

CITATION: *Bonnick v. Krimker et al.*, 2024 ONSC 6331
COURT FILE NO.: CV-21-0065193-00CP
CV-23-00711844-00CP
DATE: 20241115

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Alda Adina Bonnick

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 Home Comfort, Sandpiper Energy Solutions Home Comfort, Simply Green Home Services (Ontario) Inc., Simply Green Home Services Inc. and Simply Green Home Services Corp.

AND RE: Alga Adina Bonnick, Goran Stoilov Donev and Sarah-Jane Shah

AND:

People's Trust Company

BEFORE: J.T. Akbarali J.

COUNSEL: *David Sterns, Mohsen Seddigh and Maria Arabella Robles*, for the plaintiffs

Paul-Erik Veel for the defendants and proposed defendants Lawrence Krimker, Lyudmila Krimker, 2775996 Ontario Inc., Marble Amalco Inc., and SCHS Management Holdco Inc.

H. Michael Rosenberg and Sharanya Thavakumaran, for the defendants and proposed 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, Sandpiper Energy Solutions Home Comfort, Simply Green Home Services (Ontario) Inc., Simply Green Home Services Inc., and Simply Green Home Services Corp., HCSI Home Comfort Inc., and HCSI Home Comfort 2 Inc.

Sean Kugler and Clifton Prophet, for the defendant People's Trust Company

HEARD: In writing

Proceeding under the *Class Proceedings Act, 1992*

ENDORSEMENT

Overview

[1] This endorsement concerns two related putative class proceedings. The first of these was commenced by the plaintiff Alga Adina Bonnicks against the defendant Lawrence Krimker, and certain corporations, which I refer to as the Krimker action. The second was commenced later, by Alga Adina Bonnicks against the defendant People's Trust Company. I refer to the second action as the PTC action.

[2] In this endorsement, I:

- a. Grant the amendment of the statement of claim in the PTC action, including adding additional defendants,
- b. Consolidate the Krimker action and the PTC action;
- c. Certify the consolidated class proceeding for purposes of settlement; and
- d. Approve the notice plan and proposed notices.

Brief Background

[3] These actions arise out of agreements for leased equipment, including water and air filters, entered into between class members and different corporate entities that are alleged to be related or part of a common scheme. The agreements were originated by door-to-door salespeople. In many cases, Notices of Security Interests were registered on title to the class members' homes, in amounts that appear to far exceed the value of the equipment installed, and at least sometimes in amounts that do not appear to relate to the value of the contracts. There are allegations that the cost of the equipment under the contracts are out of all proportion to the value of the equipment leased.

[4] The plaintiffs allege that the agreements are predatory and unconscionable. They allege causes of action grounded in breach of consumer protection legislation, conspiracy, unconscionability, slander of title, and unjust enrichment.

[5] As I noted above, the Krimker action was commenced first. I scheduled a summary judgment motion to be heard together with the certification motion. However, before the motions could be heard, certain of the defendants to the Krimker action became insolvent, and involved in proceedings under the *Companies' Creditors Arrangement Act* ("CCAA"), commenced by People's Trust Company, a creditor of the insolvent companies.

[6] The plaintiffs allege that during the CCAA proceedings, they learned information that led them to believe that People's Trust Company is a party to the alleged conspiracy that is pleaded in the Krimker action. The plaintiffs thus commenced the PTC action.

[7] The stay in the CCAA proceedings was lifted to allow the summary judgment motion and certification motion in the Krimker action to proceed. The stay has also been lifted for the purpose of bringing the motions I adjudicate herein.

[8] The certification and summary judgment motions began before me, but before they were completed, the parties advised that they had reached a settlement, subject to approval of the class proceedings case management judge (me), and the CCAA judge (Conway J.). The settlement contemplates a global resolution of all issues between all parties, including the parties to be added.

[9] The parties thus seek orders amending the PTC claim to, among other things, add parties; consolidating the Krimker and PTC claims; certifying the consolidated claim for purposes of settlement; and approving of the notice plan and notices of the settlement approval hearing. These reasons address those motions.

Motion to Amend Pleadings, Add Parties, Consolidate the Actions

[10] The plaintiffs seek to make allegations of conspiracy involving the proposed new defendants and People's Trust Company. They allege that they discovered the material facts underlying the conspiracy in the course of the CCAA proceedings, and that the added parties are proper parties.

[11] The plaintiffs also seek to consolidate the PTC action with the Krimker action, so that the consolidated proceeding can be certified and the settlement approval hearing take place.

[12] The PTC action and the Krimker action arise out of the same subject matter, and many of the parties overlap.

[13] People's Trust Company and the proposed new defendants consent to the order on the basis that, if the action is not consolidated with the Krimker action, the consolidated action is not certified, or the settlement is not approved or otherwise terminates, the stay of proceedings in place in the CCAA proceeding shall automatically resume, and any actions taken that would have been subject to the stay shall be null, void, and of no effect.

[14] In other words, the parties agree to the orders sought in this endorsement for purposes of moving towards a settlement approval hearing. If the settlement is not approved or otherwise terminates, all of the procedural steps taken to set up the settlement will be unwound.

[15] In these circumstances, I grant the order to amend pleadings, add, parties, and consolidate the PTC and Krimker actions which shall continue under court file no. CV-21-00665193-00CP with a new style of cause, as follows:

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

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

ALGA ADINA BONNICK, GORAN STOILOV DONEV,
and SARAH-JANE SHAW

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., SIMPLY
GREEN HOME SERVICES CORP., PEOPLES TRUST COMPANY,
LYUDMILA KRIMKER, 2775996 ONTARIO INC., MARBLE AMALCO INC.,
HCSI HOME COMFORT INC., HCSI HOME COMFORT 2 INC. and
SGHS MANAGEMENT HOLDCO INC.

Defendants

Certification

[16] The parties seek to certify the consolidated action on consent for purposes of settlement.

[17] Pursuant to s. 5(1) of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, CPA, the court shall certify a class proceeding if: (a) the pleadings or the notice of application disclose a cause of action; (b) there is an identifiable class of two or more persons that would be represented by the representative plaintiff; (c) the claims or defences of the class members raise common issues; (d) a class proceeding would be the preferable procedure for the resolution of the common issues; and (e) there is a representative plaintiff who would fairly and adequately represent the interests of the class, has produced a workable plan for the proceeding, and does not have an interest in conflict with the interests of other class members.

[18] Where certification is sought for the purposes of settlement, all the criteria for certification must still be met, although compliance with the certification criteria is not as strictly required: *Waheed v. Pfizer Canada Inc.*, 2011 ONSC 5057, at para. 36; *Nutech Brands Inc. v. Air Canada*, [2008 CanLII 11643, at para. 9. The representative plaintiff must provide a certain minimum evidentiary basis for certification order: *Hollick v. Toronto (City)*, 2001 SCC 68, [2001] 3 S.C.R. 158, at para. 24.

Section 5(1)(a): The pleadings disclose a cause of action.

[19] Certification will not be denied under s. 5(1)(a) unless it is plain and obvious that the pleadings disclose no cause of action: *Hollick*, at para. 25.

[20] For the purposes of the settlement approval, the defendants do not dispute, and I accept, that the pleadings disclose a cause of action in (i) breach of consumer protection law; (ii) conspiracy; (iii) unconscionability; (iv) slander of title; and (v) unjust enrichment, for which facts are sufficiently pleaded.

Section 5(1)(b): There is an identifiable class of two or more persons that would be represented by the representative plaintiff.

[21] In determining whether there is an identifiable class, the court asks whether the plaintiff has defined the class by reference to objective criteria such that a person can be identified to be a class member without reference to the merits of the action. The class must be bounded, and not of unlimited membership, or unnecessarily broad, and have some rational relationship with the common issues: *Hollick*, at para. 17, *Cloud v. Canada (Attorney General)* (2004), 73 O.R. (3d) 401 (C.A.), at para. 45.

[22] For purposes of settlement, the plaintiffs seek to certify the following settlement class:

All Persons in Canada who are or were party to a Lease at any time between July 17, 2013 and January 15, 2025, except Excluded Persons.

Where:

“Excluded Persons” means any putative Class Member who validly opts out of this proceeding in accordance with the terms of this Order and each Defendant;

“Lease” means Equipment leases between putative Class Members and either: (i) a Simply Green Vendor; or (ii) an entity to which a Simply Green Vendor is or was a successor in interest in respect of that Equipment Lease whether by assignment, purchase, corporate acquisition or amalgamation or otherwise, including Leases that have been terminated, bought out, or rescinded, and Leases that have expired or matured;

“Equipment” means furnaces, heat pumps, air conditioners, air purifiers, water heaters, water softeners, water purification systems, water treatment systems, water filters, boilers, thermostats, air cleaners, humidifiers, chimney liners, duct cleaning services, heat recovery ventilators, filters, and other equipment or services; and

“Simply Green Vendor” means any of Crown Crest Capital Management Corp., Crown Crest Financial Corp., Crown Crest Funding Corp., HCSI Home Comfort Inc., HCSI Home Comfort 2 Inc., Simply Green Home Services Inc., Simply Green Home Services Corp., Utilebill Home Services Inc., Crown Crest Capital Trust, Simply Green Retail Services Inc., Crown Crest Billing Corp., Simply Green Home Services (BC) Inc., Simply Green Home Services (AB) Inc., Simply Green Home Services (SK) Inc., and Simply Green Home Services (MB) Inc.

[23] I am satisfied that the class is defined by reference to objective criteria, is bounded and bears a rational relationship with the common issue which I discuss below.

Section 5(1)(c): The claims raise common issues.

[24] When considering whether a claim raises a common issue, the court asks whether it is necessary to resolve the issue in order to resolve each class member’s claim, and whether the issue is a substantial ingredient of each of the class members’ claims. The issue is a substantial ingredient of each claim if its resolution will advance the case or move the litigation forward, and if it is capable of extrapolation to all class members: *Vivendi Canada Inc. v. Dell’Aniello*, 2014 SCC 1, [2014] 1 S.C.R. 3, at para. 46.

[25] The plaintiff must prove that there is some basis in fact that the asserted common issues actually exist, and they are common to the entire class: *Kuiper v. Cook (Canada) Inc.*, 2020 ONSC 128, at paras. 26-33.

[26] The plaintiffs propose to certify the following issue, common to the settlement class:

Did the defendants, or any of them, engage in any unfair practices, contrary to ss. 14 or 15 of the *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Sched. A, or an equivalent consumer protection statute of another province?

[27] I am satisfied that this question is common to all settlement class members, and the resolution of this question at a common issues trial would advance the action for all class members, avoiding the need for each class member to prove the issue in individual trials.

[28] Moreover, I am satisfied that the plaintiffs have adduced evidence providing some basis in fact that the proposed common issue exists, including evidence of non-disclosure of the lease value of the class members’ leases which is alleged to be at the core of the defendants’ business model.

Section 5(1)(d): Preferable Procedure

[29] This branch of the test requires that the court be satisfied that a class proceeding would be the preferable procedure for the resolution of the common issues. This inquiry is directed at two questions: first, whether the class proceeding would be a fair, efficient, and manageable way to

advance the claim, and second, whether the class proceeding would be preferable to other procedures for resolving the common issues. Section 5(1.1) of the *CPA* adds two further criteria for the court to consider: superiority and predominance. In *Banman v. Ontario*, 2023 ONSC 6187, Perell J. found that the preferable procedure analysis involves determining:

- a. Whether the design of the class action is manageable as a class action;
- b. Whether there are reasonable alternatives;
- c. Whether the common issues predominate over the individual issues;
- d. Whether the proposed class action is superior, i.e. better, to the alternatives.

[30] Preferable procedure is addressed through the lens of the three goals of class proceedings, that is, access to justice, behaviour modification, and judicial economy: *Hollick*, at para. 27; *Banman*, at para. 313.

[31] In the context of the settlement, courts have recognized that a class proceeding is a fair, efficient, and manageable method for advancing the class members claims and is preferable to other procedures. As Perell J. held in *Waheed*, at para. 27, where there is a cause of action, an identifiable class, common issues, and a settlement, there is a strong basis to conclude that a class proceeding is the preferable procedure because certification would serve the primary purposes of the *CPA*: access to justice, behaviour modification, and judicial economy.

[32] I am satisfied that, in the context of the proposed settlement, a class proceeding is the preferable procedure to resolve the common issues. The action is manageable as a class proceeding. Given the settlement, a class proceeding is superior to all other reasonable available means to address the defendants' conduct. Moreover, in view of the settlement, there are no individual issues to address, and the proposed common issues predominate.

[33] I also note that, given the ongoing *CCAA* proceedings and the limited agreement to lift the stay in that proceeding, the consolidated class proceeding is the only procedure available to the class to pursue their claims against the insolvent defendants.

[34] I conclude that a class proceeding is the preferable procedure in this case.

Section 5(1)(e): There is an adequate representative plaintiff.

[35] The evidence before me indicates that the proposed representative plaintiffs, Alga Adina Bonnick, Goran Stoilov Donev, and Sarah-Jane Shah, are adequate representative plaintiffs. They have each played an active role in the action, including filing affidavit evidence on the original contested motions for certification and summary judgment, and will continue to do so. They have no known conflict of interest with other class members. They have proposed a workable plan to move towards the approval of the settlement agreement.

Conclusion

[36] In conclusion, I certify the consolidated action for the purposes of settlement.

Approval of Notice

[37] The plaintiffs propose a notice plan including a digital banner, and a long and a short form notice. The plan includes direct notice to the class members who have registered with class counsel for updates; publication on class counsel's website, and the administrator's website; advertising on social media; and display on a news outlet with national reach (excluding Quebec) to be selected with advice from the administrator. It includes limited notice in French and resources to assist any French-speaking class member.

[38] I am satisfied that this notice plan is appropriate and will bring the terms of the settlement, the opt-out procedure, the right to object to the settlement, and the details of the settlement approval hearing to the attention of class members.

[39] I am satisfied that the content of the notices proposed is appropriate. I note in particular the fact that the notices make clear that, if settlement approval is obtained in the consolidated class proceeding, approval must still be obtained in the CCAA proceeding.

[40] I grant the order sought with respect to the notice plan.

Summary of Orders

[41] In conclusion, I:

- a. Grant the motion to amend pleadings, add parties, and consolidate the PTC action and the Krimker action;
- b. Grant the motion to certify the consolidated class proceeding on consent for purposes of settlement approval;
- c. Approve the notice program and the notices and opt-out form.

[42] The orders arising out of this endorsement shall go in the form of the drafts I have signed.

J.T. Akbarali J.

Date: November 15, 2024