THE FAIR TRADING COMMISSION
BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER OF THE CONSUMER PROTECTION ACT, 2010;

CLAUDIA BARBE
V.
DANNY BARONNE & DANIEL BARONNE
(Trading as D & D Construction)

Case No: CPA.15.123

Complainant – Ms. Claudia Barbe
Respondents – Mr. Danny Baronne and Mr. Daniel Baronne (trading as D & D Construction)

QUORUM:
Ms. Karen Domingue – Chairperson
Mr. Philippe Chong-Seng – Commissioner
Mrs. Jenna Thelermont – Commissioner
Mr. Michael Nalletamby – Commissioner
Mr. Victor Pool – Commissioner

For the Complaint: Ms. Karine Dick –Legal Officer (FTC)

Respondents – In person

RULING

[1]The Fair Trading Commission (the Commission) registered a complaint from one Ms. Claudia Barbe of Ma Joie on the 28th of May, 2015 (see FTC1 & FTC2) against Messrs Danny Baronne of Mont-Buxton and Daniel Baronne of Perseverance 2, trading as D & D Construction, a Class III Building Contractor License holder (see FTC13 & FTC14). The complaint was to the effect that the complainant via written agreement (FTC 5) contracted the respondents for the construction of her dwelling house situated at Ma Joie for the sum of SR.315,000 (see FTC 3 & FTC 4). Ms. Barbe paid the respondents a total sum of SR.310,000 (see FTC 7) for the project. The complainant alleges that the work done by the respondents was not up to standards (FTC 9 & FTC 10) and requested for a refund for incomplete and remedial works. Being satisfied that the complaint was meritorious the Commission

investigated the matter. The respondents did not contest the incomplete works and were willing to complete those works as well as to undertake remedial works but the complainant refused and insisted on a refund. Being unable to settle the matter a case was filed before the Board of Commissioners for the contravention of Section 40(1)(b) of the Consumer Protection Act, 2010 which provides that "*...where a supplier undertakes to perform any service for or on behalf of a consumer, the supplier shall perform the service in a manner and of a quality that persons are generally entitled to expect having regard to the circumstances of the supply and any specific criteria or condition agreed between the supplier and the consumer before or during the performance of the service.*"

[2]The parties appeared before the Board of Commissioners on several occasions to hear the matter. Ms. Karine Dick, Legal Officer of the Fair Trading Commission, appeared on behalf of the complainant, Ms. Barbe and the respondents, Messrs Baronne appeared in person. Ms. Dick called three witnesses in support of the complaint. Firstly, Ms. Claudia Barbe, the complainant, who reiterated that she was not at all satisfied with the workmanship of the respondents hence why she did not pay the respondents the remaining SR.5,000 as per their agreement. That she noticed issues with the ceiling, doors, window frames and paint work and some incomplete plumbing works as well as other finishing and site clearing. That she subsequently contracted another contractor to complete the work and hence would like a refund as per the Quantity Surveyor's report in the sum of SR.35,510.49. In cross-examination it came to light from Ms. Barbe that the respondents were still working on site when she asked them to return her keys and leave the site as she was not satisfied with their work.

[3]Secondly, Mr. Erol Sophola, an Analyst of the Fair Trading Commission, testified to the effect that he was assigned this case in December, 2015 and he completed the investigation of the matter. That after having had sight of the site visit report (FTC 15) he requested the assistance of Quantity Surveyors to assess the cost of the alleged substandard work (see FTC 16a to FTC 16e) which included doors which were cracked and some needed adjusting to be able to close, door frames to be sealed in the wall rather than screwed in, access to manhole to be constructed, rough plastering around frames to be remedied, switches on the wall to be straightened, gaps between the louver blades and window frames to be remedied, rusty nails to be treated, incomplete plumbing works, fixing and adjusting of fascia boards, kitchen cabinet to be fixed, the cooker unit was missing and the wash basin in bathroom to be fixed. That upon receiving a positive response from Mr. Alain Jean (FTC 16f and FTC 16g) and subsequent quantity surveyor's report (FTC 22) he met with the parties who agreed to some of the points stated in the report via a statement of agreed facts (FTC 19b) but could not come to a consensus for the final settlement of the case in that

the respondents were not in agreement with the total sum being requested for refund which was SR.35,510.49. Hence, he recommended that the case be forwarded to the Board of Commissioners for adjudication. In cross-examination the respondents questioned Mr. Sophola as to why he had not considered the cost of extra works in his investigation given that it had a direct effect on the issue of delay being alleged by the complainant. Mr. Sophola stated that the respondents did not have sufficient proof of the cost of the extra works such receipts and moreover that the Commission was not the right forum for the respondents to claim for unpaid extra works from the complainant.

[4]Finally, Mr. Alain Jean, Quantity Surveyor, was called to produce and explain his report. Mr. Jean deponed that he was contracted by the Fair Trading Commission to assess the property of Ms. Barbe as there had been claims of substandard work. Upon visiting the site he noticed issues with the living room, kitchen, bathroom and two bedrooms as well as some defects found externally. He estimated, based on the current market price at the time, the reparation cost to make good the defects at SR.35,510.49. During cross-examination the witness stated that he evaluated what he observed on site in line with the instructions he received from the Commission and he was unaware of the issue of extra works. That save for the bathroom which was incomplete the only remaining work were finishes. At the conclusion of his testimony the complainant closed its case.

[5]The respondent did not call any witnesses on their behalf and opted to defend their case in person. Messrs Baronne brought up several issues they had with the complainant's case. Firstly, that they are not disputing the fact that the work was incomplete rather as far as they were concerned they were still working on the project and there was even an outstanding balance of SR.5,000 with the complainant to be paid to them. That they never handed over the site but the complainant directed them to leave. That from the outset of this complaint being filed they have always been ready and willing to remedy all the defects complained about but they were not given the chance as the complainant refused and she had already contracted another contractor to finish the work while the complaint was being investigated by the Fair Trading Commission. Secondly, they do not agree with the sum being requested for refund based on the quantity surveyor's report given that the evaluation did not consider the extra works done by them and incorrectly added even issues that were not in their contract, namely connecting the manhole to the sewer line, the rear steps to the house and the clearing away of rocks behind the house (See points 36 to 38 of the QS Report (FTC22)). The respondents also produced two documents they prepared explaining their case in detail (Marked as DE1 and DE2).

[6]At the conclusion of giving evidence both parties opted to make oral closing submissions. Ms. Dick submitted that the respondent themselves have admitted that the works were incomplete. That although the respondents were ready and willing to rectify the defects and complete the works this remedy will be insufficient given that the works have been completed by another contractor. Ms. Dick urged the Board to accept the quantity surveyor's report save for points 36 and 37 which, with the agreement of the complainant, should be disregarded. Therefore, she urged the Board to find in favour of the complainant and order the respondents to refund to Ms. Barbe, pursuant to Section 40(2)(b) which provides that *"Where a supplier fails to perform service to the standards specified in subsection (1), the supplier shall at the direction of the consumer refund to the consumer a reasonable portion of the price paid for the service performed and goods supplied, having regard to the extent of the failure"*, a sum of SR.32,471 as per the quantity surveyor's report.

[7]In their closing submissions the respondents reinforced the fact that at all times they have always been ready and willing to complete the works as per their contract with the complainant and remedy the defects identified but the complainant refused and they were never given the opportunity. That in the event the Board orders a refund it should not rely on the sum quoted in the quantity surveyor's report given that they were denied the opportunity to be present on site when the quantity surveyor's visit hence the report does not contain their input such as the extra works they did and issues like clearing away of rocks which was not part of their contract, amongst others. The respondents also submitted that the Ms. Barbe complained to the Fair Trading Commission three months after she had directed them to leave the site and in fact she stated in her testimony that she only filed the complaint after the electrician told her that the respondents had told him not to connect power to her house showing that she is not acting in good faith. The respondents submitted that they should not be ordered to refund the complainant given that they were always ready to rectify the defects stated which is a remedy available under the Consumer Protection Act and they should not be held responsible for the complainant's refusal and her contracting of another contractor to complete the works. The respondents also expressed their disappointment with the fact that the cost of the extra works they did was not taken into consideration by the investigating officers of the Commission when investigating the case. They feel that those extra works played a major role in ascertaining the reasons for the delay being complained of. The respondents concluded by stating that had they been given the chance the SR.5,000 which remained with the complainant would have been sufficient to complete all the finishing works given that they already had all the necessary material on hand.

[8]The Board then adjourned to deliberate on the matter. It was immediately noted from the evidence adduced and the admissions of both parties that upon the

respondents exiting the complainant's site the project was incomplete as per their agreement and in addition some reparation works needed to be undertaken. The area of contention is the amount being requested by the complainant to be refunded by the respondents given that the option of repairing the defects was obsolete. The Board hereby finds the respondents Mr. Danny Baronne and Mr. Daniel Baronne to be in contravention of Section 40(1)(b) of the Consumer Protection Act, 2010 herein reproduced below: -

> *"**40.**(1)(b) Subject to this Part, where a supplier undertakes to perform any service for or on behalf of a consumer, the supplier shall perform and complete that service in a manner and of a quality that persons are generally entitled to expect having regard to the circumstances of the supply and criteria or condition agreed between the supplier and the consumer before or during the performance of the service."*

[9]At the conclusion of the matter the complainant was asking for a refund of SR.32,471 as per the Quantity Surveyor's Report (FTC 22). The respondents vehemently contested this sum given that they were denied the opportunity to be present while the Quantity Surveyor visited the site, despite having requested this, so the report could take into account their input. The respondents contested points 4, 6, 9, 11, 13, 22, 33, 35 and 38 (See FTC 19(b) and DE1) which amounted to the sum of SR13,300. The Board agrees with the respondents on this issue. The respondents should have been present when the quantity surveyor visited the site and therefore with the lack of the respondents' input the Board cannot attach full weight to report. The Board will therefore deduct the sum of SR13,300 being the sum in contention from the sum being requested. This will bring the sum being considered for refund by the Board to SR.19,171.

[10]Upon further examination of the evidence on record it is not contested that the respondents conducted extra works on the site (see FTC 11). The cost of those extra works was not established before the Board but in the essence of fairness the Board shall deduct half of the sum being considered for refund to go towards the extra works done. This will bring the sum being considered for refund by the Board to SR.9,586.

[11]Moreover, it is also not contested that the respondents were still working on the site and it was the complainant who asked them to leave and refused to let them come back even through the entire duration of the investigation when the respondents were clearly willing to remedy the defects on site. In our view this would have reduced the extent of the failure rather than aggravating the complainant's situation. The respondents stated that the balance of SR.5,000 which remained with

the complainant would have been sufficient to complete works given that they already had all the necessary materials for this. Consequently, the Board shall deduct the sum of SR.5,000 from the sum being considered for refund.

[12]Subsequently, based on all the above, the Board hereby orders the **respondents, Messrs. Danny Baraonne and Daniel Baronne (trading as D&D Construction), pursuant to Section 40(2)(b) of the Consumer Protection Act, 2010, to refund to the complainant, Ms. Claudia Barbe, the sum of SR.4,586 to be paid to the office of the Fair Trading Commission not later than thirty (30) days from the date of this ruling.**

[13]The parties are free to appeal against this ruling (*see Section 77 of the Consumer Protection Act, 2010 and Section 44 of the Fair Trading Commission Act, 2009).*

We rule accordingly.

Pronounced by us on this 30th day of August, 2018.

Ms. Karen Domingue
Chairperson

Mr. Philippe Chong-Seng
Commissioner

Mrs. Jenna Thelermont
Commissioner

Mr. Michael Nalletamby
Commissioner

Mr. Victor Pool
Commissioner