

SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Iller Door Systems Limited v. East Coast Metal Fabrication (2015) Inc.*,
2018 NSSM 106

Date: 2018-07-30

Docket: Sydney, No. 466432

Registry: Halifax

Between:

Iller Door Systems Limited

Claimant

v.

East Coast Metal Fabrication (2015) Inc.

Defendant

Adjudicator: Patricia Fricker-Bates
Heard: March 21st and May 2nd, 2018
Decision: July 30, 2018
Appearances: Patrick O’Neill, Counsel for the Claimant
Nicole Campbell, Counsel for the Defendant

BY THE COURT:

[1] The Claimant, Iller Door Systems Ltd. [hereinafter ‘Iller Door’ or ‘the Claimant’], filed a Notice of Claim against the Defendant, East Coast Metal Fabrication (2015) Ltd. [hereinafter ‘East Coast’ or ‘the Defendant’] on August 3, 2017. The reason for the claim was set out in a 15-paragraph Statement of Claim with the following relief sought (at para. 15):

The Claimant requests the following relief:

- a. judgment in the amount of \$19,686.91, representing the balance owing for Invoices 25594 and 25470;
- b. interest on the foregoing amounts in arrears as calculated by the contractual rate of interest of 24% per annum;
- c. filing fees;
- d. service fees;

- e. travel expenses;
- f. witness fees;
- g. any further relief this Honourable Court deems just.

Iller Door is represented by Patrick O'Neill of Burchell MacDougall LLP. Gerald O'Toole and Emmett O'Connor gave evidence on behalf of the Claimant.

[2] On September 21, 2018, the Defendant, East Coast, filed a 16-paragraph Defence and Counterclaim with the following relief sought (at para. 16):

The Defendant (the Claimant by way of counterclaim), requests the following relief:

- a. Dismiss the claim against it in the amount of \$19,686.91 and any interests or costs claimed;
- b. Counterclaim Judgment in the amount of \$22,000.00 plus HST, representing the cost to replace the roll up door that was left damaged and unfixed by the Defendant by way of Counterclaim;
- c. Filing fees;
- d. Any further relief this Honourable Court deems just.
- e. The Defendant-Claimant by way of counterclaim waives any amount in excess of \$25,000.00 for the counterclaim.

[3] At paragraphs 3-4 of the Defence and Counterclaim, the Defendant states:

- 3. The Defendant admits that (sic) facts stated in the statement of claim Paragraph 1,2,3,4,5,6
- 4. The Defendant denies all other allegations of fact in the statement of claim.

Joseph Anthony Hines and Roger Allan MacPhee gave evidence on behalf of the Defendant.

[4] The facts not in dispute between the Claimant and the Defendant are as follows (see Claimant's Statement of Claim, paragraphs 1-6):

1. The claimant, Iller Door Systems Limited, a body corporate pursuant to the laws of the Province of Nova Scotia, has a registered office in Truro, Nova Scotia.

2. The defendant, East Coast Metal Fabrication (2015) Inc. is a body corporate with its registered office in Sydney, Nova Scotia.

3. On May 3, 2016, the defendant sought a quotation from the claimant or the supply of overhead commercial doors. In particular, the defendant requested the supply of:

- a. three (3) 20' x 20' T-175 Thermatite Doors;
- b. six (6) 24' x 12' double glazed windows;
- c. three (3) Manaras Opera OSH Jack Shaft operators

4. On May 4, 2016, the claimant supplied Quotation 056-0511 to the defendant, offering to supply and install three (3) TS 200 20x20 overhead doors with a standard three (3) inch lift, as well as 3 H1011 Jackshaft operators for #31,743.00 plus HST.

5. The Claimant subsequently provided a quotation to the Defendant to supply the doors, exclusive of installation costs, for \$23,365 + HST.

6. On May 31, 2016, the Claimant issued Invoice No. 24627 to the Defendant, in the amount of \$26,869.75, which was paid by the Defendant on June 10, 2016.

[5] In addition, paragraphs 1, 2 and 5 found in the Defendant's Defence and Counterclaim are not in dispute:

1. This statement is being made by the Defendant, East Coast Metal Fabrication (2015) Inc., a body corporate pursuant to the laws of the Province of Nova Scotia, has a registered office in Sydney, Nova Scotia.

2. The Claimant, Iller Door Systems Limited, a body corporate pursuant to the law of the Province of Nova Scotia, has a registered office in Truro, Nova Scotia.

...

5. The Defendant states, upon receiving the purchased items from Invoice No. 24627, the Defendant began the installation of the doors in September 2016.

Review of the Evidence

[6] Based on the undisputed facts set out in paragraphs 4 and 5 herein, Iller Door supplied three (3) TS 200 20x20 overhead doors with a 3' standard lift to East Coast; and three (3) H1011 Jackshaft operators, for the total price of \$23,365.00 plus HST for a total of \$26,869.75 (see Exhibit No. 2.) As noted in the agreed facts above, on May 31, 2016, the Claimant issued Invoice No. 24627 to the Defendant, in the amount of \$26,869.75, which was paid by the Defendant on June 10, 2016. The Claimant supplied the doors only—the Defendant began the installation of the doors in September 2016.

[7] The dispute between the parties relates to two invoices submitted by Iller Door to East Coast that remain outstanding: **(a)** Invoice No. 25594 (Revised) for \$14,714.31 issued on January 1, 2017, related to the repair of overhead doors; **(b)** and Invoice No. 25470 issued on January 1, 2017, for \$4,972.60, related to the removal and installation of a rolling steel door and electric operator (See Exhibit No. 1, Tab 2).

[8] Gerald O'Toole testified for the Claimant. He is sales manager at Iller Door and has been with the company for approximately 20 years. He testified that Iller Door fills both supply-and-install and supply only contracts. About 75% of the

Claimant company's contracts are supply and install. The remaining 25% are supply only.

[9] When it comes to supply only contracts, he testified that the client provides a list of requirements, primarily through e-mail and telephone calls, and he looks to Iller Door products for a comparable match. Supply and install contracts, on the other hand, necessitate an on-site visit to ensure that everything is as agreed. He testified that the relationship between Iller Door and East Coast has been very good in the past.

Invoice No. 25594 (Revised) – Labour and Parts (Overhead Doors)

[10] On May 3, 2016 at 1:02 p.m., East Coast requested via email pricing for three overhead doors to fit a 20'x20' opening: Exhibit 1, Tab 1. Drawings of the door openings were attached. In cross-examination, Gerald O'Toole testified that while the height requirement can be determined from the drawings, the type of door—standard or high lift—cannot. However, based on the data provided in the May 3, 2016 email, Mr. O'Toole provided quotes for a supply-only contract at \$23,365.00 plus HST (see Exhibit 2) and supply and install contract at \$31,743.00 plus HST (see Exhibit 5). There is no dispute between the parties that East Coast opted for the supply-only contract and paid the bill.

[11] Iller Door had ordered the three doors supplied to East Coast from Wayne Dalton Garage Doors (see Exhibit 1, Tab 3). According to Gerald O'Toole, East Coast contacted Iller Door in October 2016 as the Defendant was having trouble installing the overhead doors and asked the Claimant for help. He maintained that the Claimant was onsite at the Defendant's business for 2 & ½ months. The job

involved converting two standard lift doors to high lift doors and this necessitated, in part, the replacement of springs (see Exhibit 3) and drums. He testified that the primary difference between sectional doors with high lift (see Exhibit 4, photo 5) and sectional doors with standard lift (see Exhibit 4, photo 6) is the tracking and head gear. Although the Defendant settled the outstanding invoice for the supply of the doors on June 10, 2016, installation of the doors was not started by the Defendant until September 2016. Unfortunately, the Wayne Dalton Garage Doors return policy on the springs stated: “All claims relating to quantity or shipping errors shall be waived by the Buyer unless made in writing to the Seller within (30) days after delivery of the goods to the address stated”: see Exhibit 3. Clearly, the Defendant was outside the 30-day return period. Mr. O’Toole indicated that Iller Door does not take returned products as the company would be left sitting on products for years. Mr. O’Toole further testified that the return policy for Wayne Dalton Garage Doors comes in a book delivered with the doors. He stated that he did not personally review or identify the policy to East Coast. As to the Claimant’s own return policy, he acknowledged that such was not reviewed or discussed with the Defendant although it is posted in the Claimant’s Truro Office.

[12] The Claimant turned to Service Delivery Doors for the replacement parts for the high lift doors. In cross-examination, Mr. O’Toole testified that he went to Service Delivery Doors for the parts because that company is quicker and easier to access and provided the same quality material. He stated that Service Delivery Doors is a parts company. He indicated that Wayne Dalton Garage Doors would continue to cover the warranty on the door panels while Service Delivery Doors would cover the parts, i.e., springs and drums.

[13] When directed to the letter forwarded to the Defendant by Burchell MacDougall LLP on April 27, 2017 (see Exhibit 1, Tab 4), Mr. O’Toole acknowledged that an error had been made in sending out the original unrevised Invoice 25594 as it included, incorrectly, 250’ of cable at \$1480.00. The witness was not sure when Invoice 25594 (Revised) had been sent out to the Defendant but testified that sending out an invoice four-to-five months after a job was not irregular. Mr. O’Toole also stated that he first attended the Defendant’s business premises in June/July 2017 for an on-site visit. The jobs in dispute had been undertaken in Nov/Dec 2016.

[14] Concerning the labour costs set out in Invoice 25594 (Revised)—\$5,348.00—and supporting Work Order 28087, including a timesheet, Mr. O’Toole testified that another Iller Door employee, Emmett O’Connor, was responsible for completing that documentation, that he was unsure if he, himself, had seen that specific form.

[15] Concerning the parts charged to the Defendant in Invoice 25594 (Revised), Gerald O’Toole testified that there was no conversation with the Defendant, that information for the parts came from Iller Door personnel. He indicated that the Defendant asked the Claimant to fix the problem with the doors but he couldn’t recollect with whom he spoke to at East Coast; however, there was no conversation or warning of new costs relayed to East Coast with respect to parts, to labour or to the cost of using Claimant machinery onsite. He testified: “I didn’t provide a quote because I didn’t feel it was necessary to talk about cost.” As for the use of the Claimant’s versus the Defendant’s machinery, Gerald O’Toole indicated that the “on site guys will determine this.” He indicated that the associated cost of using the Claimant’s machinery was not discussed with East Coast. When cross-

examined on the difference in parts' prices between Invoice 25594 (Revised) [see Exhibit 2, pg. 4] and comparison-priced parts [see Exhibit 2, pp. 8-13], Mr. O'Toole testified that freight and a mark-up increase the Iller Door cost but that the cost would be higher for parts from Wayne Dalton Commercial Doors.

[16] Emmett O'Connor is the door technician with Iller Door and has been in that position for the past 16 years. He was onsite at East Coast for the installation of the three overhead doors and the rolling steel door. He testified that he filled in Work Order 28087 attached to both Invoice 25594 and Invoice 25594 (Revised) (see Exhibit 1, Tab 2) but did not write the date "Nov. 29/16" at the bottom of the Work Order. He stated that most times there were four Iller Door workers on site. He stated that there is no customer signature on the Work Order because the job wasn't complete on the rolling steel door and that is why the Claimant's scissor-lift was left on-site.

[17] When issues arose at the Defendant company site, he indicated that he dealt with Tony Katryk. Mr. O'Connor testified that he had discussions with Tony of East Coast concerning drums, cables, tracks and springs, that they had to be replaced. According to Emmett O'Connor, Tony said: "Get what you need and get it done." He testified that when Iller Door was on site at East Coast, "our role was to make it right. East Coast was with us the whole time." In cross-examination, Mr. O'Connor admitted that he did not discuss the cost of "making it right" with East Coast personnel. Tony Katryk was not called as a witness by either the Defendant or the Claimant.

[18] Joseph Anthony Hines, COO of East Coast, testified that Iller Doors had provided all doors to the Defendant since 2008. He described the Defendant's past

dealings with the Claimant as “great”. He said that the Defendant would send drawings and specs to Gerald O’Toole who would, in turn, provide a quote. He stated that previously the Defendant and the Claimant always talked about the cost of doors and that they had a good working relationship. Prior to this incident, the Defendant had ordered six high-lift doors from the Claimant without incident. He testified that Gerald O’Toole was his main contact with the Claimant. He maintained that Invoice 25594 (Revised) [Exhibit 2, pg. 4] did not have a supporting quotation. Until he received the Invoice, Mr. Hines testified that he was unaware of the associated costs. He stated that in the past, the Defendant would receive a quote from the Claimant, then an invoice which would be paid up-front by the Defendant. He indicated that he did not receive the invoices in dispute dated January 1, 2017, until March 2017.

[19] Mr. Hines referred to the installation guide for the sectional overhead doors [see Exhibit 1, Tab 3] indicating that he didn’t review the installation guide after delivery and was unsure if his colleague, Roger MacPhee, had done so. He acknowledged that he did not know the difference between a high lift door and a standard door when he sent the May 3, 2016, email to Gerald O’Toole of Iller Door (see Exhibit 1, Tab 1) ordering three 20x20 overhead doors with 3” standard headroom wood jamb hardware. He stated that he thought the 3” standard headroom was needed but didn’t know if it referenced a standard or a high lift door. He indicated that when contact was made with the Claimant in October 2016 to help with the door installation, the doors had been fully installed by the Defendant but Roger MacPhee advised that there was something wrong with the springs. He indicated that he contacted Gerald O’Toole of Iller Door for replacement parts and for someone to come over and have a look. It was then that Gerald O’Toole (Iller Door) advised that drums and springs needed to be replaced.

Mr. Hines testified that that he had no discussion with Mr. O’Toole about costs. Mr. Hines *assumed* that the Defendant had received the wrong springs and that the Claimant would return those parts to the manufacturer and send the correct ones to East Coast. As to labour, Mr. Hines testified that the Claimant had not indicated that there would be no charge for labour—he expected a charge for labour from the Claimant.

[20] Joseph Hines for the Defendant testified under cross-examination that he disagreed with the Work Order 28078 attached to Invoice No. 25594 and No. 25594 (Revised). In particular, he did not agree with the accuracy of the time logs. He asked the Defendant’s site manager, Toney Katyrk, about the hours but neither Allen MacPhee, the head of maintenance at East Coast, nor Toney Katyrk, had been keeping record of the hours. He testified that the radio receiver requested in the May 3, 2016, email had not been provided.

[21] In re-direct, Mr. Hines, referring to the May 3, 2016 email, stated that in regard to door installation, he has no training. He advised that he had full reliance on Iller Door because the company had provided the exact same doors on previous jobs. Reliance to Mr. Hines meant trusting Gerald O’Toole of Iller Door to look at the drawings attached to the May 3, 2016 email and give the Defendant the exact same doors as before but bigger. He stated that he had taken no action in the past to question the Claimant’s work.

[22] Roger Allan ‘Allie’ MacPhee also testified for the Defendant. He testified that he is the head maintenance man at East Coast. He has been a welder for 35 years and has been with the Defendant for 13 years and reports to Tony Katyrk. He stated that the Defendant received three standard lift doors from the Claimant

instead of one standard lift and two high lift doors. He testified that with respect to Invoice 25594 (Revised) (Overhead Doors), he was not privy to the paperwork as it was not part of his job. He estimated that for the three overhead doors, the Claimant's workers had been on site at East Coast for two (2) hours on the standard lift door and two men on the high lift doors for 18 hours each over two days.

Invoice No. 25470 – Reinstallation of Rolling Steel Door

[23] The Quotation for the rolling steel door dated August 19, 2016, referenced removing and installing a 24x22 rolling steel door, but stipulated that the price of a boom truck and operator + scissor lift was not included in the quote (see Exhibit 2, pg. 2). In addressing the actual invoice for the job, Invoice 25470 (see Exhibit 2, pg. 3), Gerald O'Toole (Iller Door) indicated that the Defendant was closing for Christmas 2016 but the Claimant would have returned up until the date of closing if called back by the Defendant company to finish the job. He said that the Claimant was first notified about damage to the rolling steel door in April 2017. He maintained that when the Claimant left the Defendant's site, the rolling door appeared undamaged and moderate adjustments had to be done. He noted that that power had not been hooked up to the door but that was the responsibility of the Defendant as Iller Door does not do high voltage work.

[24] Emmett O'Connor for Iller Door testified that the work on the rolling steel door started about two days before the Christmas break. He indicated that there is no Work Sheet Order or Timesheets for that job. He explained that East Coast had started the process of re-installing the rolling door and had completed about 20% of the job. He testified that the Claimant's scissor lift was left on the Defendant's

property pending job completion. He indicated in cross-examination that he had discussed the use of the scissor-lift with Tony of East Coast but not the cost as he assumed they knew. He stated that Invoice 25470 was sent out before the job was completed.

[25] Emmett O'Connor maintained that there was a problem with the re-installation of the rolling door when efforts were made to close the door. It was late in the work day and another East Coast employee, Joe Hines, also was present, although he can't recall his conversation with Mr. Hines. He testified that "they told us they were going for Christmas break." The rolling door couldn't be used because it jammed, the slots were jammed. He testified that "we forced the door down. We used muscle, not equipment." He stated that "we basically stood on the door. We had bars inside the door to make it come down. At no point did those actions contribute to damage to the door." He referred to Exhibit 4, photo 8 as illustrative of slats out of place jamming the door. He testified that to fix the rolling steel door, the canopy would have to be removed from the track, laid flat and the slats fixed. He estimated that it would take one day with a boom truck to do the job. He did note that he parked the scissor-lift owned by Iller Door in front of the rolling steel door "as a barricade" in case the door moved in and out as only one side of the slats was in the track. Later, when issues with the Claimant's bill arose, he went to the Claimant's property and removed the scissor-lift.

[26] Joseph Hines of East Coast testified that the company had made an addition to their building and decided to move the rolling door, originally purchased and installed by the Claimant in 2013, to the new addition. He indicated that the rolling door hasn't functioned since it was moved but he was unaware if the necessary electrical work had been done. He indicated that East Coast had helped

move the door and provided the machinery, that the door was placed in the new bay but the actual installment hadn't been completed. He testified that the installation of the rolling door occurred just before Christmas 2016, that Iller Door employees was on site and were attempting to close the door. He indicated that he saw Emmett O'Connor of Iller Door and his son and two other workers trying to close the door. The door jammed and Emmett O'Connor told Mr. Hines that everything was fine, that Iller Door would be back in the in the New Year. However, the Claimant's equipment remained at the Defendant's work site for approximately three months but nobody from Iller Door returned to finish the installation. Mr. Hines testified that the current state of the rolling door is that it is closed and secured but not operable—the Defendant has not tried to fix it. All the doors—overhead and rolling—require electrical power although the rolling door can be worked with chains. Mr. Hines testified that he contacted the Claimant repeatedly to ask when the Claimant was coming back to finish the job, that he wasn't asked if the electrician had been present.

[27] Under cross-examination, Mr. Hines testified that the Defendant and the Claimant had had a good relationship, that he gave Iller Door the benefit of the doubt for two months, then contacted Gerald O'Toole of the Claimant company in February 2017 and advised “your guys damaged the door and are not coming back on site.” He indicated that he had a third party look at the rolling steel door but that party did not want to get involved. He said that Gerald O'Toole came on site in the summer of 2017 at Mr. Hines invite (See e-mail from Gerald O'Toole for the Claimant to Joe Hines for the Defendant dated June 20, 2017, at 4:05 p.m., Exhibit 1, Tab 1). Mr. Hines maintained that the rolling steel door had been shut down with two machines—the Claimant's employees were jumping up and down on a machine (scissor lift) to close the door because the machines couldn't do it alone.

[28] Roger Allan “Allie” MacPhee testified that it took him 1 & ½ days to prepare the rolling steel door to be moved to its location in the new paint shop. Prior to the arrival of the Claimant, he indicated that 95% of the work in removing the door had been completed. He stated that he welded the relocated door to secure it before Christmas, that Iller Door workers were present at the time he did the welding and made no complaints. After the Christmas 2016 holidays, he testified that there were snow drifts in the paint shop, the door was buckled in and but for the welding he had done on the rolling door, it would have been on the floor. He maintained that prior to leaving for the holidays, he did not see the Claimant’s employees pull the door down. He said the headers were in place on the door and welded on either side. According to Mr. MacPhee, the rolling steel door is not reparable as it couldn’t be trusted even if the head was uninstalled, the door laid on the floor and slats replaced. He testified that East Coast had more versatile rough terrain machinery and offered same to the Claimant but employees of the Claimant prepared their scissor lift. He was adamant that there was no conversation with the Claimant’s workers about any cost associated with the use of their equipment.

[29] In cross-examination, Mr. MacPhee acknowledged that he hadn’t reviewed the installation guide on the rolling steel door. He was unsure if the rolling steel door was reparable.

DECISION OF THE COURT

[30] I want to thank counsel for both the Claimant and the Defendant for the manner in which they presented their respective cases and for their well-drafted written submissions.

[31] A review of the testimony underscores that this is a case of poor communication between two commercial entities who, in the past, had enjoyed a positive working relationship. The normal routine between the Claimant and the Defendant was as follows: the Claimant would receive a job request from the Defendant, the Claimant would forward to the Defendant a Quotation relative to the request, followed by an invoice upon acceptance by the Defendant of the Quotation, and that invoice would be paid up front by the Defendant. That did not happen in this case.

[32] The evidence establishes that the Claimant received a request from the Defendant to supply three overhead doors in an email dated May 3, 2016 (see Exhibit 1, Tab 1). The Defendant received quotes for a supply-and-install contract and a supply-only contract, opting for the latter. There is no dispute that the Defendant paid for and began installation of the doors in September 2016. However, in or about October 2016, the Defendant contacted the Claimant for assistance with the install of the doors. From that point on, the specifics of what was requested of the Claimant and what the cost of that request would be to the Defendant remains in dispute.

[33] In reference to Invoice 25594 (Revised), Gerald O'Toole of Iller Door testified that he was contacted by someone—he couldn't remember who—from East Coast to fix the problem with the overhead doors, but there was no conversation with or warning to the Defendant as to the cost of that job. Emmett

O'Connor, Iller Door's door technician, testified that he had discussions with Tony Katryk of East Coast concerning the replacement of drums, cables, tracks and springs. He maintained that Tony Katryk said: "Get what you need and get it done." However, Emmett O'Connor for the Claimant testified that he did not discuss the cost of "making it right" with East Coast. Joseph Anthony Hines, COO of East Coast, testified that he did not know the difference between a high-lift door and a standard lift door when he sent the May 3, 2016, email to Gerald O'Toole of Iller Door. When problems surfaced with the overhead doors, there was no discussion between him and Gerald O'Toole about the cost of replacement parts. Mr. Hines *assumed* that the Defendant had received the wrong springs, drums and other parts, and that the Claimant would return those parts to the manufacturer and send the correct ones to East Coast. He acknowledged that he hadn't read the instructional guide that came with the overhead doors. He questioned the accuracy of the labour timesheet attached to Invoice 25594 (Revised) but acknowledged that East Coast had not been keeping a record of the hours. Roger Allen "Allie" MacPhee of t East Coast testified that he couldn't speak to the particulars of the Claimant's Invoice 25594 as that wasn't part of his job—he's East Coast's welder and head maintenance person.

[34] Speaking to the rolling steel door (Invoice 25470), Gerald O'Toole for the Claimant indicated that work had been done on the door just before Christmas 2016 but that the Claimant had not been notified about the alleged damage to the door until April 2017. Emmett O'Connor of Iller Door testified that East Coast has started the process of re-installing the rolling steel door and had completed approximately 20% of the job before the Claimant came on site. Unfortunately, the door wouldn't close properly because it jammed. He testified that the Defendant's employee, Joe Hines, was on site at the time but can't recall the

conversation he had with Mr. Hines. Emmett O'Connor testified that "we forced the door down. We used muscle, not equipment." He was adamant that those actions in forcing the rolling steel door closed did not contribute to the damage to the door. Joseph Hines of East Coast testified that the door jammed and the Claimant's employees forced it shut by jumping up and down on machinery. He contacted Gerald O'Toole in February 2017 and said "your guys damaged the door and are not coming back on site." Roger Allan "Allie" MacPhee testified that he was unsure if the rolling steel door was repairable or not.

[35] It is clear from this brief review of the evidence that there were no contracts per se between the Claimant and the Defendant relative to Invoices 25594/25594 (Revised). While I agree with the submission made on behalf of the Claimant that a bargain had been made between the parties for the Claimant to assist with the installation of the overhead doors, the evidence establishes that the terms of that bargain were/are not certain. The parties deviated from their usual practice of job request—quotation—invoice—settlement of account.

[36] Nevertheless, a service was provided by the Claimant and a benefit accrued to the Defendant with the assisted installation of the overhead doors. I am not persuaded on the evidence that the Claimant is responsible for the erroneous supply of standard lift doors instead of high lift doors—the Claimant filled the request as ordered.

[37] As to the rolling steel door, the Claimant's assist with installation came after the door had been relocated by the Defendant's employees from its original site in the Defendant company's building to the new site in that building. I find that in forcing the door closed at its new site, the Claimant *may* have damaged the door,

but there is no evidence before me to support the contention that the door is irreparable. There is no assessment or quotation as to the cost of repairing the rolling steel door versus replacing it. Joseph Hines of East Coast testified that the rolling steel door originally had been purchased in 2013 from the Claimant but no supporting documentation was submitted to the court confirming the original price of the door or its depreciated value as of 2017/18. There is an insufficient evidentiary basis before the Court to support the Defendant's contention that a replacement rolling door would cost \$22,000.00.

[38] Concerning the rolling steel door, after an on-site visit in June 2017, at the invitation of Joe Hines via email dated May 12, 2017 at 10:43 a.m. [Exhibit 1, Tab 1], the Claimant's employee Gerald O'Toole stated:

[T]here does not appear to be any slat damage. The side track for this door appears to be warped. We feel this was caused by the excessive amount of welding that was done during the installation, dismantling, and re-installation of the door. With this being said, Iller Door Systems Limited is willing to replace the track on this door and the drive gears within the electric motor which are worn due to hoist chain being improperly engaged.

I note that Invoice 25470 (Rolling Steel Door) represents a quotation for work completed. The evidence establishes that the work was not completed; in fact, forced closure of the rolling steel door by the Claimant's employees *may* have damaged the door. I therefore am disallowing Invoice 25470 for \$4972.60

[39] Concerning the overhead doors, the Claimant offered the Defendant a \$2500 credit in an attempt to settle the dispute over Invoice 25594 (Revised): see email from Gerald O'Toole (Iller Door) to Joseph Hines (East Coast) dated March 9, 2017, at 11:09 a.m., Exhibit 1, Tab, 1.

In response, Joe Hines for the Defendant stated via email dated June 20, 2017 at 6:04 p.m. (Exhibit 1, Tab 1):

I have a competitor price on the difference in the cost of the springs which is \$2600.
Combine that with the 24 hours of labour assuming you had some travel during the 8hr day the two guys were here.

I will pay that ...

I note that East Coast employee Joseph Hines estimated that for the three overhead doors, the Claimant's workers had been on site at East Coast for two (2) hours on the standard lift door and two men on the high lift doors for 18 hours each over two days. The Claimant's Invoice 25594 (Revised) sets labour cost for two men at \$5348.00 for 56 hours at \$95.50 per hour. The issue of the labour cost associated with the invoice is in question ranging from 24 to 56 hours. There does not appear to be a reliable record as to the number of hours worked. I am allowing 40 hours of labour for Invoice 25594 (Revised) (Overhead Doors). Given the uncertainty surrounding the terms of the bargain between the parties underpinning Invoice 25594 (Revised), I am disallowing the interest rate of 2% per month on the outstanding balance. I am substituting the interest rate of 4% per annum per s. 16 of the Small Claims Court Forms and Procedures Regulations made under Section 33 of the *Small Claims Court Act*, R.S.N.S. 1989, c. 430.

[40] Based on all of the foregoing, and upon a review of all the evidence, including the exhibits, I order as follows:

(1) Judgment for the Claimant in the amount of \$12,957.10 plus 4% interest per annum from January 1, 2017 to March 21, 2018 (\$630.46) for a total of \$13,587.56.

(2) The Defendant's Defence and Counterclaim is dismissed.

[41] Each party shall bear their own costs.

Patricia Fricker-Bates
Adjudicator
July 30, 2018