



Louis Holder v Kei-Shar's

Case No.: G-10262022-A-21

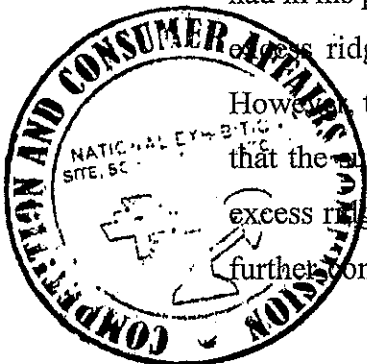
Hearing Dates: 15th December 2023

Commissioners Present: Dhaneshwar Deonarine, Nalinie Singh and Jason Allicock

Parties present: Complainant: Louis Holder, **Supplier:** Monice Spencer, employee of the supplier, Tamieka Clarke, Attorney-at-Law for the supplier.

Complainant's claim:

1. Louis Holder ("the complainant") purchased 154 ridge tiles valued at \$297,056 on 09th April 2022 from Kei-Shar's ("the supplier"). He stated that he received a receipt for the purchase. The complainant stated that he purchased the ridge tiles to use with roof tiles, which he also purchased from the supplier, to cover a roof. He claimed that at the time the supplier did not have the full amount of roof tiles to be used with the ridge tiles, however, he purchased the lesser quantity of roof tiles with the understanding that the additional roof tiles would be supplied by the supplier in the future. The complainant further stated that he purchased all of the ridge and roof tiles available at the time to avoid paying a 25% increase in price for future materials. Additionally, the complainant stated that he requested a discount, which was refused, but he was given store credit amounting to \$30,000.
2. The complainant stated that the additional roof tiles were not sourced by the supplier, therefore, he ordered roof and ridge tiles from another supplier to complete the work. The complainant noted that the said tiles that were ordered were incompatible with the tiles he had in his possession. On 25th October 2022, the complainant sought to return the 45 to 50 excess ridge tiles valued at \$109, 949 which were not compatible with the new tiles. However, the supplier refused to accept the excess ridge tiles. The complainant contended that the supplier breached *section 22 of the Consumer Affairs Act No. 13 of 2011* as the excess ridge tiles were of no use to him and the supplier refused to provide a refund. He further contended that the 7-day return period did not apply in this instance because the



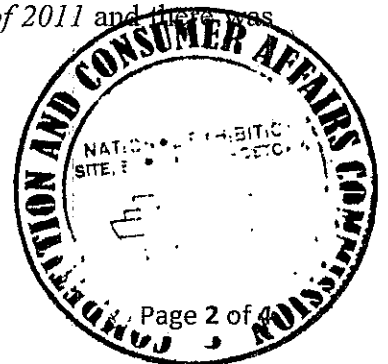
excess tiles were returned only after it was determined that the supplier could not source the roof tiles. Additionally, he stated that there was no immediate change in circumstances. The complainant stated that he had no recollection of a down payment system being offered by the supplier but he was not denying that it could have been said to him.

Investigation:

3. The matter was investigated by the Commission's Investigator, Shaquille Douglas. On 28th October 2022, Mr. Douglas contacted the complainant then he visited the supplier's place of business where a representative of the supplier provided a quotation that was issued to the complainant on 05th April 2022.

Supplier's claim:

4. Monice Spencer testified as a witness on behalf of the supplier. Ms. Spencer stated that she is a supervisor with the supplier. She further stated that she sold the ridge tiles and roof tiles to the complainant. She stated that the complainant was provided with a quotation for his order. Ms. Spencer contended that she did not make a commitment to the complainant to supply additional roofing material. Ms. Spencer further stated that if a customer wanted to pre-order goods then a 50% down payment had to be made and the remainder had to be paid when the goods were uplifted. Ms. Spencer claimed that she offered the option of pre-ordering to the complainant but he declined and indicated that he would wait until the goods were restocked. Additionally, the complainant was not given a time frame for when the goods would be restocked. Ms. Spencer indicated that attempts were made to source a customer for the complainant but he refused. The Attorney-at-Law for the supplier contended that the complainant did not return the said ridge tiles within the 7-day period prescribed under *section 21(3) of the Consumer Affairs Act No. 13 of 2011* and there was no allegation made that the goods were defective.



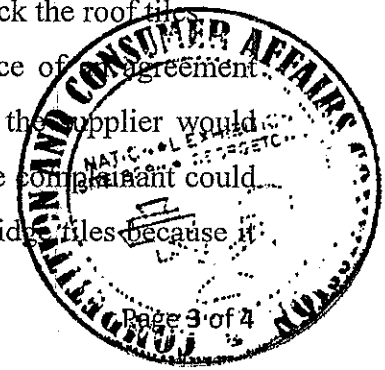
Findings:

5. **Section 2 (1) (n) of the Consumer Affairs Act No. 13 of 2011** provides a definition of goods which is

“goods includes any kind of movable property except money and securities, regardless whether the property is used or unused.”

Importantly, the said act defines products to include goods or services (**Section 2(1)(w) of the Consumer Affairs Act No. 13 of 2011**). However, a notable omission from the interpretation section of the act is for defective goods. According to **Black’s Law Dictionary 7th Edition 1999**, a defective product is *“a product that is unreasonably dangerous for normal use, as when it is not fit for its intended purpose, inadequate instructions are provided for its use, or it is inherently dangerous in its design or manufacture.”*


6. Therefore, defective goods could **not** mean, as the complainant adduced, the **excess** of the product (unused ridge tiles) which could not have been utilized as it was not compatible with another product or goods when the description of that product agreed on was clear that it could be used for the purpose for which it was purchased, albeit only for one purpose, that is, it may only be compatible with roof tiles bought. To our mind, the ridge tiles sold were of merchantable quality and fit for the intended purpose.
7. Based on the foregoing, the Board of Commissioners found that the ridge tiles purchased by the complainant were not defective as they could have been used, fit for purpose and merchantable under the description agreed to and sold under. Further, the complainant received the benefit and uninterrupted enjoyment of the ridge tiles by using (what was required) the said tiles on his roof. Here also, the evidence adduced demonstrated that if the supplier had the roof tiles available today, the complainant would still subsist with his claim as he used a substitute product, a decision taken by him although there was no committed or suggested timeline as to when the company would restock the roof tiles.
8. The Board of Commissioners also found that there was no evidence of agreement between both parties, neither on the quotation nor the receipt, that the supplier would supply additional roof tiles to the complainant. It seems to us that the complainant could have pre-ordered the roof tiles and that he purchased the additional ridge tiles because it



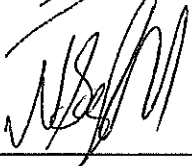
was cheaper to acquire at the time since the company's representative indicated that it would cost more whenever it became available in the future. We could not find that the mere assertions by the company's representative that the product will become available (no timeline was stipulated) in the future sufficient to conclude that there was an offer by the company or an agreement between the complainant and company that obligates the company to supply the roof tiles to the said complainant.

9. It is worth mentioning that the complainant could have returned the goods within 7 days of the purchase as required by *section 21(3) of the Consumer Affairs Act No. 13 of 2011*.
10. We, therefore, conclude that the supplier did not breach any obligation under *section 22(2) of the Consumer Affairs Act No.13 of 2011*.

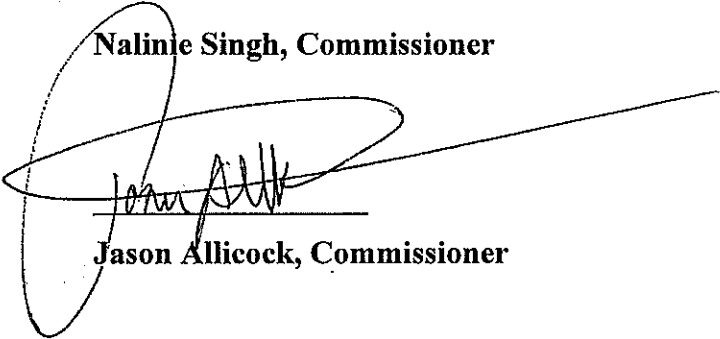
Dated | 2th January 2024



Dhaneshwar Deonarine, Chairman



Nalinie Singh, Commissioner



Jason Allicock, Commissioner

