphs 57 to 65 of the Statement of Claim, Mark states as follows regarding the allegations concerning the mortgages at the John Street Property (all as defined in the Statement of Claim). In those paragraphs, the Plaintiff again claims that Mark improper discharged a mortgage. Again, that is not true.

43. The John Street Property was another medical center development. In that transaction, GCI provided a subordinated mortgage to the owners of the John Street

Property (the "**John Street Mortgage**"). GCI was not an owner of the property or project itself.

44. The John Street Property project was another project with Fausto. Like the other projects with Fausto at this time, it was not proceedings as planned. There were various issues with the construction of the project and delays in securing tenants.

45. By around 2018, the owners on the John Street Project had defaulted on their loans to the first mortgagees. Accordingly, absent some form of restructuring, the project was going to be sold and, given the then-current market conditions and the state of the construction on the project, GCI was of the view that there would not have been any recovery whatsoever on the John Street Mortgage arising from any sale obtained in a power of sale process or other enforcement process.

46. Thus, given that GCI had other projects with Fausto at the time, GCI agreed to not oppose the refinancing of the John Street Property in order to allow owners to cure their default with the first ranking mortgagee. However, the new lender was not content to have the John Street Mortgage simply be subordinated to its new mortgage. Rather, GCI was advised by Fausto that the new lender was insisting that no other mortgage be registered on title. Faced with the inevitable discharge of the John Street Mortgage, GCI agreed to the discharge of the John Street Mortgage in connection with the refinancing on the basis that the GCI and Fausto would re-arrange their arrangements on one of the other projects that they were working on to compensate GCI.

47. GCI had syndicated the John Street Mortgage, and GCI provided a guarantee to the syndicate participants. Accordingly, participants' investment was not solely to the John Street Mortgage but was rather the package investment with the mortgage being

guaranteed by GCI. After the John Street Mortgage was discharged, GCI honoured its guarantee and made the guaranteed payments as required. Contrary to the allegation at paragraph 62 of the Statement of Claim, there was no misrepresentation to the syndicate participants as their investment continued pursuant to the guarantee provided by GCI and was honoured accordingly up to the date of GCI's bankruptcy.

F. MEDICAL PROPERTIES

48. In response to paragraphs 66 to 110 of the Statement of Claim, Mark states as follows regarding the allegations concerning the "Medical Properties" (all as defined in the Statement of Claim). In those paragraphs, the Plaintiff makes several false allegations and characterizations regarding the nature and purpose of the business plans concerning the medical buildings and why some of the premises had not yet been leased. In the Statement of Claim (including, but not limited to paragraph 88), the Plaintiff grossly mischaracterizes both the business plan and what transpired in an attempt to second guess the good-faith business decisions that were made by GCI and Mark at the time. Contrary to the Plaintiff's allegations, the fact that the business plan did not work out as anticipated is not evidence of negligence, fraud, or any other misconduct.

49. The Medical Properties, like the Four Properties discussed above, were projects that GCI entered into with the intention and purchase of developing synergistic medical facilities along with Fausto. Mark repeats the statements above regarding the genesis, purpose, and nature of the business plan regarding the medical buildings' projects being undertaken with Fausto.

50. Contrary to the allegations at paragraphs 75 of the Statement of Claim, Mark did not "essentially become business partners" with Fausto. At all times, Mark acted solely on

behalf of GCI. If Mark was appointed as a director of Medica One, which is not admitted, such appointment would only have been done in conjunction with a $2.8 million loan that was arranged by GCI and made to Medica One (the "**Medica One Loan**"), which was repaid in accordance with its terms in or about 2010. Mark may have been appointed as a director of Medica One for the purpose of providing additional oversight of the business in respect of the Medica One Loan, and if so, his appointment would have terminated upon the repayment of the Medica One Loan. At no point in time since 2010 has Mark been treated as a director of Medica One, attended any board meetings, been provided with any information about its business outside of what may have been provided to him in his capacity as an officer of GCI, or taken any other steps as a director of Medica One.

51. Further contrary to the allegations at paragraph 75 of the Statement of Claim, Fausto was not GCI's "spreadsheet guy", nor did he become "more and more involved" in GCI's business. Fausto has no position or authority within GCI. The fact that GCI and Fausto were cooperating for the purposes of developing the medical buildings did not cause Mark to put himself in "various conflicts of interest, and engaged in a scheme of misrepresentation, self-dealing and contractual breaches" that cause harm to GCI or any of its related entities.

52. Contrary to the allegations at paragraph 76(a) of the Statement of Claim, Mark did not enter into lease agreements with Fausto's companies that contained misrepresentations or higher rents than Mark believed could be paid.

53. Contrary to the allegations at paragraphs 75(b) and (c) of the Statement of Claim, neither Mark nor GCI maintained "rent rolls or other financial records" that contained false statements and misrepresentations. The Plaintiff confuses draft or pro forma rent rolls that

might have been prepared for business planning purposes with actual rent rolls that were represented to other parties as being final and accurate. Further, the Plaintiffs allege that these rent rolls were used to make misrepresentations. However, these documents were, at most, internal documents that were never disclosed to other parties and the nature and limitations of such documents were known to the Mark and GCI.

54. Contrary to the allegations at paragraph 75(d) of the Statement of Claim, Mark did not cause GCI to purchase properties from Fausto or his companies at inflated prices. Not only is that allegation not true, but it is also illogical: there was no benefit to Mark to cause GCI, a company he partly owned and from which he derived his livelihood, to pay more money for a property than what it was worth. Furthermore, Mark was a guarantor of the AIG loan and, accordingly, it would have been contrary to his interests to have allowed Fausto to benefit personally by not paying any rents that were owing.

55. Contrary to the allegations at paragraph 75(e) of the Statement of Claim, Fausto did not execute, with Mark's knowledge, documents on behalf of GCI or its related companies without authority. If Mark or Sheldon permitted him to do so, then Fausto was in fact authorized to sign the documents].

56. Contrary to the allegations at paragraph 75(f) of the Statement of Claim, Mark did not permit Fausto or his companies to accrue millions of dollars in arrears without taking enforcement action. In any event, even if he did (which is denied), that was a business decision that he and GCI were entitled to make. Landlords may decide to let premises sit vacant for several reasons. It is not for a trustee, years later, to use *ex post facto* hindsight to second guess the business decisions that were made while the company was

attempting to carry out a business plan. Furthermore, Mark repeatedly attempted to push Fausto to expedite the securing of tenants.

57. In addition, any decision to not enforce against Fausto was reasonable: given the number of projects that were underway at the time, any attempt to “enforce” with respect to a particular alleged rent default would have jeopardized the entirety off all of the projects. Also, leasing the premises to the other tenants would have been inconsistent with the business plan to medical professionals who would pay a higher lease rate given the coupling of services.

58. Contrary to the allegations at paragraph 75(g) of the Statement of Claim, Mark was not aware at any point in time prior to KPMG’s monitorship of any situations in which Fausto or his companies were charging rent to tenants and such rent was not being remitted to GCI in some fashion. In the event that Fausto or his companies were in fact generating any revenue from tenants (which is not admitted), then the respective tenant company should pay GCI for such rent.

59. Contrary to the allegations at paragraph 78 of the Statement of Claim, the defendants listed in that paragraph did not “work alongside” Mark or GCI in carrying out any scheme. Mark did not have any independent dealings with any of Allen Greenspoon, Werner Dingfield, Dennis Divalentio, or Marcia Villafranca.

60. Contrary to paragraph 83 to 86 of the Statement of Claim, GCI did not pay inflated sale prices for any of the properties that it purchased from Fausto or his affiliated companies. Neither Mark nor GCI based its decisions for the purchase on rent rolls or lease agreements signed by Fausto that Mark or GCI knew could not be paid by the alleged tenant. As noted above, while the start date may have been consensually agreed

to be extended, Mark did not cause GCI to enter into any lease agreement or other transaction based on actual or projected rent amounts that he knew or ought to have known would not be able to be paid by Fausto or his companies.

61. With respect to the allegations at paragraph 87 of the Statement of Claim, it is true that GCI received less rent from Fausto and his companies than GCI and Mark anticipated. Needless to say, had Mark known about Fausto's inability to conclude his ongoing projects, Mark would not have agreed to the various deals with Fausto that lead to the demise of his company, GCI. As GCI was suffering cash flow issues caused by, among other things, the failed deals with Fausto, Mark stopped receiving any salary or any money from GCI. In fact, by 2020, Mark stopped receiving any amounts at all from GCI. Mark has suffered significant losses as a result of the failure of the business plans with Fausto and his companies and the Plaintiff's claim that he intentionally orchestrated this result is simply nonsensical.

62. Contrary to the allegations at paragraph 89 of the Statement of Claim, it is not clear where the Plaintiff derives the figures for alleged rent arrears. Mark states, and the fact is, that he did not impede the payment of any rents from third parties that were properly due and owing. The responsibility for collecting rents rested not with Mark but rather with the Prime Real Estate Group, which was the property manager. While Mark addressed issues concerning Fausto and his companies, as noted above, Mark required Fausto and his companies to pay rent for any premises that they in fact occupied.

63. Contrary to the allegations at paragraph 92 of the Statement of Claim, the bankruptcy of GCI was not caused by the mere non-payment of the alleged unpaid rent noted in paragraphs 89 and 90. Had those been the only amounts that were required to

prevent a bankruptcy, then there would not have been a bankruptcy. The fact of the matter is that there were several compounding factors that lead to GCI's demise and bankruptcy.

64. Contrary to the allegations at paragraph 98 of the Statement of Claim, Mark did not make any misrepresentations to GCI or its stakeholders. First, Mark did not make any "representation" to GCI as he and Sheldon were the directing minds of GCI – Mark could not have made a misrepresentation to himself. Second, Mark did not make any misrepresentations to any of GCI's stakeholders – GCI's financial statements were not shared by Mark to any GCI "stakeholder", nor did Mark provide any of the alleged false rent rolls, leases or related information provided to any GCI stakeholder. Tellingly, the Plaintiff cannot identify any such alleged misrepresentations.

65. Contrary to paragraph 102 of the Statement of Claim, GCI did not hold a 50% in Prime after 2018, when GCI's interest in Prime was sold.

66. Contrary to the allegations at paragraphs 99, 102 to 107 and the other paragraphs of the Statement of Claim that attempt to plead negligence or other breaches of duty, Mark states, and the fact is, that at all times he exercised the degree of care and skill that was reasonable in the circumstances, and at all times exercised his business judgment in good faith.

67. The allegations in the Statement of Claim stating that Mark was in a conflict of interest with GCI are categorically false. Mark's interests were always aligned with GCI and its stakeholders. As noted above, Mark stopped receiving any money from GCI years ago because of its performance. Mark's personal success was dependent upon the success of GCI, and the decisions that he made concerning the business projects with Fausto and his companies were based on those symbiotic relations. As Mark was an

officer, director and one of the two shareholders of GCI (the other being Sheldon), Mark could not benefit from being in a conflict of interest with GCI as that would mean he was in a conflict with himself. The Plaintiffs allegations in this regard demonstrate the extent to which it is distorting what transpired in order to create a claim were none exists.

G. SOUTHMOUNT

68. Contrary to paragraph 115 of the Statement of Claim, Mark did not knowingly or negligently allow Fausto or anyone else to divert monies to other corporations or ventures to the detriment of GCI. Contrary to paragraph 116 of the Statement of Claim, the Plaintiff distorts Mark's testimony given during the section 163(1) examination.

H. ZEDD

69. In response to paragraphs 119 and 120 of the Statement of Claim, it is not true that GCI had any "stakeholders" to whom GCI or Mark had to report to or make disclosure to regarding the sale of Zedd Customer Solutions Inc. ("**Zedd**") to MGZ and SGZ Holdings Inc. ("**SGZ**"). At the time of that sale, the only shareholders of GCI were Mark and Sheldon. They had no obligation in law or otherwise to disclose that transaction to anyone else. Again, the Plaintiff is distorting what the facts were at the time.

70. Furthermore, the sale of Zedd to MGZ and SGZ did not harm GCI.

71. Contrary to paragraphs 120 to 121 of the Statement of Claim, any payments made by GCI on account of the Zedd Loan (as defined in the Statement of Claim) were proper. Such payments comprised part of the compensation that Mark received form GCI.

I. NO ENTITLEMENT TO RELIEF SOUGHT

72. Mark states, and the fact is, the Plaintiff's claim is based on a false narrative of the relationships that existed at the relevant times. Throughout the Statement of Claim, the Plaintiff has repeatedly attempted to recast what actually happened, and its allegations are not based on reality, but rather is an attempt by the Plaintiff (now represented by the bankruptcy trustee who has no knowledge of what actually transpired) to fit within a whole host of legal claims that have no application to the situation as they existed at the time the events were taking place.

73. For the reasons stated above, Mark states, and the fact is, that the Plaintiff' claims against him and the other defendants have no merit. Furthermore, Mark denies that the Plaintiff' have suffered damages or losses, whether as alleged in the Statement of Claim, or at all, and puts the Plaintiff to strict proof thereof. In the alternative, if the Plaintiff have suffered any damage, which is not admitted and expressly denied, the damages claimed are excessive, too remote, not reasonably foreseeable, not recoverable in law and reflect a failure to mitigate on the part of the Plaintiff.

74. Mark requests that this action be dismissed with costs on a full indemnity basis.

CROSS-CLAIMS

75. In the event that Mark and MGZ is found liable for any amounts claimed by the Plaintiffs, Mark claims against the defendants other than Irina Gross and Mark Craig Gross Holdings Inc.:

(a) contribution and indemnity for such amounts that he is found liable for;

(b) pre- and post-judgment interest in accordance with the amounts awarded in the Main Action;

(c) costs of the Main Action and Cross-Claim on a full indemnity basis; and

(d) such further and other relief as counsel may request and this Court consider just.

76. Mark and MGZ repeat and rely upon the allegations in the Statement of Defence and adopt them within this claim.

March 8, 2024

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Court File No. CV-23-00701647-0000

GROSS CAPITAL INC. -and- MARK CRAIG GROSS, ET AL

Plaintiff Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at TORONTO

STATEMENT OF DEFENCE

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