



# Civil Resolution Tribunal

Date Issued: January 19, 2024

Files: SC-2023-000754 and  
SC-CC-2023-004338

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sam's Garage Doors Ltd. v. Bidarvatan*, 2024 BCCRT 62

B E T W E E N :

SAM'S GARAGE DOORS LTD.

**APPLICANT**

A N D :

SHARAREH BIDARVATAN

**RESPONDENT**

A N D :

SAM'S GARAGE DOORS LTD.

**RESPONDENT BY COUNTERCLAIM**

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**REASONS FOR DECISION**

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Tribunal Member:

Christopher C. Rivers

## **INTRODUCTION**

1. These 2 linked disputes are about a garage door installation.
2. Sam's Garage Doors Ltd. (SGD) installed a garage door for Sharareh Bidarvatan. SGD says Ms. Bidarvatan has not fully paid for the installation. SGD claims \$995.93 for its unpaid invoice.
3. Ms. Bidarvatan says SGD gave her contractor unclear instructions, which resulted in the contractor unnecessarily and unhelpfully removing large parts of her garage's wall. I infer she is arguing that SGD was negligent in providing instructions to the contractor as part of its installation services. Ms. Bidarvatan asks that I dismiss SGD claim. In her counterclaim, she asks for \$2,000 for repairs to her garage wall she says were the result of SGD's negligence.
4. SGD is represented by an employee. Ms. Bidarvatan is represented by a friend who is not a lawyer.
5. I have issued a single decision for these 2 disputes because they involve the same parties and facts, and I find they consist of a claim and counterclaim. For the reasons that follow, I allow SGD's claim and dismiss Ms. Bidarvatan's counterclaim.

## **JURISDICTION AND PROCEDURE**

6. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness.
7. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "they said, she said" scenario. The credibility of interested witnesses, particularly where there is conflict,

cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary.<sup>1</sup>

8. Section 42 of the CRTA says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in a court of law.
9. On file SC-2023-000754, tribunal documents incorrectly show the name of the respondent and applicant by counterclaim as Shery Bidarvatan. In her emailed correspondence with SDG and in her counterclaim, Ms. Bidarvatan lists her first name as Sharareh. So, I have exercised my discretion under section 61 of the CRTA to direct the use of the respondent and applicant by counterclaim's correct legal name in these proceedings. I have amended the style of cause accordingly.
10. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

## **ISSUES**

11. The issues in this dispute are:
  - a. Is SGD entitled to be paid its unpaid invoice?
  - b. Was SGD negligent in providing instructions to Ms. Bidarvatan's contractor, and if so, is Ms. Bidarvatan entitled to damages?

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<sup>1</sup> See: *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38.

## EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, each party, as applicant, must prove their claims on a balance of probabilities. This means “more likely than not”. I have read all the parties’ submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision. Despite having the opportunity to do so, Ms. Bidarvatan did not provide any response submissions to SGD’s claim. However, this decision is about 2 linked disputes, and I have relied on the evidence and arguments in both in coming to my decision.
13. In February 2022, Ms. Bidarvatan hired SGD to replace her garage door with a new one. A February 9, 2022 invoice shows SGD’s quote for a total of \$3,794 plus 5% GST for the old door’s removal and the new one’s installation. The invoice contained a term that required a 75% deposit and terms about interest on late payments. Ms. Bidarvatan undisputedly paid \$2,987.78, which represents 75% of the total cost plus GST. I find that by paying the deposit, Ms. Bidarvatan agreed to the invoice’s terms, and they became the parties’ contract.
14. SGD ordered the new garage door from a 3<sup>rd</sup> party, and after some delays in its manufacture, installed the door on September 7, 2022. On September 8, 2022, SGD sent Ms. Bidarvatan its invoice for \$995.93, which was the final 25% of the agreed-upon amount. When SGD tried to use Ms. Bidarvatan’s credit card on file, it found the credit card was expired, and reached out to Ms. Bidarvatan.
15. On September 13, Ms. Bidarvatan’s son, D, called SGD to complain about two things. First, D said SGD told Ms. Bidarvatan’s contractor to remove large portions of a wall in the garage, which seemed unnecessary. Second, D said there was a gap at the edge of the garage door. Ms. Bidarvatan does not raise the second complaint in any her claims or submissions, so I have not considered it further.
16. Undisputedly, Ms. Bidarvatan has not paid SGD for its final invoice.

### ***Final Invoice***

17. There is no dispute whether SGD completed the garage door's installation. Likewise, there is no dispute SGD's final invoice is for the agreed-upon amount.
18. As noted above, Ms. Bidarvatan did not provide any submissions about SGD's claim. In her Dispute Response, Ms. Bidarvatan says SGD was negligent in providing instructions, resulting in delays in the garage door's installation. To the extent Ms. Bidarvatan submits SGD was negligent in providing installation services, I address this argument below while deciding her counterclaim. Even there, however, she does not provide any evidence of delays because of SGD's negligence, so I find that is not a reason for her to withhold payment.
19. So, I find SGD is entitled to its unpaid invoice of \$995.93, subject to Ms. Bidarvatan's counterclaim.

### ***Negligence and Drywall Removal***

20. I now turn to Ms. Bidarvatan's claim about SGD's allegedly negligent instructions to her drywall contractor.
21. Ms. Bidarvatan says one of SGD's employees, K, told her to make changes to the garage wall to allow the garage doors' removal and installation. She hired a drywall contractor to make the changes. However, she says once the new door was installed, she found the changes to the wall were not necessary.
22. SGD says the only change it required was to have a narrow strip of drywall cut out so it could remove the tracks for the old garage door's rollers, allowing it to put in the new one. SGD says Ms. Bidarvatan's drywall contractor removed far more from the wall than it requested or required.
23. Photos show the original track for the garage door rollers was mounted on the garage's side wall. The track was mounted behind the drywall, presumably screwed into the studs. A strip of drywall had been cut away to allow the garage door's rollers to travel along the track. The cut away strip of drywall was narrow enough that the

screws holding the track in place were covered by drywall above and below the track, so the SGD installer could not access them.

24. So, K says they told Ms. Bidarvatan she needed to remove a small strip of drywall to allow access to the old track's screws. Once SGD removed the old track, it could then install the new track. Based on the photographs of the pre-renovation wall and email evidence from K, I find it was necessary for some drywall to be cut away to allow SGD to remove the old track for the garage door.
25. Photos show what happened next. Ms. Bidarvatan hired a contractor, who removed entire drywall sheets from the wall. They also cut half-meter long and 2-inch deep sections out from underlying studs and made various reinforcements to the studs at the plate to ensure the wall would remain standing. The cutting resulted in the wall's studs having a large, C-shaped gap.
26. Around September 18, 2022, after the garage door installation was complete, Ms. Bidarvatan and K exchanged emails about the drywall renovation. K wrote "I clearly said to cut a portion of the wall/drywall, NOT the whole thing." (emphasis in original)
27. Ms. Bidarvatan wrote back, agreeing that only a strip of drywall measuring 0.5 x 2.5 meters needed to be removed. While K's emails do not include any specific dimensions, I find these measurements are reasonably consistent with the nature of K's request.
28. In the same email, Ms. Bidarvatan also said the contractor told her the drywall was "load bearing/structural" and the contractor needed to remove the rest of the drywall panels to "beef up" the wall. I find Ms. Bidarvatan likely meant to say the studs were load bearing, not the drywall, and given the large pieces cut out of them, the wall would need to be reinforced.
29. Ms. Bidarvatan also wrote an undated letter on behalf of her drywall contractor, which both the contractor and Ms. Bidarvatan signed, to explain why the contractor cut the studs in such an unusual way.

30. The letter repeats the dimensions of K's drywall removal request, as set out above, but also includes a new dimension – depth. Ms. Bidarvatan's letter first claims K told her contractor to remove 2" of drywall depth. The letter later says the contractor and K spoke by phone and that K insisted the contractor cut out 2" of the wall's depth. The letter implies the contractor was hesitant, but that K insisted removing 2" of the wall's depth was necessary. This led to the contractor cutting both the drywall and the studs.
31. Given the consistent references to cutting drywall by both K and Ms. Bidarvatan in their email communication, I find it likely K instructed Ms. Bidarvatan and her contractor to remove a strip of drywall. I find K did not tell her, or her contractor, to cut out 2"-deep sections of the studs themselves. I find it likely the drywall contractor misunderstood what K asked them to modify.
32. While she does not specifically use the word "negligent" in her submissions, I find Ms. Bidarvatan is arguing SGD was negligent in providing instructions to her and her contractor. She specifically argues that SGD should have provided either written instructions or drawings to prevent the apparent miscommunication.
33. Proving negligence requires Ms. Bidarvatan to show: SGD owed her a duty of care, SGD failed to meet a reasonable standard of care, it was reasonably foreseeable that SGD failing to meet the standard of care would cause the claimed damages, and the failure caused Ms. Bidarvatan's damages. As a garage door installation business, I find that SGD owed a duty of care to Ms. Bidarvatan as a customer to take reasonable care while instructing her contractor to facilitate the garage door installation.
34. However, I find Ms. Bidarvatan has not proved that SGD failed to meet the standard of a reasonable garage door installer. Ms. Bidarvatan acknowledges that K spoke with her contractor by phone on the day of the wall renovations. While she says SGD should have provided written instructions or drawings, I find that she or the contractor could have simply requested those if there was any question about what was to be done. This is especially the case given the contractor's unusual interpretation of SGD's instructions and apparent hesitation to implement them. I find SGD could not

reasonably foresee a professional contractor misunderstanding its directions so badly.

35. Finally, I note Ms. Bidarvatan never says K specially told her or the contractor to remove any part of the studs.
36. So, I find that SGD was not negligent, and I dismiss Ms. Bidarvatan's counterclaim.
37. The parties' contract contains terms respecting interest. While the *Court Order Interest Act* (COIA) generally applies to the CRT, section 2(b) says pre-judgment interest under the COIA does not apply where the parties have an agreement about interest. I find the parties agreed about interest in the contract, but SGD does not claim contractual interest. So, I do not order any pre-judgment interest.
38. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find SGD is entitled to reimbursement of \$125 in CRT fees. I dismiss Ms. Bidarvatan's claim for CRT fees. Neither party claimed any dispute-related expenses, so I make no order about them.

## **ORDERS**

39. Within 14 days of the date of this order, I order Ms. Bidarvatan to pay SGD a total of \$1,110.93, broken down as follows:
  - a. \$995.93 in debt, and
  - b. \$125 CRT fees.
40. SGD is entitled to post-judgment interest, as applicable.
41. I dismiss Ms. Bidarvatan's claims.



42. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

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Christopher C. Rivers, Tribunal Member