THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
VICTOR CONSTRUCTION
(Rep herein by Mr. Stephen Victor)

Case No: CPA.13.327

Complainant – Mrs. Lise Samsoodin
Respondent – Mr. Stephen Victor

QUORUM:
Mr. Collin Jean-Louis– Chairperson
Mrs. Jenna Thelermont – Commissioner
Mr. Michael Nalletamby – Commissioner
Mr. Victor Pool - Commissioner

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

For the Respondent
Mr. Stephen Victor – Respondent

RULING

[1]The Fair Trading Commission (the Commission) received a complaint on the 10th of October, 2013 from one Mrs Lise Samsoodin (the complainant) represented herein by Mr. Ziggy Adam of Fair Trading Commission against Victor Construction (the respondent) represented herein by Mr. Stephen Victor. The complaint was to the effect that the complainant had paid to the respondent by the 4th of June, 2013 the sum of SR.324, 000 as payment for the construction of a house on the complainant's premises. According to the complainant, she was informed by the respondent that a wall will need to be built prior to the construction of the house early in July. A verbal agreement was made between the complainant and the respondent that a payment will be made at a

later date for the construction of the wall as the complainant did not have the financial means to pay for the construction at the moment. The wall was completed by the end of August, 2013. The foundation work for the house started in September, 2013 but was observed as not to be to the required standard by the complainant's engineer. Dispute arose between the complainant and respondent with regards to disbursement of money and the price for the retaining wall and with notice, the respondent evacuated all his employees and equipment from the site during that time. The complainant attempted to contact the respondent to discuss the matter further but did not receive any response.

[2]The matter was investigated by the Commission. The investigation involved the planning authority who gave their statement regarding the condition of the works done on site. Their report dated November 12th 2013necessitated that the whole foundation works of the proposed structure be demolished and rebuilt. An evaluation of the works done was conducted by an independent quantity surveyor who valued the works done thus far at SR.105, 400.00 being the total amount payable to the contractor. Subtract from that as the result of planning authority's instructions to demolish the foundation, SR 42, 800.00, thus leaving SR 281, 200.00 refundable to the complainant. Additionally, the quantity surveyor valued the retaining wall at SR 148, 900.00.

[3]The Commission met with the respondent and complainant in this case and after stating the relevant facts and relevant laws the Commission asked both parties to settle this matter amicably through an undertaking. The respondent did not dispute the facts as was stated to him. On the 3rd of September 2014 Mr. Victor and Mrs Samsoodin came to the Office of the Fair Trading and agreed to sign an undertaking agreement which was endorsed by the Commission, whereby Mrs. Samsoodin was to pay Victor Construction SR 140, 000.00 for the retaining wall, and this sum was to be removed from the total sum which the respondent would pay the complainant, that is, SR 281, 200.00 thus making the total amount refundable to be 141, 200.00.

[4] Unfortunately Mr. Victor has breached the undertaking by not respecting the conditions that was set in the undertaking and not refunding the amounts as stated per the terms of the undertaking and the Commission has now put the case before the Board of Commissioners to make a ruling.

[5]The Board of Commissioners convened for a formal hearing of the case on Wednesday 6th May, 2015. Mr. Ziggy Adam, Legal Officer from the Commission appeared on behalf of the complainant and presented the Commission's findings to the Board. Mr. Adam informed the Board that the in the interim as the case was pending before the Board of Commissioners, the respondent had made full payment of the remaining balance which amounted to SR.71, 000 that needed to be cleared and that he had paid the water bill for

the period of time when construction was being made as per the undertaking dated 3rd September, 2014. Mr. Adam also stated that there were two points from the undertaking that had been breached; the demolishing of the foundation work and the clearing of complainant's premises and further removal of the debris from site. Mr. Adam concluded by recommending that the Board of Commissioners should order the respondent to comply with Section 75(3) & (4) of the Consumer Protection Act, 2010 while having regards to Section 70 of the same Act.

[6]In his reply, Mr. Victor confirmed that he had effected full payment as per the terms of the undertaking and that he had settled the water bill bullet point (4) of the same document. He stated that he had been in continuous contact with Mr. Adam through emails and telephone conversations as to keep the Commission informed of his financial positions in order to effect the payments required as per the undertaking. He stated that as per a verbal mutual agreement made between her and Mrs Samsoodin, she was to keep the materials as she was going to carry on with the construction of the house with another contractor, hence being the reason that the blocks, mentioned in bullet point (3) is still on the construction site. He accepted that there he was in partial breach of the undertaking and proposed that if Mrs Samsoodin agrees to give him access to the site and the Board of Commissioners agrees for him to proceed with such, he would completely demolish the foundation work, remove all the materials from the site and clear all the debris in two weeks' time from the date of the hearing as he wanted to put an end to the situation as soon as possible.

[7]The Board of Commissioners has listened to all parties in this matter and has examined all the relevant documents that were tendered to the Board. Mr. Victor accepted the facts as presented before the Board and explained that his financial position did not permit him to fully comply with the undertaking which he signed but that as soon as he had the money he made the payments. Further Mr. Victor gave his word and agreed that the below terms will be incorporated.

[8] The Board of Commissioners finds the respondent, Victor Construction, represented herein by Mr. Stephen Victor to be in contravention of Section 70 of the Consumer Protection Act, 2010 by breaching a signed undertaking. In accordance with Section 75 (3) (a) of the same Act the Board of Commissioners orders the respondent to **completely demolish the foundation work, remove all the materials from the site and clear all the debris by Friday 29th May, 2015**.

[9]To conclude the Board shall now consider a suitable penalty for the above contravention. Taking into account that the respondent has breached an undertaking,

the Board of Commissioners shall impose a **fine pursuant to Section 70 (a) of the Consumer Protection Act, 2010 in the sum of SR. 5,000 to be paid in full by the respondent, Mr. Stephen Victor at the offices of the Fair Trading Commission not later than thirty (30) days from the date of this ruling**

(CPA, 2010) *"**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 an 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."

(FTC Act, 2009) *"**53.** A person who fails or refuses to comply with a direction or order of the Commission commits an offence and is liable –*

(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.

(b) Where the person is a person other than an individual, to a fine not exceeding 400, 000 rupees.

[7]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).*We rule accordingly.

Pronounced by us on this 24th day of June, 2015.

Mr. Collin Jean-Louis
Chairperson

Mrs. Jenna Thelermont
Commissioner

Mr. Michael Nalletamby
Commissioner

Mr. Victor Pool
Commissioner