

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY  
(COMMERCIAL LIST)**

**THE HONOURABLE** ) **WEDNESDAY, THE 8<sup>th</sup> DAY**  
 )  
**JUSTICE KIMMEL** ) **OF FEBRUARY, 2023**

**IN THE MATTER OF THE BANKRUPTCY OF  
GROSS CAPITAL INC.  
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**AND IN THE MATTERS LISTED ON SCHEDULE “A”**

**ORDER**

**THIS MOTION** by YUCHUAN SHAO, SANLIN SHAO, JUN XING and JIANZHONG XING (the “**Moving Parties**”) seeking an order lifting the stay of proceedings in various bankruptcy and receivership proceedings was heard this day via videoconference at Toronto, Ontario.

**UPON** reading the Amended Notice of Motion of the Moving Parties, the Affidavit of Jun Xing sworn June 3, 2022 and exhibits filed, the Affidavit of Jianzhong Xing sworn June 27, 2022, and the Affidavit of Spencer Frederick Toole sworn September 16, 2022 and exhibits filed; and upon reading the affidavit of Allan Fogul sworn January 30, 2022 and exhibits filed; and upon reading the Motion Record of Yi Jin and Awei Liu including the affidavits contained therein in a related motion heard this day brought in this court file number 31-2747949; and upon reading the Responding Report of KPMG Inc., the receiver and manager of Southmount Healthcare Centre Inc. et al., and of Victoria Avenue North Holdings Inc., and the Trustee of the estates of 65 Larch



Holdings Inc., 2009 Long Lake Holdings Inc., 100 Colborne Holdings Inc., 240 Old Penetanguish Holdings Inc. and 2478658 Ontario Ltd., all bankrupt (collectively in those capacities, “**KPMG**”);

**AND UPON** hearing the submissions of counsel acting as agent for the litigation counsel for the Moving Parties; and counsel for KPMG; no one appearing for Deloitte Restructuring Inc. (“**Deloitte**”), for KSV Restructuring Inc., the trustee of the estates of Gross Capital Inc. and of Sheldon Gross Limited, both bankrupt (“**KSV**”), or for the Office of the Superintendent of Bankruptcy, although duly served;

1. **THIS COURT ORDERS** and declares that, subject to paragraphs 3 through 6 below, the stay of proceedings pursuant to Section 69.3 of the *Bankruptcy and Insolvency Act* (the “**BIA**”) in each of the following estates:

- a. 31-2747949 – Bankruptcy of Gross Capital Inc.;
- b. 31-2810419 – Bankruptcy of Sheldon Gross Limited;
- c. 31-2842640 – Bankruptcy of 100 Colborne Holdings Inc.;
- d. 31-2842641 – Bankruptcy of 240 Old Penetanguish Holdings Inc.; and
- e. 32-2842635 – Bankruptcy of 2478658 Ontario Ltd.
- f. 31-2869843 – Bankruptcy of 2009 Long Lake Holdings Inc.
- g. 31-2869845 – Bankruptcy of 65 Larch Holdings Inc.

(collectively, the “**Bankruptcy Estates**”) shall no longer operate in respect of the action commenced by the Moving Parties against Mark Gross, Sheldon Gross, and numerous corporate defendants set out in Schedule “B” hereto (collectively, the “**Defendants**”) and that the Moving Parties are authorized to commence and continue to prosecute their action

no. CV-21-00666297-0000 commenced in the Superior Court of Justice at Toronto (the “**Action**”), *nunc pro tunc*.

2. **THIS COURT ORDERS** and declares that, subject to paragraphs 3 through 6 below, the stay of proceedings pursuant paragraphs 8 and 9 of the following Appointment Orders of this Court in:

- a. Court File No. CV-21-00656098-00CL dated March 9, 2021;
- b. Court File No. CV-21-00664273-00CL dated June 29, 2021; and
- c. Court File No. CV-21-00665375-00CL dated August 3, 2021


(collectively, the “**Receivership Orders**”) shall no longer operate in respect of the Action, and that the Moving Parties are authorized to commence and continue to prosecute the Action, *nunc pro tunc*.

3. **THIS COURT ORDERS** that the right of the Moving Parties to commence and continue to prosecute the Action as against the bankrupts in any of the Bankruptcy Estates (collectively, the “**Bankrupts**”) or as against the respondents in any of the Receivership Orders (collectively, the “**Receivership Respondents**”) (without limiting of the Moving Parties’ rights as against any of the other Defendants) shall be for the purpose only of establishing the amount for which the Moving Parties are entitled to prove in the Bankruptcy Estates and/or the receiverships in the proceedings referenced in subparagraphs 2(a) through (c) (collectively, the “**Receiverships**”) as an unsecured claim, such that, for greater certainty, the enforcement of any Judgment obtained by the Moving Parties as against any of the Bankrupts

or Receivership Respondents or their respective property remains stayed pending further Order of this Court.

4. **THIS COURT ORDERS** that nothing in this Order shall be deemed to require KSV, KPMG, or Deloitte (collectively, the “**LITs**”) to defend the Action or the Judgment sought therein, or to take any other steps in respect of the Action or the Judgment sought therein, including, without limitation, production of documents (subject to further Order of this Court, provided that all reasonable fees and expenses incurred by any of the LITs in attempting to locate, locating and/or providing any such documents, as applicable, shall be paid jointly and severally by the Moving Parties to that LIT, including without limitation, at the regular hourly rates of those representatives of the LIT engaged with such tasks and any reasonable disbursements (including, without limitation, legal fees) in connection with same) or participating in any discovery proceedings or similar proceedings.
5. **THIS COURT ORDERS** that, provided that an LIT does not defend the Action, that LIT shall not be liable (in its corporate capacity or in its capacity as the trustee or receiver) for any costs with respect to the Action or the Judgment sought therein.
6. **THIS COURT ORDERS** that, in the event that any of the non-bankrupt Receivership Respondents hereafter becomes bankrupt, the terms of this Order shall apply to lift the stay of proceedings under s.69.3 of the *BIA* in any such bankruptcy estate as if the estate of the bankrupt Receivership Respondent is included in the list of bankruptcy estates enumerated in paragraph 1 and defined herein as the “Bankruptcy Estates”.

7. **THIS COURT ORDERS** that a copy of this Order shall be placed in each of the Court Files listed on Schedule "A".

 Digitally signed  
by Jessica Kimmel  
Date: 2023.02.08  
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**SCHEDULE "A"**

In addition to the title of proceedings set out on the Order as follows:

Court File No. 31-2747949

**IN THE MATTER OF THE BANKRUPTCY OF  
GROSS CAPITAL INC.  
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

this Order is also made in the following proceedings:

Court File No. 31-2810419

**IN THE MATTER OF THE BANKRUPTCY OF  
SHELDON GROSS LIMITED  
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

Court File No. 31-2842640

**IN THE MATTER OF THE BANKRUPTCY OF  
100 COLBORNE HOLDINGS INC.**

Court File No. 31-2842641

**IN THE MATTER OF THE BANKRUPTCY OF  
240 OLD PENETANGUISH HOLDINGS INC.**

Court File No. 32-2842635

**IN THE MATTER OF THE BANKRUPTCY OF  
2478658 ONTARIO LTD.**

Court File No. 32-2869843

**IN THE MATTER OF THE BANKRUPTCY OF  
2009 LONG LAKE HOLDINGS INC.**

Court File No. 32-2869845

**IN THE MATTER OF THE BANKRUPTCY OF  
65 LARCH HOLDINGS INC.**

Court File No. CV-21-00664273-00CL

**AMERICAN GENERAL LIFE INSURANCE COMPANY, LEXINGTON INSURANCE  
COMPANY, AND THE VARIABLE ANNUITY LIFE INSURANCE COMPANY**

Applicants

- and -

**SOUTHMOUNT HEALTHCARE CENTRE INC., 180 VINE INC., 2478658 ONTARIO LTD.,  
2009 LONG LAKE HOLDINGS INC., 65 LARCH HOLDINGS INC., 100 COLBORNE  
HOLDINGS INC., 240 OLD PENETANGUIH HOLDINGS INC., GROSS PROPERTIES  
INC., 180 VINE PURCHASER INC., AND 2413667 ONTARIO INC.**

Respondents

Court File No. CV-21-00656098-00CL

**ADDENDA CAPITAL INC.**

Applicant

- and -

**249 ONTARIO STREET HOLDINGS INC.,  
GROSS PROPERTIES INC.  
and 2413667 ONTARIO INC.**

Respondents

Court File No. CV-21-00665375-00CL

**AMERICAN GENERAL LIFE INSURANCE COMPANY and  
NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.**

Applicants

- and -

**VICTORIA AVENUE NORTH HOLDINGS INC.  
and THE PARTIES LISTED ON SCHEDULE "A"**

Respondents

**SCHEDULE  
“A”**

<b>Individuals</b>
Allan Gross
Errol Yim and Andrea Yim, jointly
Ava Gross
Karen Nakagawa and Calvin Nakagawa, jointly
Carol Jaxon
Carole Kai Onouye
Diane Curtis
Dwight Otani and Theresa Otani, jointly
Edward Bugarin
Ellen Fleishman
Gemie Arakawa
George Tamashiro
Guy Pace and Caroline Berdusco, jointly
Heidi Berger
Henry Ko
Hongwei Su
James Brand
Janis L. Lai Trustee
Jean Morel
Jian Zhang
Johann Strasser
John Dattomo and Daniela Dattomo
Kelly Ann Hiraki and Jonathan Wah Hee Hee, jointly
Randall Y.C. Ho
Robert Atkinson
Roberta Sunahara and Paul Sunahara, jointly
Seymour Kazimirski
Stanley Salcedo

<b>Trusts</b>
Charlyn Shizue Honda Masini Trust, by and through its trustee(s)
Fleishman Family Trust, by and through its trustee(s)
J. Zachery Jones Trust, by and through its trustee(s)
Jane Shigeta Revocable Living Trust, by and through its trustee(s)
Jasen Takei Revocable Living Trust, by and through its trustee(s)
Melvin Shigeta Revocable Living Trust, by and through its trustee(s)
Ruth Hisaye Honda Trust, by and through its trustee(s)
S. Bucky Revocable Living Trust & Bruce E. Bucky Revocable Living Trust, by and through its trustee(s)
Wallace K. Tsuha Trust, by and through its trustee(s)
<b>Corporations / Partnerships</b>
1236068 Ontario Limited
1649750 Ontario Inc.
1818019 Ontario Limited
Citydrill Inc.
Gross Capital Inc.
Dirk and Dale IRA LLC
Gross Medical Opportunities Fund LP
Hybrid Activities Inc.
Mark Craig Gross Holdings Inc.
Randy 88, LLC
Rastogi Medicine Professional Corporation
RMK IRA LLC



**SCHEDULE “B”**

1. Stayed by receivership order in Court File No. CV-21-00656098-CL (Deloitte as receiver)
  - a. Gross Properties Inc., as it relates to any “Property” as defined in the aforementioned receivership order dated March 9, 2021
  - b. 249 Ontario Street Holdings Inc., as it relates to any “Property” as defined in the aforementioned receivership order dated March 9, 2021
2. Stayed by receivership order in Court File No. CV-21-00664273-00CL (KPMG as receiver)
  - a. Gross Properties Inc., as it relates to any “Property” as defined in the aforementioned receivership order dated June 29, 2021
  - b. 2009 Long Lake Holdings Inc.
  - c. 65 Larch Holdings Inc.
  - d. 100 Colborne Holdings Inc.  
240 Old Penetanguish Holdings Inc.
  - e. 2478658 Ontario Ltd.
3. Stayed by receivership order in Court File No. CV-21-00665375-00CL (KPMG as receiver)
  - a. Gross Capital Inc., as it relates to any “Property” as defined in the aforementioned receivership order dated August 3, 2021
  - b. Victoria Avenue North Holdings Inc.
4. Stayed by s.69.3 of the *BIA* (KPMG as trustee)
  - a. 100 Colborne Holdings Inc. (Estate/Court File No. 31-2842640)
  - b. 240 Old Penetanguish Holdings Inc. (Estate/Court File No. 31-2842641)
  - c. 2478658 Ontario Ltd. (Estate/Court File No. 31-2842635)
  - d. 2009 Long Lake Holdings Inc. (Estate/Court File No. 31-2869843)
  - e. 65 Larch Holdings Inc. (Estate/Court File No. 31-2869845)
5. Stayed by s.69.3 of the *BIA* (KSV as trustee)
  - a. Gross Capital Inc. (Estate/Court File No. 31-2747949)
  - b. Sheldon Gross Ltd. (Estate/Court File No. 31-2810419)
6. Not under bankruptcy or receivership
  - a. Mark Gross
  - b. Sheldon Gross
  - c. 86 Angeline Street Holdings Inc.
  - d. Morrison Street Holdings Limited
  - e. Portage Road Holdings Limited
  - f. 800 Princess Street Holdings Limited
  - g. 132 Second Street Purchaser Limited
  - h. 2753703 Ontario Inc.

- i. 2771840 Ontario Ltd.
- j. 2771837 Ontario Inc.
- k. 2771839 Ontario Limited
- l. 2771841 Ontario Corp.

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**IN BANKRUPTCY AND INSOLVENCY**  
**(Commercial List)**

**At Toronto**

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**ORDER**

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