



Girendra Persaud v Elite Crete Guyana

Case No.: 02082021-C-17

Hearing Date: 06th December 2021, 14th January 2022

Commissioners Present: Chairman Dhaneshwar Deonarine, Nalinie Singh, Allizen Welch-Critchlow and Jason Allcock

**Parties: Complainant: Girendra Persaud represented by Attorney-at-Law Anita Mohan,
Supplier: Dax Kissoon trading as "Elite Crete Guyana" represented by Attorney-at-Law
Dawn Cush**

Facts:

1. The complainant entered into an agreement with the supplier for the supplier to install a terrazzo floor at a cost of \$4,524,000. On 17th August 2020, the complainant gave the supplier a deposit of \$3,000,000 to commence work with an estimated completion time of six (6) weeks. After five months, the work was not completed and the supplier's workmen had dismantled the complainant's drainage pipes, damaged painted walls and left the property in an untidy state. The complainant alleged that the work done by the supplier was not of quality and standard.
2. The defects the complainant noted were that the terrazzo was dirty, yet it was still sealed, water pooled on the floors and the grading was not effective, stone decorations were missing in the terrazzo work with noticeable patches. There were grind-depth inconsistencies and broken strips in several areas, colour inconsistencies were in the terrazzo along with holes in the terrazzo. Acid burned and discoloured the edges of the terrazzo. The terrazzo material seeped into the drain and damaged the border tiles on the floors. The sides of the building and the fence were messed up in several places. Internal drainage pipes were compromised and cement stains were on the windows.
3. The complainant further claimed that he never gave permission for the supplier to reconstruct his stairs and that the workers were not skilled in the art of terrazzo. The complainant contacted the supplier for a new deadline to complete the work, but no commitment was given. Further, the supplier did not refund or rebate a proportionate part of the fees to the complainant.

Investigation:

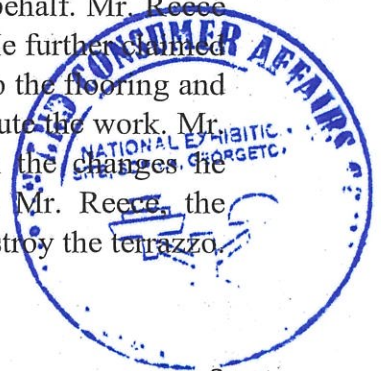
4. On 29th January 2021, the complainant lodged a complaint with the Commission. On 16th February 2021, the complainant, the supplier and Consumer Affairs Unit Investigator Michael Washington, conducted a walkthrough of the worksite, the complainant pointed out defects in the work and the supplier accepted that there were defects in the terrazzo work. It was also observed that the work was completed but not to the complainant's satisfaction.



5. An independent expert was recruited to examine the quality of work completed. Victor Graham, civil engineer, examined the building on 04th March 2021 and noted the surface level and grading tolerance of the floors were not uniformly completed. We had the benefit of oral evidence from Mr. Graham and we received in evidence copies of his written report on the worksite and an estimate of the costs to conduct remedial works. We were satisfied with his experience in the construction industry and accepted his report.
6. At the hearing, Graham provided evidence that there were indentations, depressions and waves on the surface level of the first-floor slab and water pooling, inconsistencies in the colour of the terrazzo flooring. He also noted that the terrazzo was sealed but the surface area was unclean, the marble chips had a rough and rugged finish and were unevenly distributed. The surface area on the roof slab was not adequately prepared which caused an uneven grade. The terrazzo mixture used to form the grout for the terrazzo floor was not consistent. The terrazzo floor was not sufficiently polished to allow the floor to have a visible sheen. Further, sections of the terrazzo floor were not coated with a sealer.

Respondent's claim:

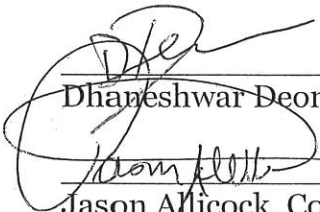
7. The Commission caused a summons to be delivered to the supplier for the hearing. At the hearing, the supplier alleged that the complainant made him do additional work and requested intricate terrazzo colour and design but he refused to pay for the value of the work. He claimed that the complainant originally requested a simple two colour pattern. He noted that his workers had done many terrazzo jobs before and the complainant also requested him to reconstruct the stairs.
8. The supplier stated that the complainant also shifted the goal post for the project and demanded many changes be done to the work which his employees complied with. He noted that as the fixes were done, it created a higher risk of dirtying the finished areas. He stated that they fixed all issues for free, did additional work which included the reconstruction of stairs for free and the work was completed. The supplier claimed that the complainant was dissatisfied that he did not get an additional seal on the terrazzo flooring.
9. The supplier alleged that he was forced to provide his own electricity and a water pump system to complete the work. He also alleged that the terrazzo was dirty because they were forced to use dirty water from the complainant's pump system. He stated that the complainant still has outstanding money for the work completed amounting to \$1,424,000.
10. Mervin Reece, an employee of the supplier, testified on the supplier's behalf. Mr. Reece claimed that he was the supervisor in charge in the supplier's absence. He further claimed that the supplier's employees were required to make repeated changes to the flooring and the supplier was required to utilize his own electricity and water to execute the work. Mr. Reece claimed that the complainant was constantly dissatisfied with the changes he requested and many workers left the job as a result. According to Mr. Reece, the complainant was advised that further rectification of the work would destroy the terrazzo. However, Mr. Reece did accept that there were defects in the terrazzo.

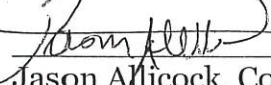



Findings:

11. Based on the evidence of the complainant and the independent expert, we were satisfied that the supplier's work on the terrazzo flooring was so below reasonable standards and plagued with defects that the supplier failed to substantially perform the contract. Thus, we find that the supplier did not provide the full benefit of the service to the complainant. Further, the complainant gave evidence that the supplier did not refund a proportionate part of the fees after the supplier failed to provide the full benefit of the service to the complainant. We find that the supplier's failure to refund or rebate a proportionate part of the fees to the complainant was a breach of his obligations under section 29(2)(a) of the Consumer Affairs Act No. 13 of 2011. A supplier who fails to comply with subsection (2) commits an offence.
12. The independent expert estimated that the cost to conduct remedial works on the terrazzo flooring would be \$2,464,000. We formed the view that the complainant is entitled to \$940,000 being the difference between the costs for remedial works and the outstanding balance of \$1,524,000 to be paid by the complainant to the supplier.
13. However, we take note of the cost for mobilization which the independent expert estimated would be \$160,000 and the supplier's claim for additional works done. Thus, we made further deductions to cater for mobilization and the additional works conducted.
14. We, therefore, advise that the supplier should refund the complainant the sum of **\$585,000 within twenty-eight (28) days of this Order**. In accordance with sections 96 and 98 of the Consumer Affairs Act No. 13 of 2011, the Commission advises that if the sum of \$585,000 is paid, that further proceedings be stayed, otherwise the supplier should be sued for compensation.
15. We further advise that pursuant to section 105 of the Consumer Affairs Act No. 13 of 2011, if the supplier is aggrieved by the Commission's written decision, he may appeal to a judge of the Court within fifteen (15) days after the date of the decision.

Dated 21st February, 2022


Dhaneshwar Deonarine, Chairman


Jason Allicock, Commissioner


Nalinie Singh, Commissioner


Allizen Welch-Critchlow, Commissioner

