CITATION: YME Welding Enterprises Inc. v. Chaschuk Enterprises Ltd., 2026 ONSC 247
DIVISIONAL COURT FILE NO.: 1/25
DATE: 20260113

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

FAIETA, SHORE, O'BRIEN JJ.

BETWEEN:	
YME WELDING ENTERPRISE INC.	*Rachel Allen*, for the Appellant
Appellant	
– **and** –	
CHASCHUK ENTERPRISES LTD.	*Nathan Wainwright,* for the Respondent
Respondent	**HEARD:** December 1, 2025 (at Thunder Bay, Ontario)

REASONS FOR DECISION

FAIETA J.

[1] In September 2020, the appellant, YME Welding Enterprise Inc. ("YME"), retained the services of the respondent, Chaschuk Enterprises Ltd. ("CEL"), to provide certain construction materials and services in preparation for construction of a commercial building by another contractor. YME requested that CEL undertake additional work outside the scope of their contract without a written agreement nor a price for such work. YME did not pay for the contracted work or the additional work. Consequently, CEL commenced a claim for $103,326.59, inclusive of HST, for payment of their work. YME filed a counterclaim for breach of an earlier 2019 contract and payment for the removal of topsoil and removal of granular material from YME's property

[2] The trial judge granted CEL $81,947.60, inclusive of HST. The trial judge also granted YME's counterclaim of $16,385.00. The court also awarded costs of $15,000 to be paid by YME to CEL, in addition to an earlier costs order of $5,000.00.

[3] On this appeal, YME seeks an order setting aside the trial judge's decision and remitting the matter to trial. YME alleges that the trial judge erred in:

> 1) refusing to admit an affidavit that YME sought to file on the eve of trial;
>
> 2) finding that the 2019 agreement and the 2020 agreement were modified by further agreements and failing to apply the correct test for oral contract;
>
> 3) failing to identify the proper legal test for *quantum meruit*, finding that *quantum meruit* applied, and alternatively, in finding that the price for the additional work should be paid at normal rates, rather than the agreed rates set under the 2020 agreement; and
>
> 4) providing insufficient reasons for decision, which would not allow counsel to make an effective appeal.

[4] For the reasons described below, this appeal is dismissed.

BACKGROUND

[5] Colin Chaschuk provides excavation, foundation construction and septic field installation services through his company, CEL.

[6] YME is owned by Tuyet Dao and her spouse, Yvon Brochu. YME owned a property on which it wished to construct an office and commercial garage to house its heavy equipment welding business. The lot was 200 feet wide by 340 feet deep, and according to their rough sketch, the shop would have dimensions of 80 by 100 feet with a 25 by 30 foot office adjoining the northwest corner of the shop.

[7] In October 2019, CEL provided YME with a quote of $103,000 plus HST for construction services at its property located at 1706 Rosslyn Road, Thunder Bay, Ontario. This work included supplying, delivering, placing and compacting sand and gravel, supplying Geotech fabric, a culvert and a septic tank, as well as the excavation of about 30 inches of soil for the subsequent construction of a pad upon which a building would be placed. This quote was accepted and, according to Mr. Chaschuk, this work was completed by early November 2019 (the "2019 Agreement"). YME paid for this work.

[8] In August 2020, Ms. Dao contacted Mr. Chaschuk to prepare the foundation for the new building. CEL prepared the following quote for YME:

> (a) excavate a 7-foot-deep trench, 16 feet wide, for the 360 feet perimeter of the shop: $7,000 plus HST;
>
> (b) place 2 feet of compacted gravel in the bottom of the trench: $12,200 plus HST;
>
> (c) backfill with granular around the foundation: $16,040 plus HST;

(d) remove existing sand and relocate, excavate a new location for the septic field: $2,000 plus HST;

(e) supply and install granular for the office pad: $6,000 plus HST; and

(f) excavate a trench for a power line and backfill: $1,760 plus HST.

[9] Ms. Tuyet negotiated a reduction in the price of the above quote from $48,610.00 plus HST to $45,000.00 plus HST. The revised quote was signed on September 17, 2020 (the "2020 Agreement").

[10] Two errors were made by YME that led to the need for additional work to remedy the property for the erection of a building.

Error #1

[11] Before CEL commenced work under the 2020 Agreement, YME discovered that the location for the building was too close to a commercial building on an adjacent property and required the building to be moved 20 feet west from the original site. The gravel pad that Mr. Chaschuk had prepared in 2019 would have to be extended westerly. In addition, the soil in the westerly area of the property was visibly more wet, which would require that area to be dewatered and further excavated to find suitable soil. Mr. Chaschuk immediately told Ms. Dao of these problems. Ms. Dao wanted the work done immediately and before the onset of winter. She accepted that the cost for the extra work would be in addition to the work in the 2020 Agreement. On October 1, 2020, CEL delivered Invoice #9607 for $38,227.90 which included $7,000 for foundation excavation and $12,200 for foundation gravel preparation in accordance with the 2020 Agreement, as well as a charge of $14,630 for the additional work plus HST. YME did not pay this invoice.

Error #2

[12] After the above work was completed, in early October 2020 Ms. Dao notified Mr. Chaschuk that the building site was five metres too close to the road. Ms. Dao, Mr. Chaschuk, and Donald DeMichele of Syncor Contracting Limited (who had been hired by YME to construct the building), met on site. Of the 360 feet of perimeter excavating and backfilling that had been completed, about another 200 feet would need to be redone and the backfilled material would need to be dug out. Mr. Chaschuk described this as a "big error" and that significant work was required. An invoice for this additional work of $37,144.54 was issued to YME.

[13] CEL built the front office foundation and the powerline trench which had to be extended due to the change in building location.

[14] YME did not pay the invoices issued by CEL in respect of the work performed under the 2020 Agreement and for the additional work performed by CEL.

[15] In February 2021, CEL commenced a claim seeking the sum of $103,326.59 inclusive of HST for the entire work performed.

Trial Management Conferences

[16] At a pre-trial conference held on October 7, 2022, the court ordered a summary trial. Four days were set aside. The court ordered that the plaintiff shall serve and file witness affidavits by December 31, 2022 and the defendant shall serve and file witness affidavits by March 15, 2023. Following service of the affidavits, counsel were directed to contact the trial coordinator to schedule the trial. The plaintiff served their affidavits on December 22, 2022, however they were not received by the defendant until March or April 2023 due to a technological issue.

[17] Shortly before the commencement of what ended up being a two-day trial on September 4, 2024, RSJ Newton held a trial management conference on August 21, 2024. The Endorsement states:

> Defendant has identified three additional witnesses to be called. Plaintiff objects on the basis that no additional witnesses were to be called based on prior endorsements. Admissibility of those additional witnesses left to the discretion of the trial judge. Parties agree three days required for trial. Trial to be in person. Defendant reluctantly abandons request to traverse to October running list. To be spoken to August 28, 2024 to confirm trial dates.

Trial

[18] At the summary trial, YME relied on Ms. Dao's affidavit and CEL relied on the affidavits of Mr. Chaschuk and Mr. DeMichele. The affiants were cross-examined on their affidavits.

[19] Amongst other things, the trial judge dismissed YME's submission that the extra work should have been charged on the discounted rates shown in the 2020 Agreement. The trial judge stated:

> Chaschuk claims $95,528.30, inclusive of HST, based on the quote and additional invoices, with a credit of $5,000 for the septic work not completed.
>
> YME[1] argues that fair compensation owing to Chaschuk is $45,257 plus HST. YME bases this on the original quote, the value of the work to correct the errors based on estimating the value of extra work on a pro rata linear feet method, and after deducting the cost for the septic work, the trenching and the sand relocation. YME [sic] calculations do not include any amounts for topsoil or gravel claimed to have been removed.
>
> Chaschuk supplied the following invoices to YME :

[1] In this portion of his decision, the trial judge referred to YME as "YWE." I have corrected that error in this excerpt.

#9607	Foundation Excavation	7000	per Sept 17 quote
	Foundation Gravel	12200	per Sept 17 quote
	Costs re Error #1	14630	
#9697	Costs re Error #2	16350	
#9858	Foundation Backfilling	16040	per Sept 17 quote
	Front office prep	6000	per Sept 17 quote
	Power line trenching	1700	per Sept 17 quote
#9859	Extra Back Filling	16521.25	
		90,441.25 plus HST	

Where the evidence of Ms. Dao conflicts with the evidence of Mr. Chaschuk, I prefer the evidence of Mr. Chaschuk. Generally, Ms. Dao's evidence was not of much assistance and directly contradicted by the testimony of Mr. DeMichele on the state of work completed when Error #2 was discovered.

I accept that, once the building was moved off of the original "pad", Chaschuk was no longer bound by the original quote. I accept the evidence of Mr. Chaschuk as to the different conditions encountered when the building footprint was moved form the original "pad" that Chaschuk had prepared previously. His evidence was supported by the photographs. There was no challenge to his equipment and material tickets. The only attack on the charges was what I would describe as an oversimplified theory that additional work required could be calculated on a pro rata basis. That analysis does not account for the change in conditions when the building was moved off of the "pad".

With respect to the above invoices, I am satisfied that the costs for Error #1 and #2 have been proven, except that I would reduce the costs associated with Error #1 by $1400 for the geotextile cloth and placement that was directed by the engineer.

I am not satisfied that the evidence supports invoice #9859 for extra backfilling. The quote provided for backfilling services at $16040, and I am not satisfied that extra backfilling was required. There was no sufficient evidence before me to show that the work or material required would double to fill the same size of hole once those areas had been excavated properly. This invoice is not proven.

The claim for the trenching of the powerline is allowed. It was accepted in the quote, and it is not disputed that the work was done. If another party was to do it, YMEcan pursue that claim.

The plaintiff's claim, after deducting the amounts for geotextile and extra backfilling, is proven at $72,520 plus HST.[2]

[20] With respect to YME's counterclaim, the trial judge ruled as follows:

(a) YME should be given a credit of $16,385.00 as CEL did not supply and install all materials necessary for a septic field as required by the 2019 Agreement.

(b) Although CEL did not install geotextile fabric in accordance with the 2019 Agreement, the court accepted that it had not done so due to site conditions and that it supplied crushed rock for which it absorbed the additional cost.

(c) Although CEL had paid YME the sum of about $12,000.00 for the removal of topsoil from YME's property at a rate of $50 per load, YME's claim that CEL had taken additional 350 loads of topsoil without making payment was dismissed for lack of proof.

(d) YME alleged that CEL removed granular material from the property on September 24, 2020. This was denied by CEL. The court dismissed this claim as it found that there was no evidence that CEL had removed granular material.

[21] Accordingly, the court granted Judgment in the amount of $65,562.20 which was calculated as follows:

YME's claim $72,520 plus HST	$81,947.60
Less Counterclaim	$16,385.00
Net	$65,562.60

[22] The court ordered that YME pay costs of $15,000.00 to CEL in addition to an earlier costs order of $5,000.00. In coming to this conclusion, the trial judge stated:

> … Although it was acknowledged that the defendant owed the plaintiff at least $45,000, a trial was required as the defendant did not pay the plaintiff anything. The plaintiff's recovery was a little over $65,000 plus prejudgment interest. Therefore, this should have been a trial over $20,000 in the small claims court.

ISSUES

[23] YME raises four issues on this appeal:

[2] *Chaschuk v. YME Welding,* 2025 ONSC 22, at paras. 55-63 ("Reasons for Decision").

1. Did the trial judge fail to apply the proper test when he refused to admit the Brochu affidavit? Alternatively, did the trial judge make a palpable and overriding error in refusing to admit the Brochu affidavit?

2. Did the trial judge fail to apply the proper test when considering whether an oral contract was formed that replaced the 2020 Agreement? Did the trial judge make a palpable and overriding error in applying this test to the facts?

3. Did the trial judge fail to apply the proper test when considering whether *quantum meruit* applied to CEL's work? Did the trial judge make a palpable and overriding error in applying this test?

4. Are the trial judge's Reasons for Decision insufficient to allow counsel to make an effective appeal?

STANDARD OF REVIEW AND POWERS ON AN APPEAL

[24] The principles related to the standard of review from this trial decision are described below.

[25] In *Terry Longair Professional Corporation v. Akumin Inc*., 2025 ONCA 606, at para. 44, Monahan, J.A., stated:

> In general terms, decisions on questions of law are reviewable on a standard of correctness whereas determinations of fact or of mixed fact and law are reviewable on a standard of palpable and overriding error: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at para. 36. However, where an error of mixed fact and law can be attributed to the application of an incorrect standard or an error in principle, this amounts to an error of law, reviewable on a correctness standard of review: *Housen*, at paras. 33 and 36.

[26] In *Hydro-Québec v. Matta*, 2020 SCC 37, at para. 33, Côté J. stated:

> An error is *palpable* if it is plainly seen and if all the evidence need not be reconsidered in order to identify it, and is *overriding* if it has affected the result: … As Morissette J.A. so eloquently put it in *J.G. v. Nadeau*, 2016 QCCA 167, at para. 77 (CanLII), [translation] "a palpable and overriding error is in the nature not of a needle in a haystack, but of a beam in the eye. And it is impossible to confuse these last two notions": quoted in *Benhaim*, at para. 39. The beam in the eye metaphor not only illustrates the obviousness of a reviewable error, but also connotes a misreading of the case whose impact on the decision is plain to see.

ISSUE #1: DID THE TRIAL JUDGE FAIL TO APPLY THE PROPER TEST WHEN REFUSING TO ADMIT YVAN BROCHU'S AFFIDAVIT? ALTERNATIVELY, DID THE TRIAL JUDGE MAKE A PALPABLE AND OVERRIDING ERORR IN REFUSING TO ADMIT YVAN BROCHU'S AFFIDAVIT?

[27] At trial, YME sought to admit the affidavit of Yvan Brochu, sworn August 30, 2024, which states that CEL had removed an unspecified amount of granular material from the property on September 24, 2020 and 88 truckloads of topsoil over an unspecified period.

[28] The appellant/defendant YME submits that the trial judge erred in not permitting the affidavit of Yvan Brochu – who along with his wife, Tuyet Dao owns YME – to be admitted. The affidavit was served on CEL four days prior to the trial.

[29] At the opening of trial, counsel for YME advised the Court:

> … last Friday afternoon, I received the second trial affidavit from my friend. No exhibits were attached to it. … The Brochu affidavit … names two people in it whom have not been referenced in this case before, and has prompted me over the long weekend to track down these people, which I have finally been able to do as of yesterday, and I've now formed a view that if Mr. Brochu is allowed to testify in this case, I intend on calling two additional witnesses as well.

[30] The trial judge's Reasons for Decision state:

> [3] This Construction Lien trial was directed to proceed by way of summary trial, with evidence being presented by affidavit. The plaintiff was ordered to deliver witness affidavits by December 31, 2022, and the defendant by March 15, 2023.
>
> [4] The defendant did not deliver an affidavit until January 18, 2024, after a further order. At a trial management conference before me on August 21, 2024, the defendant announced an intention to "call" three additional witness. The plaintiff objected, and I directed that the trial judge would determine whether evidence could be led from these additional witnesses.
>
> [5] At the commencement of trial, counsel for the plaintiff advised that he was served with an affidavit from Mr. Brochu, the co-owner of the defendant, on August 30, 2024, four days before the trial commenced. The plaintiff objected to this new affidavit being introduced at trial. After hearing submissions, I directed that the trial was to proceed with the two affidavits delivered by the plaintiff and the one affidavit delivered by the defendant previously in March 2023, and not with the new affidavit from Mr. Brochu.
>
> [6] When a Court gives direction on how a trial is to proceed, the trial shall proceed as directed subject to a parties' right to appeal the interlocutory order. Timelines set by the Court for the delivery of affidavits or other trial documents are to be followed and, when one party does not comply, it is unfair to allow additional filings outside the Court ordered timeline. Allowing late filing invariably leads to delay and/or adjournments and wastes scant judicial resources. [Emphasis added]

[31] YME relies on the principle that "*prima facie* relevant evidence is admissible, subject to a discretion to exclude where the probative value is outweighed by its prejudicial effect"*: Landolfi v. Fargione* (2006), 79 O.R. (3d) 767 (C.A.), at para. 48.

[32] YME submits that the trial judge erred by excluding the affidavit because late delivery would cause delay and/or an adjournment, rather than considering whether the probative value outweighed the prejudicial effect.

[33] However, a late filed affidavit may be excluded by a judge exercising their trial management powers in order to ensure the orderly and fair preparation for trial: *Amirthalingam v. Ratnam*, 2025 ONCA 414, at paras. 18 and 19.

[34] In this case, the Brochu affidavit was served on the eve of trial and more than 1 ½ years past a court ordered deadline. There was no need for the court to consider whether the Brochu affidavit should be admissible applying the test in *Landolfi*, given that a judge has the authority to manage the trial process to ensure a fair and efficient trial. It was well within the trial judge's discretion to refuse admission of the Brochu affidavit on the eve of trial when the court had ordered affidavits to be filed 1 ½ years earlier, particularly as the events described in that affidavit occurred about four years earlier.

[35] The trial judge did not apply the wrong legal principles in refusing to admit the Brochu affidavit, nor did the trial judge's exercise of discretion of his trial management powers amount to a palpable and overriding error.

ISSUE #2: DID THE TRIAL JUDGE FAIL TO APPLY THE PROPER TEST WHEN CONSIDERING WHETHER AN ORAL CONTRACT WAS FORMED WHICH REPLACED THE 2020 AGREEMENT? DID THE TRIAL JUDGE MAKE A PALPABLE AND OVERRIDING ERROR IN APPLYING THIS TEST TO THE FACTS?

[36] YME submits that the trial judge appears to have found an oral agreement superseding the 2020 Agreement as his Reasons for Decision state:

> I accept that, once the building was moved off of the original "pad", Chaschuk was no longer bound by the original quote.

[37] I do not read into that statement the conclusion advanced by YME.

[38] No such argument was placed before the trial judge by the parties. There is no merit to the submission that the trial judge erred in law by failing to consider the legal test for determining whether there was an oral agreement.

ISSUE #3: DID THE TRIAL JUDGE FAIL TO APPLY THE PROPER TEST WHEN CONSIDERING WHETHER QUANTUM MERUIT APPLIED TO CEL'S WORK? DID THE TRIAL JUDGE MAKE A PALPABLE AND OVERRIDING ERROR IN APPLYING THIS TEST TO THE FACTS?

[39] YME submits that the "… trial judge may also have been considering a *quantum meruit* argument. If so, then the trial judge erred in law by failing to identify the proper legal test for *quantum meruit*".

[40] In its opening submissions at trial, YME stated that there was no issue that additional work was requested beyond the terms of the written agreements, nor was there any question that it was performed.

> THE COURT: … So, Mr. Cupello, do you want to make an opening statement?
>
> M. CUPELLO: Sure. The - so, the - the - the way - on behalf of the defendant, the way we see this case is that it - it revolves around these four invoices that have been entered as Exhibits 9 and 10.
>
> THE COURT: Yes.
>
> M. CUPELLO: And the - the invoices include charges in accordance with the fixed price contract of September 17, 2020, and then also include charges for what the court has described for over 80 years as extras. So, the - the - to narrow it down, what - what this court is being asked to adjudicate upon is, I guess, number one, what was the additional work that the plaintiff states they were requested to do, and that they undertook? What was it? The second part, what - because I don't think there is any issue that there was additional work that was requested, and there's no issue that it was performed, but this court needs to, based on all of the evidence, find - adjudicate upon what was this additional work. And then once that additional work is identified, then to come up with a reasonable value for this additional work. And - and we say that that's within the context of this construction project. And to come up - and - and then to determine the reasonableness, then the court is going to look at all of the evidence that's been provided, you know, including the prior contract that was entered between the parties, the - how it all played out over time, and at the end of the day, that would be the amount that the defendant is liable to pay to the plaintiff. So, I mean, that - that is it in a nutshell. … [Emphasis added]

[41] In short, YME submitted the issues for trial were what additional work was performed and what is a reasonable value for that work. YME implicitly accepted there was a legal basis for the court to order a payment to CEL and the question was in what amount. There were no arguments made regarding whether an oral agreement or *quantum meruit* should be found, nor were there any arguments made by YME that such finding would impact the determination of the amount that is found to be a reasonable value for the additional work.

[42] Accordingly, there is no merit to assertion that the trial judge failed to apply the proper test in relation to the claim for *quantum meruit* for the additional work or that he made a palpable and overriding error in the application of that test. In any event, the requirements of *quantum meruit* were met. The 2020 Agreement did not cover the additional work. CEL did the work and YME obtained the benefit of it. There was no juristic reason for YME to retain the benefit without paying.

[43] Alternatively, YME submits that if the trial judge correctly found *quantum meruit*, then the trial judge made a palpable and overriding error when calculating damages. YME submits that the reasonable value for the additional work performed by CEL should have been based on the rates set under the 2019 and 2020 Agreements, rather than CEL's normal rates. YME submitted that

this matter should be remitted to trial so that the appropriate price for the additional work can be determined.

[44] In closing argument, YME acknowledged that there was no dispute that compensation was required for the extras performed by CEL – the only issue was the amount that should be paid for those extras. CEL, at page 18 of the transcript, referenced para. 78 of *2002759 Ontario Ltd et al. v. Koropeski et al*., 2021 ONSC 7873, for the relevant criteria in assessing the reasonableness of an amount claimed for extras. At para. 78, Nieckarz J. stated:

> The court must do the best it can in determining a fair and reasonable fee for the service provided, by assessing what it was worth having regard to the relevant circumstances. Some factors to consider in valuing a *quantum meruit* claim include the course of dealings between the parties, any estimates obtained, the costs incurred, the scope of work, the actual work done, and the market value of the services provided: See *Hugh's Contracting Ltd. v. Stevens,* 2015 BCCA 491 (CanLII), at para. 33.

In their closing submissions, at page 37 of the transcript, YME agreed with the application of the above test. Both parties in their submissions also referred to the factors used to assess the reasonableness based in *quantum meruit*.

[45] Mr. Chaschuk's evidence was that the additional work was charged on a time and material basis using regular rates. It was open to the trial judge to find CEL's regular rates were reasonable. I find that the trial judge made no palpable and overriding error in making this finding.

ISSUE #4: ARE THE TRIAL JUDGE'S REASONS FOR DECISION INSUFFICIENT TO ALLOW COUNSEL TO MAKE AN EFFECTIVE APPEAL?

[46] Adequate reasons must explain why a trial judge reached the decision that they did by addressing the parties' key arguments, making judicial reasoning transparent and accountable to the public, and allowing appellate courts to effectively review decisions: *Penate v. Martoglio*, 2024 ONCA 166, at para. 21.

[47] YME submits that the trial judge's reasons do not identify the grounds on which he has found liability, as the trial judge does not expressly state that his decision is based on a finding that the parties had entered an oral agreement for the additional work, or on the basis of *quantum meruit*. As noted, liability was effectively conceded by YME. At trial, YME did not dispute liability – only quantum – and in that respect adopted principles, referenced by both parties, for determining a reasonable amount for the additional work based on caselaw in the context of a claim for *quantum meruit*.

[48] The trial judge concluded:

> I accept that, once the building was moved off of the original "pad", Chaschuk was no longer bound by the original quote. I accept the evidence of Mr. Chaschuk as too the different conditions encountered when the building footprint was moved form the original "pad" that Chaschuk had prepared previously. His evidence was supported by the photographs. There was no challenge to his equipment and material tickets. The only attack

on the charges was what I would describe as an oversimplified theory that additional work required could be calculated on a pro rata basis. That analysis does not account for the change in conditions when the building was moved off of the "pad".

[49] I find that the trial judge adequately explained why he did not agree with YME's submission that a reasonable amount for the additional work should be based on the discounted rates that the parties had agreed upon in their written agreements. Nothing more was required.

CONCLUSIONS

[50] This appeal is dismissed. As agreed by the parties, YME shall pay $5,000 in costs, inclusive of HST and disbursements, to CEL.

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Faieta J

I agree_____

Shore J

I agree_____

O'Brien J

Released: January 13, 2026

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SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

FAIETA, SHORE, O'BRIEN JJ.

BETWEEN:

YME WELDING ENTERPRISES INC.

Appellant

– **and** –

CHASCHUK ENTERPRISES LTD.

Respondent

REASONS FOR DECISION

FAIETA J.

Released: January 13, 2026