

IN THE APPEAL TRIBUNAL OF SEYCHELLES

XAVIER EULENTIN

Appellant

versus

FAIR TRADING COMMISSION

Respondent

Heard: 13 April 2018

Delivered: 13 July 2018

Case No. CPA.17. 029

RULING

- [1] The Appellant, Mr. Xavier Eulentin, being aggrieved by the decision of the Fair Trading Commission (hereinafter referred to as 'FTC'), the Respondent herein, to discontinue their investigation into the Appellant's complaint dated 23rd January 2017, lodged an appeal to this Tribunal on 4 September 2017.
- [2] Both parties were present at the hearing of this matter. The Appellant chose to conduct his own case without the assistance of a legal counsel. Neither party objected to the Tribunal's reliance on the case file, which was also served on all parties.
- [3] The Appellant in August 2016 purchased a 32-inch flat screen television, make Nikura, at OJ Shopping Centre, Providence, Mahe, for the sum of SR 3880.00. It is not in dispute that the television was in good, working condition once it was installed in the Appellant's household, and that it was free of any cracks. It is also not disputed that the television falls within the 6-month warranty period as provided for by the warranty terms and conditions of Providence Supplies (Pty) Ltd.
- [4] Approximately five months from the date of purchase, on 12 January 2017, the Appellant noticed a small crack on the television screen while he was cleaning the screen with a cloth. He explained that he was using gentle pressure and that he

alone was responsible for the cleaning of the television. He further noted that he had not noticed the crack before that date. He personally brought the television set back to OJ Shopping Centre at Providence on 13 January 2017, where the crack allegedly widened, when the power was switched on.

- [5] The seller, Providence Supplies Pty Ltd, concluded upon an examination of the television that the damage had been occasioned by the pure negligence of the buyer. It could not have been caused by wiping with a smooth cloth. They further noted in their report dated 9 May 2017 that the Appellant had been unable to produce a receipt for his purchase. The Supplier refused to replace or refund the purchase on this basis. The Tribunal notes that the Appellant did not produce a receipt as proof of purchase to the Fair Trading Commission, nor to the Tribunal itself during the hearing.
- [6] The Respondent during their investigation obtained an independent technical report dated 4 February 2017 which concluded that the cause of the crack “is definitely due to hard impact/ press to the LCD screen.” For this reason, the Respondent concluded that there was no breach of section 42 (1) of the Consumer Protection Act 2010 (CPA), as the damage was occasioned by the Appellant’s negligence and not by a manufacturing defect. They further submitted that the warranty, as provided for by the warranty terms and conditions of Providence Supplies Pty Ltd, would only be limited to manufacturing defects, and specifically excludes physical damage to the television.
- [7] The Respondent submitted that the seller fulfilled its obligations under Article 1625 of the Civil Code of Seychelles, which provides that the buyer shall be protected against hidden or latent defects of the goods being sold.
- [8] Upon request of the Tribunal, the Respondent was asked to supply an updated Report from an Electronics Technician from The Home Electronics Shops, addressing firstly whether the Technician had been informed at the time of examining the LCD screen that the crack was initially small then had subsequently widened when it was switched on, upon return of the TV at the shop for examination. The Electronic Technician, namely Mr. James Canggat, responded in the affirmative by way of a written report dated 22 June 2018. The second request was whether the Technician’s conclusion would have remained the same had the crack not widened, and he once again responded in the affirmative. The Technician concluded that a small crack or a wide crack would still count as damage to the LCD screen, caused by impact.
- [9] The Tribunal has considered all the evidence adduced in this case. We note that the Appellant (who was unrepresented by counsel) chose not to call any expert evidence (although the tribunal did inform him that he could if he wished to do so) in support of his case. From the uncontested testimony of the Appellant it is evident that the crack materialized in his care five months after the date of purchase, which he noticed while he was cleaning the LCD screen. The Technician report concludes that the crack was occasioned by the hard impact. While the Appellant maintains he

used gentle force on the screen, no evidence has been led to prove a manufacturing defect in the television set. In the absence of any evidence to the contrary, the Tribunal is satisfied that the Fair Trading Commission was correct in its decision to discontinue the investigation.

[10] For this reason, it is the unanimous view of the Tribunal that this appeal be dismissed and it is dismissed accordingly.

[11] The Appellant has 14 days from the date of this ruling in which to appeal this decision to the Supreme Court.

[12] Copy of ruling served on all parties on the date of delivery, and a copy of the same is today published on the notice board at the Fair Trading Commission, Unity House, Victoria.

Signed, dated and delivered at Victoria on 13 July 2018.

Mr. Kieran Shah (Chairman) Kieran A. Shah

Mr. Ashik Hassan (about but agrees with the decision as confirmed in his email dated 13 July 2018) Kieran A. Shah

Mr. Gerard Adonis G. Adonis

Miss Diana Quatre D. Quatre