

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
CROWN CREST CAPITAL MANAGEMENT CORP., CROWN CREST FINANCIAL
CORP., CROWN CREST FUNDING CORP., SIMPLY GREEN HOME SERVICES INC.,
SIMPLY GREEN HOME SERVICES CORP., AND CROWN CREST CAPITAL TRUST

PEOPLES TRUST COMPANY

Applicant

AND

CROWN CREST CAPITAL MANAGEMENT CORP., CROWN CREST FINANCIAL CORP.,
CROWN CREST FUNDING CORP., SIMPLY GREEN HOME SERVICES INC., SIMPLY
GREEN HOME SERVICES CORP., AND CROWN CREST CAPITAL TRUST

Respondents

FACTUM OF THE CLASS ACTION PLAINTIFFS

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PART I - OVERVIEW

1. The business of the respondents in this proceeding is unlike almost any that have ever sought protection under the CCAA. The business is built on misrepresentation, deceit and financial exploitation, particularly that of the elderly. The assets of the respondents have, for the most part, been acquired by misrepresentation and deceit. The business practices of the respondents have given rise to a class action lawsuit against them, where the respondents have led evidence that at least 54,000 households in Ontario are impacted.

2. The plaintiffs allege that the leases, which form the central assets of the respondents, should be declared null and void, invalid and unenforceable; that damages should be paid to consumers who were parties to them; and that the respondents should be enjoined from continuing to be in business, both on an interim and permanent business.

3. It is in this context that this court must consider whether or not these CCAA proceedings are appropriate, and what relief, if any, should be granted to the applicant, Peoples Trust Company (“PTC”), which has now revealed itself as a half owner of the impugned leases, or to the respondents themselves. The usual rationale that the business should be preserved does not fit easily with this case.

4. The materials filed by the applicant on the hearing for the initial order provided the court with little to no information about the class action and the allegations that are swirling against the respondents. There were no materials provided by the respondents, and in particular no affidavit from the respondents upon which anyone might question the nature of the business and which alludes to the harm it has caused, and continues to cause, to Ontarians.

5. Given that the directors and officers have all resigned, it is not immediately apparent to the class action plaintiffs that this process is preferable to a bankruptcy or a receivership. However, the class action plaintiffs are prepared to review that with the monitor and discuss it further during the proposed stay.

6. The class action plaintiffs also do not object to the granting of a DIP to “keep the lights on” while this matter is reviewed. However, the DIP lender, who itself is an owner, assignee of the consumer leases, and a participant in the respondents’ business practices (and therefore liable under the *Consumer Protection Act* and the common law), should not, by the granting of the DIP, be given better rights to the collateral vis-à-vis the rights of the class actions plaintiffs and affected consumers.

7. As such, while the class action plaintiffs are not, on this comeback motion asking for the court to immediately terminate these proceedings, they respectfully submit that the court should only grant such relief as is necessary to “keep the lights on” and ensure that the respondents are not empowered to continue to cause further harm. Unfortunately, even in the short period from the initial order until today, the respondents have continued causing such harm to consumers.

8. This factum describes the business model of the respondents to this CCAA proceeding, Simply Green, Crown Crest, and their associated entities (“**Simply Group**”),¹ which consists of:

- (a) the non-disclosure of material information to consumers; and

¹ References to Simply Group in this factum are to both the respondent entities in this CCAA application as well as the named defendants to the class proceeding, including the named individual, Lawrence Krimker.

- (b) the use of unlawfully obtained and unlawfully registered notices of security interest (“**NOSI**”) on consumers’ home titles as leverage to extort previously undisclosed, unconscionable sums from those consumers.

9. The consumers are represented in a proposed class action advanced by Alga Bonnicks and Goran Donev. They seek to be heard in this application because their homes are encumbered by the respondents.

10. The predatory and illegal practices of Simply Group centre on the leasing of HVAC and HVAC-related Equipment² to Ontario consumers. The class includes all Ontario consumers whose homes have been held for ransom by Simply Group in return for extortionate payouts.

11. During the Class Period, Simply Group has been, and continues to be, engaged in the business of entering into these agreements directly or financing other vendors who enter into these HVAC and HVAC-related Equipment agreements with consumers.

12. Simply Group carries out this conduct against consumers individually, as well as *en masse*, by financing the installation of HVAC and HVAC-related Equipment in new condominium buildings where at times hundreds of unsuspecting new unit owners find themselves in Simply Group’s trap described herein.³

13. In violation of consumer protection legislation, at no point during the process to obtain the consumer agreements, either directly or by assignment, does Simply Group or any other involved party disclose the consumers’ total liability under the HVAC or HVAC-related Equipment leases.

² Defined terms in this factum have the same meaning as in the Amended Fresh as Amended Statement of Claim, unless otherwise defined herein.

³ Affidavit of Karen Whibley, sworn November 15, 2023 (the “**Whibley Affidavit**”) at para 26

Simply Group unilaterally determines and imposes these amounts *after* consumers have signed the agreement.

14. Nor does Simply Group disclose to consumers, until after the fact, that by registering a NOSI against the consumer's home titles, it will extract amounts that are many times the market value of the equipment in question.

15. Lawrence Krimker, who is personally named a defendant to the class action, has been the founder, CEO and legal and/or beneficial owner, officer, and director of all the corporate and trust parties implicated in this CCAA proceeding. He became extremely wealthy through this scheme.

16. The plaintiffs advance three related causes of action against Simply Group: breach of consumer protection legislation, slander of title, and the resulting unjust enrichment.

17. In terms of remedy, the plaintiffs seek damages, disgorgement and restitution.

18. In addition, the plaintiffs seek an interlocutory and permanent injunction to stop Simply Group, including Mr. Krimker, from victimizing more Ontario consumers. That request has suddenly come to a head in this CCAA proceeding where Simply Group is asking this court to enable its continued operation, which inherently involves victimizing further consumers, but now under the express authority of the court.

PART II - SUMMARY OF FACTS

A. The Parties to the Class Proceeding

19. The plaintiffs, Alga Adina Bonnick and Goran Stoilov Donev, are individuals residing in Ontario. They are two of approximately 54,000 Ontario consumers who have entered into

Consumer Agreements to lease HVAC and HVAC-related Equipment with Simply Group and/or their agent vendors.

20. Lawrence Krimker is an individual residing in Toronto, Ontario. He was or has been at all material times an owner, officer, and director of Simply Group.

21. The corporate defendants named in the class proceeding overlap with the respondents to this CCAA proceeding. They include Simply Green Home Services (Ontario) Inc., Simply Green Home Services Inc., and Simply Green Home Services Corp., Crown Crest Capital Management Corp., Crown Crest Capital Corp., Crown Crest Capital Trust, Crown Crest Capital II Trust, Crown Crest Financial Corp., Crown Crest Billing Corp., and Crown Crest Funding Corp., Sandpiper Energy Solutions, and Sandpiper Energy Solutions Home Comfort.

22. These are affiliated HVAC equipment and financial services entities, mostly corporations incorporated under Ontario's *Business Corporations Act*. They are or were all controlled by Mr. Krimker and operate from the same physical location where they share employees and deal with customers interchangeably. Consumers face challenges knowing which entity exactly they are dealing with at any given moment.

B. Simply Group's Impugned Conduct

23. The rampant nature of the predatory business practices in the HVAC market, particularly by Simply Group, is well-documented in the media. The following are some recent reports about Simply Group and the market in general, which provide some real life examples of what these companies do to people in Ontario:

- (a) **“Woman with dementia locked into 10-year home-heating contract — with a \$15K lien on her property,”** *CBC News* (19 Apr 2021), <https://www.cbc.ca/news/business/hvac-contracts-lien-sales-1.5988112>
- (b) **“Toronto CEO, 12 companies facing \$5M⁴ class action lawsuit for alleged door-to-door rental scam,”** *CTV News* (7 Sept 2023), <https://toronto.ctvnews.ca/toronto-ceo-12-companies-facing-5m-class-action-lawsuit-for-alleged-door-to-door-rental-scam-1.6551746>
- (c) **“Ontario homeowner shocked it’s \$17K to buy out AC and water heater contract,”** *CTV News* (2 Feb 2023), <https://toronto.ctvnews.ca/ontario-homeowner-shocked-it-s-17k-to-buy-out-ac-and-water-heater-contract-1.6257975>
- (d) **“Hidden cameras catch HVAC scam in action (CBC Marketplace)”**: <https://www.youtube.com/watch?v=4NPPRoqd7No>
- (e) **“HVAC scams: Are you protected? (CBC Marketplace)”**: <https://www.youtube.com/watch?v=euOOpBmZsh4>

24. The business of leasing HVAC and HVAC-related Equipment typically involves vendors who attend at consumers’ homes (whether door-to-door or through previous advertising or other prior outreach) to sign a lease agreement with the consumer.

25. The customer-facing side of the business is populated by shell companies, many of which go out of business by bankruptcy, takeover, or otherwise to avoid liability to the consumers who

⁴ The reference here is only to the amount sought in punitive damages against Simply Group.

have been duped. Justice Perell recognized this reality in the class action involving Simply Group.⁵ These CCAA proceedings may have been commenced in furtherance of that practice if the true purpose is to leave harmed consumers without a remedy.

26. The arrangement wherein class members sign consumer agreements is controlled by and/or directly financed by companies like Simply Group. In other instances, the agreement changes hands until it reaches Simply Group.

27. Once Simply Group obtains ownership and control over the consumer agreements, it uses the onerous terms and conditions in the fine print to unlawfully register NOSIs and other encumbrances against the title to consumer's home. Simply Group then uses these NOSIs as leverage to extract previously undisclosed sums of money from the entrapped consumers: consumers who need to sell or refinance have little option but to pay any ransom demanded if they need the NOSI discharged, because home purchasers and mortgage lenders often justifiably refuse to accept title corrupted by such NOSIs notorious for their extortionate effect.

i. How Simply Group Obtains HVAC Consumer Contracts

28. Simply Group obtains ownership and control over the HVAC or HVAC-related Equipment agreements in one of three ways.

29. First, Simply Group enters into the consumer agreements with class members directly through its own vendor agents. An example of such vendors is Simply Green Home Services Inc.

⁵ [Blackford-Hall v Simply Group, 2021 ONSC 8502](#) at para 31.

and Simply Green Home Services Corp., who directly deal with consumers in this leasing market. The plaintiff, Mr. Donev, is one of their victims.

30. Second, Simply Group enters into consumer agreements by creating and maintaining a common contractual program for financing other vendors, whereby Simply Group finances those vendors' marketing of HVAC or HVAC-related Equipment to consumers subject to conditions set out by Simply Group ("**Financing Arrangement**").⁶ These conditions are not disclosed to consumers at any material time, and include, amongst others:

- (a) the requirement that Simply Group would dictate or approve the terms of the agreements between the vendor companies and the consumers;
- (b) the common and uniform inclusion of a provision in the fine print of the consumer agreements giving the vendor and any subsequent assignee, *i.e.* Simply Group, a unilateral right to register a NOSI on title without notice to the consumer; and
- (c) the common and uniform inclusion of a provision in the fine print of the consumer agreements giving the vendor or any subsequent assignee a unilateral right to assign the contracts to any person at the vendor's sole discretion without the consent of or notice to the consumer.

31. After a vetting process, if Simply Group is satisfied with a consumer's credit and ownership of title, the vendor then immediately assigns the consumer agreement to Simply Group in return for financing for the purchase and installation of the equipment as well as other expenses. In other

⁶ Whibley Affidavit, Exhibit L, Pro Bono Ontario Submission to the Ministry of Government and Consumer Services dated February 2021, pp. 60-62

words, under the Financing Arrangement, the vendors' role is to be at consumer's door finding prey for Simply Group. The plaintiff, Ms. Bonnick, is one of their such victims.

32. Third, the main method used by Simply Group to obtain ownership and control over the consumer agreements has been through the purchase or assignment of such contracts in bulk from intermediaries such as similar financing companies involved in financing predatory door-to-door HVAC arrangements.

ii. Simply Group's Use of NOSIs

33. Once in control of a consumer contract, Simply Group registers a NOSI against the consumer's home title in an amount that is disproportionate to the value of the equipment and any service received by the consumer. Simply Group then waits until the consumer has to sell or refinance her home. At that point, often pressed for time with an upcoming closing or refinancing, the consumer has no choice but to pay whatever amount Simply Group demands, sometimes up to ten times the new market value of the equipment in question.

34. Simply Group uniformly does not disclose material information to consumers contrary to consumer protection legislation. For example, at no point during any of their processes (except when they are extracting a payout) does Simply Group disclose or cause to be disclosed to consumers the total liability under consumer agreements or the fact that a NOSI will be used to extract an arbitrary and extortionate amount from them.

35. The failure to disclose each consumer's total liability is due to Simply Group's business practice of unilaterally and arbitrarily determining these amounts after consumers have already signed the consumer agreements. One method that Simply Group has admitted to is to charge the

consumer exorbitant sums for future “service” and “peace of mind services”, costing the consumer many times the value of the actual equipment, and never previously disclosed to the consumer.

36. This anti-consumer conduct is extremely lucrative for those involved. At a recent trial before Justice Centa, Mr. Krimker admitted on cross-examination to have had a Simply Group company—a consumer scam shell company—issue some \$26 million in dividends in 2019 alone.⁷ Yet, despite subsequent years of acquisitions of consumer contracts that Simply Group boasted to have exceeded \$1.45 billion,⁸ the respondents now say they are insolvent solely on the alleged basis of interest rates.

C. The Experience of the Plaintiffs and Other Consumers

37. The experience of Ms. Bonnick and Mr. Donev is outlined in detail in the Amended Fresh as Amended Statement of Claim,⁹ as well as in their various affidavits served in the class proceeding. There are tens of thousands of others in Ontario.

38. Several consumers have also adduced affidavits in the class proceeding pointing to the same systemic predatory practices of Simply Group described above. The class members’ evidence in the record is common on all the elements of the asserted causes of action. For the sake of brevity at this juncture, this evidence has not been reproduced in this filing, but may be provided at the next stages along with fresh evidence relating to any relief sought.

⁷ Whibley Affidavit at para 27.

⁸ Simply group, “Simply Group Completes Acquisition of Dealnet in Transaction Valued at over \$243 Million,” *Cision* (30 November 2020), <https://www.newswire.ca/news-releases/simply-group-completes-acquisition-of-dealnet-in-transaction-valued-at-over-243-million-808176167.html>

⁹ Whibley Affidavit, Exhibit A, Fresh As Amended Statement of Claim amended July 4, 2023, at para. 28-70.

D. Reports and Judicial Decisions on the Impugned Conduct

39. Members of the Simply Group have been charged and/or prosecuted for the consumer scam at issue in this case.

40. Lawrence Krimker, Simply Green Home Services Inc., and Crown Crest Capital Corp. feature prominently on the Consumer Beware List of Ontario's Ministry of Public and Business Service Delivery over the multiple charges laid against them and their anti-consumer business operation.¹⁰ Neither these charges nor the years of inclusion on the government's Consumer Beware List has disincentivized them from the lucrative consumer scam in issue in this case.

41. On August 16, 2019, the Director of Fair Trading of Alberta ordered Crown Crest Capital Management Corp., Simply Green Home Services Inc. and their affiliates to immediately issue refunds to Albertan consumers who had fallen prey to their practices.¹¹

42. On June 9, 2020, the Director of British Columbia's Ministry of Consumer Protection issued a decision against Simply Green Home Services (BC) Inc., Crown Crest Capital, & Lawrence Krimker for the contravention of certain consumer protection legislation. The director issued a monetary penalty, a compliance order (for costs only), and a direct sales prohibition.¹²

43. The predatory leasing of HVAC and HVAC-related Equipment is a common practice in Ontario, and the subject of numerous judicial findings.¹³

¹⁰ Whibley Affidavit, at paras 12-14, Exhibits I-J, Consumer Beware List dated June 2021 and December 2022.

¹¹ Whibley Affidavit, Exhibit F, Order of the Alberta Director of Fair Trading, August 16, 2019.

¹² Whibley Affidavit, Exhibit G, Decision of the Director of Consumer Protection BC, June 15, 2020.

¹³ See e.g., [Cullaton v MDG Newmarket Inc](#), 2019 ONSC 6432; [DUNCAN v ONTARIO HOME SERVICES INC](#), 2019 CanLII 131885; [Utilebill Credit Corp v Apex Home Services Inc](#), 2021 ONSC 4633; [Bernstein v Peoples Trust Company](#), 2019 ONSC 2867; [Skymark Finance Corporation v Toraman](#), 2020 CanLII 51091; [Thomas v MDG Newmarket Inc](#), 2017 CanLII 67311; [Balagula v Ontario Consumers Home Services](#), 2018 ONSC 5398.

44. The class action plaintiffs have been prosecuting this action in collaboration with Pro Bono Ontario. In December 2020, in response to a consultation for improvements to the *Consumer Protection Act*,¹⁴ Pro Bono Ontario provided submissions to the Ministry of Government and Consumer Services specifically with respect to the HVAC market and the predatory practices therein.¹⁵ In Pro Bono Ontario's submission to the Ontario government based on its consultation service to 1225 affected consumers, 46 percent of consumers calling about door-to-door contracts are senior citizens.¹⁶ Pro Bono Ontario further reported:

Of the hundreds of purchase cost plus lease agreements PBO has reviewed, we can recall **none** that have complied fully with the CPA disclosure requirements. Invariably, there has been no disclosure of the lease value (i.e. retail value) of the equipment in these contracts. Most forms of lease currently in circulation are not compliant with the CPA in this respect, and in rare instances where the form of lease does contain a box for inserting this value, the box is routinely left blank in practice. ...

Disclosure deficiencies are among the most frequent complaints PBO hears from consumers, second only to unfair business practices. Consumers routinely report that they would not knowingly have signed the agreement had they realized how much they would have paid relative to the retail value of the equipment over the life of the contract. That is, had the mandated disclosure been made and understood, they would not have signed.

As noted above, the amounts demanded by suppliers to buy out these contracts are generally a shock to consumers, and far exceed the value of the goods provided.¹⁷

45. The Government of Ontario has recently introduced *Bill 142, Better for Consumers, Better for Businesses Act, 2023*, which attempts to revise Ontario's *Consumer Protection Act*, and

¹⁴ Whibley Affidavit, Exhibit K, Consumer Protection Act, 2002 Review Consultation, December 1, 2020.

¹⁵ Whibley Affidavit, Exhibit L, Pro Bono Ontario Submission to the Ministry of Government and Consumer Services dated February 2021.

¹⁶ Whibley Affidavit, Exhibit L, Pro Bono Ontario Submission to the Ministry of Government and Consumer Services dated February 2021, p. 9.

¹⁷ Whibley Affidavit, Exhibit L, Pro Bono Ontario Submission to the Ministry of Government and Consumer Services dated February 2021, pp. 17, 27, 30 [emphasis added].

includes specific provisions dealing with NOSIs.¹⁸ A third public consultation on issues related to NOSIs was started on September 17, 2023, and included a consultation paper outlining the pervasive issues already identified in the class action.¹⁹ This Government of Ontario consultation paper described the problem—which is identical to Simply Group’s business model and operation:

The ministry is aware that some consumers are adversely affected by having a NOSI on title, the effect of which usually arises when they try to sell their home or access additional financing.

In many cases, consumers are not aware that a NOSI has been registered on title to their home until they are in the midst of a home sale or mortgage refinancing, with tight timelines adding to the high pressure to resolve the situation expeditiously. Whether selling or refinancing a home, the discharge of a NOSI is usually required for the transaction to proceed, unless, in the case of a sale, the purchaser agrees to assume the contract (e.g., lease for the fixture). In those cases, the sale would move forward and the NOSI would stay on title.

Where the consumer is required to discharge the NOSI in order to complete the sale or refinancing of the property, certain suppliers use the discharge of the NOSI as leverage and unfairly pressure the consumer to negotiate a buyout of the contract in its entirety, including services, and not just for the value of the equipment. This can result in exorbitant payouts.²⁰

46. Simply Group has carried out this conduct at an industrial level, affecting over 54,000 Ontario households (and thousands more elsewhere in Canada). It is this conduct that the class action plaintiffs seek to enjoin. It is this conduct that this court must not empower or condone.

47. Since the issuance of the court’s initial order last week, class counsel have continued receiving complaints from consumers, who indicate that Simply Group is continuing with its

¹⁸ [Bill 142, *Better for Consumers, Better for Businesses Act, 2023*, 1st Sess, 43rd Leg Ontario, 2023 \(first reading 23 October 2023\)](#), ss 60, 88, 93, 104.

¹⁹ Whibley Affidavit, Exhibit O, Consultation on Issues Related to Notices of Security Interest (NOSIs), October 17, 2023.

²⁰ Whibley Affidavit, Exhibit O, Consultation on Issues Related to Notices of Security Interest (NOSIs), October 17, 2023, p. 4.

consumer scam practices, and demanding extortionate buyout sums in return for discharging NOSIs registered on consumers' home title:

- (a) One consumer advises: She called Simply Group on behalf of her father who is currently in hospital. Her parents are elderly immigrants who do not speak much English. The same door-to-door vendor company involved in Ms. Bonnicks' case, MGA Home Services, was involved in inducing her parents to sign for this equipment. She called Simply Group on November 14, 2023 to find out how she could discharge the NOSIs filed by these companies on her parents' home for basic HVAC equipment that is some six years old and heavily depreciated. The equipment had previously malfunctioned and they had received no assistance from Simply Group such that her brother had to fix it using duct tape. A Simply Group agent advised her that the NOSIs would not be discharged unless her parents paid over \$5600 in alleged arrears plus a buyout of over \$25,000.²¹

- (b) Another consumer contacted class counsel on November 15, 2023: Simply Group has registered NOSIs on her home title. She has been unable to discharge the NOSIs despite numerous attempts. The consumer called Simply Group on November 15, 2023, and was given a buyout quote of almost \$10,000 in exchange for equipment that had already been removed from her home. Simply Group provided her with a further buyout quote demanding an additional \$23,842.94 to buyout equipment worth a few thousand dollars at most, if bought new on the market.²²

²¹ Whibley Affidavit, at paras. 22-24.

²² Whibley Affidavit, at para. 25.

E. Status of the Class Proceeding (Certification and Summary Judgment)

48. The pleadings have closed in the class proceeding. The claim, defences, and reply are enclosed to the supporting affidavit of Karen Whibley.

49. The plaintiffs have a concurrent summary judgment and certification motion scheduled before Justice Akbarali in October 2024. The plaintiffs have served a total of 26 affidavits in support of these motions. Mr. Krimker served one responding affidavit. His companies served a separate responding affidavit.²³

50. The following chart shows the progress of the litigation to date:

Date	Event
July 7, 2021	The plaintiff, Alga Bonnick, issued her Statement of Claim, naming Lawrence Krimker and Crown Crest as defendants
September 2, 2021	The plaintiff served her certification motion record
September 20, 2021	The plaintiff served her supplementary certification motion record
January 28, 2022	Sotos LLP, counsel for the representative plaintiffs, is granted carriage of the class action in accordance with the order of Justice Perell ²⁴
May 25, 2022	The plaintiff issued her Fresh as Amended Statement of Claim with leave of Justice Belobaba, adding Sandpiper and Simply Green as defendants as well as more recently discovered particulars relating to the existing defendants' conduct
January 12, 2023	The plaintiff served her second supplementary certification motion record relating to the newly added defendants, as well as further evidence on Krimker and Crown Crest such as the recent charges laid against them and the information obtained through the Ontario Court of Justice. The plaintiff also served a third supplementary certification motion record attaching a Fresh as Amended Notice of motion for Certification
March 23, 2023	The plaintiffs received approval of funding from the Law Foundation of Ontario's Class Proceedings Fund

²³ Whibley Affidavit, at para. 6.

²⁴ [Blackford-Hall v Simply Group, 2021 ONSC 8502](#)

April 17, 2023	The named corporate defendants served a Statement of Defence
April 18, 2023	The defendant, Lawrence Krimker, served a Statement of Defence
May 2, 2023	The plaintiff served her fourth supplementary certification motion record
July 4, 2023	The plaintiff issued an Amended Fresh as Amended Statement of Claim with leave of Justice Akbarali, adding Goran Donev as a representative plaintiff
July 28, 2023	The corporate defendants served their Amended Statement of Defence
July 28, 2023	Mr. Krimker served his Amended Statement of Defence
September 7, 2023	The plaintiffs served their Reply to the statements of defence of all defendants
September 18, 2023	Mr. Krimker served a responding certification motion record
September 29, 2023	Simply Group served a responding certification motion record
October 31, 2023	The plaintiffs served a reply certification motion record

51. The latter steps in the above were carried out in accordance with a timetable set by Justice Akbarali.²⁵ These CCAA proceedings directly interfere with the above referenced action. But for these CCAA proceedings, cross-examinations were slated to begin on November 24, 2023.²⁶

F. Newly Discovered Involvement of PTC in Impugned Conduct

52. PTC is no ordinary secured creditor. In this CCAA proceeding, PTC has brought to light evidence that since 2016 (meaning, during the majority of the Class Period), PTC has been a concurrent owner of the consumer leases at issue in the class proceeding.²⁷

53. Through PTC's own affidavit evidence on this CCAA application, the plaintiffs have learned that PTC actively and knowingly took on the role of a financing company, amongst others,

²⁵ Whibley Affidavit, Exhibit E, Timetable Endorsement of Justice Akbarali dated October 20, 2023.

²⁶ Whibley Affidavit, at para. 8.

²⁷ Affidavit of Michael Lombard, sworn November 6, 2023 ("**Lombard Affidavit**") at paras 5, 14, 18

similar to Simply Group and other predatory actors in this lucrative HVAC scam market as pleaded in the class proceeding and described above.²⁸

54. The applicant is not the typical arm's length secured creditor seeking to protect its business by forcing a CCAA upon a reluctant or incapable debtor. PTC is the almost 50% owner of the debtor and the leases in question, and is a party to the impugned conduct in issue in the class action, which PTC now seeks to suspend through this CCAA application.

55. PTC is no stranger to anti-consumer conduct. Justice Perell recently awarded punitive damages on summary judgment against PTC in another consumer matter, finding: "Peoples Trust's violations of the *Consumer Protection Act, 2002* were serious ones and went to the very heart of the Legislature's public purpose in providing protection to purchasers and recipients of open loop gift cards."²⁹

56. Given the foregoing, PTC is, along with the respondents, subject to at least inquiry by the monitor as to whether or not its actions are done in good faith.

57. While the monitor's pre-filing report indicates their intention to have their counsel deliver an independent opinion on the security of PTC, the court should be cautious in considering any such opinion. To the extent that such an opinion may state, as security opinions usually do, that the security agreements are valid on their face, are properly executed, and identify the collateral of the debtor, such an opinion would be essentially useless to the issues which will be before the court in this matter.

²⁸ Lombard Affidavit at paras 27-41

²⁹ [*Bernstein v Peoples Trust Company*](#) at para 320.

58. The issue is not what the documents say on their face; the issue is rather whether or not the security can properly attach to the purported collateral, which collateral is subject of the class action and the proposed relief sought therein.

59. In addition, the conduct of the purported secured creditor in creating these leases may impact their enforceability. These issues cannot be resolved by a paper opinion about the security, but must be subject to litigation and careful review by the court.

60. In the interim, the court should be cautious in extending to PTC the usual privileges enjoyed by a secured creditor in insolvency proceedings.

PART III - RELIEF SOUGHT

61. As noted above, since the initial order on November 9, 2023, Simply Group has continued victimizing consumers.³⁰

62. The class action plaintiffs are considering their options and will engage in discussions with the monitor following the comeback hearing should the court decide to grant the continuation of the CCAA proceeding. In the interim, the class action plaintiffs seek the following reservations of rights in these CCAA proceedings:


- (a) That the continuation of the CCAA proceeding, should the court decide to grant it, is without prejudice to the right of the class action plaintiffs to bring a motion to lift the stay and to pursue equitable relief;

³⁰ Whibley Affidavit, at paras. 22-25.

- (b) That the DIP loan shall not provide PTC with any better rights to the purported collateral, than its other security currently enjoys, until such time as those rights are determined by this court;
- (c) That the extension of the stay, should the court decide to grant it, is without prejudice to the rights of the class action plaintiffs to seek an order to terminate the CCAA proceedings on a motion brought before this court;
- (d) That nothing in the Amended and Restated Order, the appointment of the monitor or the CRO contemplated therein, protects any party from being liable for damages or other penalty or remedy if it is found that the enforcement of any security interests or contracts against the class action plaintiffs or putative class or collection of debts by such party during these proceedings causes harm to the parties to those agreements.

63. The court is being asked to impose a process to decide how best to deal with tainted collateral assets. All parties, as a matter of public policy, must ensure that this process is not used, deliberately or inadvertently, to compound the harm caused to the class action plaintiffs and other consumers by the respondents.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16th day of November, 2023.



SCHEDULE “A”

LIST OF AUTHORITIES *Jurisprudence*

1. [*Cullaton v MDG Newmarket Inc*, 2019 ONSC 6432](#)
2. [*DUNCAN v ONTARIO HOME SERVICES INC*, 2019 CanLII 131885](#)
3. [*Utilebill Credit Corp v Apex Home Services Inc*, 2021 ONSC 4633](#)
4. [*Bernstein v Peoples Trust Company*, 2019 ONSC 2867](#)
5. [*Skymark Finance Corporation v Toraman*, 2020 CanLII 51091](#)
6. [*Thomas v MDG Newmarket Inc*, 2017 CanLII 67311](#)
7. [*Balagula v Ontario Consumers Home Services*, 2018 ONSC 5398](#)
8. [*Blackford-Hall v Simply Group*, 2021 ONSC 8502](#)

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY-LAWS

1. [Consumer Protection Act, 2002, S.O. 2002, c. 30, Schedule A](#)
2. **Bill 142, [Better for Consumers, Better for Businesses Act, 2023](#), 1st Sess, 43rd Leg Ontario, 2023 (first reading 23 October 2023).**

Supplier’s duty to discharge registered notices, etc.

60 If a consumer rescinds a consumer contract under subsection 49 (1), cancels a consumer contract under section 50, 51, 52, 53, 54 or 55 or terminates a purchase-cost-plus lease, the supplier must do the following within 15 days after the rescission, cancellation or termination, as applicable:

1. Register a certificate of discharge to discharge any notice of security interest that has been registered on title to land under section 54 of the Personal Property Security Act in respect of goods provided under the contract or any related agreement.
2. In accordance with such requirements as may be prescribed, register any document or instrument as may be required to discharge or remove a prescribed registration, notice or instrument that has been registered to protect an interest in goods provided under the contract or any related agreement.

Undertaking of voluntary compliance

88 (1) At any time before all rights of appeal are exhausted or the time for appeals has expired without an appeal being commenced, any person against whom the Director has made or is considering making an order under section 89 or 90 may enter into a written undertaking of voluntary compliance,

- (a) to not engage in the specified act after the date of the undertaking;
- (b) to refund to a consumer who cancelled a consumer contract any payment made under the contract or any related agreement;
- (c) to discharge or remove a notice of security interest or other prescribed registration, notice or instrument that has been registered in respect of goods provided under a consumer contract or any related agreement that has been rescinded, cancelled or terminated;
- (d) to provide compensation to any consumer who has suffered a loss;
- (e) to publicize the undertaking or the actions being undertaken as a result of the undertaking;
- (f) to pay any cost incurred in investigating the person’s activities, any legal costs incurred in relation to the person’s activities and any cost associated with the undertakings; and
- (g) to take any such action as the Director considers appropriate in the circumstances.

Compliance order, etc., re duty to discharge registered notices

Application

93 (1) This section applies to an order made under subsection 89 (1) or (2) or 90 (1) or (2) against a person, if the order relates to the person contravening section 60. Rules re par. 1 of s. 60

(2) If the order relates to the contravention of paragraph 1 of section 60, the following rules apply if all rights of appeal are exhausted with respect to the order or the time for appeals has expired without an appeal being commenced:

1. The Director may issue to a consumer an order directing the appropriate land registrar to delete the notice of security interest referred to in paragraph 1 of section 60 from title to the land identified in the order.
2. The consumer, after receipt of the order, may register the order in the proper land registry office in a manner approved by the Director of Titles appointed under the Land Titles Act.
3. Upon registration of the order, the land registrar shall delete the notice of security interest from title to the land identified in the order

Order re registration system or land registry

104 (1) If a person is convicted of an offence under this Act, the court making the conviction may, if it considers it just to do so having regard to all the circumstances, order that,

- (a) the registrar amend the information recorded in the central file of the registration system to indicate that the registration of a financing statement has been discharged or partially discharged, as the case may be; or
- (b) the land registrar delete any entry in the books of the land registry office related to a notice of security interest or that the land registrar amend the books of the land registry office to indicate that a security interest has been discharged or partially discharged, as the case may be.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CROWN CREST CAPITAL MANAGEMENT CORP.,
CROWN CREST FINANCIAL CORP., CROWN CREST FUNDING CORP., SIMPLY GREEN HOME SERVICES INC., SIMPLY GREEN
HOME SERVICES CORP., AND CROWN CREST CAPITAL TRUST**

Court File No. CV-23-00709183-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

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