

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

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

**AMENDED STATEMENT OF DEFENCE
OF THE DEFENDANT, LAWRENCE KRIMKER**

1. Except as expressly admitted herein, the Defendant Lawrence Krimker denies all of the allegations contained in the Amended Fresh as Amended Statement of Claim and puts the ~~Plaintiff~~ Plaintiffs to the proof thereof.

LAWRENCE KRIMKER

2. Mr. Krimker is an individual residing in Toronto, Ontario. He is the founder and Chief Executive Officer of Simply Group. Mr. Krimker is the director and/or officer of certain corporations within Simply Group, as described below.

THE CORPORATE DEFENDANTS

3. 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., Simply Green Home Services (Ontario) Inc., Simply Green Home Services Inc., and Simply Green Home Services Corp. (together, the “Corporate Defendants”) are or were each part of Simply Group.

4. Crown Crest Capital Management Corp. is a corporation incorporated under the laws of Ontario. It is a management company and has been the beneficiary of the Defendant Crown Crest Capital Trust since January 1, 2019. At all material times, Mr. Krimker was an officer and director of Crown Crest Capital Management Corp.

5. Crown Crest Financial Corp. is an inactive Ontario subsidiary of Crown Crest Capital Management Corp. It had no involvement with the ~~Plaintiff's~~ Plaintiffs' home comfort equipment ~~lease~~ leases. At all material times, Mr. Krimker was the President and a director of Crown Crest Financial Corp.

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

7. Crown Crest Capital II Trust is an inactive trust. It had no involvement with the ~~Plaintiff's~~ Plaintiffs' home comfort equipment ~~lease~~ leases.

8. Crown Crest Billing Corp. is a corporation incorporated under the laws of Ontario. It had no involvement with the ~~Plaintiff's~~ Plaintiffs' home comfort equipment ~~lease~~ leases. At all material times, Mr. Krimker was an officer and director of Crown Crest Billing Corp.

9. Crown Crest Capital Corp. is an inactive corporation incorporated under the laws of Ontario and a wholly owned subsidiary of the Defendant Simply Green Home Services Corp. It had no involvement with the ~~Plaintiff's~~ Plaintiffs' home comfort equipment ~~lease~~ leases. At all material times, Mr. Krimker was an officer of Crown Crest Capital Corp.

10. Crown Crest Funding Corp. is a corporation incorporated under the laws of Ontario. It is the trustee of the Defendant Crown Crest Capital Trust.

11. Simply Green Home Services (Ontario) Inc. is corporation incorporated under the laws of Ontario. It is a wholly-owned subsidiary of the Defendant Simply Green Home Services Corp It had no involvement with the ~~Plaintiff's~~ Plaintiffs' home comfort equipment ~~lease~~ leases. At all material times, Mr. Krimker was an officer and director of Simply Green Home Services (Ontario) Inc.

12. Simply Green Home Services Inc. is a corporation incorporated under the laws of Ontario. It had no involvement with the ~~Plaintiff's~~, Alga Adina Bonnick's, home comfort equipment lease. It originated the Plaintiff, Goran Stoilov Donev's, home comfort equipment lease. At all material times, Mr. Krimker was an officer and director of Simply Green Home Services Inc.

13. Simply Green Home Services Corp., formerly known as Simply Green Home Services Inc., is a corporation incorporated under the laws of Ontario. It had no involvement with the ~~Plaintiff's~~ Plaintiffs' home comfort equipment ~~lease~~ leases. At all material times, Mr. Krimker was an officer and director of Simply Green Home Services Corp.

14. 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 involvement with the ~~Plaintiff's~~ Plaintiffs' home comfort equipment ~~lease~~ leases.

MR. KRIMKER'S ROLE WITHIN SIMPLY GROUP

15. Simply Group is a large organization with a number of business lines, including but not limited to the consumer equipment leasing business. While the size and organization of Simply Group and the Corporate Defendants has changed over time, Mr. Krimker has consistently held a senior role focused on high-level strategic matters. Mr. Krimker has not generally been involved in day-to-day operational matters pertaining to Simply Group or any of the Corporate Defendants. The vast majority of decisions made by the Corporate Defendants, including decisions relating to the subject-matter related to the allegations in the Amended Fresh as Amended Statement of Claim, have been made by others working at corporations within Simply Group.

16. In terms of Simply Group's structure, by way of example, as of early 2022:

- (a) Simply Group was led by an Executive Team, who oversaw a broader Leadership Team, who in turn directly or indirectly supervised hundreds of employees.
- (b) Mr. Krimker was the CEO of Simply Group. He was part of the Executive Team, along with the Chief Financial Officer and the Chief Operating Officer.
- (c) At that time, reporting to the COO was a broader Senior Leadership Team, which included individuals in the following roles:

- (i) Chief Risk Officer;
 - (ii) Executive Vice-President, Operations;
 - (iii) Executive Vice-President, Strategic Relationships and Business Development;
 - (iv) Senior Vice-President, Technology;
 - (v) Senior Vice-President, Product and Consumer Lending;
 - (vi) Executive Vice-President, Sales;
 - (vii) Senior Vice-President, Sales;
 - (viii) Vice-President, Marketing;
 - (ix) Vice-President, Collection and Recovery;
 - (x) Senior Vice-President, Operations; and
 - (xi) Vice President, Human Resources.
- (d) The individuals on the Senior Leadership team themselves oversaw, directly or indirectly, teams of up to 20 employees.

17. Mr. Krimker's role at Simply Group and the Corporate Defendants in particular is limited primarily to strategic decisions and initiatives. Mr. Krimker's primary efforts have been directed at growing Simply Group's business through the acquisition of portfolios of relationships that have been originated by third-parties.

18. Contrary to paragraph 96 97 of the Amended Fresh as Amended Statement of Claim, Mr. Krimker has not personally engaged in or directly overseen any of the conduct alleged to be unlawful in the Amended Fresh as Amended Statement of Claim. In particular, Mr. Krimker did not:

- (a) Draft the lease agreements (“Agreements”) entered into with customers, including the ~~Plaintiff~~ Plaintiffs;
- (b) Determine the content of any particular contractual terms contained in any Agreements entered into with customers, including the ~~Plaintiff~~ Plaintiffs;
- (c) Make any decisions about what information was disclosed or not disclosed to customers, including the Plaintiff, in connection with the purchase or lease of home comfort equipment, or provide any directions or guidance to anyone else about what information should or should not be disclosed to customers, including the ~~Plaintiff~~ Plaintiffs;
- (d) Engage in any sale or lease of home comfort equipment to customers, including the ~~Plaintiff~~ Plaintiffs;
- (e) Supervise any employees or agents of any Corporate Defendants, or any third-parties, who engaged in the sale or lease of home comfort equipment to customers, including the ~~Plaintiff~~ Plaintiffs;
- (f) Determine the cost of the equipment sold to particular customers, including the ~~Plaintiff~~ Plaintiffs;

- (g) Determine the cost of the monthly rent of the equipment sold to particular customers, including the ~~Plaintiff~~ Plaintiffs;
- (h) Engage in any negotiations of the Agreements entered into with customers, including the ~~Plaintiff~~ Plaintiffs;
- (i) Engage in any credit verifications or otherwise with customers, including the ~~Plaintiff~~ Plaintiffs;
- (j) Determine which customers, including the ~~Plaintiff~~ Plaintiffs, have a notice of security interest (“NOSI”) registered on their home;
- (k) Determine the quantum of any security interest on a customer’s home, including the Plaintiffs; or
- (l) Register any NOSIs on any customers’ homes, including the Plaintiffs.

19. Simply put, Mr. Krimker had no direct involvement or communication with customers, including the ~~Plaintiff~~ Plaintiffs, nor did he have any indirect involvement regarding any of the matters alleged in the Amended Fresh as Amended Statement of Claim.

NO PERSONAL LIABILITY

20. There is no basis for imposing any personal liability on Mr. Krimker in respect of any allegations advanced in the Amended Fresh as Amended Statement of Claim.

21. Mr. Krimker did not personally engage in any of the alleged conduct which is alleged to be unlawful in the Amended Fresh as Amended Statement of Claim.

22. Moreover, Mr. Krimker denies that there is any basis under which to pierce the corporate veil and/or impose any liability on him in respect of the conduct alleged as against any of the Corporate Defendants. In particular, contrary to paragraphs ~~89-97~~ 90-98 of the Amended Fresh as Amended Statement of Claim:

- (a) Mr. Krimker is not the directing mind of the Corporate Defendants with respect to the matters alleged in the Amended Fresh as Amended Statement of Claim;
- (b) Mr. Krimker has not had any involvement, directly or indirectly, with the drafting, negotiation, or execution of the Agreements entered into with the ~~Plaintiff~~ Plaintiffs on the one hand and any Corporate Defendant on the other hand;
- (c) Mr. Krimker has not had any involvement, directly or indirectly, with the registration of NOSIs and/or other encumbrances on the title to the home of the ~~Plaintiff~~ Plaintiffs. Nor does Mr. Krimker have any involvement, directly or indirectly, with when the NOSIs are registered and/or in what amount;
- (d) Mr. Krimker did not incorporate the Corporate Defendants in order to conduct any improper activity; and
- (e) Mr. Krimker denies that he used the Corporate Defendants as a puppet, a sham, or as a mere façade acting as his agent in carrying out the conduct alleged in the Amended Fresh as Amended Statement of Claim.

NO BREACH OF THE CONSUMER PROTECTION ACT

23. Mr. Krimker is not liable under the *Consumer Protection Act* (“CPA”) in respect of any of the conduct alleged. Mr. Krimker specifically denies paragraphs ~~66-68~~ 67-69, ~~70-73~~ 71-74, and ~~76-82~~ 77-83 of the Amended Fresh as Amended Statement of Claim.

24. Mr. Krimker did not personally engage in any conduct alleged to be unlawful under the *CPA*.

25. Mr. Krimker is not a “supplier” as defined in section 1 of the *CPA*. A “supplier” is 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.” Mr. Krimker is not personally in the business of selling, leasing, or trading in goods or services.

26. Likewise, Mr. Krimker is not an “assignee” as defined in section 82(1) of the *CPA*. Section 82(1) provides that if a “a person assigns a negotiable instrument given to secure credit or a loan of money”, then certain obligations flow therefrom. No person or corporation has ever assigned a negotiable instrument to Mr. Krimker.

27. Moreover, Mr. Krimker has never had direct interactions with any of the customers of any of the Corporate Defendants. Mr. Krimker has never been involved in the drafting of the Agreements, communicating with customers regarding their home comfort equipment, or the registering NOSIs on title to customers’ homes. Mr. Krimker has never engaged in any unfair practices under sections 14 and 15 of the *CPA*.

28. There is no basis in law or fact to pierce the corporate veil and/or impose any liability on Mr. Krimker in respect of any breaches of *CPA* alleged as against any of the Corporate Defendants.

29. In any event, Mr. Krimker denies that any of the Corporate Defendants engaged in any breaches of the *CPA* as alleged in the Amended Fresh as Amended Statement of Claim or at all.

NO SLANDER OF TITLE

30. Mr. Krimker is not liable for slander of title vis-à-vis the ~~Plaintiff~~ Plaintiffs. Mr. Krimker specifically denies paragraphs ~~83-87~~ 84-88 of the Amended Fresh as Amended Statement of Claim.

31. Mr. Krimker has never been involved in the registration of any NOSIs on title to customers' homes. He did not register or cause to be registered false statements contrary to the *CPA* or any other statutes.

32. There is no basis in law or fact to pierce the corporate veil and/or impose any liability on Mr. Krimker in respect of any slander of title alleged as against any of the Corporate Defendants.

33. In any event, Mr. Krimker denies that any of the Corporate Defendants engaged in any slander of title as alleged in the Amended Fresh as Amended Statement of Claim or at all. Mr. Krimker denies that the registration of NOSIs constitutes slander of title. He also denies that any NOSIs were registered with an improper motive to injure the ~~Plaintiff~~ Plaintiffs.

NO UNJUST ENRICHMENT

34. Mr. Krimker is not liable for unjust enrichment vis-à-vis the ~~Plaintiff~~ Plaintiffs. Mr. Krimker specifically denies the allegations at paragraphs ~~110-113~~ 111-114 of the Amended Fresh as Amended Statement of Claim.

35. Mr. Krimker specifically denies that he was enriched by charging and retaining unlawful fees, interest, and other amounts under the Agreements. Mr. Krimker did not charge and/or retain unlawful fees, interest, and other amounts, as he is not a counterparty to any of the Agreements.

36. In any event, the ~~Plaintiff~~ Plaintiffs did not suffer a deprivation corresponding to any enrichment to Mr. Krimker.

37. If Mr. Krimker was enriched, which is denied, there was a juristic reason for the charging of fees, interest, and other amounts, namely, the Agreements pursuant to which fees, interest, and other amounts were charged.

38. There is no basis in law or fact to pierce the corporate veil and/or impose any liability on Mr. Krimker in respect of unjust enrichment alleged as against any of the Corporate Defendants.

39. In any event, Mr. Krimker denies that any of the Corporate Defendants were unjustly enriched as alleged in the Amended Fresh as Amended Statement of Claim or at all.

NO ENTITLEMENT TO RESCISSION OF THE AGREEMENTS

40. The Plaintiff is not entitled to rescission of the Agreements. Mr. Krimker specifically denies paragraph ~~101~~ 102 of the Amended Fresh as Amended Statement of Claim.

41. Any Corporate Defendants involved with the ~~Plaintiff~~ Plaintiffs are third parties who acquired the Agreements in good faith and for value. Pursuant to subsection 18(2) of the *CPA*, rescission is not available to the ~~Plaintiff~~ Plaintiffs.

42. In the alternative, if subsection 18(2) does not apply, the ~~Plaintiff~~ Plaintiffs ~~is~~ are not entitled to rescission because ~~the~~ their home comfort equipment was used after ~~its~~ their installation.

The ~~Plaintiff~~ Plaintiffs cannot return the equipment in ~~its~~ their original condition. To the extent any remedy were available to the ~~Plaintiff~~ Plaintiffs, the only remedy available would be damages.

43. In the further alternative, if subsection 18(2) does not apply, the ~~Plaintiff~~ Plaintiffs ~~has~~ have not given notice of ~~her~~ their claims in accordance with the *CPA*. As such, ~~she~~ they ~~is~~ are not entitled to rescission.

NO DAMAGES

44. Mr. Krimker denies that the ~~Plaintiff~~ Plaintiffs has suffered any damages as a consequence of the alleged conduct or otherwise.

45. To the extent the ~~Plaintiff~~ Plaintiffs ~~has~~ have suffered damages, which is denied, such damages are excessive, remote, and/or arise from acts for which Mr. Krimker is not responsible in fact or in law. Further, the ~~Plaintiff~~ Plaintiffs ~~has~~ have failed to mitigate ~~her~~ their damages.

46. Mr. Krimker denies that the ~~Plaintiff~~ Plaintiffs ~~is~~ are entitled to disgorgement, as claimed in paragraphs ~~104-105~~ 105-106 of the Amended Fresh as Amended Statement of Claim. Disgorgement is not an available remedy under the *CPA*. In any event, disgorgement would not be an appropriate remedy in the circumstances.

NO ENTITLEMENT TO INJUNCTIVE RELIEF

47. The ~~Plaintiff~~ Plaintiffs ~~is~~ are not entitled to injunctive relief. Mr. Krimker specifically denies paragraphs ~~106-109~~ 107-110 of the Amended Fresh as Amended Statement of Claim.

NO PUNITIVE DAMAGES

48. Mr. Krimker denies that the ~~Plaintiff~~ Plaintiffs ~~is~~ are entitled to punitive damages.

49. Mr. Krimker denies that he has engaged in wrongful conduct that was willful, deliberate, high-handed, outrageous, callous, or in contemptuous disregard of the ~~Plaintiff's~~ Plaintiffs' rights and interests.

NO JOINT AND SEVERAL LIABILITY

50. Mr. Krimker denies that he is jointly or severally liable with any other Defendant in relation to the ~~Plaintiff~~ Plaintiffs, as alleged in the Amended Fresh as Amended Statement of Claim or at all, under s. 18(12) of the *CPA*, in law, or otherwise.

THE PLAINTIFF'S CLAIM IS STATUTE-BARRED

51. The ~~Plaintiff's~~ Plaintiffs' claims ~~is~~ are statute-barred pursuant to the *Limitations Act, 2002*, S.O. 2002, c. 24. The material facts on which the ~~Plaintiff~~ Plaintiffs ~~relies~~ rely in the Amended Fresh as Amended Statement of Claim were or reasonably ought to have been known to ~~her~~ them more than two years before ~~she~~ they commenced the within Action.

52. Mr. Krimker did not participate in any fraudulent concealment as alleged in the Amended Fresh as Amended Statement of Claim or at all. Mr. Krimker specifically denies paragraphs ~~118-119~~ 119-120 of the Amended Fresh as Amended Statement of Claim.

53. Mr. Krimker denies that either he or any Corporate Defendant wilfully concealed any material facts from the ~~Plaintiff~~ Plaintiffs, including any material terms of any Agreement entered into by the ~~Plaintiff~~ Plaintiffs, or the identity of the companies through which Simply Group offers home comfort equipment to customers.

NOT SUITABLE FOR CLASS PROCEEDING

54. Mr. Krimker denies 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 have not been met.

55. This Statement of Defence responds to the ~~Plaintiff's~~ Plaintiffs' individual claims only. Mr. Krimker reserve the right to amend this Amended Statement of Defence if the action is certified as a class proceeding in order to respond to the action as certified, if at all.

56. Mr. Krimker asks that this action be dismissed with costs.

~~April 18, 2023~~ July 28, 2023

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-and- LAWRENCE KRIMKER et al.
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Court File No. CV-21-00665193-00CP

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PROCEEDING COMMENCED AT TORONTO

**AMENDED STATEMENT OF DEFENCE
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