

REGISTRAR  
SUPERIOR COURT OF JUSTICE

Court File No.: CV-21-00665193-00CP

## ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

ALGA ADINA BONNICK and GORAN STOILOV DONEV

Plaintiffs

- and -

LAWRENCE KRIMKER, CROWN CREST CAPITAL MANAGEMENT CORP., CROWN CREST FINANCIAL CORP., CROWN CREST CAPITAL TRUST, CROWN CREST CAPITAL II TRUST, CROWN CREST BILLING CORP., CROWN CREST CAPITAL CORP., CROWN CREST FUNDING CORP., SANDPIPER ENERGY SOLUTIONS, SANDPIPER ENERGY SOLUTIONS HOME COMFORT, SIMPLY GREEN HOME SERVICES (ONTARIO) INC., SIMPLY GREEN HOME SERVICES INC., and SIMPLY GREEN HOME SERVICES CORP.

## Defendants

Proceeding under the *Class Proceedings Act*, 1992

**AMENDED STATEMENT OF DEFENCE  
OF THE CORPORATE DEFENDANTS**

1. The Defendants Crown Crest Capital Management Corp., Crown Crest Financial Corp., Crown Crest Capital Trust, Crown Crest Capital II Trust, Crown Crest Billing Corp., Crown Crest Capital Corp., Crown Crest Funding Corp., Sandpiper Energy Solutions and Sandpiper Energy Solutions Home Comfort, Simply Green Home Services (Ontario) Inc., Simply Green Home Services Inc., and Simply Green Home Services Corp. (together, the “**Corporate Defendants**”) admit the allegations contained in paragraph 78 of the Amended Fresh as Amended Statement of Claim.

2. The Corporate Defendants deny the balance of the allegations contained in the Amended Fresh as Amended Statement of Claim except as expressly admitted herein, and put the Plaintiffs to the strict proof thereof.

3. The Defendants Sandpiper Energy Solutions and Sandpiper Energy Solutions Home Comfort are not legal entities and do not exist.

### **The Corporate Defendants**

4. The only Corporate Defendants that had any involvement with the ~~Plaintiffs~~ Plaintiffs' home comfort equipment leases (the "**Leases**" and each, individually, a "**Lease**") are Simply Green Home Services Corp., Crown Crest Capital Management Corp., Crown Crest Capital Trust, and its trustee Crown Crest Funding Corp.

5. **Crown Crest Capital Management Corp.**, an Ontario corporation, is a management company. It has been the beneficiary of the defendant Crown Crest Capital Trust since January 1, 2019.

6. **Crown Crest Capital Trust** is a special purpose funding trust existing under the laws of Ontario.

7. **Crown Crest Funding Corp.** is an Ontario corporation and the trustee of Crown Crest Capital Trust.

8. Crown Crest Capital Trust, through its trustee Crown Crest Funding Corp., purchased from and was assigned ~~the Plaintiffs~~ Ms. Alga Adina Bonnick's ("**Ms. Bonnick**") Lease by 2558561 Ontario Inc. dba. MGA Home Services ("**MGA Home Services**"). Crown Crest Capital Management Corp. registered a notice of security interest (the "**NOSI**") on title to ~~the Plaintiff~~ Ms. Bonnick's property in relation to the Bonnick Lease.

9. **Simply Green Home Services Corp.**, formerly known as Simply Green Home Services Inc., is an Ontario corporation. It had no involvement with Ms. Bonnick's Lease. It originated Mr. Goran Stoilov Donev's ("Mr. Donev") Lease.
10. None of the other Corporate Defendants had any involvement with the ~~Plaintiff's~~ Plaintiffs' Leases.
11. **Crown Crest Financial Corp.** is an inactive Ontario subsidiary of the Defendant Crown Crest Capital Management Corp. It had no involvement with the ~~Plaintiff's~~ Plaintiffs' Leases.
12. **Crown Crest Capital II Trust** is an inactive trust. It had no involvement with the ~~Plaintiff's~~ Plaintiffs' Leases.
13. **Crown Crest Billing Corp.** is an Ontario corporation. It had no involvement with the ~~Plaintiff's~~ Plaintiffs' Leases.
14. **Crown Crest Capital Corp.** is an inactive Ontario corporation and a wholly owned subsidiary of the Defendant Simply Green Home Services Corp. It had no involvement with the ~~Plaintiff's~~ Plaintiffs' Leases.
15. **Simply Green Home Services (Ontario) Inc.** is an Ontario corporation. It is a wholly-owned subsidiary of the Defendant Simply Green Home Services Corp. It had no involvement with the ~~Plaintiff's~~ Plaintiffs' Leases.
16. **Simply Green Home Services Inc.** is an Ontario corporation. It had no involvement with the ~~Plaintiff's~~ Plaintiffs' Leases.

17. ~~Simply Green Home Services Corp., formerly known as Simply Green Home Services Inc., is an Ontario corporation. It had no involvement with the Plaintiff's Lease.~~

18. **Sandpiper Energy Solutions** and **Sandpiper Energy Solutions Home Comfort** are not legal entities and do not exist. Sandpiper Energy Solutions is a registered business name of the Defendant Simply Green Home Services Corp. Sandpiper Energy Solutions Home Comfort is a registered business name of the Defendant Crown Crest Funding Corp. ~~Neither Simply Green Home Services Corp. nor Crown Crest Funding Corp. had any no involvement with the Plaintiff's~~ Plaintiffs' Leases. Simply Green Home Services Corp. did not have involvement with Ms. Bonnick's Lease.

19. Lawrence Krimker is an individual residing in Toronto, Ontario. He is the founder and Chief Executive Officer of Simply Green Home Services Corp. and Crown Crest Capital Management Corp.

20. At all material times, Mr. Krimker was an officer and director of the Corporate Defendants Crown Crest Capital Management Corp., Crown Crest Financial Corp., Crown Crest Billing Corp., Simply Green Home Services (Ontario) Inc., Simply Green Home Services Corp. and Simply Green Home Services Inc., and an officer of Crown Crest Capital Corp. Mr. Krimker was not an officer or director of the other Corporate Defendants at any relevant time.

**The Plaintiff Ms. Bonnick's Lease**

21. On or about July 22, 2017, the Plaintiff, Ms. Bonnick, entered into a home comfort equipment lease agreement with MGA Home Services for the lease of a water softener, carbon filter and HEPA air filter in the Plaintiff's home (~~defined above as the~~ **"Bonnick Lease"**).

22. The ~~Plaintiff's~~ Bonnick Lease was originated by MGA Home Services. MGA Home Services is an arm's length party from the Corporate Defendants. None of the Corporate Defendants has any interest in MGA Home Services.

23. The Corporate Defendants had no involvement in the origination of the Bonnick Lease, including the events alleged at paragraphs ~~28-42~~ 29-43 of the Amended Fresh as Amended Statement of Claim. The Corporate Defendants put the Plaintiff, Ms. Bonnick, to the strict proof thereof.

24. The terms of the ~~Plaintiff's~~ Bonnick Lease provided the following:

- The initial monthly charges payable by ~~the Plaintiff~~ Ms. Bonnick, being \$59.99/month plus tax for each piece of equipment, for a total of \$179.97/month plus tax;
- The monthly charges could increase by up to 3.5% annually throughout the term of the Bonnick Lease, at the discretion of the lessor;
- The term of the Bonnick Lease, which ends when the Lease is terminated in accordance with its terms, or the useful life of the leased equipment has ended;
- The lessor's obligation to service and repair the leased equipment at no cost to ~~the Plaintiff~~ Ms. Bonnick during the Bonnick Lease term;
- The lessor's obligation to replace the leased equipment at no cost to ~~the Plaintiff~~ Ms. Bonnick if it is beyond repair;
- ~~The Plaintiff's~~ Ms. Bonnick's option to purchase the leased equipment or the Bonnick Lease for the buyout price specified in the Lease;

- MGA Home Services and its authorized personnel, representatives, contractors and assigns have the right to assign any interest in the Lease and the leased equipment, in their sole discretion without consent of or notice to ~~the Plaintiff~~ Ms. Bonnick; and
- ~~The Plaintiff~~ Ms. Bonnick granted an exclusive security interest to MGA Home Services and its authorized personnel, representatives, contractors and assigns and granted them the right to register the security interest against ~~the Plaintiff~~ Ms. Bonnick and against title to the lands where the leased equipment is located. ~~The Plaintiff~~ Ms. Bonnick waived the right to receive a copy of such registration.

25. The Lease advised ~~the Plaintiff~~ Ms. Bonnick of her consumer rights in large font, on the front and back page of the Bonnick Lease, including her right to cancel the Lease within 10 days of receiving the Lease.

26. ~~The Plaintiff~~ Ms. Bonnick received a verification call from MGA Home Services to confirm the Lease when it was entered into, before the leased equipment was installed. ~~The Plaintiff~~ Ms. Bonnick confirmed that she had a copy of the Lease, understood its terms, and understood her right to cancel the Lease within 10 days.

27. The Corporate Defendants deny the allegation that any sales representative of MGA Home Services who interacted with ~~the Plaintiff~~ Ms. Bonnick held themselves out as working for "Enercare". ~~The Plaintiff~~ Ms. Bonnick understood that the Lease was with MGA Home Services and that the sales representative with whom she dealt was a representative of MGA Home Services. The Corporate Defendants deny paragraphs 29 and 30 of the Amended Fresh as Amended Statement of Claim and put ~~the Plaintiff~~ Ms. Bonnick to the strict proof thereof.

28. ~~The Plaintiff~~ Ms. Bonnick received a number of goods and services under the Bonnick Lease, including the following:

- use of good and valuable home equipment over the course of the Lease term;
- the ability to finance the cost of using the leased equipment over the Lease term, instead of pay for equipment up-front;
- installation of the leased equipment at no additional cost;
- removal of her old home comfort equipment at no additional cost;
- repairs to or replacement of the leased equipment at no additional cost;
- access to a customer care service centre to address any problems with the leased equipment; and
- “peace of mind” that any problems with the leased equipment would be addressed without additional cost to her.

29. The Bonnick Lease disclosed all material terms required by law. ~~The Plaintiff~~ Ms. Bonnick received a copy of the Lease. ~~The Plaintiff~~ Ms. Bonnick was aware of and understood the terms of ~~the her~~ Lease before entering into it. ~~The Plaintiff~~ Ms. Bonnick was not at a gross informational disadvantage.

30. There was no obligation to disclose to ~~the Plaintiff~~ Ms. Bonnick the total lease cost, total amount payable, the security granted or the implicit finance charge or annual percentage rate under the Lease. In the alternative, these items were disclosed to ~~the Plaintiff~~ Ms. Bonnick at the time the Lease was entered into, insofar as it was possible to describe the manner in which they would

be calculated. However, it was not possible to quantify these items at the time the Bonnick Lease was entered into.

31. In any event, the information that ~~the Plaintiff~~ Ms. Bonnick pleads she did not receive, including as alleged at paragraphs ~~22-23, 51, 64, 66-67, 69, 72-73 and 76~~ 23-24, 52, 80, 82-83, 85, 88-89 and 92 of the Amended Fresh as Amended Statement of Claim, was not material and would not reasonably have affected ~~the Plaintiff's~~ Ms. Bonnick's or any decision to enter into the Lease. Importantly, ~~the Plaintiff~~ Ms. Bonnick did not request any such information when she entered into the Lease.

32. Contrary to the allegations in paragraph ~~49~~ 20 of the Amended Fresh as Amended Statement of Claim, MGA Home Services determined the Bonnick Lease terms, not the Corporate Defendants. MGA Home Services did not require the Corporate Defendants' approval to set the Lease terms or to enter into the Lease with ~~the Plaintiff~~ Ms. Bonnick. The Corporate Defendants did not "vet" ~~the Plaintiff~~ Ms. Bonnick before MGA Home Services could or did enter into the Lease.

33. The leased equipment was installed in ~~the Plaintiff's~~ Ms. Bonnick's home in a good and workmanlike manner. The leased equipment was good and valuable working home comfort equipment. ~~The Plaintiff~~ Ms. Bonnick did not ask that the leased equipment be repaired or replaced in accordance with the Lease. The leased equipment was not defective and did not cause damage to ~~the Plaintiff's~~ Ms. Bonnick's home. The Corporate Defendants specifically deny the allegations at paragraph ~~53~~ 54 of the Amended Fresh as Amended Statement of Claim.

34. Crown Crest Capital Trust, through its trustee Crown Crest Funding Corp., subsequently purchased and was assigned ~~the Plaintiff's~~ Ms. Bonnick's Lease from MGA Home Services



pursuant to a Master Assignment and Program Agreement, after determining in its discretion that the Lease was suitable for purchase. This included a determination that the Lease terms were satisfactory to Crown Crest Funding Corp. as trustee of Crown Crest Capital Trust, confirmation of a satisfactory credit check for ~~the Plaintiff~~ Ms. Bonnick and confirmation that she owned the property where the leased equipment was installed.

35. Although not required, Ms. Bonnick was subsequently advised that Crown Crest Capital Trust had purchased and taken assignment of the Lease. ~~The Plaintiff~~ Ms. Bonnick did not object to the assignment, and nor did she have a reason or right to object to the assignment.

36. MGA Home Services is an arm's length third party from the Corporate Defendants. Crown Crest Funding Corp. as trustee of Crown Crest Capital Trust acquired the Lease for fair value. It took reasonable steps to confirm the Lease was lawful and complied with applicable consumer protection laws before purchasing it. It did not have, and could not through reasonable diligence have had, notice of the possible liabilities alleged in ~~the Plaintiff's~~ Ms. Bonnick's Amended Fresh as Amended Statement of Claim.

37. On or about April 3, 2018, Crown Crest Capital Management Corp. registered a notice of security interest in the leased equipment in the amount of \$14,448.00 (defined above as the "NOSI"). The Bonnick Lease expressly permitted the registration of the NOSI on title to ~~the Plaintiff's~~ Ms. Bonnick's property. The ~~amount~~ registration of the NOSI was not unconscionable. The amount of the NOSI was not the total amount payable or total lease cost to be paid by ~~the Plaintiff~~ Ms. Bonnick under the Lease.

38. Contrary to paragraphs 1(i), ~~13, 24, 26, 57, 71, 93~~ 14, 25, 27, 73, 87, and 109 of the Amended Fresh as Amended Statement of Claim, the NOSI is not a lien or encumbrance on ~~the~~

~~Plaintiff's~~ Ms. Bonnick's property. The NOSI is notice that the Crown Crest Capital Management Corp. holds a security interest in the leased equipment that is installed in ~~the Plaintiff's~~ Ms. Bonnick's property. Without the NOSI, a subsequent purchaser for value might purchase the leased equipment or the entire property without knowledge of Crown Crest Capital Management Corp.'s interest. However, the NOSI does not entitle Crown Crest Capital Management Corp. to enforce the security interest against ~~the Plaintiff's~~ Ms. Bonnick's real property.

39. The registration of the NOSI ~~against the Plaintiff's~~ on title to Ms. Bonnick's property did not impede her ability to deal with the property, including to refinance or sell it. If ~~the Plaintiff~~ Ms. Bonnick had any concerns about the NOSI in connection with a sale of her property, Crown Crest Capital Management Corp. would have granted a reasonable waiver of its priority of registration. However, ~~the Plaintiff~~ Ms. Bonnick made no such request.

40. ~~The Plaintiff~~ Ms. Bonnick was invoiced \$67.79 per month for each piece of equipment, including HST. Thereafter, the monthly payments were increased for each piece of equipment as permitted under the Lease, as follows: \$70.16 including HST starting January 4, 2019; \$72.61 including HST starting January 23, 2020; and \$75.16 including HST starting March 23, 2021. All amounts invoiced to ~~the Plaintiff~~ Ms. Bonnick were in accordance with the Lease.

41. The price of ~~the Plaintiff's~~ Ms. Bonnick's Lease did not grossly exceed the price at which similar goods or services provided under the Lease are readily available to customers like ~~the Plaintiff~~ Ms. Bonnick. The cost of the Lease cannot be compared to the cost of purchasing the equipment outright. The Lease was a means of financing the cost of using home comfort equipment over a lengthy period of time, rather than making an upfront payment. The Lease also included lifetime services, including repair and replacement as needed, installation of the new equipment,

and the removal of any old equipment. Long-term financing and extended “peace of mind” services offer material value. ~~The Plaintiff’s~~ Ms. Bonnick’s Lease was competitively priced, including relative to any providers offering comparable packages of equipment and services.

42. ~~The Plaintiff’s~~ Ms. Bonnick’s Lease remains in effect and has not terminated in accordance with its terms. To date, ~~the Plaintiff~~ Ms. Bonnick has made no payments of the monthly amounts due under the Lease. Nor has ~~the Plaintiff~~ Ms. Bonnick ever paid the buyout amount to terminate her Lease. At all times, Crown Crest Capital Trust has been entitled to request payment from ~~the Plaintiff~~ Ms. Bonnick and to enforce the terms of the Lease.

#### Mr. Donev’s Lease

43. On or about May 19, 2015, the Plaintiff, Mr. Donev, entered into a home comfort equipment lease agreement with Simply Green Home Services Corp. (at the time known as Simply Green Home Services Inc.) (“Simply Green”) for the lease of an air conditioner in Mr. Donev’s home (the “Donev Lease”).

44. The Donev Lease was originated by Simply Green. The Donev Lease was subsequently assigned to Crown Crest Capital Trust, through its trustee Crown Crest Funding Corp. The remaining Corporate Defendants had no involvement in the Donev Lease.

45. Before Mr. Donev entered into the Donev Lease, the sales representative who attended Mr. Donev’s home accurately explained the Lease terms, answered all of Mr. Donev’s questions, and Mr. Donev indicated that he understood the terms.

46. The Corporate Defendants put Mr. Donev to the strict proof of the facts alleged, including the events alleged at paragraphs 57-69 of the Amended Fresh as Amended Statement of Claim.

47. The terms of the Donev Lease provided the following:

- The initial monthly charges payable by Mr. Donev, being \$79.99/month plus tax for the air conditioner;
- The monthly charges could increase by up to 3.5% annually throughout the term of the Donev Lease;
- The term of the Donev Lease, which was 180 months;
- The lessor's obligation to service and repair the leased equipment at no cost to Mr. Donev during the Donev Lease term;
- The lessor's obligation to replace the leased equipment at no cost to Mr. Donev if it was beyond repair;
- Mr. Donev's option to purchase the leased equipment for the buyout price that can be calculated based on the formula in the Donev Lease;
- Simply Green and its authorized personnel, representatives, contractors and assigns have the right to assign any interest in the Donev Lease and the leased equipment, in their sole discretion without consent of or notice to Mr. Donev; and
- Mr. Donev expressly granted an exclusive security interest to Simply Green and its authorized personnel, representatives, contractors and assigns and granted them the right to register the security interest against Mr. Donev and against title to the lands where the leased equipment is located. Mr. Donev waived the right to receive a copy of such registration.

48. Mr. Donev received a verification call from Simply Green to confirm the Donev Lease when it was entered into, before the leased equipment was installed. Among other things, Mr. Donev confirmed that he had received a copy of the Donev Lease, understood its terms, and understood his right to cancel the Donev Lease within 10 days.

49. Mr. Donev received a number of goods and services under the Donev Lease, including the following:

- use of good and valuable home equipment over the course of the Donev Lease term;
- the ability to finance the cost of using the leased equipment over the Donev Lease term, instead of pay for equipment up-front;
- installation of the leased equipment at no additional cost;
- removal of his old home comfort equipment at no additional cost;
- repairs to the leased equipment at no additional cost;
- access to a customer care service centre to address any problems with the leased equipment; and
- “peace of mind” that any problems with the leased equipment would be addressed without additional cost to him.

50. Government rebates and energy cost savings for upgrading to and using more energy efficient equipment were generally available at the time of the Donev Lease. The Corporate Defendants have no knowledge of what specific rebates or cost savings Mr. Donev sought or

received or Mr. Donev's assertion at paragraph 58 of the Amended Fresh as Amended Statement of Claim.

51. The Donev Lease disclosed all material terms required by law. Mr. Donev received a copy of the Donev Lease. Mr. Donev was aware of and understood the terms of the Donev Lease before entering into it. Mr. Donev was not at a gross informational disadvantage.

52. There was no obligation to disclose to Mr. Donev the total lease cost, total amount payable, the security granted or the implicit finance charge or annual percentage rate under the Donev Lease. In the alternative, these items were disclosed to him at the time the Donev Lease was entered into, insofar as it was possible to describe the manner in which they would be calculated; however, it was not possible to quantify these items at the time the Donev Lease was entered into.

53. In any event, the information that Mr. Donev pleads he did not receive, including as alleged at paragraphs 23-24, 64, 80, 82-83, 85, 88-89 and 92 of the Amended Fresh as Amended Statement of Claim, was not material and would not reasonably have affected Mr. Donev's or any decision to enter into the Donev Lease. Importantly, Mr. Donev did not request any such information when he entered into his Lease.

54. Following the installation of the home comfort equipment, Simply Green called Mr. Donev who confirmed that the equipment was installed in a good and workmanlike manner. The leased equipment was good and valuable working home comfort equipment.

55. On or about July 30, 2015, Simply Green registered a notice of security interest in the leased equipment in the amount of \$7,269.00 (defined above as a "NOSI"). The Donev Lease expressly permitted the registration of the NOSI on title to Mr. Donev's property. The registration

of the NOSI was not unconscionable. The amount of the NOSI was not the total amount payable or total lease cost to be paid by Mr. Donev under the Donev Lease.

56. The Donev Lease was subsequently assigned to Crown Crest Capital Trust, through its trustee Crown Crest Funding Corp.

57. The registration of the NOSI on title to Mr. Donev's property did not impede his ability to deal with the property, including to refinance or sell it. If he had any concerns about the NOSI in connection with a sale of his property, Crown Crest Capital Trust would have granted a reasonable waiver of its priority of registration. However, he made no such request.

58. Mr. Donev was invoiced \$90.39 per month for the air conditioner, including HST. Thereafter, the monthly payments were increased for the equipment as permitted under the Donev Lease, as follows: \$93.55 including HST starting February 28, 2018; \$96.83 including HST starting January 23, 2019; \$100.22 including HST starting February 19, 2020; \$103.72 including HST starting May 16, 2021; and \$107.35 including HST starting February 16, 2023. All amounts invoiced to Mr. Donev were in accordance with his Lease.

59. Simply Green and Crown Crest Capital Trust were entitled to invoice and collect, and Mr. Donev paid, all amounts invoiced under the Donev Lease.

60. The price of Mr. Donev's Lease did not grossly exceed the price at which similar goods or services provided under the Donev Lease are readily available to customers like Mr. Donev. The cost of the Donev Lease cannot be compared to the cost of purchasing the equipment outright. The Donev Lease was a means of financing the cost of using home comfort equipment over a lengthy period of time, rather than making an upfront payment. The Donev Lease also included lifetime

services, including repair as needed. Long-term financing and extended “peace of mind” services offer material value. Mr. Donev’s Lease was competitively priced, including relative to any providers offering comparable packages of equipment and services.

61. Mr. Donev’s Lease remains in effect and has not terminated in accordance with its terms. At all times, Crown Crest Capital Trust has been entitled to request payment from Mr. Donev and to enforce the terms of his Lease.

**No Liability of Defendants Not Involved or Non-Existent**

62. Sandpiper Energy Solutions and Sandpiper Energy Solutions Home Comfort are not legal entities and do not exist. They cannot have any liability to the Plaintiffs.

63. Crown Crest Financial Corp., Crown Crest Capital II Trust, Crown Crest Billing Corp., Crown Crest Capital Corp., Simply Green Home Services (Ontario) Inc., and Simply Green Home Services Inc., ~~and Simply Green Home Services Corp.~~ had no involvement in the ~~Plaintiff’s~~ Plaintiffs’ Leases at any time and do not have any liability to the Plaintiffs.

**No Liability Under the Consumer Protection Act**

**Corporate Defendants Not Liable**

64. The Corporate Defendants are not liable under the *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Sched. A (“CPA”) in relation to the Plaintiffs or ~~her~~ their Leases, as alleged in the Amended Fresh as Amended Statement of Claim or at all.

65. None of the Corporate Defendants are or were “suppliers” with respect to the ~~Plaintiff’s~~ Plaintiffs’ Leases as defined under the CPA. The Leases was not originated by any of the Corporate



Defendants, except for Simply Green. There was no relationship between the Corporate Defendants and MGA Home Services regarding the Bonnick Lease that would make any of the Corporate Defendants “suppliers” under the *CPA* in relation to the Plaintiff, Ms. Bonnick, or her Lease.

66. Other than Crown Crest Capital Trust through its trustee Crown Crest ~~Financial~~ Funding Corp., none of the Corporate Defendants are or were “assignees” with respect to the ~~Plaintiff's~~ Plaintiffs' Leases as defined under the *CPA*.

67. In the alternative, and further, the Corporate Defendants did not breach the *CPA* in relation to the Plaintiffs or ~~her~~ their Leases, as alleged in the Amended Fresh as Amended Statement of Claim or at all.

68. In the alternative, and further, the Leases ~~was~~ were not unlawful or contrary to the *CPA*, as alleged or at all. In the further alternative, the Corporate Defendants did not know, and had no reason to believe, that the Leases ~~was~~ were unlawful or contrary to the *CPA*, which is denied.

#### **No Unfair Practices**

69. The Corporate Defendants deny that they engaged in, or that the Leases constitutes, any unfair practices contrary to sections 14 or 15 of the *CPA* as alleged or at all.

70. None of the Corporate Defendants, except for Simply Green, originated the ~~Plaintiff's~~ Plaintiffs' Lease. Providing financing for, registering a NOSI in relation to, and subsequently

taking assignment of the Leases or originating and subsequently assigning the Leases does not constitute an unfair practices contrary sections 14 or 15 of the CPA.

71. There was no failure to disclose to the Plaintiffs any material information required to be disclosed to ~~her~~them. The Plaintiffs received all material information ~~she~~ they ~~was~~ were entitled to receive. There was no exaggeration, innuendo or ambiguity as to any material fact, and no failure to state a material fact. Any inadequate disclosure, which is denied, did not deceive or tend to deceive.

72. The total lease cost, total amount payable and the security given under the Leases are not material facts requiring disclosure to the Plaintiffs. In the alternative, they were adequately described to the Plaintiffs. In the further alternative, it was not possible to ascertain these amounts at the time the Leases ~~was~~ were entered into.

73. The terms of the Leases are not excessively one-sided, or so adverse to the Plaintiffs as to be inequitable, including with respect to the NOSIs.

74. The Lease prices does not grossly exceed the prices at which similar goods and services are readily available to customers like the Plaintiffs.

#### **No Breach of the Direct Agreement Provisions**

75. There is no breach of s. 42(1) of the CPA or of the *Requirements for Direct Agreements Subject to Section 43.1 of Act*, O. Reg 8/18 (the "**Direct Agreements Regulation**") in relation to the Plaintiffs or ~~her~~ their Leases, as alleged or at all.

76. The Corporate Defendants, except for Simply Green, did not originate the Leases. They put the Plaintiffs to strict proof of establishing that the Leases ~~is~~ are a "direct agreement" as defined under the CPA.

77. Further, and in the alternative, the Direct Agreements Regulation does not have any application to the ~~Plaintiff's~~ Plaintiffs' Leases. The Direct Agreements Regulation came into force on March 1, 2018 and May 1, 2018, after the ~~Plaintiff's~~ Plaintiffs' Leases ~~was~~ were entered into, and does not have retroactive effect.

78. Further, and in the alternative, the Leases complied with all requirements of s. 42(1) of the CPA in force at the time of, and which apply to, the ~~Plaintiff's~~ Plaintiffs' Leases.

79. All prescribed information was disclosed to the Plaintiffs as required by law. The total amount payable under the Leases and the security given were not material facts requiring disclosure.

80. The Leases ~~was~~ were for goods and services to be supplied during an indefinite period. The Leases described the amount and frequency of the periodic payments.

81. In the alternative, the total amount payable under the Leases and the security given were appropriately described in the Leases. In the further alternative, it was not possible to ascertain the total amount payable under the Leases at the time the Leases ~~was~~ were entered into. In the further alternative, the Plaintiffs had sufficient information to ascertain the total amount payable and the security given under the Leases, and this was disclosed to the Plaintiffs at the time the Leases ~~was~~ were entered into.

### **No Breach of Lease Requirements**

82. There is no breach of s. 89(2) of the *CPA* or s. 74(2) of *General Regulation*, O. Reg 17/05 in relation to the Plaintiffs or ~~her~~ their Leases, as alleged or at all.

83. At all times, all prescribed information was disclosed to the Plaintiffs as required by law, including any disclosure statement.

84. Further, and in the alternative, there was no requirement to disclose the total lease cost or implicit finance charge. It was not possible to determine the total lease cost or the amount of every periodic payment under the Leases at the time the Leases ~~was~~ were entered into. The Leases expressly provided that the periodic payments under the Leases could change during the Lease, and said changes were both variable and discretionary. Additionally, the term of the leases ~~was~~ were measured by the useful life of the equipment, which could not be determined at the outset. The Corporate Defendants plead and rely on s. 77 of *General Regulation*, O. Reg 17/05.

85. In the alternative, the Leases described the payments under the Leases, how the payments could change over time, and at whose discretion. The Plaintiffs had sufficient information to ascertain the total cost of the Leases and the implicit finance charge, and this information was appropriately disclosed to the Plaintiffs before the Leases ~~was~~ were entered into.

### **Slander of Title**

86. The Corporate Defendants deny the registration of the NOSIs constituted slander of title, as alleged or at all.

87. The Leases expressly granted an exclusive security interest to MGA Home Services and Simply Green and their ~~its~~ authorized personnel, representatives, contractors and assigns, and

granted them the right to register notice of the security interest on title to the ~~Plaintiff's~~ Plaintiffs' ~~property properties~~ without further notice to the Plaintiffs.

88. The security granted under the Leases was lawful, and the registrations of the NOSIs on the title to the ~~Plaintiff's~~ Plaintiffs' ~~property properties~~ was were lawful.

89. The registrations of the NOSIs was were not a false statements that the Plaintiffs had defective title or otherwise. Further, and in the alternative, the NOSIs was were not published maliciously or with malicious intent.

90. The Plaintiffs ~~is~~ are and ~~was~~ were at all times able to dispose of and deal with ~~her~~ their property. ~~Her~~ Their ability to do so is and was not affected by the registrations of the NOSIs.

91. The registrations of the NOSIs did not lower the values of the ~~Plaintiff's~~ Plaintiffs' ~~property properties~~.

92. The Plaintiffs ~~has~~ have not suffered any loss or damage as a result of the registrations of the NOSIs, and the Corporate Defendants put ~~her~~ them to the strict proof thereof.

### **No Remedies**

93. The Plaintiffs ~~has~~ have not suffered any loss or damage for which the Corporate Defendants are liable under the CPA or at law, as alleged or at all.

94. The Leases was were made in accordance with the CPA and is binding on the Plaintiffs. In any event, the Plaintiff, Ms. Bonnick, never made any payment under ~~the~~ her Lease or suffered any loss in connection with the Lease.

95. The Plaintiffs ~~is~~ are not entitled to any damages, under the *CPA* or at law, as alleged or at all.

96. The Plaintiffs ~~is~~ are not entitled to any remedies under s. 18 of the *CPA*, as alleged or at all.

97. The Plaintiffs ~~is~~ are not entitled to rescission of ~~her~~ their Leases. Rescission would deprive any applicable Corporate Defendants, who are third parties, of a right in the subject-matter of the Leases that they acquired in good faith and for value. The Corporate Defendants plead and rely on s. 18(2) of the *CPA*.

98. Further, and in the alternative, rescission of the Leases is not available because the Plaintiffs used the leased equipment and ~~is~~ are not in a position to return it in its original condition. Return or restitution of the leased goods and services is no longer possible.

99. Further, and in the alternative, the Plaintiffs ~~has~~ have not given notice of ~~her~~ their claims in accordance with the *CPA*, and as such is not entitled to rescission of ~~her~~ their Leases or any other remedies sought. It is not in the interest of justice to waive any notice requirement. The Corporate Defendants rely on s. 18(3) of the *CPA*.

100. Further, and in the alternative, if any Corporate Defendant, except for Simply Green Home Services Corp., ~~is~~ are liable to the Plaintiffs, which is denied, they are an “assignee” as defined under the *CPA* and their liability is limited to the amounts paid by the Plaintiffs to that specific assignee.

101. The Plaintiffs ~~is~~ are not entitled to disgorgement of any Corporate Defendant's profits, as alleged or at all. Disgorgement is not an available remedy under the *CPA*. Further, and in the alternative, it is not an appropriate remedy in the circumstances.

### **Unjust Enrichment**

102. The Corporate Defendants have not been unjustly enriched, as alleged or at all.

103. None of the Corporate Defendants charged or retained any unlawful amounts from the Plaintiff.

104. The Plaintiffs ~~has~~ have not suffered any deprivation. ~~She~~ They received the goods and services provided to ~~her~~ them under the Leases and, in the case of Ms. Bonnick, she did not pay any amount due under the Lease.

105. Further, and in the alternative, the Plaintiffs ~~has~~ have not suffered any deprivation that corresponds to any alleged unjust enrichment of the Corporate Defendants.

106. Further, and in the alternative, the Leases ~~is~~ are a juristic reason for any enrichment of any Corporate Defendants.

107. Further, and in the alternative, the Plaintiffs ~~is~~ are not entitled to restitution of any amount by which any Corporate Defendant was enriched.

### **Injunctive Relief**

108. There is no basis for injunctive relief with respect to the Plaintiffs. The Corporate Defendants deny the conduct alleged in the Amended Fresh as Amended Statement of Claim with

respect to their involvement with the Leases or the Plaintiffs, if any, was unlawful or that they are liable for it.

### **Punitive Damages**

109. The Plaintiffs ~~is~~ are not entitled to punitive or exemplary damages as alleged or at all. None of the Corporate Defendants engaged in any wrongful conduct that was willful, deliberate, high-handed, outrageous, callous, or in contemptuous disregard of the ~~Plaintiff's~~ Plaintiffs' rights and interests or took advantage of any alleged vulnerability of the Plaintiffs. The Corporate Defendants' conduct did not depart to a marked degree from ordinary standards of decent behaviour.

### **No Joint and Several Liability**

110. The Corporate Defendants deny that they are jointly or severally liable with any other Defendant in relation to the Plaintiffs or ~~her~~ their Leases, as alleged or at all, under s. 18(12) of the CPA, in law, or otherwise.

### **Claims ~~is~~ are Statute-Barred**

111. The ~~Plaintiff's~~ Plaintiffs' claims ~~is~~ are statute-barred pursuant to s. 4 of the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B. The Corporate Defendants rely on s. 5 of the *Limitations Act*. The facts on which the Plaintiffs ~~relies~~ rely in the Amended Fresh as Amended Statement of Claim were available to ~~her~~ them more than two years before ~~she~~ they commenced the within Action.

112. The Corporate Defendants did not engage in any fraudulent concealment as alleged or at all. They not willfully or fraudulently conceal the ~~Plaintiff's~~ Plaintiffs' alleged causes of action,



any material term of the Leases or the NOSIs. It would not be unconscionable to enforce the applicable limitation period against the Plaintiffs.

### **Set Off**

113. In the event that the Plaintiffs ~~is~~ are entitled to any damages, which is denied, the Leases remains a valid, subsisting, and binding agreement. The Plaintiff, Ms. Bonnick, has paid none of the amounts due under ~~the~~ her Lease and she is in breach of its terms.

114. Crown Crest Funding Corp. as trustee of Crown Crest Capital Trust purchased the Bonnick Lease in good faith and in an arm's length transaction with the expectation of receiving the amounts due under the Lease. Because of ~~the Plaintiffs~~ Ms. Bonnick's breach of her obligations under ~~the~~ her Lease, Crown Crest Funding Corp. as trustee of Crown Crest Capital Trust, has received nothing.

115. Crown Crest Funding Corp. as trustee of Crown Crest Capital Trust is entitled to set off the price of the buyout under the terms of the Bonnick Lease as against any damages due to the Plaintiff, Ms. Bonnick, which are denied. In the alternative, Crown Crest Funding Corp. as trustee of Crown Crest Capital Trust, is entitled to set off the cost of the Bonnick Lease as against any damages due to the Plaintiff, Ms. Bonnick, which are denied.

### **Class Proceeding Not Suitable**

116. The Corporate Defendants deny that this action is suitable for a class proceeding. The criteria for certification under s. 5(1) of the *Class Proceedings Act*, S.O. 1992, c. 6 (the "***Class Proceedings Act***") have not been met.

117. The Corporate Defendants deny that that the Plaintiffs ~~is~~ are entitled to aggregate damages under the *Class Proceedings Act*. The requirements under s. 24 of the *Class Proceedings Act* have not been met.

118. This Amended Statement of Defence responds to the ~~Plaintiffs~~ Plaintiffs' individual claims only. The Corporate Defendants reserve the right to amend this Amended Statement of Defence if the action is certified as a class proceeding and respond to the claims, if any, as certified.

119. The Corporate Defendants ask that this action be dismissed with costs.

~~April 17, 2023~~ July 28, 2023

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Plaintiff Defendants

Court File No.: CV-21-00665193-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

Proceeding under the *Class Proceedings Act*, 1992

**AMENDED STATEMENT OF DEFENCE**

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