

CITATION: Versailles Investment Ltd. & Henry Chiu Architect Ltd. v. Protosteel Ltd., 2026
ONSC 5131

DIVISIONAL COURT FILE NO.: 208/26

DATE: 20260909

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

RE: Versailles Investment Ltd. & Henry Chiu Architect Ltd., Appellants

AND:

Protosteel Ltd., Respondent

BEFORE: Nakatsuru, O'Brien, Vermette JJ.

COUNSEL: *James McDonald*, for the Appellants

Nicholas Tibolla, for the Respondents

HEARD: July 6, 2026, in Toronto

REASONS FOR DECISION

NAKATSURU J (orally)

[1] This is an appeal of McSweeney J.'s decision dated December 6, 2024, granting judgment in favor of the respondent, Protosteel Ltd. The appellants had contracted the respondent to do work supplying and installing structural steel at their Mississauga Convention Center project. The respondent was not paid to its satisfaction for all the work done and sued to remedy this. Although the lien under the *Construction Act* lapsed, the litigation continued at a trial before McSweeney J. This appeal deals with McSweeney J.'s decision to award damages and interest on specific unpaid invoices submitted by the respondent to the appellants. The total amount in question is for \$38,033.55 with 18% interest. In addition, the trial judge's costs award is appealed.

[2] The contract between the parties outlined what was included and what was not. The contract also indicated that should extras be required, they were to be billed on a "time and materials" basis. The trial judge determined that while the contract outlined how to deal with extras, there was no provision that specifically stated how extras were to be communicated between the parties. Her task at trial was to determine whether the appellants were required to pay the amounts owing. She made factual findings that Invoices 164, 165, 201, and 316 were to be paid. Further she determined that the 18% interest rate set out in the contract on unpaid balances applied to these extras.

[3] The appellant submits the trial judge erred in several ways:

- That the trial judge erred in finding that respondent's supply and installation of a roof screen was miscellaneous steel and was an extra outside the contract.
- That the trial judge erred in finding that the respondent had proven that Invoice 201 was payable as part of the light pole work invoiced under Invoice 202.
- That the trial judge erred in finding that the appellants were obligated to pay the respondent for work on the exterior staircase that was not completed.
- That the trial judge erred in applying the interest rate found in the contract to the extras since there was no evidence tendered at trial that the appellants agreed to pay 18% interest *per annum* on overdue payments for the extras.
- If judgment is varied, the award of costs should be adjusted accordingly.

[4] We do not agree with the appellants' arguments.

[5] The appellants' grounds of appeal are essentially based upon factual or mixed fact and law findings made by the trial judge. We note that she also made credibility findings against Mr. Chiu, the project architect, on certain issues. The findings made by the trial judge that the appellants owed the amounts under the various invoices submitted by the respondent warrant deference. We have not been persuaded that any error of law or palpable and overriding error of fact or mixed fact and law have been identified.

[6] With respect to the invoices regarding the preparatory work for and the roof screen itself, regardless of the absence of an express or written agreement that this was a billable extra, the trial judge reasonably concluded from the evidence that the invoices fell within the extras provision of the contract. The relevant evidence supporting this conclusion includes the fact that the roof screen was required for the project, later drawings post-agreement of the quote included the roof screen and its dimensions and it was completed to the appellants' desires and satisfaction. She committed no error in this conclusion. She properly set out the fundamental principles regarding the law of contracts and applied it to the evidence before her.

[7] There is no merit to the appellants' argument regarding the light pole. The invoice attaching the packing slip looked at in its entirety in the context of the evidence heard by the trial judge provides a basis for the factual conclusion that the invoice was an extra that required payment.

[8] The respondent was supposed to supply and install the exterior stairs after a quote was sent and approved by Mr. Chiu. However, the parties' relationship broke down. Ultimately as communications proved fruitless, the respondent delivered the stairs but did not fully install them. We find it was open to the trial judge to accept the respondent's evidence about the cost of the metal. She discounted the invoice by 25% due to the incomplete installation. She made no reversible error in approaching the issue in this way.

[9] The imposition of the 18% interest as articulated in the contract to the extras provision was a matter of contractual interpretation based upon settled principles. The trial judge committed no error of law or palpable or overriding error in reaching the conclusion that she did.

[10] Lastly, as the judgment has not been varied on appeal, the costs of the trial should not be reduced.

[11] The appeal is dismissed. With respect to costs of this appeal, as per the agreement of the parties, costs are fixed in the amount of \$15,000 inclusive of HST and disbursements to be paid to the respondent.



Nakatsuru J.

O'Brien J.

Vermette J.

Oral Reasons given: July 6, 2026

Written Reasons released: September 9, 2026