THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
SRP RICHARD BUILDING AND FURNITURE CONTRACTOR (PTY) LTD
(Rep herein by Mr. Rolland Richard)

Case No: CPA.13.099

Complainant – Mr. William Lespoir
Respondent – SRP Richard Building and Furniture Contractor (Pty) Ltd

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QUORUM:
Mr. Victor Pool – Commissioner (Presiding)
Mr. Philippe Chong-Seng – Commissioner
Mrs. Jenna Thelermont – Commissioner

For the Complainant
Mr. Ziggy Adam – Legal Officer (FTC)

For the Respondent
Mr. Rolland Richard – Respondent
Ms. Alexandra Benoiton – Attorney-At-Law

RULING

[1]The Fair Trading Commission registered a complaint from Mr. William Lespoir (CE1) of Bel Air on the 12th of February, 2013 against SRP Richard Building and Furniture Contractor of Pointe Conan (CE3), represented herein by Mr. Rolland Richard. The complaint was to the effect that Mr. Lespoir, the complainant, had paid to the respondent the sum of SR. 607,397.34 for the construction of a garage at the Providence Industrial Estate (CE12) but the complainant found stages 1 and 2 of the project to be sub-standard and incomplete (CE5). Mr. Lespoir wanted a full refund of the money he paid. Identifying possible breach of Section 40 of the Consumer Protection Act, 2010 the Commission investigated the complaint further.

[2]During the investigation process it came to light that the construction works were actually being undertaken by a Mr. Robin Zarine under the license of Mr. Rolland Richard and all payments were received by the former. During a meeting held on the 27th of June, 2013 both Mr. Richard and Mr. Zarine agreed to effect a partial refund subject to a quantity surveyor's report being produced outlining the cost of the works that were substandard. Subsequently, it was agreed that the Commission appoints an independent surveyor, Mr. Allain Jean, to carry out the valuation works (CE11). Mr. Lespoir also highlighted defects with the oil inceptor, septic tank and wall plastering. Several site visits were conducted with the aid of the relevant authorities providing their expertise on the matter. The Public Utility Corporation addressed issues of the septic tank whereby they reported that a smooth plastering of the septic tanks wall was needed, the drainage pipe from the outside of the building to the septic tank is incomplete and needs to be aligned properly as it is likely to give rise to blockages, the inlet chamber needed to be raised to allow for proper cover fitting to minimize obstruction and blockages. Furthermore, that vent pipes for the oil inceptor had not been installed as well as the inlet and outlet pipe connection from the oily water collection pit to the inceptor and that although a proper inspection of the blocks used could not be carried out since both structures had been plastered to the top 6 inch solid blocks ought to have been used.

[3]There were many communications with the Seychelles Planning Authority. Their findings were that the building and its foundation had to be demolished (CE7) given that it failed to satisfy the required strength when the concrete used was tested by the Seychelles Bureau of Standards (See CE14). That an additional manhole was needed and the same would not be disturbed with the demolition of the building. Furthermore, unlike the required 6 inch solid blocks a few hollow blocks were observed at the top of the septic tank. Other parts of the structure could not be inspected as they were below ground so it was recommended that the slab be removed to facilitate inspection. Additionally, the concrete columns to the boundary wall should be demolished and reconstructed using the proper grade of concrete as assessment revealed that coral fill was used in the mix rather than crusher dust, whereas the base (footing) of the wall was of adequate strength (CE8).

[4]Based on information from the Seychelles Planning Authority and the Public Utilities Corporation Mr. Allain Jean, the Quantity Surveyor, produced his final report dated 24th April, 2014 whereby he quoted the sum of SR499, 468.77 as the sum to be refunded to the complainant (CE18). Being unable to come to an amicable settlement with the respondent the Commission filed a case before the Board of Commissioners for the contravention of Section 40(1)(b) and (c) which states the following:

*"**40(1)** Subject to this Part, where a supplier undertakes to perform any service for or on behalf of a consumer, the supplier shall –*

(b) perform the service in a manner and of a quality that persons are generally entitled to expect;

(c) where the goods are required for performance of service, use, deliver or install such goods that are free of defects and are of a quality that persons are generally entitled to expect."

[5]The Board of Commissioners convened several times for a lengthy hearing process which lasted for a year. Mr. Ziggy Adam, Legal Officer from the Fair Trading Commission, appeared on behalf of the complainant Mr. Lespoir and his partner Ms. Marie-Jeanne Carolla and presented the Commission's findings to the Board. Mr. Adam called several expert witnesses in support of his case. Mr. Franky Lespoir (CW2). Principal Engineer from the Seychelles Planning Authority confirmed the Authority's decision that the concrete used in the foundation did not meet the proper concrete grade and therefore it was recommended that it be demolished. In turn Mr. Alf Esparon (CW8), an engineer also from the Seychelles Planning Authority in his oral evidence addressed issues of the septic tank and the boundary wall concluding that the defective columns should be removed and rebuilt using the proper concrete grade.

[6]Mr. Angelo Lesperance (CW4), an Analyst of the Fair Trading Commission, deponed to the fact that he was the investigating officer of this complaint and that upon receiving this case he liaised with all parties concerned through telephone calls, meetings, emails, site visits and collected information from the necessary authorities to try and settle this matter. Being unable to reach an agreeable settlement he compiled his findings in an investigation report and forwarded the matter to the Legal Department to be heard before the Board. The investigation report was produced herein as Complainant Exhibit (CE11). Mr. Gilbert Madeleine (CW6), Manager of Engineering from the Seychelles Bureau of Standards testified that the SBS received extracted core samples from the complainant's project for testing. That a concrete core test was conducted and the results forwarded to engineers involved in the project for interpretation during the hearing. Mr. Johny Bastienne (CW7), Senior Legal Officer from the Development Bank of Seychelles gave evidence relating to Mr. Lespoir's loan and the accumulated interest due to non repayment (CE17) whereas Mr. Allain Jean (CW9) described the process of compiling the valuation report for this case and explained that there were changing circumstances in the matter thus the reason for there being more than one report produced but that the final one being relied upon is

dated 24th April, 2014 which stated an amount of SR. 499,468.77 to be refunded and an addition amount of SR.107,928.57 for the repairing of the septic tank, oil interceptor tank and supporting columns of the boundary wall.

[7]Mr. William Lespoir (CW1), the complainant herein gave evidence to the effect that he had a signed contract with SRP Richard Building and Furniture Contractor (Pty) Ltd to build his garage. That he paid to SRP Richard Building and Furniture Contractor (Pty) Ltd two portions of monies amounting to SR.607,397.34 for the construction of phases 1 and 2 of the contract. That he was unsatisfied with the standard of works and asked that work be stopped and that he be refunded in full given that the structure could not be used and has to be demolished and that he be paid damages for the expenses he has incurred over the years because he has been unable to use his establishment to conduct his business. Ms. Marie-Jeanne Carolla (CW5), the complainant's partner corroborated the complainant's evidence and added that despite this set back they still want to set up their garage business and therefore would wish for a refund so they can reconstruct the structure.

[8]Mr Adam concluded his case by praying that the Board finds in favour of the complainant and order remedies as set out in Section 40(2)(a) or (b) which provides that *"Where a supplier fails to perform a service to the standards specified in subsection (1), the supplier shall at the direction of the consumer (a) remedy any defect in the quality of the services performed or goods supplied; or (b) 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."* In his final submissions Mr. Adam requested that the respondent pays to the complainant the sum of SR527, 118.77 being the cost to demolish the substandard structures, SR.187,680 being the lease fee the complainant has been unable to pay (CE13) and SR.229, 785 being the sum of interest that has accumulated on the complainant's business loan with the Development Bank of Seychelles.

[9]The respondent herein being represented by Ms. Alexandra Benoiton, Attorney-At-Law called three witnesses to support his case. The respondent's defence was that although the contract was in his business name he did not receive any money from the complainant. Mr. Rolland Richard (RW1) gave evidence that the person undertaking the project was one Mr. Robin Zarine and not him personally. That the only reason the name SRP Richard Building and Furniture Contractor has come up is because Mr. Zarine, a contractor, did not have the necessary license to undertake this project so as a favour he agreed and allowed Mr. Zarine to operate under his (Mr. Richard's) contractor license for this particular project. That Mr. Zarine only kept him informed of what was happening on site as an act of courtesy but he (Mr. Richard) would assist

him (Mr. Zarine) when needed. Mr. Richard insisted that Mr. Zarine was not his employee or business partner and that he was only doing him a favour. When Mr. Robin Zarine (RW3) testified through a telecommunication arranged during the hearing from **Dubai**, he corroborated the respondent's claim. Mr. Zarine stated that the complainant approached him to take on the project and he only sought Mr. Richard's assistance to support the project through the use of his license as this was a common practice between the two of them. That he (Mr. Zarine) was in charge of the site and Mr. Lespoir, the complainant knew this. Mr. Zarine added that initially when he was made aware of the issues on site with the septic tank and boundary wall he was prepared to rectify them but that the matter then escalated to defects with the floor and they were ordered off the site so he never got the chance to make any rectifications.

[10]Counsel Benoiton also called Mr. Patrick Amade (RW2), a civil engineer by profession, to provide his expert opinion on the core test conducted by the Seychelles Bureau of Standard upon the request of the complainant and on other structural issues of the structure. Upon studying the results of the concrete core test Mr. Amade stated that in his years as a qualified engineer he had never seen concrete strength so low, so much so that in his opinion such result were practically impossible. He went on to suggest that a concrete core test was not the proper test that should have been done in that the extraction process already undermines the strength of the concrete being tested. That should a rebound hammer test be performed better and more realistic results would be obtained and indeed defence counsel made such a request and after making certain inquiries the Board decided that the interpretation of the results of concrete core test was sufficient for the Board to make a decision in the matter. Counsel concluded her case with her final submissions whereby she submitted to the Board that although the respondent made efforts to assist the complainant he did not have any material role in the contract and therefore to dismiss this complaint or to award the complainant minimal damages.

[11]The Board of Commissioners has deliberated lengthily on the matter and has considered all evidence adduced. It is an undisputed fact that there is a signed contract between the complainant and the respondent. Whether the respondent was only a straw man for the complainant in this matter the said contract cannot be ignored by the Board. The Board therefore finds that SRP Richard Building and Furniture Contractor is indeed the proper respondent before the Board of Commissioners. Also undisputed is the fact that there were certain substandard works on site although it is unfortunate despite the respondent's willingness to settle the matter no agreement could be reached between the parties. Consequently, the Board of Commissioners finds the respondent SRP Richard Furniture and Building

Contractor to be in contravention of Section 40(1)(b) and (c) of the Consumer Protection Act, 2010.

[12]Pursuant to Section 40(2) the Board of Commissioner **hereby orders the respondent to refund to the complainant, Mr. Lespoir the sum of SR.527,118.77** as per the Quantity Surveyor's report whereby SR.499,468.77 is the value of the substandard work done which is to be demolished and SR.27,650 being the value to repair the septic tank and oil interceptor instead of being demolished (See CE18).

[13]The Board shall now address the prayer for damages pursuant to Section 76(1) of the Consumer Protection Act, 2010. The complainant is seeking in the sum of SR.500 per day as per Clause 8 of the contract agreement for non-completion which was to be in February, 2012 to date. In view of the fact that the complainant himself admitted that there was some delay not attributed to the respondent and it is on record that payment for the second phase of the work was made only in July 2012 **the Board shall award the complainant the sum of SR.75,000 being the value of five months delay** taking into account the date that the complainant filed his complaint with the Commission which was in February, 2013.

[14]Moreover, the complainant is praying for SR.187,680 for accumulated lease fees. After due consideration **the Board of Commissioners is granting the complainant the sum of SR.46, 920 as damages under this heading** for the year and will not award beyond that for the reason that the whole amount was not reasonably foreseeable as a loss by the respondent. Finally, the complainant is requesting for damages for accumulated interest on his loan repayment in the sum of SR.229, 785. **The Board will allow an amount of SR.174, 019 in damages for interest accumulated only on the amount of money paid to the respondent** as it is a direct result and was foreseeable by the respondent that the plaintiff financing was from a loan.

[15]**The Board hereby orders that the total amount of SR.823,057.77 to be paid in full by the respondent within 60 days from the date of this ruling to the office of the Fair Trading Commission. All payments are to be made to the office of the Fair Trading Commission**

[16]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).*

[17]We so rule accordingly.

Pronounced by us on this 11th day of December, 2015.

Mr. Victor Pool
Commissioner (Presiding)

Mr. Philippe Chong-Seng
Commissioner

Mrs. Jenna Thelermont
Commissioner