THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
PATRICK JOSEPH

CPA.13.254

Complainant – Mr. Francois Vital
Respondent – Mr. Patrick Joseph

QUORUM:
Mr. Colin Jean-Louis – Chairperson
Mr. Philippe Chong-Seng – Commissioner
Mrs. Jenna Thelermont – Commissioner
Mr. Victor Pool – Commissioner

For the Complainant
Ms. Emily Mousbé – Legal Officer (FTC)
Mr. Francois Vital (Complainant)

For the Respondent
Mr. Patrick Joseph

RULING

[1]The Fair Trading Commission (the Commission) established under Section 3(1) of the Fair Trading Commission Act, 2009 registered a complaint from Mr. Francois Vital (complainant) (See Exhibit 1) on the 23rd of July, 2013 against Mr. Patrick Joseph (the respondent) (See Exhibit 4). The complaint was to the effect that Mr. Patrick Joseph had undertaken to perform repairs on Mr. Vital's pick-up since October, 2012, namely panel beating works, but had since then failed to complete such works (See Exhibit 5). The complainant alleged that after several visits to the respondent's garage he found that his vehicle had been disassembled and no other works had been completed. He complained to the Seychelles Licensing Authority

who in turn stated that the respondent had no license to operate as a garage owner or panel beater and therefore requested the respondent to return the vehicle to the complainant. When this request was not adhered to the Seychelles Licensing Authority advised Mr. Vital to file a complainant with the Fair Trading Commission (See Exhibits 6 & 7).

[2]The respondent was contacted by officers of the Commission who claimed that he had no written agreement nor was any money exchanged for the transaction. He however stated that he will complete the work by the 15th of September 2013. Via letter dated 3rd of September, 2013 from the Fair Trading Commission Mr. Joseph was informed that he was in breach of Section 40 of the Consumer Protection Act 2010 and was given a deadline of the 20th September 2013 to assemble the vehicle and return it to the Complainant (See Exhibit 8). Two site visits were conducted by different officers of the Commission as part of the investigation process whereby it was discovered that no work had been done and on the second occasion that the battery was missing from the disassembled vehicle (See Exhibits 9 & 10). The Commission concluded that the respondent was in breach of Section 40(1)(a) which states that *"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 timely manner and give to the consumer notice of any unavoidable delay in the performance of the service."* It was therefore deemed necessary for the case to be heard before the Board of Commissioners for a determination.

[3]The matter was heard on Wednesday 19th March, 2014. Ms. Emily Mousbé, a Legal Officer presented the case on behalf of the Commission and urged the Board of Commissioners to find in favour of the complainant and order the respondent to complete the works he had undertaken to perform on the complainant's vehicle and also to order in accordance with Section 76(2) that the respondent pays the complainant the amount of SR.406, 000 for economic loss incurred for the entire duration during which the vehicle was in Mr. Joseph's possession (See Exhibits 11, 12 & 13). Ms. Mousbé also urged the Board of Commissioners to consider penalties set out in Section 67(1) of the Consumer Protection Act, 2010 while having regards to Section 67(3) of the same Act and enforcing Section 68(1) where applicable.

[4]Mr. Patrick Joseph, the respondent, was heard by the Board of Commissioners. He claimed that the complainant had purchased the pick-up second hand so he could use to carry out his cleaning business. That he agreed and tried to undertake the repairs on the pick-up although they did not agree on a deadline but unfortunately could not do so given that he had other works from previous customers before the complainant brought his pick-up to his workplace. Mr. Joseph emphasised the fact that because he works alone also contributed to the delay. Mr. Joseph stated that he never agrees to any deadline with anyone but nevertheless he is still willing to complete the works by the end of April. The complainant reluctantly agreed. At the conclusion of the hearing the Board of Commissioners endorsed the mutual agreement and directed the respondent to complete all repair works on the vehicle by the 7th of May, 2014 and to return the completely repaired vehicle to the complainant.

[5]During the deliberation process it was brought to the Board's attention by the complainant that the respondent, Mr. Joseph had failed to honour the above agreement and to date Mr. Vital is still without his vehicle. Taking into consideration all the circumstances of the case the Board of Commissioners finds the respondent, Mr. Patrick Joseph, to be in contravention of Section 40(1)(a) of the Consumer Protection Act, 2010 and hereby orders **Mr. Patrick Joseph to put back the pick-up into the same state it was when given to him and return said vehicle to the complainant, Mr. Francois Vital as well as any material given to him by the complainant for the said works within seven days from the date of this ruling.** Further the Board shall impose **a fine in the sum of SR. 10,000 for the above contravention to be paid not later than thirty (30) days from the date of this ruling**.

[6]The Board shall now address the prayer of compensation pursuant to Section 76(2) of Consumer Protection Act, 2010. The Board of Commissioners could not establish without a doubt whether there was a deadline established between the complainant and respondent as to when works on the pick-up were to be completed. It is clear that this was an informal agreement between two friends. Taking the latter into consideration coupled with the fact that the pick-up did not form part of the complainant's business operations at the time the vehicle was brought to the respondent, the Board of Commissioners cannot, therefore, establish with certainty the liability of the claim for economic loss. Moreover, the fact that the complainant hired other individuals to fulfil his contractual obligations he had been receiving some income from his clients hence it cannot be said that the

complainant suffered loss per se. Although the complainant brought to light that he was relying on this vehicle to incorporate into his business the damages from the respondent is too remote for a claim. Subsequently, this limb of the complaint falls.

[7]To conclude the Board feels it necessary to make mention of other underlying matter which came to light during the determination of this case. The respondent himself admitted to operating a garage in a residential area and without a license. This is not acceptable. The Board is of the view that the respondent should abide by the rules and regulations put in place by the Government to govern the operation of such businesses. Hence the Board hereby directs the Fair Trading Commission to alert the necessary authorities of this ongoing behaviour by the respondent, Mr. Patrick Joseph so that the same may be ceased.

[8]At this juncture the Board shall issue a strong warning to the respondent that it is an offence to refuse or fail to comply with an order, direction or undertaking of the Commission hence failure to comply with one limb of this ruling shall result the case being forwarded to the police for further action. See Section 70 of the Consumer Protection Act, 2010 reproduced below:-

> **"70.** *"A person who fails or refuses to comply with an order, direction or undertaking of the Commission or order or direction of the Tribunal, commits and offence and is liable on conviction –*
>
> *(a) where the person is an individual, to a fine not exceeding 100, 000 rupees or to imprisonment for a term not exceeding 2 years, or to both such fine and imprisonment;*
>
> *(b) where the person is a person other than an individual to a fine not exceeding 400,000 rupees."*

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

[10]We rule accordingly.

Pronounced by us on the 9th day of June, 2014.

Mr. Colin Jean-Louis
Chairperson

Mr. Philippe Chong-Seng
Commissioner

Mrs. Jenna Thelermont
Commissioner

Mr. Victor Pool
Commissioner