

COURT OF APPEAL FOR ONTARIO

CITATION: Dani Building System Inc. v. Hossain, 2026 ONCA 362

DATE: 20260521

DOCKET: M56745 (COA-25-CV-1590)

Miller, Trotter and Osborne JJ.A.

BETWEEN

Dani Building System Inc.

Plaintiff (Respondent/
Moving Party)

and

Syed Hossain*, Nasreen Hossain*, Royal Bank of Canada, Comat Mortgage Corporation, Alpine Credits Ontario Limited and Ashley Joan Fleischer

Defendants (Appellants*/
Responding Parties*)

Mark Wyatt, for the respondent/moving party

Syed Hossain, acting in person

Nasreen Hossain, acting in person

Heard: May 14, 2026

REASONS FOR DECISION

Overview

[1] The appellants/responding parties (the “Hossains”) contracted with the respondent/moving party Dani Building System Inc. (“DBS”) to renovate their

house. Things did not proceed smoothly and DBS filed and perfected a construction lien in the amount of \$76,618.61. The lien remains on title.

[2] A judgment of reference was issued on April 21, 2023, ordering that the matter be referred to the Construction Lien Associate Judge for trial under s. 58(1)(a) of the *Construction Act*, R.S.O. 1990, c. C.30. Several pre-trial hearings ensued. The parties, who were all represented by counsel, agreed to terms of settlement following a settlement conference in the fall of 2024. The terms included judgment in favour of DBS in the amount of \$85,000 and a dismissal of the Hossain's counterclaim. The Hossains were to execute a release. On receipt of the settlement proceeds, DBS was ordered to discharge its lien. Payment was to be made by March 31, 2025. Minutes of settlement were signed. The trial dates were vacated.

[3] The Hossains did not pay.

[4] On a motion before Associate Judge Robinson on July 25, 2025, DBS sought to enforce the settlement and the Hossains sought an order to vacate the settlement and remove the lien. Associate Judge Robinson released his reasons on October 29, 2025, which affirmed the settlement agreement. The Final Report was issued on October 31, 2025.

[5] The Hossains filed a notice of appeal with this court on December 11, 2025, and DBS responded with the present motion to quash on the basis that this court

lacks jurisdiction to hear the appeal, pursuant to s. 134(3) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

Analysis

[6] At the conclusion of the hearing, the court granted the motion to quash with reasons to follow. These are our reasons.

[7] By operation of r. 54.09(1)(b) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, when the Hossains did not file a motion opposing confirmation of the report within 15 days of service, the report was confirmed. The Hossains take the position that they are appealing an order enforcing a settlement, which comes within the subject matter jurisdiction of this court. Further, the amount in issue is greater than \$50,000, which brings it within the monetary jurisdiction of this court. Accordingly, they say, this court has jurisdiction to hear the appeal and the motion should be dismissed.

[8] DBS argues that notwithstanding these general rules, there are specific rules governing construction lien disputes which take priority. Section 71(1) of the *Construction Act* provides that “an appeal lies to the Divisional Court from a judgment or order on a motion to oppose confirmation of a report under this Act.”

[9] We agree that s. 71(1) applies to this appeal. Section 71(1) has been interpreted broadly by this court, such that it applies to all appeals involving only proceedings brought under the *Construction Act*: *MGW-Homes Design Inc. v.*

Pasqualino, 2024 ONCA 422, 172 OR (3d) 770, at paras. 31-35; *Chaly v. Structured Restoration Inc.*, 2025 ONCA 901, at paras. 6-7. The report that the Hossains wish to appeal from is a judgment within the meaning of s. 71(1), and accordingly an appeal would arguably lie to the Divisional Court. In any event, it does not lie here.

[10] The Hossains requested that if we found that this court does not have jurisdiction, that we traverse the appeal to the Divisional Court, which is what this court did in *Chaly*.

[11] This is not an appropriate case to do so. Although the Hossains do not have a right of appeal to this court, neither do they have a right to a direct appeal to the Divisional Court. The complicating factor is that they did not oppose the confirmation of the report within the requisite time period, or at all. As with references conducted under r. 54 of the *Rules of Civil Procedure*, there is no right of direct appeal from a reference conducted under s. 58 of the *Construction Act*: *Martin v. 11037315 Canada Inc.*, 2025 ONCA 44, para. 13. The proper procedure was to have opposed confirmation of the report. That did not happen. Given that the report was already confirmed, it is now necessary for the Hossains to seek leave in the Superior Court to extend the time to file a motion in opposition to the report. Given that a goal of the *Construction Act* is to promote expeditious resolution of disputes, it cannot be assumed that leave to extend time will be given.

DISPOSITION

[12] The motion is granted and the appeal is quashed for want of jurisdiction. The moving party is awarded costs of the motion in the amount of \$5,000 inclusive of disbursements and HST.

“B.W. Miller J.A.”
“Gary Trotter J.A.”
“P.J. Osborne J.A.”