

## Consumer Protection in the Home Equipment Rental Financing Industry

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Door-to-door marketing of household equipment for rent, such as air conditioners, hot water heaters, and water softeners, has created a flurry of media coverage, regulatory action, and legal proceedings. This industry exploits loopholes in the laws governing consumer protection, civil litigation and the real property registration system, and has been widely decried as a scam. Yet, in the absence of serious enforcement measures, it continues to flourish in Ontario.

The scam works by locking vulnerable homeowners into disadvantageous rental contracts for home equipment. Door-to-door salesmen target mature suburban neighbourhoods, where the homeowners are likely to be older. When they get the homeowner at the door, they use deceptive marketing tactics and high-pressure sales techniques to get homeowners, many of whom may have language barriers or cognitive impairments, to sign excessively one-sided rental agreements for HVAC or other home equipment of dubious quality.

These rental companies rent out HVAC equipment at massively inflated prices. They then assign the rental contract to an associated financing company who registers a notice of security interest against the house, without telling the homeowner. When the homeowner goes to sell or refinance their house, they are shocked when their lawyer tells them about the notice of security interest. They are even more shocked when the finance company sends the payout statement, demanding payment of \$10,000.00, \$15,000.00, or even more. All to "buy out" a rental contract for an air conditioner or water softener, the retail value of which may be no more than \$2,500.00. In many cases, this is after the homeowner has already paid hundreds or thousands of dollars in rental fees before "buying out" the contract, which makes the disparity between fair retail value and the amounts charged even more obscene.

### Media Coverage

Consumer affairs journalists have covered the HVAC rental industry extensively, generating reports with headlines such as "Man still paying off 'predatory' contracts his father signed with HVAC company funded by big financial lender" on [cbcnews.ca](http://cbcnews.ca)<sup>1</sup>, or "Slick sales pitches trap seniors in costly contracts" in the *Toronto Star*.<sup>2</sup> "High-pressure scammers dupe Ontario woman

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<sup>1</sup> Nicole Brockbank, "Man still paying off 'predatory' contracts his father signed with HVAC company funded by big financial lender" (25 March 2019), online: *CBC News* <[cbc.ca/news/canada/toronto/home-trust-hvac-rental-contracts-1.5067957](http://cbc.ca/news/canada/toronto/home-trust-hvac-rental-contracts-1.5067957)>.

<sup>2</sup> Ellen Roseman, "Slick sales pitches trap seniors in costly contracts" (23 January 2018), online: *Toronto Star* <[thestar.com/business/personal\\_finance/advice/2018/01/23/slick-sales-pitches-trap-seniors-in-costly-contracts.html](http://thestar.com/business/personal_finance/advice/2018/01/23/slick-sales-pitches-trap-seniors-in-costly-contracts.html)>.

into replacing nearly new furnace” offers the National Post<sup>3</sup>, while the CBC has also run stories under the headlines, “High pressure door-to-door furnace sale leaves family steaming over \$10K buy-out bill”,<sup>4</sup> “Single mom hit with \$32,000 bill to break furnace, air conditioner rental contract”,<sup>5</sup> and “Woman with dementia locked into 10-year home-heating contract - with a \$15K lien on her property”.<sup>6</sup> For its part, CTV ran a major feature on the door-to-door home-equipment-rental-financing industry on the programme W5, in a two-part investigative series titled “Energy Trap”.<sup>7</sup>

Frustrated homeowners have turned to the courts for relief and have found success. The courts have found these rental contracts to be unconscionable and unenforceable and have granted rescission. In every one of the handful of reported decisions handed down in Ontario so far, the homeowner has been successful. Despite the factual similarities amongst these cases, each judge hearing these cases has provided their own legal analysis, even as they have all reached the same conclusion.

### Reported Decisions in Ontario

In *Balagula v Ontario Consumers Home Services*,<sup>8</sup> the homeowner entered into an agreement to sell his house, at which time he discovered the notices of security interest registered on title. He paid out the notices of security interest to the rental company so he could close the sale of his house, and then sued the rental company in Small Claims Court for return of the buy-out monies. Ruling in favour of the plaintiff, the Deputy Judge found that the rental contract was an onerous contract and the unusually onerous provisions of the contract were not pointed out to the homeowner at the time he signed the contract. The rental company was ordered to return the buy-out monies to the homeowner. The appeal by the defendant was dismissed by the Divisional Court.<sup>9</sup>

In *Duncan v Ontario Home Service Inc.*,<sup>10</sup> the homeowner brought a claim in Small Claims Court for rescission of an HVAC rental contract under the *Consumer Protection Act, 2000*. She also

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<sup>3</sup> “‘You feel really stupid’: High-pressure scammers dupe Ontario woman into replacing nearly new furnace”, *National Post* (11 April 2016), online: <nationalpost.com/news/canada/you-feel-really-stupid-high-pressure-scammers-dupe-ontario-woman-into-replacing-nearly-new-furnace>.

<sup>4</sup> Belle Puri, “High pressure door-to-door furnace sale leaves family steaming over \$10K buy-out bill” (9 March 2020), online: *CBC News* <cbc.ca/news/canada/british-columbia/simply-green-door-to-door-furnace-sales-1.5484612>.

<sup>5</sup> Sophia Harris, “‘I was livid’: Single mom hit with \$32,000 bill to break furnace, air conditioner rental contract” (26 January 2020), online: *CBC News* <cbc.ca/news/business/home-energy-appliance-rental-crown-crest-furnace-1.5439572>.

<sup>6</sup> Rosa Marchitelli, “Woman with dementia locked into 10-year home-heating contract - with a \$15K lien on her property” (19 April 2021), online: *CBC News* <www.cbc.ca/news/business/hvac-contracts-lien-sales-1.5988112>.

<sup>7</sup> “W5 investigates door-to-door furnace sales schemes that victimize Canadians” (1 October 2016), online: *CTV News* <ctvnews.ca/w5/w5-investigates-door-to-door-furnace-sales-schemes-that-victimize-canadians-1.3096100>.

<sup>8</sup> *Balagula v Ontario Consumers Home Services*, 2017 CanLII 152558 (ON SCSM).

<sup>9</sup> *Balagula v Ontario Consumers Home Services*, 2018 ONSC 5398 (Div Ct).

<sup>10</sup> *Duncan v Ontario Home Services Inc.*, 2019 CanLII 131885 (ON SCSM).

sought an order that a notice of security interest be deleted from title to her house. Deputy Judge Hum granted rescission of the contract pursuant to the *CPA*. Notably, though it was requested by the plaintiff, the Deputy Judge specifically declined to address her request that a notice of security interest be ordered to be deleted from title to her house.<sup>11</sup> Though not stated by Deputy Judge, this was likely because she considered the Small Claims Court to lack jurisdiction to make an order affecting the land titles register, by operation of section 97 of the *Courts of Justice Act*.

The case of *Skymark Finance Corporation v Toraman*<sup>12</sup> was typical of the high-handed conduct of the actors in the home equipment rental financing industry. In this particularly jarring case, the plaintiff, who acts as a finance company to equipment rental companies, sued the defendant homeowners for more than \$8,000.00 for unpaid rental payments in respect of a rental contract for a water filter. The homeowners were immigrants to Canada with limited abilities in English who had made multiple attempts to get out of the rental contract which had been presented to them by a door-to-door salesman. The Deputy Judge found that the rental company's "door-to-door salesman engaged in both false, misleading or deceptive representations and unconscionable representations." He granted rescission of the contract pursuant to the provision of Part III of the *Consumer Protection Act, 2002* and dismissed the finance company's action.

Notwithstanding these setbacks in court, the door-to-door rental scam continues apace in Ontario, and these cases continue to come before the courts. The most recent decision in this area is in *Utilebill Credit Corp. v Apex Home Services Inc.*<sup>13</sup> This case, brought in Small Claims Court by a self-represented plaintiff homeowner against the rental company and the financing company, had some facts which are not typical of all such cases. In particular, the homeowner had made handwritten amendments to the rental contract before signing it. She inserted handwritten notations to indicate that the entire price of the furnace and air conditioner would be \$7,355.00, payable over ten (10) years, with no interest. It was also her position that this was a purchase agreement, not a rental agreement. In other words, she believed she was buying the equipment, while the defendants argued that she was renting the equipment.

The Deputy Judge considered the fact that the pre-printed terms of the contract and the handwritten note of the homeowner were inconsistent and held that the handwritten amendment prevailed. She also held that the contract (had it not been amended) would have been unconscionable, and awarded the plaintiff homeowner \$10,000.00 in punitive damages.

Utilebill, the financing company, appealed the award of punitive damages only. Though it overturned some of the Deputy Judge's specific findings, the Divisional Court nevertheless dismissed the appeal, finding that the Deputy Judge had sufficient grounds to award punitive damages.

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<sup>11</sup> *Ibid* at para 72: "I will not deal with Ms. Duncan's claim for discharge of the lien on her property."

<sup>12</sup> *Skymark Finance Corporation v Toraman*, 2020 CanLII 51091 (ON SCSM).

<sup>13</sup> *Utilebill Credit Corp. v Apex Home Services Inc.*, 2021 ONSC 4633 (Div Ct).

## Class Action against Ontario Energy Group

At least one class action against actors in the home-equipment-rental-financing industry has been certified in Ontario. *Cullaton v MDG Newmarket Inc*<sup>14</sup> was brought against one rental company (MDG Newmarket Inc., operating as Ontario Energy Group) and its financing company (Home Trust Company). Despite vigorous opposition from Home Trust, the class action was certified by the Superior Court in 2019. The class was defined as “All persons in Ontario who are or were at any time party to a lease agreement of equipment with MDG Newmarket Inc. O/A Ontario Energy Group entered into between May 1, 2012 and December 31, 2016.” At the hearing of the certification motion, it was estimated that there are approximately 12,500 individuals across Ontario who fall into this class.<sup>15</sup> A proposed settlement of this class action, for \$14.95 million, is currently pending court approval.<sup>16</sup>

## The Regulatory Response

The regulatory response to this business model has been incremental. One of the last measures taken by the previous Liberal Government in Ontario was to ban door-to-door selling of most HVAC equipment, including furnaces, air conditioners, hot water heaters, and water softeners.<sup>17</sup> The government was clear that this ban was designed specifically to target this business model. These changes came into effect on 1 March 2018. In this author’s practice, I have observed that these regulatory changes have not diminished the prevalence of this business model. The actors in this industry have simply switched to renting out equipment or services which are not banned under the regulations. In recent cases I have seen, these companies have registered notices of security interest purporting to secure an interest in electric optimizers, thermostats, doorbell cameras, and even blown-in attic insulation.

The business model is exactly the same, in that it relies on the secretive registration of an instrument on title to the homeowner’s house and the subsequent payout of that instrument under the pressure of having to comply with an agreement to sell the property. Though virtually nothing has changed about this business model, the rental and financing companies can genuinely say that they are complying with the regulations, because they have not rented any of the specific types of equipment which are prohibited under O Reg 17/05.

The current provincial government has solicited comments on proposed changes to the *Consumer Protection Act, 2002* which would make it slightly easier for homeowners to have

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<sup>14</sup> *Cullaton v MDG Newmarket Inc.*, 2019 ONSC 6432.

<sup>15</sup> *Ibid* at para 60.

<sup>16</sup> Forman & Company, Press Release, “Proposed Settlement Reached in HVAC Equipment Lease Class Action against Ontario Energy Group and Home Trust Company” (14 June 2021).

<sup>17</sup> *General*, O Reg 17/05, s 35.1.

these “HVAC liens” deleted from title to the property in cases where the homeowner has cancelled the contract during the ten-day cooling-off period.<sup>18</sup>

In its submissions to the government, the Advocacy Centre for the Elderly (“ACE”) has accurately summarised the problem with this business model when it said:

ACE is frequently told by callers that if they knew that a business was going to put a “lien” on their property, they would have never entered into the lease. In addition to [the proposals], which ACE supports, business (sic) must advise consumers that a notice may (or will) be registered on title to the consumer’s home before the contract is entered into.

In addition to clarifying the business’ obligation to discharge notices related to leased consumer goods registered in the Land Registry System when the contract for the leased good is cancelled or terminated in accordance with the CPA, there should be financial penalties for failing to do so.<sup>19</sup>

No timeline has been provided as to when these proposed changes may be implemented.

## Conclusion

Despite heavily unfavourable media coverage, strong court decisions (including the awarding of punitive damages), and regulatory responses from the provincial government, actors in the home equipment rental financing industry continue their door-to-door business model. They continue to register notices of security interest against title to the homes where the rented equipment is located without informing the homeowners of the registration. As these elderly homeowners move out of their houses and into long-term care, they and their children are going to be in for an unpleasant surprise when they try to sell the house. They will discover the notices of security interest, the finance company will hold up the sale of the house until they get paid, and the homeowners will wonder how so much of the equity in their house was eaten up by a rented water softener.

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<sup>18</sup> Ontario, Ministry of Government and Consumer Services, *Improving Ontario’s Consumer Protection Act: Strengthening Consumer Protection in Ontario*, Consumer Protection Act, 2002 Review Consultation Paper (1 December 2020), online: <[ontariocanada.com/registry/view.do?language=en&postingId=35387](http://ontariocanada.com/registry/view.do?language=en&postingId=35387)>.

<sup>19</sup> Letter from Advocacy Centre for the Elderly to Minister of Government and Consumer Services (1 February 2021).