

CITATION: Sheikh et al v. 1579959 Ontario Inc., 2026 ONSC 1322  
DIVISIONAL COURT FILE NO.: 112/25  
DATE: 20260310

**SUPERIOR COURT OF JUSTICE – ONTARIO  
DIVISIONAL COURT**

**RE:** Sheikh, Shaukat Riaz and Sheikh, Neelofer Shaukat, Appellants

**AND:**

1579959 Ontario Inc., Respondent

**BEFORE:** Justices Shore, O'Brien and Smith JJ.

**COUNSEL:** *Fatma Uyuklu and N. Joan Kasozi*, for the Appellants

*Calvin Zhang*, for the Respondent

**HEARD:** Brampton on March 4, 2026

**ENDORSEMENT**

**O'BRIEN J. (Orally)**

[1] The appellants appeal from the judgment of Trimble J. dated January 8, 2025, and seek leave to appeal the related cost decision dated May 26, 2025. The dispute between the parties arose from a residential renovation project to convert an existing sunroom to a year-round living space.

[2] The total contract price agreed-to by the parties was in dispute. The appellants alleged the respondent had abandoned its unfinished work and they refused to pay the respondent's final invoice. The respondent brought its action under the *Construction Act*, RSO 1990 c.C.30.

[3] After a four-day trial, the trial judge found the respondent substantially performed the contract, that the work was 97% complete, and that the appellants' refusal to pay constituted an unjustified termination and repudiation. He awarded judgment to the respondent in the amount of \$105,804.92 plus interest and subsequently costs of \$82,368.35.

[4] We do not find any error of law in the trial judge's exclusion of the appellant's proposed expert. The determination of whether to qualify an expert is a discretionary exercise. The trial judge gave thorough reasons for why the appellants had not met the burden of demonstrating the proposed expert had appropriate expertise on the issues for which he was proffered. Given the lack of clarity about the connection between Mr. Clarke's qualifications and the expertise required to address the issues in dispute, it was open to the trial judge to conclude Mr. Clarke should not be qualified as an expert. Contrary to the appellants' submission, the trial judge was not required to qualify Mr. Clarke and address any concerns about his evidence in the weight to be applied to it.

[5] The appellants claim the trial judge misinterpreted the contract and should have deducted for certain items that were removed after the initial proposed contract. We disagree. The trial judge's interpretation raises an issue of mixed fact and law. It was open to the trial judge to read the credits associated with removed items as already reflected in the option A pricing in the contract. The trial judge considered the appellants' argument but concluded that this was the only reasonable inference to be drawn. That conclusion was available to him.

[6] The trial judge's determination that the contract was 97% completed was also open to him on the record. The trial judge was entitled to accept Mr. Dattani's evidence as a fact witness on that point. He was also entitled to reject Mr. Sheikh's evidence about the completion of the work because he concluded it was based on the proposed expert evidence that he refused to admit. Mr. Sheikh's affidavit does not provide any other basis for arriving at that number. There was also no reversal of the burden of proof as submitted by the appellants. Because the trial judge accepted the respondent's evidence, the respondent met its burden of proof.

[7] It was also open to the trial judge, on the evidence, to find the appellants repudiated the contract. There was ample evidence that the appellants refused to pay and insisted on unilateral conditions beyond the contractual terms. The e-mails could also be interpreted as a refusal to permit the respondent to complete the remaining work. Contrary to the appellants' submission, it was open to the trial judge to conclude the appellants did not merely seek clarification or raise concerns in the May 2022 e-mail. The trial judge's conclusion that the appellants' conduct amounted to repudiation was a fact-driven determination that was available on the record.

[8] We do not find any error in the trial judge's determination of credibility. This is a discretionary assessment that was well explained by the trial judge. He raised concerns about both parties' credibility but ultimately assessed Mr. Dattani as more credible and reliable. He was not required to dismiss Mr. Dattani's evidence on the basis that he was an interested party.

[9] The appellants have raised numerous challenges to the trial judge's factual findings. However, the standard of review for those findings is palpable and overriding error. While the appellants may disagree with the weighing of evidence, there was some evidence in support of the respondent's position. There is no basis to interfere in the trial judge's factual findings.

[10] With respect to the request for leave to appeal the trial judge's cost decision, cost determinations are discretionary and attract a high degree of appellate deference. Although the respondent's offer to settle did not strictly follow the requirements of Rule 49.10, a trial judge nonetheless has discretion as to how offers to settle are treated under Rule 49.13 and Rule 57. Here, the respondent's offer was almost as favorable as the ultimate judgment awarded. The overall quantum of cost was reasonable in the context of a four-day trial. We would not grant leave to appeal from this decision.

[11] The appeal is dismissed. As agreed by the parties, the appellants shall pay the respondent costs of \$20,000 all-inclusive.

*S. Shore*

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Shore J.

*A O'Brien*

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O'Brien J.

*I. Smith*

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I. Smith J.

**Released Orally: March 4, 2026**

**Released In Writing: March 10, 2026**