

CITATION: Blackford-Hall v. Simply Group, 2021 ONSC 8502

COURT FILE NO.: CV-21-00664652-00CP

CITATION: Bonnick v. Crown Crest Capital Management Corp., 2021 ONSC 8503

COURT FILE NO.: CV-21-00665193-00CP

DATE: 2021/12/29

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**PAULA BLACKFORD-HALL and
MERCEDES CHACIN DE FUCHS, BY
HER LITIGATION GUARDIAN
MATHIAS JOHANN FUCHS**

Plaintiffs

- and -

**SIMPLY GROUP, SIMPLY GREEN
HOME SERVICES INC., SIMPLY
GREEN HOME SERVICES
(ONTARIO) INC., GREEN PLANET
HOME SERVICES INC., HCSI HOME
COMFORT INC., HCSI HOME
COMFORT INC. 2, ECOHOME
FINANCIAL INC., CROWN CREST
CAPITAL CORP., CROWN CREST
FINANCIAL CORP., ENBRIDGE INC.,
SIMPLY GROUP ACQUISITION
CORP. and LAWRENCE KRIMKER**

Defendants

Proceeding under the *Class Proceedings
Act, 1992*

AND BETWEEN:

ALGA ADINA BONNICK

Plaintiff

-and-

*Michael Spencer, Aris Gyamfi, and Rachael
Sider for the Plaintiff*

*Paul-Erik Veel and Caroline Humphrey for
the Defendant Lawrence Krimker*

*Mohsen Seddigh, Michelle Logasov and
David Sterns, for the Plaintiff*

**CROWN CREST CAPITAL
MANAGEMENT CORP., CROWN
CREST FINANCIAL CORP., and
LAWRENCE KRIMKER**

Proceeding under the *Class Proceedings
Act, 1992*

)
) *Michael Rosenberg and Oscar Strawczynski*
) for Crown Crest Capital Management Corp.
) and Crown Crest Financial Corp.
)

) *Paul-Erik Veel and Caroline Humphrey* for
) the Defendant Lawrence Krimker
)

) **HEARD:** November 29, 2021

PERELL, J.

REASONS FOR DECISION

A. Introduction

[1] Pursuant to the amended *Class Proceedings Act, 1992*,¹ this is a carriage motion between two rival proposed class actions. The rivals are *Bonnick v. Crown Crest Capital Management Corp.* (the “Bonnick Action”) and *Blackford-Hall v. Simply Group* (the “Blackford-Hall Action”).

[2] For the reasons that follow, I conclude that the Bonnick Action is the proceeding that would best advance the claims of the class members in an efficient and cost-effective manner. Accordingly, I grant the Bonnick Action carriage, and I stay the Blackford-Hall Action.

B. The Law for Carriage Motions

[3] The *Class Proceedings Act, 1992* was recently amended to add s.13.1, a new provision that addresses carriage motions. The case at bar is the first case to consider the effect, if any, of the new provision on the law for carriage motions. Section 13.1 states:

Carriage motions

13.1 (1) In this section,

“carriage motion” means a motion for an order under this section.

Stay of other proceedings

(2) Where two or more proceedings under this Act involve the same or similar subject matter and some or all of the same class members, the court may, on the motion of a representative plaintiff in one of the proceedings, order that one or more of the proceedings be stayed.

Timing

(3) A carriage motion shall be made no later than 60 days after the day on which the first of the proceedings was commenced and shall be heard as soon as is practicable.

¹ S.O. 1992, c. 6.

Considerations

(4) On a carriage motion, the court shall determine which proceeding would best advance the claims of the class members in an efficient and cost-effective manner, and shall, for the purpose, consider,

- (a) each representative plaintiff's theory of its case, including the amount of work performed to date to develop and support the theory;
- (b) the relative likelihood of success in each proceeding, both on the motion for certification and as a class proceeding;
- (c) the expertise and experience of, and results previously achieved by, each solicitor in class proceedings litigation or in the substantive areas of law at issue; and
- (d) the funding of each proceeding, including the resources of the solicitor and any applicable third-party funding agreements as defined in section 33.1, and the sufficiency of such funding in the circumstances.

Decision final

(5) The decision of the court on a carriage motion is final and not subject to appeal.

[4] Although Class Counsel in the Blackford-Hall Action acknowledge that s. 13.1 (4)(c) is a marked departure from the existing law, they suggest that s. 13.1 is largely a codification of the existing law about carriage motions. Under the former law, on a carriage motion, a judge would not consider the relative likelihood of success of each proceeding apart from noticing egregious errors or difficulties in a party's case theory. Section 13.1 (4)(c) now directs the judge to consider the relative likelihood of success in each proceeding both on the motion for certification and as a class proceeding.

[5] Class Counsel in the Bonnick Action, however, disputes that s. 13.1 is a codification, and they rather submit that it is a fresh starting point for the law of carriage motions. In paragraphs 34-36 of their factum on this carriage motion, the Bonnick Action Class Counsel state:

34. Section 13.1(4)(b) specifically departs from the common law,² and requires an assessment of the "likelihood of success in each proceeding".

35. The legislature deliberately reduced the governing carriage factors from seventeen³ to four. Bill 161 adopted the reasoning and proposals of the Law Commission of Ontario's 2019 final report, *Class Actions: Objectives, Experiences and Reforms*⁴ The LCO Report called for "simpler criteria for courts to use when deciding between competing firms" in order to "bring greater focus, predictability and finality to carriage hearings". For that purpose, the LCO stated:

The LCO agrees that **the current list of factors to determine carriage is too complex** and promotes uncertainty. In these circumstances, there is a clear need for statutory direction to ensure courts and counsel are able to **focus on the most important factors**. The LCO recommends that that court's primary objective in carriage proceedings should be to select the firm that is most likely to **advance the claims and interests of class members in an efficient and cost-effective manner**. [...]

² *Mancinelli v. Barrick Gold*, 2014 ONSC 6516 at para 25. See also *Smith v Sino-Forest Corporation*, 2012 ONSC 24 at para 307

³ *Del Giudice v. Thompson*, 2020 ONSC 2676 at para 65

⁴ Law Commission of Ontario, *Class Actions: Objectives, Experiences and Reforms: Final Report* (Toronto: July 2019).

the LCO believes it is important to identify a limited number of statutory criteria to guide courts in their analysis of choosing between competing firms, including:

- each firm's **theory** of each case;
- the **chances for success** at certification and on the merits;
- the **experience of counsel** in class action litigation or the substantive area at issue; and,
- **funding and costs arrangements**, including resources of counsel.

36. Although the legislature has abandoned the seventeen-factor common law analysis, many of the principles developed by the Court over the years still apply to the four statutory factors: [...]

[6] Although in the immediate case, both Class Counsel are on the target in interpreting the new provision, in my opinion, neither Class Counsel has hit the bull's-eye or the triple-20 in interpreting the meaning and the significance of s. 13.1 of the *Class Proceedings Act, 1992*.

[7] Section 13.1 is indeed a significant change in the law about carriage motions, so Blackford-Hall's Class Counsel's suggestion that the provision is largely a codification is incorrect. Bonnick's Class Counsel's weakly made counter-suggestion, however, that the seventeen-factor common law analysis has been abandoned is also incorrect, because most, if not all, of the seventeen factors of the common law test remain as the ingredients of the so-called limited number of statutory factors. But for s.13.1 (4) paragraph (c) and the blissful s. 13.1 (5) there is a great deal of *plus ça change, plus c'est la même chose* about s. 13.1.

[8] That said, s.13.1 (4) paragraph (c) is a significant and substantial change in the law, and s.13.1's focus on "efficiency" and on the chances of success of the theory of the case at certification and at the common issues trial; *i.e.* a focus on "productivity," dare I say it, heralds a "culture change" of the introduction of proportionality as a factor on a carriage motion in the evaluation of rival proposed class actions.

[9] Efficiency measures input, the amount of resources dedicated to a project, versus what is achieved by the project, and productivity measures output over time. Productivity is about results over time, efficiency is about the measure of the results against the resources invested. In my opinion, section 13.1 (4) directs the court to examine the access to justice goals of the class members measured against efficiency, productivity, and proportionality. This entails measuring the anticipated outcome for the class members' needs against the legal resources being marshalled to achieve those goals in the particular circumstances of each case.

[10] As I interpret s. 13.1 (4) of the *Class Proceedings Act, 1992*, it directs the court to consider what is precisely necessary for access to justice for the class members in their particular circumstances and to discourage case theories or the parts of case theories that may be a waste of resources or that may be a drag on the proceeding or that are not worth the trouble or effort needed to achieve access to justice, the primary goal of class proceedings. What is efficient and cost-effective is a proportionality approach to the design of a class proceeding.

[11] Time will tell whether s. 13.1 will bring more certainty to carriage motions, which I rather doubt, because efficiency, productivity, and proportionality will have to be measured in the circumstances of each case and so uncertainty will remain, but a focus on efficiency, productivity, and proportionality is undoubtedly a good idea for the health of Ontario's class action regime.

Focusing on efficiency, productivity, and proportionality will have the salutary byproducts of conserving scarce judicial resources and of achieving access to justice and behaviour modification much sooner, all without sacrificing justice for both plaintiffs and defendants on the altar of expediency, which is not the same thing as efficiency.

[12] Section 13.1 of the *Class Proceedings Act, 1992* demands a case-by-case analysis of efficiency, productivity, and proportionality and the needs of Class Members (not necessarily the same as the wants of Class Counsel). Some cases will have a need for a rapid response because, for example, Class Members are suffering personal injuries and may actually need compensation sooner than later, while other cases may not be so urgent, as, for example, cases involving economic losses where the Class Members' individual losses are small and there will be no suffering as the class action plods along.

[13] In the immediate case, I shall apply the revised law for carriage motions in analyzing the rival class actions.

C. Consumer Protection under the *Consumer Protection Act, 2002*

[14] To understand the purpose and the quality of the rival class actions, it is necessary to place the actions in the context of Ontario's *Consumer Protection Act, 2002*. For present purposes, the relevant sections are set out in Schedule "A" to this decision.

[15] For the purposes of understanding these Reasons for Decision, it is helpful to keep in mind that the *Consumer Protection Act, 2002* regulates consumer agreements and protects consumers from predatory practices. The Act prohibits unfair practices, which include misrepresentations and unconscionable representations. The Act provides remedies for breaches of the Act. The Act also regulates "direct agreements" and "leases." Parts IV and VIII of the Act strictly regulates the form and content of such agreements and give consumers rights and protections against breaches of those requirements.

D. Analysis

[16] The Bonnick Action is a proposed regional class action about predatory practices in the consumer marketplace for HVAC equipment for residential premises. The equipment includes furnaces, air conditioners, air cleaners, air purifiers, water heaters, water treatment devices, water purifiers, and water softeners.

[17] The Blackford-Hall Action is a proposed national class action about the same grievances.

[18] The Bonnick Action is a regional (Ontario) class action with the following class definition:

All individuals in Ontario who:

(a) are or were at any time party to a consumer agreement for HVAC or HVAC related Equipment* with any person who directly or indirectly assigned that consumer agreement to Crown Crest between August 3, 2016 and the date of certification of this action or any other date that the Court deems appropriate ("Class Period"); and

(b) against whose property Crown Crest registered a security interest on title.

*"HVAC or HVAC-related Equipment" means furnaces, air conditioners, air purifiers, water heaters, water softeners, water purifiers, water treatment systems, water filters, boilers, air cleaners,

humidifiers, chimney liners, duct cleaning services, filters, thermostats and other equipment or services offered under the rental contracts, or bundles of these goods and services.

[19] The Blackford-Hall Action is a national class action with the following class definition:

All persons in Canada who:

(1) entered into Lease Agreements for Home Appliance Equipment, including but not limited to furnaces, air conditioners, air cleaners, air purifiers, water heaters, water treatment devices, water purifiers, water filters, water softeners, and other home appliances, with any of the Defendants; and/or

(2) entered into Lease Agreements for Home Appliance Equipment, including but not limited to furnaces, air conditioners, air cleaners, air purifiers, water heaters, water treatment devices, water purifiers, water filters, water softeners, and other home appliances that were acquired by or assigned to any of the Defendants and the rights to which are held by any of the Defendants; between July 17, 2013, when Simply Group's parent company Simply Group Home Services Inc. was founded, and the date of judgment (the "Class Period").

[20] The proposed Class Counsel in the Bonnick Action is Sotos LLP.

[21] The Bonnick Action, which was brought by Alga Adina Bonnick, was commenced on July 7, 2021, approximately two weeks after the Blackford-Hall Action, which was commenced on June 25, 2021. The defendants in the Bonnick Action are Crown Crest Capital Management Corp., Crown Crest Financial Corp. and Lawrence Krimker.

[22] In the Bonnick Action, the defendants are sued for: (a) breach of the *Consumer Protection Act, 2002*⁵ and its regulations⁶ as a supplier or as an assignee of a supplier, and (b) slander of title.

[23] In the Bonnick Action, the Class Members allege that the consumer agreements breached the *Consumer Protection Act, 2002* by: (a) failing to set out material information, including the total amount payable by the consumer under the agreement, and all security given by the consumer in respect of money payable under the agreement; and (b) failing to deliver a disclosure statement for the lease, disclosing material information including the total lease cost. The Class Members allege that Crown Crest's encumbrance of class members' home titles constituted slander of title. Ms. Bonnick pleads the elements of the test for piercing the corporate veil as against Mr. Krimker.

[24] The proposed Class Counsel in the Blackford-Hall Action is Kim Spencer McPhee Barristers P.C.

[25] The Blackford-Hall Action is brought by Paula Blackford-Hall and Mercedes Chacin De Fuchs. Ms. De Fuchs is represented by her litigation guardian, Mathias Johann Fuchs. The defendants in the Blackford-Hall Action are: Simply Group; Simply Green Home Services Inc; Simply Green Home Services (Ontario) Inc.; Green Planet Home Services Inc., HCSI Home Comfort Inc.; HCSI Home Comfort Inc. 2; Ecohome Financial Inc.; Crown Crest Capital Corp.; Crown Crest Financial Corp.; Enbridge Inc.; Simply Group Acquisition Corp.; and Lawrence Krimker. The Blackford-Hall Plaintiffs seek leave to add: Crown Crest Capital Management; Crown Crest Capital Trust; and Enbridge Gas Inc. as parties.

[26] In the Blackford-Hall Action, the Class Members sue the dealers, suppliers, billing agents,

⁵ S.O. 2002, c. 30, Schedule A.

⁶ Ont. Reg 17/05 and Ont. Reg 8/18.

lenders, and assignees of HVAC equipment lease agreements. In the Blackford-Hall Action, the defendants are sued for: (a) breach of the *Consumer Protection Act, 2002* and its regulations; (b) breach of the *Competition Act*,⁷ (c) common law conspiracy; (d) unconscionability of contract; (e) unjust enrichment; and in the alternative; (f) disgorgement of profits and/or restitution of all money paid. They sue Mr. Krimker for negligence and in the alternative disgorgement of profits and/or restitution of all money paid.

[27] In the Blackford-Hall Action, the Class Members seek, general damages on an aggregate basis or, in the alternative, disgorgement of profits and/or restitution, punitive damages, a declaration that the Lease Agreements are illegal, void or unenforceable, and removal of all notices of security interests registered by the defendants. Further, it seeks an order pursuant to ss. 159 and 160 of the *Land Titles Act*⁸ rectifying the title and removing all notices of security interests registered by the Defendants.

[28] The underlying premise of both proposed class actions is that the sales representatives of the vendors of HVAC equipment induce the purchasers (many of whom suffer from vulnerabilities and who are overmatched by the sales representatives) to enter into unconscionable and improvident lease agreements. The sales representatives are alleged to employ unfair practices and misrepresentations. A major grievance is that clandestinely the customer's HVAC lease agreements is registered against the title of the consumer's home and the consumer pays a ransom to clear the title of their real property.

[29] In both actions, it is alleged that the lease agreements contain numerous onerous terms and conditions, many of them in violation of the provisions of the consumer protection statutes. It is alleged that the lease agreements contain terms in fine print that go unnoticed and unnotified. It is alleged that the consumers are contractually obliged to pay unlawful and unconscionable fees. The lease agreements are arguably unconscionable and illegal contracts. One of the oppressive terms of the contracts is that the Dealer may register a security interest against the consumer's real property.

[30] The consumers do not realize that that the leases will be registered against the title of their real property and the consumers will have to pay more than the HVAC equipment is worth to obtain a discharge of the security interest. It is alleged in the actions that the registered security interests are often first discovered when the consumer sells or renovates his or her home. The security interest is then used as leverage to extort payment from the consumers. Further, it is alleged that when consumers attempt to terminate their lease agreements, they are subject to exorbitant interest, additional charges, and threats of damage to their credit score and history. The hapless and helpless consumer is quoted buy-out fees many times the value of the equipment and more than represented in the lease agreements.

[31] As a factual matter about the HVAC marketplace, it shall be important to note that historically many vendors (suppliers) go out of business, sometimes by bankruptcy and many vendors are taken over by other vendors. This circumstance makes it difficult for the consumers to escape the agreements that have been assigned, and this circumstance often makes it both difficult and futile to obtain any remedial relief from the vendor (supplier) which breached the consumer protection legislation.

⁷ R.S.C. 1985, c. C-34.

⁸ R.S.O. 1990, c. L-5.

[32] In both actions, the ultimate target, is the defendant Lawrence Krimker, who is alleged to be behind the impugned lease agreements and the harmful registration of liens against the titles of the consumers' homes.

a. In the Bonnick Action, the Plaintiffs seek to pierce the corporate veil of the defendant lenders, which are corporations owned or controlled by Mr. Krimker.

b. In the Blackford-Hall Action, Mr. Krimker is sued as the mastermind of a civil conspiracy to harm the putative Class Members. He is also sued in negligence. The co-conspirators with Mr. Krimker are the vendors, who are corporations associated with Mr. Krimker's empire. The billing agent defendants, like Enbridge, are joined as co-conspirator defendants because they facilitated the alleged conspiracy by Mr. Krimker and his corporate minions to harm the putative Class Members.

[33] The Bonnick Action and the Blackford-Hall Action have radically different case theories, and radically different strategies to achieve success on the motion for certification and as a class proceeding.

[34] To use military metaphors, the strategic war plan of Class Counsel in the Bonnick Action is to attack and capture command and control. They target Mr. Krimker and his lender corporations with two main causes of action. Class Counsel in the Bonnick Action employ a "cut the head off the snake" military strategy. They attack the major culprit or the source of the problem with the intent that the problem will naturally die off without its source. Class Counsel in the Bonnick Action do not target other than the top of the chain of command.

[35] In contrast, the strategic war plan of Class Counsel in the Blackford-Hall Action is a massive ground war assault that attacks the Defendants' battalions and then marches against the chain of command. As noted above Class Counsel in the Blackford-Hall Action advance seven causes of action.

[36] On this carriage motion, the court must determine which proceeding would best advance the claims of the class members in an efficient and cost-effective manner. In the immediate case, factors 13.1 (4) paragraphs (c) and (d) are neutral.

[37] In the immediate case, the determining factors are: (a) each representative plaintiff's theory of its case;⁹ and (b) the relative likelihood of success in each proceeding, both on the motion for certification and as a class proceeding.

[38] Based on these determining factors, in my opinion, carriage should be granted to the Bonnick Action. It is by a large measure the most efficient and cost-effective proceeding to advance the claims of the class members.

[39] I disagree with Blackford-Hall's Class Counsel's criticism of the Bonnick Action's case theory. The major criticism, with which I disagree, is that the Bonnick Action is seriously deficient because of its reliance or dependency upon proving that the Defendants are "suppliers" under the *Consumer Protection Act, 1992*.

[40] Colloquially speaking, the Blackford-Hall's Class Counsel submit that it is a mistake to put all your eggs in one basket and there is no failsafe cause of action should this cause of action

⁹ The theory of the case includes the amount of work performed to date to develop and support the theory. In the immediate case, the work effort is a neutral factor. Both Class Counsel were diligent in developing the theory of the case.

fail in the Bonnick Action. This criticism, however, is wrong and does not withstand analysis. Should the claim against the defendants as suppliers fail, the claim against the defendants as assignees of supplier may succeed as may the claim for slander of title. The Bonnick Action plaintiffs do not put all their eggs in one basket. Moreover, and in any event, as I shall explain further below when I consider the Blackford-Hall case theory, the proposed better alternative to putting all one's eggs in one basket is a dog's breakfast of a case theory that is inefficient, disproportionate, and potentially unproductive.

[41] The design of the Bonnick Action in focusing on the defendants that are the head of the snake of wrongdoing avoids serious problems of establishing commonality in any of the cause of actions against the vendors (the dealers) that induced the Class Members to sign HVAC lease agreements. This is not to say that commonality could not be established in a consumer protection case like the Blackford-Hall Action but historically, class actions based on disparate misrepresentations or disparate breaches of contract made by a sales force do not get certified.¹⁰

[42] This criticism is not to play the defendant's non-certification cards, it is simply to say that an action against ten defendants, some of them groups of presently unnamed defendants, with both direct and indirect and tangential relationships to Mr. Krimker is indicative that the litigation risk in the Blackford-Hall Action is much higher than the less ambitious and more conservative Bonnick Action.

[43] Moreover, it is already apparent that suppliers disappear or go bankrupt or are insolvent; thus, success against them is a victory won at too great a cost to have been worthwhile.

[44] I agree with the criticism the Bonnick Class Counsel have of the Blackford-Hall Action's theory of the case.

[45] The Blackford-Hall claims based on varying and undefined representations and contractual terms are prone to failure on commonality and preferable procedure. The pleading of negligence against Mr. Krimker, a tort claim of pure economic losses, runs the risk of being struck out for failure to show a cause of action. The conspiracy cause of action is unnecessary, implausible, unmanageable and, much like the attack on Pearl Harbour in the Second World War, will mobilize formidable foes for the Class Members to contend with.

[46] In their factum, the Blackford-Hall Class Counsel submit that their case theory is designed to overcome the Defendants' shell game in the consumer HVAC marketplace that lease Agreements are transferred, through assignment or corporate acquisition, from one entity to another, so that the supplier is not the same entity that collects the charges under that Lease Agreement, or that registers unlawful security interests on that consumer's property. With respect, in my opinion, the design of the Blackford-Hall Action succumbs to rather than overcomes the Defendants' shell game.

[47] I also agree with the criticism that a national class membership is inappropriate in this case. The Draft Amended Statement of Claim in the Blackford-Hall Action pleads only Ontario's *Consumer Protection Act, 2002*, and it is not clear that the Ontario Act applies for "All persons in Canada who: (1) entered into Lease Agreements ...". Nor is it clear that an Ontario court could enforce the consumer protection laws of another province. Nor is it clear that an Ontario court has

¹⁰ *Williams v. Mutual Life Assurance Co. of Canada*, [2000] O.J. No. 3821 (S.C.J.), aff'd. [2001] O.J. No. 4952 (Div. Ct.), aff'd. sub nom *Kumar v. Mutual Life Assurance Co.*, [2003] O.J. No. 1160 (C.A.), leave to appeal ref'd. [2003] S.C.C.A. No. 283 is an example.

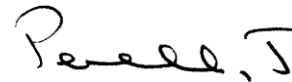
jurisdiction to address encumbrances on land registered in another province.

[48] All these jurisdictional problems are avoided in the regional, Ontario based, Bonnick Action.

E. Conclusion

[49] For the above reasons, I conclude that the Bonnick Action is the proceeding that would best advance the claims of the class members in an efficient and cost-effective manner. I grant the Bonnick Action carriage, and I stay the Blackford-Hall Action.

[50] There shall be no order as to costs.

A handwritten signature in black ink, appearing to read "Perell, J.", with a stylized flourish at the end.

Perell, J.

Released: December 29, 2021.

Schedule “A”
Consumer Protection Act, 2002

Interpretation

1. In this Act,

“consumer” means an individual acting for personal, family or household purposes and does not include a person who is acting for business purposes;

“consumer agreement” means an agreement between a supplier and a consumer in which,

(a) the supplier agrees to supply goods or services for payment, or

[...]

“consumer transaction” means any act or instance of conducting business or other dealings with a consumer, including a consumer agreement;

[...]

“goods” means any type of property;

[...]

“representation” means a representation, claim, statement, offer, request or proposal that is or purports to be,

(a) made respecting or with a view to the supplying of goods or services to consumers, or

(b) made for the purpose of receiving payment for goods or services supplied or purporting to be supplied to consumers;

[...]

“supplier” means a person who is in the business of selling, leasing or trading in goods or services or is otherwise in the business of supplying goods or services, including the supply of rewards points, and includes an agent of the supplier and a person who holds themselves out to be a supplier or an agent of the supplier;

[...]

Application

2. (1) Subject to this section, this Act applies in respect of all consumer transactions if the consumer or the person engaging in the transaction with the consumer is located in Ontario when the transaction takes place.

[...]

Exceptions

(2) This Act does not apply in respect of,

[...]

(f) consumer transactions for the purchase, sale or lease of real property, except transactions with respect to time share agreements as defined in section 20; and

[...]

[...]

Agreement for supply of appliances

(6) For greater certainty, despite clause (2) (f), this Act applies to a consumer agreement under which a supplier supplies goods to a consumer that are not part of real property at the time the parties enter into the agreement but that subsequently become so under the agreement.

[...]

Disclosure of information

5 (1) If a supplier is required to disclose information under this Act, the disclosure must be clear, comprehensible and prominent.

[...]

PART III

UNFAIR PRACTICES

False, misleading or deceptive representation

14 (1) It is an unfair practice for a person to make a false, misleading or deceptive representation.

Examples of false, misleading or deceptive representations

(2) Without limiting the generality of what constitutes a false, misleading or deceptive representation, the following are included as false, misleading or deceptive representations:

1. A representation that the goods or services have sponsorship, approval, performance characteristics, accessories, uses, ingredients, benefits or qualities they do not have.
2. A representation that the person who is to supply the goods or services has sponsorship, approval, status, affiliation or connection the person does not have.
3. A representation that the goods or services are of a particular standard, quality, grade, style or model, if they are not.
4. A representation that the goods are new, or unused, if they are not or are reconditioned or reclaimed, but the reasonable use of goods to enable the person to service, prepare, test and deliver the goods does not result in the goods being deemed to be used for the purposes of this paragraph.
5. A representation that the goods have been used to an extent that is materially different from the fact.
6. A representation that the goods or services are available for a reason that does not exist.
7. A representation that the goods or services have been supplied in accordance with a previous representation, if they have not.
8. A representation that the goods or services or any part of them are available or can be delivered or performed when the person making the representation knows or ought to know they are not available or cannot be delivered or performed.

9. A representation that the goods or services or any part of them will be available or can be delivered or performed by a specified time when the person making the representation knows or ought to know they will not be available or cannot be delivered or performed by the specified time.
10. A representation that a service, part, replacement or repair is needed or advisable, if it is not.
11. A representation that a specific price advantage exists, if it does not.
12. A representation that misrepresents the authority of a salesperson, representative, employee or agent to negotiate the final terms of the agreement.
13. A representation that the transaction involves or does not involve rights, remedies or obligations if the representation is false, misleading or deceptive.
14. A representation using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if such use or failure deceives or tends to deceive.
15. A representation that misrepresents the purpose or intent of any solicitation of or any communication with a consumer.
16. A representation that misrepresents the purpose of any charge or proposed charge.
17. A representation that misrepresents or exaggerates the benefits that are likely to flow to a consumer if the consumer helps a person obtain new or potential customers.

Unconscionable representation

15 (1) It is an unfair practice to make an unconscionable representation.

Same

- (2) Without limiting the generality of what may be taken into account in determining whether a representation is unconscionable, there may be taken into account that the person making the representation or the person's employer or principal knows or ought to know,
- (a) that the consumer is not reasonably able to protect his or her interests because of disability, ignorance, illiteracy, inability to understand the language of an agreement or similar factors;
 - (b) that the price grossly exceeds the price at which similar goods or services are readily available to like consumers;
 - (c) that the consumer is unable to receive a substantial benefit from the subject-matter of the representation;
 - (d) that there is no reasonable probability of payment of the obligation in full by the consumer;
 - (e) that the consumer transaction is excessively one-sided in favour of someone other than the consumer;
 - (f) that the terms of the consumer transaction are so adverse to the consumer as to be inequitable;
 - (g) that a statement of opinion is misleading and the consumer is likely to rely on it to his or her detriment; or

(h) that the consumer is being subjected to undue pressure to enter into a consumer transaction.

Renegotiation of price

16. It is an unfair practice for a person to use his, her or its custody or control of a consumer's goods to pressure the consumer into renegotiating the terms of a consumer transaction.

Unfair practices prohibited

17. (1) No person shall engage in an unfair practice.

One act deemed practice

(2) A person who performs one act referred to in section 14, 15 or 16 shall be deemed to be engaging in an unfair practice

Advertising excepted

(3) It is not an unfair practice for a person, on behalf of another person, to print, publish, distribute, broadcast or telecast a representation that the person accepted in good faith for printing, publishing, distributing, broadcasting or telecasting in the ordinary course of business.

Rescinding agreement

18 (1) Any agreement, whether written, oral or implied, entered into by a consumer after or while a person has engaged in an unfair practice may be rescinded by the consumer and the consumer is entitled to any remedy that is available in law, including damages.

Remedy if rescission not possible

(2) A consumer is entitled to recover the amount by which the consumer's payment under the agreement exceeds the value that the goods or services have to the consumer or to recover damages, or both, if rescission of the agreement under subsection (1) is not possible,

(a) because the return or restitution of the goods or services is no longer possible; or

(b) because rescission would deprive a third party of a right in the subject-matter of the agreement that the third party has acquired in good faith and for value.

Notice

(3) A consumer must give notice within one year after entering into the agreement if,

(a) the consumer seeks to rescind an agreement under subsection (1); or

(b) the consumer seeks recovery under subsection (2), if rescission is not possible.

[...]

Commencement of an action

(8) If a consumer has delivered notice and has not received a satisfactory response within the prescribed period, the consumer may commence an action.

Same

(9) If a consumer has a right to commence an action under this section, the consumer may commence the action in the Superior Court of Justice.

[...]

Exemplary damages

(11) A court may award exemplary or punitive damages in addition to any other remedy in an action commenced under this section.

Liability

(12) Each person who engaged in an unfair practice is liable jointly and severally with the person who entered into the agreement with the consumer for any amount to which the consumer is entitled under this section.

Limited liability of assignee

(13) If an agreement to which subsection (1) or (2) applies has been assigned or if any right to payment under such an agreement has been assigned, the liability of the person to whom it has been assigned is limited to the amount paid to that person by the consumer.

[...]

Waiver of notice

(15) If a consumer is required to give notice under this Part in order to obtain a remedy, a court may disregard the requirement to give the notice or any requirement relating to the notice if it is in the interest of justice to do so.

[...]

**PART IV
RIGHTS AND OBLIGATIONS RESPECTING SPECIFIC CONSUMER AGREEMENTS**

DEFINITIONS AND APPLICATION

Interpretation

20 (1) In this Part,

“direct agreement” means a consumer agreement that is negotiated or concluded in person at a place other than,

- (a) at the supplier’s place of business, or
- (b) at a market place, an auction, trade fair, agricultural fair or exhibition

[...]

DIRECT AGREEMENTS

Application

41 (1) Sections 42 and 43 apply to direct agreements if the consumer’s total potential payment obligations under the agreement, excluding the cost of borrowing, exceeds a prescribed amount. 2002, c. 30, Sched. A, s. 41 (1).

[...]

Requirements for direct agreements

42 (1) Every direct agreement shall be in writing, shall be delivered to the consumer and shall be made in accordance with the prescribed requirements.

[...]

Restriction on entering into certain direct agreements

43.1 (1) No supplier shall, while at a consumer's dwelling or at any other prescribed place, solicit the consumer to enter into a direct agreement for the supply of prescribed goods or services or enter into such an agreement unless the consumer has initiated contact with the supplier and has specifically requested that the supplier attend at the consumer's dwelling or the other prescribed place for the purpose of entering into such an agreement.

Same

(2) The following activities do not constitute solicitation for the purpose of subsection (1):

1. Leaving marketing materials at a consumer's dwelling or any other place prescribed for the purpose of that subsection without attempting to contact the consumer with respect to any prescribed direct agreement.
2. Such other activities that are prescribed.

Agreement void

(3) A direct agreement that the parties enter into in contravention of subsection (1) is void.

Related agreements void

(4) Any agreement, including the following, that is related to the consumer's obligations under the direct agreement is void:

1. A guarantee or security given by a guarantor for the purpose of securing the performance of those obligations.
2. An agreement under which the consumer gives security for the purpose of securing the performance of those obligations.
3. A credit agreement within the meaning of Part VII that the consumer enters into as a borrower in respect of money that the consumer is required to pay under the direct agreement and any other payment instrument that the consumer enters into in that respect.

PART VIII
LEASING

Definitions

86 In this Part,

“lease” means a consumer agreement for the lease of goods, other than a consumer agreement for the lease of goods in connection with a residential tenancy agreement, and “lessor” and “lessee” have a corresponding meaning;

“lease term” means the period during which the lessee is entitled to retain possession of the leased goods;

“residual obligation lease” means a lease under which the lessor may require the lessee at the end of the lease term to pay the lessor an amount based in whole or in part on the difference, if any, between,

- (a) the estimated wholesale value of the leased goods at the end of the lease term, and

(b) the realizable value of the leased goods at the end of the lease term.

[...]

Representations

88 Any person who makes representations or causes representations to be made about the cost of a lease, whether orally, in writing or in any other form, shall do so in accordance with the prescribed requirements.

Disclosure statement

89 (1) Every lessor shall deliver a disclosure statement for a lease to the lessee before the earlier of,

(a) the time that the lessee enters into the lease; and

(b) the time that the lessee makes any payment in connection with the lease.

Contents of statement

(2) The disclosure statement for a lease shall disclose the prescribed information.

Compensation re: termination of lease

90 (1) The maximum amount of compensation that may be charged to a lessee by a lessor for termination of a lease before the end of the lease term may be limited as prescribed.

Residual obligation lease

(2) The maximum liability of the lessee at the end of the term of a residual obligation lease after returning the leased goods to the lessor shall be the amount calculated in the prescribed manner.

CITATION: Blackford-Hall v. Simply Group, 2021 ONSC 8502
COURT FILE NO.: CV-21-00664652-00CP
CITATION: Bonnick v. Crown Crest Capital Management Corp., 2021 ONSC 8503
COURT FILE NO.: CV-21-00665193-00CP
DATE: 2021/12/29

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**PAULA BLACKFORD-HALL and MERCEDES
CHACIN DE FUCHS, BY HER LITIGATION
GUARDIAN MATHIAS JOHANN FUCHS**

Plaintiffs

- and -

**SIMPLY GROUP, SIMPLY GREEN HOME
SERVICES INC., SIMPLY GREEN HOME
SERVICES (ONTARIO) INC., GREEN PLANET
HOME SERVICES INC., HCSI HOME COMFORT
INC., HCSI HOME COMFORT INC. 2, ECOHOME
FINANCIAL INC., CROWN CREST CAPITAL
CORP., CROWN CREST FINANCIAL CORP.,
ENBRIDGE INC., SIMPLY GROUP ACQUISITION
CORP. and LAWRENCE KRIMKER**

Defendants

AND BETWEEN:

ALGA ADINA BONNICK

Plaintiff

-and-

**CROWN CREST CAPITAL MANAGEMENT CORP.,
CROWN CREST FINANCIAL CORP., and
LAWRENCE KRIMKER**

REASONS FOR DECISION

PERELL J.