

APPEAL TRIBUNAL OF THE FAIR TRADING COMMISSION OF SEYCHELLES

MANDANA ROSS

APPELLANT

Versus

FAIR TRADING COMMISSION

RESPONDENT

REASON FOR DECISION

We had allowed the appeal and remitted the case to Fair Trading Commission for the investigation to continue. We now give our reasons.

The Consumer Protection Act 1997 was the applicable legislation at the start of this relationship between Mrs Mandana Ross and Siana Bistoquet, and was repealed by the Consumer Protection Act 2010 which erroneously states that the Consumer Protection Act 1977 was repealed. As there was no Consumer Protection Act 1977, we take this to be a typographical error in Section 81 and the preamble to the Act. The effect of the repeal of an Act does not affect any right, privilege or obligation acquired by virtue of section s3(1) of the General Provisions Act (CAP 103).

The Appellant had transferred her land and house thereon on the seaside at Anse-Royale in exchange for a plot of land at Val d'Endor and on which Ms Siana Bistoquet undertook to build a house for the Appellant.

The fact that it was an exchange of properties does not stop the transaction from being a sale. Under the Interpretation and General Provisions Act section 22(1) "sell" is defined as "includes barter, exchange and offer to sell or offer for sale".

The house was built by Sadep Builders (Pty) Ltd in which Ms Bistoquet had an interest, namely being one of the two directors and one of the two shareholders. The Applicant had no contractual relationship with Sadep Builders. Ms Bistoquet engaged Sadep Builders as all buildings must be constructed by a duly licenced building contractor. Sadep Builders was therefore the agent for Ms Bistoquet to honour her commitment in delivering the Appellant a properly constructed house. There was therefore a consumer-supplier relationship established. Mrs Bistoquet cannot hide behind Sadep Builders to escape her contractual obligation towards Mrs Ross.

Lay persons coming before the Fair Trading Commission cannot be expected to know the different legal personalities, and differences between a natural and a legal person. Mrs Ross interacted with Mrs Bistoquet.

She expected to receive a properly built house. Report of the engineer Low Nam detailed many defects.

We have consulted the Supreme Court judgment awarding Mrs Ross R 20,000/- offered by Siane Bistoquet. Whilst at this stage we cannot consider the merits of the case, but if the defects in the

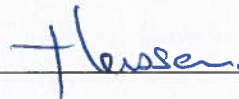
Low Nam Report is proven and it is more than the defects pleaded in the Supreme Court case, then the R20,000/- already paid by may be deducted.

It is for these reasons that we remit the case to Fair Trading Commission for investigation and we allowed Mrs Ross to amend her claim to include Sadeb Builders (Pty) Ltd and/or Bistoquet as she may be legally advised, following the authority of the Supreme Court in Petit Car Hire v Mendelson 1977 SLR Page 72.

Dated at Victoria, Mahe, Seychelles on this ^{18th} day of March 2020



KIERAN B SHAH
CHAIRMAN OF THE APPEAL TRIBUNAL



ASHIK HASSAN
MEMBER OF THE APPEAL TRIBUNAL



DIANA QUATRE
MEMBER OF THE APPEAL TRIBUNAL



GERARD ADONIS
MEMBER OF THE APPEAL TRIBUNAL

Appeal Tribunal
established under
Section 44(1) of the
Fair Trading Commission Act 2009