CITATION: Bonnick v. Krimker et al., 2024 ONSC 1151
COURT FILE NO.: CV-21-0065193-00CP
DATE: 20250221

SUPERIOR COURT OF JUSTICE - ONTARIO

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

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.

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.

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

HEARD: February 4, 2025

Proceeding under the *Class Proceedings Act, 1992*

CORRECTED ENDORSEMENT

Overview

[1] On this motion, the plaintiff seeks orders, among others, approving the settlement agreement reached between the plaintiffs and defendants, approving the distribution protocol to govern the administration of the settlement agreement, approving fees and disbursements of class counsel, approving certain other fees to be paid out of the settlement funds, and approving an honorarium for the plaintiff, Alga Adina Bonnick.

Brief Background

[2] This action arises 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 ("NOSIs") 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 rental charges and buy-out costs of the equipment under the contracts are out of all proportion to the value of the equipment leased.

[3] 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.

[4] The issues raised by the plaintiffs have garnered significant public attention. Class counsel, together with advocacy organizations, including Advocacy Centre for the Elderly and Pro Bono Law Ontario, worked to raise awareness of the plaintiffs' allegations. Media reported on predatory sales tactics that led to the type of allegedly unconscionable contracts at issue in this litigation. The evidence[1], and the experiences certain class members relayed at the hearing of the settlement approval motion, suggest the defendants, or some of them, engaged in a business plan that included:

a. Predatory door-to-door sales tactics;

b. Contracts for rental equipment that were out of all proportion to the value of the equipment leased, including uncapped and unreasonable annual price increases;

c. Buy-out prices that were unclear, changing, and out of all proportion to the value of the equipment leased;

[1] The evidence I refer to includes evidence led before me on a summary judgment motion that did not conclude because the parties reached a settlement while it was in process.

d. Delivery of equipment of lower value or quality than that contracted for;

e. NOSIs registered on title without the homeowner's knowledge, in amounts well in excess of the value of the equipment or the lease;

f. Inability for consumers to reach any representative of the corporation holding their contract who was empowered to have a meaningful discussion about the issues arising from the contracts and the NOSIs;

g. High-pressure tactics demanding payment of amounts already paid by class members;

h. High-pressure tactics demanding payment of exorbitant buy-out prices to remove NOSIs from title, which class members were required to pay in order to sell or refinance their homes;

i. Contracts transferred and sold between different corporate entities, leading to confusion on the part of the consumer, and a lack of corporate accountability;

j. Contracts entered into disproportionately with vulnerable consumers, including the elderly and disabled.

[5] In Ontario, the advocacy efforts and issues raised led to statutory reform, under which consumer NOSIs registered in Ontario were deemed expired: *Homeowner Protection Act, 2024*, S.O. 2024, c. 18, Sched. 4.

[6] Despite the broad range of predatory tactics and unfair business practices described by class members, class counsel focused this litigation more narrowly, to render it more suitable for determination on a class-wide basis. The action concentrates on the NOSIs and the contracts at issue, rather than the door-to-door sales tactics.

[7] I set out the allegations above for context, and not as findings of fact of wrongdoing on the part of the defendants. The alleged wrongdoing of the defendants has not been litigated, and is not before me for determination on this motion. The defendants deny liability.

Procedural History of the Action

[8] The procedural history of this action is complex. It began with a putative class action commenced by the plaintiff, Alga Adina Bonnick, against the defendant Lawrence Krimker and certain of the corporate defendants. While a motion for summary judgment and certification was pending, certain of the defendants in that action became insolvent. A creditor of the insolvent companies, People's Trust Company, commenced proceedings under the *Companies' Creditors Arrangement Act* ("*CCAA*").

[9] In the course of the *CCAA* proceedings, the plaintiffs learned information that led them to believe that People's Trust Company was a party to the alleged scheme that underlay the allegations in the class action. The plaintiffs commenced a second putative class action, this time against People's Trust Company.

[10] The stay in the *CCAA* proceedings was lifted to allow the summary judgment motion and certification motion in the first action to proceed. Before the motion was concluded, the parties reached a settlement agreement.

[11] On November 15, 2024, I released an endorsement in both actions: *Bonnick v. Krimker et al.*, 2024 ONSC 6331. In my endorsement, I granted an amendment in the action against People's Trust Company, including adding additional defendants. I consolidated the two actions and certified the consolidated class proceeding for purposes of settlement. I also approved the notice plan and proposed notices.

[12] The certified class is: all persons in Canada who are or were party to a Lease at any time between July 17, 2013 and January 15, 2025 (the Opt Out Deadline), except Excluded Persons. "Lease" and "Excluded Persons" are defined terms, but I need not repeat the definitions of those terms here.

[13] On December 13, 2024, I released an endorsement in the consolidated action: *Bonnick v. Krimker et al.*, 2024 ONSC 7018. In this endorsement, I approved Verita Global as administrator for the implementation of the proposed settlement of the proceeding.

[14] The parties now seek approval of the settlement agreement and the distribution protocol, and ancillary relief. Class counsel seeks approval of its fees and disbursements, as well as other costs to be paid out of the settlement fund, including administration costs and the Class Proceedings Fund levy. I am also asked to make an order approving an honorarium of $10,000 for one of the representative plaintiffs, Alga Adina Bonnick.

[15] Because some of the defendants continue to be in *CCAA* proceedings, even if I grant the relief sought, the agreement remains subject to approval of the *CCAA* court, to be addressed in a further hearing.

Proposed Settlement and Distribution Protocol

[16] The settlement agreement provides relief for class members in different ways, and not all class members will receive the same relief. It provides:

a. The defendants will make a cash payment of $17 million for the benefit of the class. The cash payment will be made by the settling defendants, as defined in the settlement agreement, and not by the insolvent defendants;

b. The class is entitled to a contingent cash payment, referred to as the "Participation Amount," from the sale proceeds of the companies protected under the *CCAA* proceeding. The Participation Amount shall be 25% of the purchase price paid over $250 million in connection with any transaction concluded in accordance with the *CCAA*-approved sales process;

c. A sub-group of class members will receive cancellation and arrears forgiveness of $13.5 million worth of ongoing leases and the gifting of the leased equipment to the class member without further payment or obligation;

d. A permanent cap of 3.5% will apply to the annual escalation of lease payments for all leases held as of November 1, 2024; this cap has an estimated value of $746,000;

e. A permanent reduction of 25% will apply to the contractual buyout or termination fees on leases of HVAC equipment held as of November 1, 2024 based on how those payments are currently calculated under the terms of the leases; this reduction has an estimated value of $1.7 million;

f. A consent order to the effect that no NOSI or similar lien anywhere in Canada shall be enforceable in respect of leases held by the settling defendants, together with an individualized letter to each affected class member authorizing a lawyer engaged and paid for by the individual class member to discharge the NOSI from title at the class members' expense. Although arguably no longer needed in Ontario due to statutory reform, this is a benefit to class members whose property is outside of Ontario.

[17] The settlement contemplates that some of these benefits will be administered directly by the settlement agreement and orders of the court, rather than the distribution protocol. For example, the permanent cap in annual escalation, the reduced buyout and termination fees, and the invalidity of the NOSIs together with the letters authorizing discharge require no further administration if the settlement is approved and the proposed court orders signed.

[18] The cash component of the settlement and lease cancellations are proposed to be distributed under the distribution protocol, as follows:

a. The net settlement fund shall be paid out to the class members who paid the settling defendants a buyout or termination fee on a *pro rata* basis in an amount not to exceed the amount that was paid. The distribution protocol provides for a streamlined claims process, aided by information provided by the defendants with respect to class members who paid money to terminate their leases;

b. The defendants shall be responsible for the cancellation of $11.5 million worth of leases, which they are required to select based on the length of default by the class member as reflected in their internal records.

c. The plaintiffs, through class counsel, have discretion to cancel a further $2 million worth of leases having regard to considerations identified in the distribution protocol, including hardship, mental incapacity, significant vulnerability, documented un-honoured cancellation requests, removal of functioning equipment, equipment failure, service issues, non-operational equipment, and door-step fraud and misrepresentations.

[19] The distribution protocol also provides for an internal summary appeal process for class members.

Approval of the Settlement and Distribution Protocol

Legal Principles Applicable to Motions to Approve a Settlement in a Class Proceeding

[20] Under s. 27.1(1) of the *Class Proceedings Act,* 1992, S.O. 192, c. 6, ("*CPA*"), a proceeding brought under the *CPA* may only be settled with court approval. The court shall not approve a settlement unless it determines that the settlement is fair, reasonable, and in the best interests of the class: s. 27.1(5) *CPA*, at para. 7. The burden lies on the party seeking approval: *Robinson v. Medtronic, Inc.*, 2020 ONSC 1688, at para. 63; *Nunes v. Air Transat A.T. Inc.*, 2005 CarswellOnt 2503 (S.C.J.), at para. 7.

[21] Public policy favours the resolution of complex litigation: *Nunes*, at para. 7.

[22] Settlements need not be perfect; they are compromises: *Lozanski v. The Home Depot, Inc.*, 2016 ONSC 5447, at para. 71. To find that a settlement is not fair and reasonable, it must fall outside a range of reasonable outcomes: *Nunes*, at para. 7. An objective and rational assessment of the pros and cons of a settlement is required: *Mancinelli v. Royal Bank of Canada*, 2017 ONSC 2324, at para. 38. There is a strong presumption of fairness when a proposed class settlement, which was negotiated at arms-length by counsel for the class, is presented for court approval: *Nunes*, at para. 7.

[23] A court must be assured that the settlement secures appropriate consideration for the class in return for the surrender of its litigation rights against the defendants: *Nunes*, at para. 7. However, it is not the court's function to substitute its judgment for that of the parties or attempt to renegotiate a proposed settlement. Nor is it the court's function to litigate the merits of the action, or, on the other hand, to rubber-stamp a settlement: *Nunes*, at para. 7.

[24] When considering whether to approve a negotiated settlement, the court may consider, among other things: (a) the likelihood of recovery or likelihood of success; (b) the amount and nature of discovery, evidence or investigation; (c) the proposed settlement terms and conditions; (d) the recommendation and experience of counsel; (e) the future expense and likely duration of litigation and risk; (f) the recommendation of neutral parties, if any; (g) the number of objectors and nature of objections, if any; (h) the presence of good faith, arm's length bargaining and the absence of collusion; (i) the degree and nature of communications by counsel and the representative parties with class members during the litigation; and (j) information conveying to the court the dynamics of and the positions taken by the parties during the negotiation: *Lozanski*, at para. 73; *Nunes*, at para. 7; *Robinson*, at para. 65.

[25] Other relevant considerations include whether there are any structural indicators that suggest collusion or conflict of interest: *Leslie v. Agnico-Eagles Mines*, 2016 ONSC 532, at para. 8; *Green v. CIBC*, 2022 ONSC 373, at para. 17.

[26] Agreements that place a high value on non-monetary or conditional compensation, contemplate a possible reversion of settlement funds to defendants without a concomitant reduction in class counsel's compensation, make settlement approval contingent on fee approval and have optics that suggest the settlement is more favourable to class counsel than class members are the kinds of features which suggest collusion or conflict of interest: *Smith Estate v. National*

Money Mart Co., 2010 ONSC 1334, at paras. 33 and 95, varied in part, 2011 ONCA 233; *Leslie*, at footnote 10, *Brown v. Canada (Attorney General)*, 2018 ONSC 3429, at paras. 85-86.

[27] Where counsel is in possession of significant facts and knowledge of risks, the court is justified in assuming that counsel had a complete or almost complete understanding of the risks and rewards of further litigation, and the court will be more comfortable relying on class counsel's recommendation that the settlement is in the best interests of the class: *Cannon v. Funds for Canada Foundation*, 2017 ONSC 2670, at paras. 5-10.

[28] Distribution protocols are assessed under the same legal test as settlement approval, that is, whether the protocol is fair, reasonable, and in the best interests of the class: *Zaniewicz v. Zungui Haixi Corp*, 2013 ONSC 5490, at para. 59; *The Trustees of the Drywall Acoustic Lathing and Insulation Local 675 Pension Fund v. SNC-Lavalin Group Inc.,* 2018 ONSC 6447, at para. 72.

Should the settlement and distribution protocol be approved?

[29] I consider below the factors relevant to the approval of the settlement and the distribution protocol.

The Likelihood of Recovery or Success

[30] The likelihood of recovery is a significant risk in this class proceeding, not least because of the ongoing *CCAA* proceedings.

[31] Moreover, as Perell J. recognized in *Blackford-Hall v. Simply Group*, 2021 ONSC 8502, at para. 31, historically, many suppliers in the HVAC marketplace go out of business, sometimes by bankruptcy, and some are taken over by other suppliers. "This circumstance makes it difficult for the consumers to escape the agreements that have been assigned, and this circumstance often makes it both difficult and futile to obtain any remedial relief from the vendor (supplier) which breached the consumer protection legislation."

[32] The evidence in this action reveals the assignment of agreements between different corporate entities, demonstrating the concern identified by Perell J.

[33] While the class has a strong legal position with respect to the agreements, a judgment that cannot be enforced would not be of practical value to the class.

The Amount and Nature of Discovery, Evidence, or Investigation

[34] Class counsel has had ample opportunity to investigate the allegations underlying this claim. They first became familiar with the alleged scheme when acting *pro bono* in individual proceedings for certain consumers who were party to the sort of leases impugned in this proceeding.

[35] The contact between class counsel and class members in this case was unusually extensive. During the class proceeding, class counsel had contact with hundreds of class members who provided information and documents. They also received extensive documentary productions through the development of a motion record in a highly contested summary judgment motion. In

addition, there was extensive documentary production and records obtained through the *CCAA* proceeding in which class counsel participated on behalf of the class.

[36] Class counsel's knowledge and understanding of the evidence and allegations in this proceeding is thus extensive and deep.

The Proposed Settlement Terms and Conditions

[37] The proposed settlement in this case is informed by a similar class action in the same industry, *Cullaton v. MDG Newmarket Inc*. In *Cullaton*, the class alleged that they were owed damages and other remedies due to misleading HVAC leases that contravened the *Consumer Protection Act*. *Cullaton* dealt with a single standard form contract by one supplier. *Cullaton* was settled through an agreement that provided a monetary element and solutions by way of contract modification for class members remaining in their contracts. Class counsel built upon the experiences learned from the *Cullaton* settlement when negotiating the settlement agreement in this proceeding.

[38] I have already described the elements of the proposed settlement and distribution protocol. All class members will derive some benefit from it, although the benefits will be different. Importantly, all NOSIs will become unenforceable, and no longer able to act as an impediment to class members' refinancing or selling their homes. Some class members will receive monetary compensation, while others will receive lease cancellation benefits. Some will receive contractual benefits in the form of reductions in the buy-out cost of the lease, and caps on increases in annual lease payments.

The Recommendation and Experience of Counsel

[39] The settlement is recommended by class counsel, who is very experienced. In counsel's view, especially in view of the *CCAA* proceedings, the recovery for the class is as good as could have been expected. It resolves the litigation in a timely manner. For a class that includes a high number of elderly and disabled class members, some of whom have died during the course of the proceeding, a timely resolution provides real value.

The Future Expense and Likely Duration of the Litigation

[40] An adjudication of the issues in this litigation would be time-consuming. It would require reviving the summary judgment and certification motion in the original class proceeding, assuming the lift stay order in the *CCAA* proceedings could be continued, which is a questionable assumption. It would require advancing the class proceeding against People's Trust Company, which is at the earliest stages and can be expected to be vigorously contested.

[41] The complexity of two class actions and the *CCAA* proceedings would add delay and expense to the proceedings. Appeals would be expected. The class proceedings would likely take years to resolve.

The Number of Objectors and Nature of Objections

[42] The representative plaintiffs support the proposed settlement.

[43] Notice of settlement approval reached a few million people. Two class members objected to the settlement. Four others provided comments. The comments can be described as generally supportive of the settlement. Some class members who commented wished to share their stories with the court. Several class members attended the hearing and shared their views, including objections.

[44] The objections to the settlement were limited to certain aspects only. Two class members shared their view that the cap on lease increases and the reduction in buy-out amount were insufficient, and still resulted in lease costs and buy-out costs out of proportion to the value of the equipment. One class member shared his view that it should be up to the defendants to remove the NOSIs from title to the class members' properties.

[45] Class counsel explained that there was a finite pool of benefits or funds that could be obtained in the settlement, and determining the allocation of those required judgment which they exercised based on the instructions of the representative plaintiffs and the experiences of class members. A significant objective of commencing the proceeding at the outset was to address the NOSIs, and as a result of the proposed settlement, no class member will have to worry about an enforceable NOSI on title. The proposed settlement strikes a balance designed to provide all class members with some relief. I note that the $2 million in lease cancellations that are within the discretion of class counsel is also meant to address the situation of class members who continue to have leases for HVAC equipment and whose circumstances require further redress, based on the criteria identified earlier, including vulnerability.

[46] Apart from the objectors, I note that there were 31 putative class members who opted out of the settlement, many because they had commenced individual litigation in relation to their contracts.

The Presence of Good Faith, Arms-Length Bargaining, and the Absence of Collusion

[47] The parties entered into a negotiation process prompted by order of the *CCAA* court on advice of the *CCAA* monitor. They were assisted by a former judge of this court with familiarity with *CCAA* proceedings. The evidence indicates the negotiations took place over several months, after an initial mediation failed. There is every indication that good faith, arms-length bargaining led to the proposed settlement.

[48] There are no structural elements of the proposed settlement that indicate any collusion or conflict of interest.

The Dynamics of, and Positions taken by the Parties during the Negotiations

[49] As I have noted, settlement discussions originally failed, and took months to result in a proposed resolution.

The Nature of Communications by Counsel and the Representative Plaintiffs with Class Members

[50] I have already noted that class counsel's communications with class members was unusually frequent and deep. The interest of class members in the proceeding was reflected in the attendance of many spectators at the summary judgment motion, and the participation of class

members at the settlement approval hearing. The class in this proceeding has been attentive and engaged throughout.

The Risks of Not Approving the Settlement

[51] I have already averted to the biggest risks inherent in not approving the settlement: the length of time it would take to reach an adjudicated result, the delays associated with appeals, the potential that the stay of proceedings from the *CCAA* proceeding would be renewed, and the risk of inability to recover based on the nature of the HVAC industry and the transfers of contracts between corporate entities, and the insolvency of a number of the corporate defendants.

Conclusion on Approval of the Settlement and Distribution Protocol

[52] I reiterate that in determining whether the settlement and distribution protocol ought to be approved, it is not within my discretion to rework aspects of the settlement. I cannot, for example, decide that the settlement should be approved, but with a greater reduction in the buy-out fees for leases, and a smaller cash component. I am asked a yes or no question when it comes to approving the settlement and distribution protocol.

[53] I reiterate too that to find the settlement or distribution protocol is not fair and reasonable, it must fall outside a range of reasonable outcomes.

[54] I accept the submissions of the objectors that the settlement and distribution protocol are not ideal in some respects. They are imperfect, but imperfection is an inescapable characteristic of settlements. All class members will benefit from the proposed settlement and distribution protocol in important and valuable ways. In contrast, the risks of proceeding with the litigation are significant, especially in view of the *CCAA* proceedings and the insolvency of many of the corporate defendants.

[55] In my view, the settlement and distribution protocol are fair, reasonable, and in the best interests of the class. I approve them.

Notice of Settlement Approval

[56] The plaintiffs seek approval of a notice of settlement approval. I have reviewed the proposed notice and I am satisfied that it clearly sets out the required information. The proposed notice complies with s. 27.1(12) of the *CPA*.

[57] The court has already approved a notice plan. The notice of settlement approval shall be distributed by the administrator in accordance with the plan. I note that the notice shall only be distributed if the *CCAA* court also grants approval to the settlement, and subject to any non-material modification that may be required by that court. If a material modification is required, the parties may seek a further attendance before me to address notice approval for purposes of the *CPA*.

Administration-Related Disbursements

[58] As I have noted, on December 12, 2024, I approved Verita Global as administrator of the settlement. The settlement, which I have approved, contemplates that the costs of notice and administration of the settlement shall be paid out of the settlement fund. I approve the payment of the administrator's reasonable fees and disbursements from the settlement fund.

Class Counsel Fees

[59] Class counsel seeks approval of its fees the amount of $5,610,000 plus 33% of any Participation Amount that may result from the sale of the business in the *CCAA* proceeding.

[60] Class counsel entered into retainer agreements with the representative plaintiffs under which class counsel is entitled to 33% of any recovery, plus taxes and disbursements.

[61] The amount class counsel seeks in this case is less than provided for in the retainer agreement. Class counsel seeks approval for 33% of the cash components of the settlement only.

Legal Principles Applicable to the Approval of Counsel Fees and Disbursements

[62] As Morgan J. noted in *Austin v. Bell Canada*, 2021 ONSC 5068, at para. 10, citing *Commonwealth Investors Syndicate Ltd. v. Laxton,* [1994] O.J. No. 2922, at para. 63 (S.C.J.), when considering whether to approve class counsel fees, "the amount payable under the contract is the starting point for the application of the court's judgment."

[63] In *MacDonald et al. v. BMO Trust Company et al.*, 2021 ONSC 3726, at para. 21, Belobaba J. held that the approach that presumes valid the percentage of recovery agreed to in the contingency fee retainer (up to one-third) is appropriate in most class action settlements. See also *Dufault v. The Toronto-Dominion Bank*, 2024 ONSC 961, at para. 39, where I held, citing *Cannon,* at paras. 8-10, that:

> A contingency fee of up to 33% is presumptively valid and enforceable provided that the arrangement is fully understood and accepted by the representative plaintiff, the contingency amount is not excessive, and the contingency fee is not so large as to be unseemly or otherwise unreasonable.

[64] There is ample law explaining why contingency fees in class proceedings advance the goal of access to justice: see, for example, *Baker (Estate) v. Sony BMG Music (Canada) Inc.*, 2011 ONSC 7105, at para. 64; *Osmun v. Cadbury Adams Canada Inc.*, 2010 ONSC 2752, at para. 21.

[65] Contingency fees also incentivize class counsel to maximize recovery for the class, and promote judicial economy by encouraging efficiency in the litigation and discouraging unnecessary work: *Crown Bay Hotel Ltd. Partnership v. Zurich Indemnity Co. of Canada*, 1998 CanLII 14842; *Osmun*, at para. 21

[66] The general principles to apply to the assessment of class counsel's fees were set out by Juriansz J.A., in *Smith Estate v. National Money Mart Co.*, 2011 ONCA 233, at para. 80:

a. the factual and legal complexities of the matters dealt with;

b. the risk undertaken;

c. the degree of responsibility assumed by class counsel;

d. the monetary value of the matters in issue;

e. the importance of the matter to the class;

f. the degree of skill and competence demonstrated by class counsel;

g. the results achieved;

h. the ability of the class to pay;

i. the expectations of the class as to the amount of the fees;

j. the opportunity cost to class counsel in the expenditure of time in pursuit of the litigation and settlement.

[67] The court also considers the integrity of the profession as a relevant factor: *Fresco v. Canadian Imperial Bank of Commerce*, 2023 ONSC 3335, at paras. 127-133, aff'd 2024 ONCA 628, at paras. 101-102. It is important to note, as the Court of Appeal did in *Fresco*, at para. 84, that the phrase "integrity of the profession" is not meant to connote dishonesty in this context, but rather, a fee that is not champertous.

[68] In *McIntyre Estate v. Ontario (Attorney General)*, 2002 CanLII 45046, at para. 76, the Court of Appeal for Ontario found that a "fee agreement that so over-compensates a lawyer such that it is unreasonable or unfair to the client is an agreement with an improper purpose -- i.e., taking advantage of the client."

[69] The risk class counsel took on must be measured from the outset of the litigation, not with the benefit of hindsight: *Gagne v. Silcorp Ltd.*, 1998 CanLII 1584.

Should class counsel fees be approved?

[70] I begin by noting that the jurisprudence reviewed above supports the conclusion that the agreed-upon 33% contingency fee contained in the retainer agreements is presumptively valid. Moreover, the record establishes that the retainer agreements satisfy the requirements of s. 32(1) *CPA*.

[71] I find that the counsel fees sought (plus applicable taxes), and including 33% of any Participation Amount, are fair and reasonable. I reach this conclusion for the following reasons:

a. Class counsel took on a putative class action that was factually and legally complex, and applied skill and judgment to simplify it to make it into a claim amenable to certification, while still maintaining the class's claims for damages and other relief.

b. The risk class counsel undertook was significant, in part due to the expected difficulty in obtaining recovery of any judgment obtained; that risk presented itself in concrete terms when many of the corporate defendants became engaged in *CCAA* proceedings.

c. The risk inherent in the claim was also reflected in the fact that the Class Proceedings Fund had earlier refused to fund a different case involving the same conduct and some of the same defendants. Class counsel advanced a novel, top-down liability theory, and sought relief, such as the class-wide discharge of NOSIs, that was also novel. Class counsel succeeded in obtaining funding from the Class Proceedings Fund, likely in part due to their approach to the issues which, while carrying risk due to its novelty, resulted in a claim that was amenable to class-wide treatment.

d. Class counsel assumed a significant degree of responsibility in this proceeding. Not only did they act in connection with the original class action, but they commenced a second class action, and took on the responsibility of advocating for the class in the *CCAA* proceedings. In addition, their responsibilities to the class were more demanding than in most class proceedings, due to the significant engagement and communication with and from class members, some of which resulted from the widespread media coverage of the class members' claims.

e. The monetary value of the matters in issue was significant, as reflected by the size of the settlement.

f. The matters raised in the action were of great importance to the class. The class has received real value from the proposed settlement, not least of which is the class-wide unenforceability of the NOSIs, in addition to the other monetary and non-monetary relief. In part due to class counsel's advocacy efforts, along with those of the representative plaintiffs, class members, and other advocacy organizations, legislative reform was also achieved.

g. The results of the settlement are excellent. As I have noted, class members receive real value, and they get it in a timely way, which is particularly important for the elderly and disabled class members who make up a material proportion of the class.

h. The settlement is large enough that the class has the ability to pay the fees sought.

i. Class counsel seeks fees that are less than the amount set out in the retainer agreements, and less than the amount that the jurisprudence recognizes as presumptively valid. I thus conclude that the fees sought are within the expectations of the class. Even those class members who objected to portions of the settlement praised class counsel's efforts on behalf of the class.

j. The opportunity cost to class counsel of this case is significant. The evidence indicates that counsel's total incurred time up to January 20, 2025 is $1,710,740.109 before HST. Class counsel will also continue to devote time to this action in connection with obtaining approval from the *CCAA* court, as well as in

discharging their active role in the implementation of the settlement as contemplated in the distribution protocol. Class counsel will also maintain an active role in the sales process of the business to be conducted in the *CCAA* proceeding, though that work will be compensated on a contingency basis if the sale price is sufficient to generate a Participation Amount under the terms of the settlement.

k. In my view, the fees sought do not call into question the integrity of the legal profession, nor are they so large as to be unseemly or unreasonable, when viewed in the context of the actual time counsel devoted and will devote to the litigation, the risks they undertook, and the benefits obtained for the class.

[72] I also approve class counsel's requests for disbursements, plus their request for additional reasonable disbursements up to a maximum of $30,000 plus taxes, recognizing the amount of work that remains for class counsel in connection with this litigation. If greater disbursements are incurred, class counsel may seek a further order of this court for approval of additional disbursements.

[73] These amounts shall be paid from the settlement fund.

Class Proceedings Fund

[74] The Class Proceedings Fund provided funding to the plaintiff class in the original action. I am asked to approve a levy payable to the Class Proceedings Fund in the amount of 10% on 38.19% of the net settlement fund.

[75] This figure originates from the data provided to class counsel from Chief Restructuring Officer in the *CCAA* proceeding. The best estimate available is that 138,977 leases nationally (some of which may be held by the same class member) were captured in the People's Trust Company class proceeding. The definition of the class in the original class proceeding is wholly subsumed by the definition of the class in the People's Trust Company proceeding (and in the consolidated proceeding). The Chief Restructuring Officer's best estimate is that, of the 138,977 leases, 53,088 leases were in Ontario and involved a NOSI on title, and thus captured by the class definition in the original proceeding.

[76] The Chief Restructuring Officer further estimates that each householder (i.e., class member) has an average of 1.35 leases.

[77] Using these estimates, the original class proceeding covered 39,324 class members, and thus constitutes 38.19% of the national class in the People's Trust Company action.

[78] The plaintiffs calculate the Class Proceedings Fund levy at 10% of 38.19% of the net settlement fund, inclusive of the initial cash payment and any Participation Amount, after payment of class counsel fees, disbursements and administration expenses, in accordance with s. 10(3) of O. Reg. 771/92. I am satisfied that the evidence supports the levy in the amount sought.

[79] In addition, the Class Proceedings Fund advanced disbursements of $5,294.07 in connection with this litigation. It is entitled to be reimbursed that amount from the settlement fund.

The Honorarium

[80] The plaintiffs ask that I approve an honorarium for the representative plaintiff, Alga Adina Bonnick, in the amount of $10,000, to be paid from the settlement fund. They do not seek an honorarium for the other representative plaintiffs.

[81] In *Doucet v. Royal Winnipeg Ballet Company*, 2023 ONSC 2323, the Divisional Court considered the circumstances under which a representative plaintiff may be entitled to an honorarium. The Divisional Court found that a modest payment to the representative plaintiff can be made in exceptional circumstances. In considering whether to approve or disapprove a request for an honorarium, the court should consider the following factors (*Doucet*, at para. 92):

> a. The nature of the case, including whether the representative plaintiff brings forward a claim (such as for sexual abuse) in which they expose themselves to re-traumatization for the benefit of the class.
>
> b. The nature of the remedies available for the cause of action asserted, particularly cases where even complete success would lead to only a tiny monetary remedy for each class member or none at all.
>
> c. The steps taken by the representative plaintiff, who must do more than taking an active role and fulfilling the normal steps required in class proceedings, [in] achieving a settlement. Exceptional circumstances include enduring significant additional personal or financial hardship in connection with the prosecution of the class proceeding.
>
> d. The rationale for the requested payment, which must not be added compensation for losses or damages that fall within the potential remedies available for the causes of action asserted in the claim itself or for the necessary steps to fulfill the responsibilities of a representative plaintiff.
>
> e. The exposure to a real risk of an adverse costs award.
>
> f. The quantum of the requested payment, which must be modest both in general terms and in relation to the remedies available to the class members in the settlement.

[82] The Divisional Court's conclusion was cited with approval by the Court of Appeal for Ontario in *Fresco*, at paras. 107-112.

[83] In my view, Ms. Bonnick's contribution to this class proceeding can fairly be described as exceptional.

[84] Ms. Bonnick became a proposed representative plaintiff in her 70s. Ms. Bonnick is a retired house cleaner. She manages chronic medical conditions, including high blood pressure and poor

eyesight. She is of limited means. She had no experience with the civil justice system until this proceeding.

[85] It is apparent to me, from the affidavits of class members that I read in the context of the summary judgment and settlement approval motions, from the written statements class members delivered in connection with the settlement approval motions, and from the stories that class members who attended the settlement approval hearing told me, that many class members experienced a great deal of stress and anxiety as a result of the leases at issue in this proceeding. Class members relayed how their health had suffered from the stress. They felt exploited, and helpless.

[86] The court sees lease-related disputes regularly, but this dispute was qualitatively different, measured by the impact it had on consumers, and particularly those who are vulnerable.

[87] When Ms. Bonnick decided to take on the role of representative plaintiff, she not only sought justice for class members, but she shielded them from having to revisit publicly events that many of them found to be traumatic. Ms. Bonnick went through a lengthy cross-examination, and by placing herself at the forefront of the litigation, she allowed others to protect themselves.

[88] Ms. Bonnick was so committed to the proceeding that she persevered while dealing with the illness of her son. Tragically, he died shortly before the hearing of the summary judgment motion. Ms. Bonnick put off time to grieve with family abroad to be present for the hearing.

[89] The honorarium sought is modest, both in general, and in the context of the benefits of the settlement.

[90] Ms. Bonnick's exceptional commitment to the proceeding ought to be recognized with an honorarium. I approve the honorarium of $10,000.

Conclusion

[91] In conclusion, I approve the settlement and distribution protocol. I approve class counsel's request for fees, disbursements, and taxes, and the honorarium for Ms. Bonnick. I approve the notice, administration fees, and payment to the Class Proceedings Fund.

[92] These orders are contingent upon the approval of the settlement agreement by the *CCAA* court, and the agreement becoming effective pursuant to its terms.

[93] The plaintiffs have provided me with draft orders with which I am largely satisfied. However, I ask counsel to take these reasons into account and provide me with finalized copies of the orders for my signature.

Post-Script

[94] I wish to thank all counsel for their professionalism and helpful submissions throughout this complex and important litigation. In many ways, this litigation highlights how the objectives of class proceedings — access to justice, behaviour modification, and judicial economy — are not just aspirational.

[95] I also wish to extend my thanks to the class members who participated and engaged in the process; by doing so, you demonstrated the importance of this proceeding to you and to the class, and the value of class actions as a vehicle for justice in our society.

[96] Finally, I wish to offer my thanks to the representative plaintiffs, and particularly to Ms. Bonnick who suffered a great deal personally while continuing to persist in this litigation. There is no access to justice in class proceedings without representative plaintiffs; our system of justice owes each person who is willing to take on the (unpaid) responsibilities of a representative plaintiff for the benefit of others a debt of gratitude.

J.T. Akbarali J.

Date: February 21, 2025

Corrected: February 25, 2025