THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS
(Consumer Protection Act, 2010)

IN THE MATTER:

JIMMY BARBE & MARIE ANGE HOAREAU
V
ARSENE LADOUCE
(trading as ATL Building Contractor)

Case No: CPA.18.119

Complainant – Jimmy Barbe & Marie Ange Hoareau
Respondent – Arsene Ladouce

QUORUM:
Mr. Victor Pool – Presiding Commissioner
Mrs. Jenna Thelermont – Commissioner
Mr. Michael Nalletamby – Commissioner

For the Complainant
Ms. Hazel Renaud–Legal Officer (FTC)

For the Respondent
Mr. Arsene Ladouce- Absent

RULING

[1] The Fair-Trading Commission (the Commission) registered a complaint from Mr. Jimmy Barbe and Ms. Marie Ange Hoareau (A1.1, A1.2) (the complainants) of Belombre, on the 22nd June 2018 against one Mr. Arsene Ladouce, trading as ATL Building Contractor (the respondent) of, Mont Buxton (A2, A3).

[2] The gist of the complaint is that on the 25th of November 2016 they had sought a quotation from Mr. Ladouce for the construction of their dwelling house situated at Belombre. The total sum that was quoted was SCR 1,192,240, which was inclusive of all materials and labor (A5).

[3] On the 25th September 2017, Mr. Barbe and Ms. Hoareau entered into a written contract with Mr. Ladouce for their dwelling house (A6.1). On the 26th September 2017, Mr. Barbe and Ms. Hoareau paid the sum of SCR 238,448 to Mr. Ladouce as their down payment (A6.2). That the commencement date and completion date was not stated in the contract. However, in a joint meeting at the Fair-Trading Commission on the 27th October 2017, Mr. Barbe and Ms. Hoareau made known to Fair Trading Commission that there was a verbal agreement that the works was to be completed withing six to nine months from the date first payment was made.

[4] That on the 18th December 2017, the commencement notice was submitted in at the Planning Authority. On the 16th February 2018, an officer from the Planning Authority, Mr. Aldo Rose carried out a monitoring visit with regards to the commencement notice at the site in Belombre. During that visit, Mr. Rose observed and recorded that the setting out had been done, building footings had been excavated (A24).

[5] That on the 14th June 2018, Mr. Barbe and Ms. Hoareau terminated their contract that they had signed with Mr. Ladouce and contacted the Commission to lodge a complaint against the respondent. (A8). The Fair-Trading commission launched an investigation in this matter and held a meeting with Mr. Ladouce on the 02nd August 2018. In this particular meeting, Mr. Ladouce agreed that an independent Quantity Surveyor should assess and quantify the value of the works he had done at the site(A15).

[6] On the 16th August 2018, a site visit was conducted by the officers of the Fair-Trading commission. At this site visit, it was observed that 8 pillars had been erected, a retaining wall with enforcement pillars had been constructed and that there was evidence that rock breaking had been done on the site (A16). On the 03rd September 2017, officers from the Fair-Trading commission, accompanied by the independent quantity surveyor conducted a joint site visit at the site. The quantity surveyor Mr. Alain Jean observed and concluded that the value of works done amount to a total of SCR 78,112.60 (A21).

[7] That on the 24th September 2018, a second meeting was held with Mr. Ladouce whereby Mr. ladouce was informed of the outcome of the QS report to which he expressed that he does not agree with the report (A23). On the 24th October 2018, a meeting with both parties was held where Mr. Ladouce admitted that in fact, he did encounter delays with the work, but however he did not notify the complainants. In this meeting, Mr. Ladouce informed the Commission that he had sought his own QS to carry out an evaluation on the value of works that he

had done and that he will provide the Commission with their copy. To date, Mr. Ladouce has never provided the Fair-Trading commission with a copy of the QS report even though he had been contacted on several occasions by the officers of the Commission.

[8] Attempts by Fair trading commission to amicably resolve the matter failed and to date the complainants have not been given any remedy.

[9] Given the Commission could not resolve the dispute, the case was forwarded before the Board of Commissioners for a hearing for the contravention of Section 40 (1) (a) and Section 40 (2) (b) of the Consumer Protection Act 2010, which states 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 of a quality that persons are generally entitled to expect;*
>
> *"40(2) Subject to this Part, where a supplier fails to perform service to the standards specified in subsection (1), the supplier shall at the direction of the consumer—*
>
> *(b) refund to the consumer a reasonable portion of the price paid for the service performed, having regards to the extent of failure."*

[10] On the 10th November 2020 the matter was mentioned before the Board of Commissioners, whereby Mr. Barbe and Ms. Hoareau attended, however Mr. Ladouce who had been served with summons on two occasions and had been given substituted service did not show up. We were informed by the process server that Mr. Ladouche was difficult to find and was deliberately trying to evade service. Ms. Renaud moved motion that the matter be decided by 'Judgement by Default', since this is not the first time Mr. Ladouce does not show up. The Board granted this motion.

[11] The complainants' case is that the respondent is in breach of Section 40 (1) (a) of the Consumer Protection Act, 2010.

[12] The Board, after hearing the evidence from the Commission and all the documents adduced as evidence in this matter the Board finds that Mr. Ladouce had failed to perform and complete the service in a timely manner contrary to Section 40 (1) (a) of the CPA 2010.

[13] Based on all the evidence presented, the Board rules as follows:

That Mr. Arsene Ladouce, refunds the respondents Mr. Jimmy Barbe and Ms. Marie Ange Hoareau, the sum of SCR 160,335.40

Given the conduct of Mr. Ladouce, in this matter the Board considers a penalty under section 67 (1)(a) read with subsection (3) (c)and (f) of the Consumer Protection Act to an amount of SCR 8,000.

All payments are to be made by the respondents at the office of the Fair-Trading Commission not later than Thirty (30) calendar days from the date of the receipt of this ruling.

The parties are free to appeal against the 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 21st day of January, 2021.

Mr. Victor Pool
Commissioner
(Presiding)

Mr. Michael Nalletamby
Commissioner

Mrs. Jenna Thelermont
Commissioner