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THE BOARD OF COMMISSIONERS

29th January 2021

CPA.18.214

Mr. Arsene Ladouce
Mont Buxton
Mahe

ATTN: Mr. Ladouce

Dear Mr. Ladouce,

RE: Ms Myriam Desir Vs Mr Arsene Ladouce (trading as ATL Building Contractor)- CPA.18.214

In accordance with Section 42(1) of the Fair-Trading Commission Act 2009, please find attached a signed copy of the ruling of the Board of Commissioners of the hearing conducted in the above-mentioned case. We trust in your expedient compliance as per the orders contained herein.

Also note that failure or refusal to comply with this ruling constitutes an offence under Section 53(1) of the Fair-Trading Act 2009. The same is reproduced below:

53 (1) A person which refuses or fails to comply with a direction or order of the commission commits and offence and is liable-

a) Where the person is an individual, to a fine not exceeding SCR 100,000 rupees or to imprisonment for a term not exceeding 2 years or to both
b) Where the person is a person other than the individual to a fine not exceeding SCR 400,000 rupees

THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

(Consumer Protection Act, 2010)

IN THE MATTER:

MYRIAM DESIR
V
ARSENE LADOUCE
(trading as ATL Building Contractor)
EXPARTE

Case No: CPA.18.214

Complainant – Myriam Desir
Respondent – Arsene Ladouce

QUORUM:
Mr. Victor Pool – Presiding Commissioner
Mrs. Jenna Thelermont – Commissioner
Mr. Michael Nalletamby – Commissioner

For the Complainant
Ms. Hazel Renaud–Legal Officer (FTC)

For the Respondent
Mr. Arsene Ladouce- Absent

RULING

[1] The Fair-Trading Commission (the Commission) registered a complaint from Ms. Myriam Desir (the complainant) of Roche Caiman on the 28th December 2018 (A5), against one Mr. Arsene Ladouce (A2), trading as ATL Building Contractor (the respondent) of, Mont Buxton (A3, CE7).

[2] The gist of the complaint is that on the 28th July 2018, Ms. Desir and Mr. Ladouce entered into a contract for the construction of her four-bedroom house on pillars with an attic at Grand Anse Mahe on parcel number B7162

(A6, CE1, CE3). The quoted sum for this project was SCR 1,400,000, which was to be paid in eight (8) installments of various sums(A8).

[3] That on the 30th July 2018, Ms. Desir paid the first installment amounting to SCR 350,000 (A10, CE2). This was for the site preparation; foundation works up to the concrete flooring for the first floor including all shuttering works. The commencement date and time frame for this project was agreed to be one week after the first disbursement of money and that the agreed time frame for the completion of the house would be six to seven months thereafter (A9).

[4] On the 21st November 2018, exactly four months after the first disbursement was made, Ms. Desir terminated the service of Mr. Ladouce. Ms. Desir explained in her letter as to why she terminated the contract (A12, CE5), due to the fact that she was not satisfied with his works and the delay to deliver as he had no capacity in terms to finish the works as per the agreement signed.

[5] That on the 28th November 2018, officers of the Planning Authority conducted site visits at Ms. Desir's premises and observed that there were differences in height of the pillars erected and that nonetheless it was still according to plan. Further to that, the design engineer was advised to certify the works done and to submit new structural details if changes are made.

[6] In December 2018, Ms. Desir's design engineer noted that the contractor had not followed and built according to the approved engineering and architectural specifications and that this contravenes Article 1 of the contract document.

[7] That on the 28th December 2018, Ms. Desir placed her complaint at the fair-trading commission alleging that Mr. Ladouce at this stage had only done site preparations and put up only seven pillars and that she would like a refund (CE4).

[8] That the Fair-trading commission launched an investigation into this matter and that on the 05th February 2019, the officers at the Fair-Trading Commission carried out a site visit at Ms. Desir's premises. This site visit revealed that only 9 pillars had been erected (CE9).

[9] Furthermore, on the 21st February 2019, Mr. Ladouce attended a meeting set by the officer at the Fair-Trading Commission where he confirmed that the time frame for the service was 7 months and that he was paid SCR 350,000. Mr.

Ladouce admitted that at the time the contract was terminated he had only done site clearing and erected some pillars and that only 3-4 were left (CE10).

[10] That on the 08th March 2019, the officers of the Fair-Trading Commission carried out a second site visit at Ms. Desir's premises in the presence of an independent Quantity Surveyor, Mr. Dereck Accouche to establish the value of the works undertaken by Mr. Ladouce and how much is due to Ms. Desir.

[11] That the Quantity surveyors report further revealed that Mr. Ladouce had only undertaken works for the value of SCR 121, 448 and that Mr. Ladouce is therefore liable to refund Ms. Desir the amount of SCR 228,552 (CE6).

[12] In a meeting held on the 29th April 2019, Mr. Ladouce disagreed that he should refund Ms. Desir the amount of SCR 228,52, but that he was willing to refund SCR 150,000 instead. Ms. Desir rejected this offer (CE13).

[13] Attempts by the Fair-Trading Commission to amicably resolve the matter failed and to date the complainant has not been given any remedy.

[14] Given the Commission could not resolve the dispute, the case was forwarded before the Board of Commissioners for a hearing for the contravention of Section 40 (1) (a) and Section 40 (2) (b) of the Consumer Protection Act 2010, which states that: -

> *"**40**(1) Subject to this Part, where a supplier undertakes to perform any service for or on behalf of a consumer, the supplier shall—*
>
> *(a) perform and complete that service in a timely manner and give to the consumer timely notice of any unavoidable delay in the performance of the service;*
>
> *"**40**(2) Subject to this Part, where a supplier fails to perform service to the standards specified in subsection (1), the supplier shall at the direction of the consumer—*

(b) refund to the consumer a reasonable portion of the price paid for the service performed, having regards to the extent of failure.''

[15] On the 22nd September 2020 the matter was heard before the Board of Commissioners. An application to leave for this case to be heard Exparte was granted since Mr. Ladouce was served with a summon for the mention date but did not show up. On the date of hearing, leave was sought for an amendment in the Notice of Complaint that the case before the Board of Commissioners will be under section 40 (1) (a) of the CPA 2010, only therefore paragraph 17 and 18 of the complaint were moved to be struck of completely and that the prayer was also amended to reflect that the complaint against Mr. Ladouce is for the breach of Section 40 (1) (a) of the CPA only. The Board granted this motion.

[16] The Fair-Trading Commission called 3 witnesses and Ms. Myriam Desir, the complainant, testified that on the 28th July 2018, that she had signed a contract with the Mr. Ladouce, for the construction of her 4-bedroom dwelling house at Grand Anse Mahe (CE1). She stated that she had paid the first installment of SCR 350,000 by bank transfer which as according to her cost breakdown which was part of her contract. She produced her bank transfer documents and the receipt that was issued to her (CE2) to prove that Mr. Ladouce in fact had received the money on the 30th July 2018.

[17] Ms. Desir referred back to Article 2 of her contract whereby it stated that the work was scheduled to commence one week after the first payment and that the completion date was set for six to seven months thereafter. She testified that in November 2018, four months after she had paid her first installment, she had visited the site at Grand Anse Mahe to check on the progress of the works and that she was not satisfied since so far only 9 columns had been casted since she had paid the first installment. She was also not satisfied to how the columns had been casted since she there were differences in the heights. She further expressed that she believed that Mr. Ladouce did not have the proper manpower to deliver the works by the completion date.

[18] Ms. Desir says that she lodged her complaint on the 28th December 2018 by filling and signing the complaint form (CE4) alongside other documents such as her Planning Authority documents (CE3) and the contract (CE1). She stated that she filed a complaint seeking her refund from Mr. Ladouce

since she believes that Mr. Ladouce did not do the works for the value of money paid SCR 350,000.

[19] During the matters arising from the Board of Commissioners, Ms. Desir says that she was not satisfied about the differences in height of the columns casted by Mr. Ladouce because that would mean that it would cost her more money to complete her house. She added that she is currently renting a house since her dwelling house was in complete. She stated that she found it necessary to request an additional loan from the bank because she had not yet been refunded a portion of the money paid to Mr. Ladouce.

[20] The second witness to be called up was Mr. Dereck Accouche, an independent quantity surveyor. Mr. Accouche declared that he is a qualified self-employed quantity surveyor with five years' experience. Mr. Accouche produced his report (CE6) that he provided the Commission as part of investigation of his case. Mr. Accouche gave evidence that on the 08th March 2019, he carried out a site visit at Ms. Desirs site alongside officers from the Fair-Trading Commission and that Mr. Ladouce was not present. Mr. Accouche explained that there were differences in the heights where some columns where built higher than others. Mr. Accouched explained that this was a result of Mr. Ladouce casting columns according to the topography instead of the land, instead of levelling out the ground prior to casting so that the columns would be all the same height. Mr. Accouche standing by his report said that he is of the opinion that Mr. Ladouce undertook the works for the value of SCR 121,448 and that Ms. Desir should be refunded the amount of SCR 228,552.

[21] The last witness to be called was Ms. Kettlyn Marie, an analyst at the Fair-Trading Commission, and that she was the investigator for that particular case. Ms. Marie gave evidence that upon receiving the complaint she identified that there was a potential breach of Section 40 (1) (a) of the CPA 2010. Ms. Marie stated that she had started her investigation by ascertaining whether Mr. Ladouce was a supplier in trade or commerce and she produced the license and business registration documents (CE7), which confirms that he is. Ms. Marie testified that Mr. Ladouce was notified of the complaint that had been lodged against him through a letter that she had sent and delivered to Mr. Ladouce (CE8). She states that she carried out a site visit at Ms. Desirs site at Grand Anse Mahe and she observed that only nine reinforced concrete pillars had been erected built so far. Ms. Marie produced her site visit report (CE9) whereby she recorded her findings.

[22] The site visit was done on the 05th February 2019 shows that the works where not done in a timely manner. Ms. Marie stated that she had conducted two meetings. The first one was to inform Mr. Ladouce the findings to the site visit conducted whereby Mr. Ladouce confirmed that he was paid SCR 350,000 and that he had agreed that the Commission should seek a Quantity Surveyor to quantify the value of his works. The second meeting was to inform Mr. Ladouce of the findings of the Quantity surveyor evaluation where he contested the sum and only wanted to refund SCR 150,000. Ms. Marie produced the verbatim for both meetings that she had conducted with Mr. Ladouce (CE 10, CE 13) Ms. Marie that she had sought the services of an independent Quantity Surveyor to carry out and evaluation to find out the value of works carried out by Mr. Ladouce. Ms. Marie added that Mr. Ladouce was invited to attend the QS site visit through a letter sent and delivered (CE11) but he did not attend.

[23] Ms. Marie concluded by producing through her investigation report whereby she had recorded her investigation process and analysis so as to send the matter before the Board of Commissioners on the basis that Ms. Desir wanted to be refunded the sum as per the Quantity surveyors report (CE6).

[24] During the matters arising, the Board of Commissioners raised a question in reference to the registration documents (CE7) on whether the other partner, Mr. Travis Ladouce, the brother of Mr. Arsene Ladouce was also liable for the breach. Ms. Marie stated that initially both partners had been notified of the complaint (CE8), but only Mr. Arsene Ladouce attended the meetings (CE10, CE13) whereby he declared that his brother did not undertake to perform the services and he is not liable.

[25] The Board, after hearing the evidence from the Commission and all the documents adduced as evidence in this matter the Board finds that Mr. Ladouce had failed to perform and complete the service in a timely manner contrary to Section 40 (1) (a) of the CPA 2010.

[26] Based on all the evidence presented, the Board rules as follows:

That Mr. Arsene Ladouce, refunds the complainant, Ms. Myriam Desir, the sum of SCR 228,552.00

Given the conduct of Mr. Ladouce, in this matter the Board considers a penalty under section 67 (1)(a) read with subsection (3) (c)and (f) of the Consumer Protection Act to an amount of SCR 8,000.

All payments are to be made by the respondents at the office of the Fair-Trading Commission not later than Thirty (30) calendar days from the date of the receipt of this ruling.

The parties are free to appeal against the ruling to the Appeal Tribunal (See Section 44 of the Fair-Trading Commission Act, 2009 and Section 77 (1) of the Consumer Protection Act, 2010)

We rule accordingly.
Pronounced by us on this 30th day of March, 2021.

Mr. Victor Pool
Commissioner
(Presiding)

Mr. Michael Nalletamby
Commissioner

Mrs. Jenna Thelermont
Commissioner