THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
RODE COMPANY LIMITED
(Rep herein by Mr. Robert Ah-Wan)

Case No: CPA.13.108

Complainants – Mr. Francois Labiche
Respondent – RoDe Company Limited

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

For the Complainant
Mr. S. Rajasundaram – Attorney-At-Law
Mr. Ziggy Adam – Legal Officer (FTC)

For the Respondent
Mr. Robert Ah-Wan – Respondent
Mr. Guy Ferley-Attorney-At-Law

RULING

[1]The Fair Trading Commission registered a complaint from Mr. Francois Labiche (Annex 1) of Belombre on the 21st of February, 2013 against RoDe Company Limited of Bel Air, represented herein by Mr. Robert Ah-Wan. The complaint was to the effect that works carried out by the respondent, RoDe Company Limited, was substandard. The complainant was therefore seeking for the respondent to remedy the defects in the

service he performed within a reasonable time frame. When all attempts to settle the matter failed the Commission filed a case before the Board of Commissioners praying for an order for the above redress.

[2]The case was consequently called for hearing before the Board of Commissioners on Wednesday 21st October, 2015. During said hearing the Board was informed by the parties that the respondent, Mr. Ah-Wan, Director of RoDe Company Limited had subsequently instituted a plaint before the Supreme Court against Mr. Labiche, the complainant before the Fair Trading Commission, for breach of contract whereby Mr. Ah-Wan is claiming for outstanding payment for works carried out and outstanding payment for additional works carried out. Mr. Labiche then informed the Board that he has filed a counter claim to the plaint through his lawyer Mr. Rajasundaram, who was not present at the time before the Board. Mr. Labiche explained that the prayers contained in his complaint before the Board are also contained in his counter claim before the Supreme Court. Upon learning this, the Board of Commissioners opted to adjourn the matter to determine if the Board should hear this matter or defer proceedings of the case before the Supreme Court. In the meantime the Board requested for copies of the plaint and defence and counter claim to confirm this issue. Before this was done the Commission received a letter from Mr. Rajasundaram, counsel for Mr. Labiche, dated 23rd October, 2015 requesting that the Board of Commissioners proceeds with the hearing as the suit filed before the Supreme Court should in no way affect or preclude the Commission from hearing this case. After due consideration the parties were ordered to appear before the Board of Commissioners to present their arguments vis a vis the said request. The case was therefore fixed for a hearing of this motion on the 20th of April, 2016.

[3]Both parties appeared before the Board of Commissioners with their respective counsels. Mr. Rajasundaram argued that the redress being sought before these two forums are completely different in that Mr. Labiche was seeking for remedial works before the Fair Trading Commission whereas in his counter claim before the Supreme Court he is seeking for monetary compensation for incomplete and substandard works carried and for loss and damage. Therefore, he sees no reason for the Board not to proceed with the complaint before it.

[4]Mr. Guy Ferley, counsel for the Mr. Ah-Wan, disagreed and stated that should the Board hear this matter there will be duplication of process and given that the Supreme Court is a higher court and is already hearing the matter in full, a hearing before the Board would be an abusing of process.

[5]The Board has deliberated on the matter and has weighed all circumstances of the case. After considering the multiple repercussions of this issue the Board is of the view that the same parties cannot appear before two different forums with the same facts seeking the same relief. The Board of Commissioners therefore order that this matter be adjourned sine die.

[6]The parties are free to appeal against this 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).*

[7]We so rule accordingly.

Pronounced by us on this 9th day of May, 2016.

Mr. Colin Jean-Louis
Chairperson

Mr. Philippe Chong-Seng
Commissioner

Mrs. Jenna Thelermont
Commissioner

Mr. Michael Nalletamby
Commissioner

Mr. Victor Pool
Commissioner