IN THE FAIR TRADING TRIBUNAL

Civil Side Number: 21/22

VISION CARE (SEYCHELLES) PTY LTD **Complainant**
Represented by Sven Melhorn
(Represented by D. Charles of FTC)

V/S

Faddy FRANCOURT **Respondent**

Heard: 6 September 2023
Before: Magistrate E. Gonthier, L. Julienne, L. Palit
Delivered: 12 October 2023

JUDGMENT

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[1] The Complainant filed a complaint with the Fair Trading Commission (FTC) against the Respondent, Faddy Francourt under Section 40(1)(b) of the Consumer Protection Act, 2010. The complaint alleges that the Complainant sought the services of the Respondent to create a modern and flexible interface and database API for them for a quoted sum of SCR 80,000. The Complainant is claiming a sum of SCR 96,335.02 and prays that the Tribunal also impose on the Respondent a penalty not exceeding SCR 100,000 in accordance with section 67(1)(a) of the Consumer Protection Act, 2010.

[2] The Respondent was served with a copy of the Complaint and summons to appear before the Fair Trading Tribunal on 17th May 2023 to answer to the claim. Service was effected on him on 9th May 2023. On the date that the matter was called the Respondent failed to appear before the Tribunal. Representative for the Complainant moved for the matter to be heard ex parte, which motion was granted and the matter was set for ex parte hearing and so heard on 6th September 2023.

THE EVIDENCE

[3] In support of the Complaint, the Tribunal heard the sworn testimony of the Managing Director and Secretary of Vision Care (Seychelles) Pty Ltd, namely Sven Melhorn, who currently runs all operations within the company since 2002.

[4] He testified that prior to becoming the Managing Director he was the operations manager and right hand man of the director, and that he had been put in charge of developing software to centralise system for all five of their shops. He stated that the Respondent, Faddy Francourt, was recommended by someone to Mr Holst, the then Managing Director, and at the time the Respondent was still employed as a software developer at the Pension Fund. He testified that they had a first meeting to discuss the scope of the software and functionality that they would want. At a second meeting he presented them with a contract, which was signed by Mr. Holst and the Respondent on 19 November 2019 (Exhibit FTP2) in the presence of the witness, and an initial payment of SCR 40,000 was made. As per the contract the duration of the project was two (2) months and the fee was refundable if no database was produced. The witness stated that they were supposed to have weekly meetings and that at first it seemed to be progressing well until the Respondent started making excuses as to why he could not attend the meetings and the project was taking longer than expected. The Respondent kept asking for more money as advances on payment and asked them to rent server space on a website to store the database on the cloud for the centralised feature. This was paid as a monthly service fee of about USD 91 using the company credit card. The witness stated that they paid a deposit to the Respondent as well as any additional fees that he asked for, but they did not make the final payment since he did not deliver on the service. When pressed, the Respondent gave a written commitment to do what was he was supposed to (Exhibit FTP5).

[5] A bank statement was produced as evidence of the payments made to the Respondent and payments for the server as advised by the Respondent, which was an extra cost not

contemplated in the contract (Exhibit FTP3). The witness further produced emails confirming the payments made (Exhibit FTP4). He stated that the hosting service did not benefit Vision Care as they did not have a use for it, but rather it was just an extra cost. The contract was eventually terminated, the Respondent agreed to reimburse SCR 85,000 and he gave a cheque which was not honoured (Exhibit FTP6). Witness stated that the Respondent admitted that he was overdue and would do his best to deliver but that did not happen. A complaint was eventually lodged with FTC (Exhibit FTP7) claiming the reimbursement of the payment made to the Respondent directly and for rental of the Name Cheap server, amounting to SCR 96,335.02.

[6] The witness further testified in response to questions from the Panel that prior to procuring the services of the Respondent they had been using a software from South Africa and that they wanted to develop a software locally to centralise the database for all their shops. They were advised by the Respondent that it was better to use a web-based server for their database. The modules developed by the Respondent were not usable and they had to start over. He stated that the Respondent had seemed knowledgeable to him, a non-IT person, and he is unsure whether it was ability that was lacking or whether their requirements were more complicated than the Respondent had anticipated.

LAW AND ANALYSIS

[7] Section 40 of the Consumer Protection Act, 2010 provides the standards for performance of services as follows -

> (1) Subject to this Part, where a supplier undertakes to perform any service for or on behalf of a consumer, the supplier shall—
>
> (a) ...
>
> (b) perform the service in a manner and of a quality that persons are generally entitled to expect;

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

(d) …

having regard to the circumstances of the supply and any specific criteria or condition agreed between the supplier and the consumer before or during the performance of the service.

(2) 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 the 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.

(3) Subsection (2) does not apply where the failure of the supplier to perform a service to the standards specified in subsection (1) is due to—

(a) the act or default of another person; or

(b) an accident or a cause beyond the control of the supplier.

[8] The Tribunal is satisfied that there was a contract for services to be provided by the Respondent, with deliverables within a specific timeline. The Tribunal is further satisfied that the Complainant effected part payment to the Respondent for this service as well as payment for rental of server space on the advice of the Respondent, and that the Respondent failed to effect the service or deliver the database, as a result of which the Complainant had no use for the web hosting service they paid for.

ORDER

[9] Having found the respondent to be liable for the contravention of Section 40 (1) (b) read with Section 40 (2) (b), and pursuant to section 41(1) the ~~Board~~ Tribunal hereby orders that the Respondent, Faddy Francourt refunds the complainant Vision Care Pty Ltd the sum of SCR 96,335.02 for the contravention of Section 40 (1) (b) read with 40(2)(b) and this sum is to be paid within thirty (30) calendar days from the date of receipt of this ruling.

[10] We make no order in terms of penalty under Section 67(1)(a) of the Consumer Protection Act.

[11] The Respondent has 14 days to appeal against this decision.

Signed, dated and delivered at Ile du Port on 12th October 2023

E. GONTHIER	L. JULIENNE	L. PALIT
Chairperson	**Member**	**Member**