THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
REHOBOTH BUILDERS (PTY) LTD
(Rep herein by Mr. Mark Agrippine)

CPA.12.108

Complainants: Mr. Jude Barra
Ms. Marie-Jona Radegonde

Respondent: Rehoboth Builders (Pty) Ltd
(Rep herein by Mr. Mark Agrippine)

QUORUM:

Mrs. Vijyakumari (Dolly) Tirant – Commissioner (Chairperson)
Mr. Philippe Chong-Seng – Commissioner
Mrs. Jenna Thelermont – Commissioner

For the Complainants

Mr. Georges Tirant – Director for Consumer Protection Affairs (FTC)
Mr. Jude Bistoquet – Enforcement Officer (FTC)

For the Respondent

Mr. Mark Agrippine

Case presented on behalf of the complainants by Mr. Georges Tirant, Director for Consumer Protection Affairs (FTC).

RULING

[1]On the 11th July, 2012 the complainants herein, Mr. Jude Barra and Ms. Marie-Jona Radegonde (See Annex 1), lodged a complaint against Rehoboth Builders (Pty) Ltd, a registered company previously known as Forest Builders (See Annex 2a) incorporated on the 17th of May, 1999 (See Annex 2b) represented herein by Mr.

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Mark Agrippine. The complainants first sought assistance from the Seychelles Licensing Authority (See Annex 9) and were advised to seek redress from the Fair Trading Commission. The gist of the complaint was to the effect that the respondent, Rehoboth Builders (Pty) Ltd had failed to complete services for which he had been paid (See Annex 4). The Commission thoroughly investigated the matter and made several findings. The complainants signed a contract agreement with the respondent to complete their two-bedroom, two storey flat on the complainants' premises at Fisherman's Cove Estate, Bel Ombre. It is unclear when the agreement was signed as the same was undated (See Annex 3) but having had sight of 'Appendix A', a document integrated as part of the agreement document stipulates the date of possession of the site as Monday 9th January, 2012 (See Annex 3d). The contract did not include foundation works as this had been formerly completed by another contractor. Having been paid a first disbursement of SR.50, 000/- the respondent commenced the project and completed the first phase as scheduled which comprised of block work on the first floor. As per a receipt dated 16th April, 2012 the respondent was paid a second disbursement of SR85, 000/- for the completion of phase two, the laying of suspended floor slabs. Till the date of the filing of the complaint the respondent has failed to return to the site to complete the aforementioned after only laying wooden setters and welded mesh (See Annex 7). Nearing the end of the contract period set for 9th November, 2012 (See Annex 3d) the complainants contacted the respondent on numerous occasions to inquire of the completion of their house but to no avail. The complainants terminated the building contract (See Annex 10) and requests for a full refund of SR.85, 000/- being the amount intended for the completion of the second phase. Armed with this information the Commission was satisfied that the complainants had grounds for a sustainable complaint under the provisions of the Consumer Protection Act, 2010.

[2]The respondent was contacted by the Commission to attend several meetings to discuss the matter whereby he explained that the delay in completion of works was due to lack of manpower. Further that subsequent to completing phase one on the site he moved to another project at La Gogue since the complainants took long to disburse the second payment. The respondent expressed his willingness to complete phase two of Mr. Barra and Ms. Radegonde's project as he was finding it difficult to raise funds to refund the complainants who in turn declined that offer and reiterated that they only wanted a refund of SR.85, 000/-. The Commission

concluded that by not performing work required and not giving the complainants notice of any avoidable the respondent's behaviour constitute a contravention covered within the scope of Section 40(1)(a)(b) of the Consumer Protection Act, 2010 which provides 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;
>
> (b) perform the service in a manner and of a quality that persons are generally entitled to expect;

[3]The case was submitted before the Board of Commissioners for a formal hearing as per the provisions of Section 30(1) of the Fair Trading Act, 2009 and Sections 5(1) and 9(1) of the Consumer Protection Act, 2010 and was heard on Wednesday 24th October, 2012. Mr. Georges Tirant, the Director for Consumer Protection Affairs presented the case on behalf of the complainants, Mr. Jude Barra and Ms. Marie-Jona Radegonde and Mr. Mark Agrippine was duly present representing the respondent, Rehoboth Builders (Pty) Ltd. The complainants confirmed the above findings of the Commission and added that they are incurring extra costs as a result of the respondent's behaviour such as finding themselves having to repurchase building materials to complete the work the respondent was contracted for as well as paying rent for their current living accommodation which will now exceed the predicted period of time as the complainants were expecting their house to be completed on 9th November, 2012 as per the contract. In his defence the respondent explained that the delay in his performance has been due to his company experiencing unexpected manpower shortages, a predicament he was in the process of rectifying, and again expressed his willingness to complete phase two of the complainants' project if given the opportunity. This was once more refused by the complainants who were adamant that they did not want the respondent back on their premises instead they wished for a full refund of SR.85, 000/-.

[4]We have deliberated on all the evidence placed before us by both parties. It is not in dispute that the parties entered into a written contract agreement for the respondent to build the house of the complainants at a sum of SR.410, 000/-.

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Although it is outside the scope of our mandate we are opined to mention that we have noticed lapses in the contract. One instance is that the contract was not dated and lacked details and clarity, there are discrepancies between works approved by the Seychelles Planning Authority and what was built on site i.e. the foundation which the respondent said he noticed differences, the veranda which were two and circular on the approved drawings but on site a squared one had been built as well as stairs which were supposed to be outside but on site were inside, the later changes having been made in by mutual agreement by both parties. Some of these issues were addressed in a letter submitted as evidence by the complaints from the Seychelles Planning Authority (See Annex 8). These inconsistencies however, do not form part of the subject matter placed before thus shall not bear any weight on our determination on the issue that is, namely the refunding of SR.85, 000/- for incomplete works. Although, in that same letter the engineer from the Seychelles Planning Authority who conducted the site visit on the premises in question also noted that parts of the wooden setters affixed by the respondent were rotten most probably as a result of exposure to the different weather conditions. He added furthermore that the reinforcements for the first floor slab have obtained its brownish colour. Undeniably the contractor commenced works as scheduled and completed the first phase promptly between the commencement date which was 9th January and early February, 2012. Difficulties arose at the stage of the beginning of the second phase of works prized at SR.100, 000/- out of which the contractor received SR.85, 000/- in cash between the period of March and April, 2012. To this end the Board also noted the mention of some sort of barter agreement between the parties to cover the balance involving a hired car which again do not form part of the evidence.

[5]It is also not disputed that the respondent had to demobilize in late February, 2012 after having been made idle pending the disbursement of funds from the complainants to commence works on the second phase. It is the evidence of the respondent that he started experiencing labour problems in March going on April whereby his workforce was downsized by more than 50% thus resulting in immense delays on the complainants' project as he unsuccessfully scattered efforts of his remaining manpower in an attempt to meet the demands of his several clients. Similarly, the Board takes note that upon receiving the second disbursement the respondent was aware he had certain constraints but still accepted payment and began works on the second phase as shown in photographs marked and produced as Annex 7a and 7b although these works were not quantified.

[6]A further perusal of the evidence adduced before the Board of Commissioners goes to show that as a result of his behaviour the respondent, Rehoboth Builders (Pty) Ltd, has contravened Section 40(1)(a) and (b) of the Consumer Protection Act, 2010 as outlined by not performing works required and not giving the complainants herein notice of any avoidable delay. We therefore enter such a finding.

[7]What remains now is to impose a suitable remedy for the said contravention. Taking into account the claims of the complainants, who wishes for a full refund of SR.85, 000/- as they allege that they cannot used the materials purchased by the respondent and had to repurchase everything to undergo works on the second phase of the house. On the other hand the respondent has maintained throughout that he is willing to complete the work he was paid for. In accordance with Section 67(1) of the Consumer Protection Act, 2010 we are of view that a refund is merited as a suitable remedy to the contravention. Taking into due consideration that some works had been done by the respondent yet no valuation report has been produced before the Board of Commissioners we rule further that the complainants and the respondent herein agree to an independent engineer to evaluate said works done as well as the value of usable materials left behind by the respondent. This value is to be reduced from the SR.85, 000/- paid to the respondent and the respondent refunds the complainants the balance. The cost of this exercise is to be reduced from the value of the works carried out by the respondent.

[8]In conclusion the Board cannot sweep under the carpet the inconveniences caused by the delays brought about by the respondent's actions. We therefore impose a **penalty equal to 2.5% of the full contract sum of SR410, 000/- to be paid by the respondent thirty (30) days from the date of this ruling.** We so order.

[9]The parties are free to appeal against this ruling.

Pronounced by us on this 28th day of November, 2012.

Mrs. Vijaykumari D. Tirant **Commissioner** **(Chairperson)**	**Mr. Philippe Chong-Seng** **Commissioner**	**Mrs. Jenna Thelermont** **Commissioner**