

contracted with Mr. Del Grosso. It is a question not easily answered because the business arrangements were made orally between Mr. Del Grosso and Imran Ahmed, the principal of the Diamond Luxury defendants. The one written contract produced by Mr. Del Grosso was with the “Diamond Group of Companies”, but it was not signed by any of the defendants. Mr. Ahmed does admit that the terms of the unsigned contract reflect the agreement he reached with Mr. Del Grosso.

[3] With the exception of the last two invoices, the plaintiff rendered its invoices to Diamond Luxury Developments (“DLD”) and Imran Ahemd (sic). The last invoice dated March 20, 2023, was directed only to DLD. The invoices were delivered to Mr. Ahmed’s email address. When one invoice was revised after discussions, Mr. Ahmed signed the invoice in his personal capacity. There is no indication he was signing on behalf of a corporate entity. Payments were made from the account of Diamond Luxury Developments Corp. (“DLD Corp.”). Many of the drawings have the DLD logo together with Mr. Del Grosso’s business logo.

[4] Mr. Ahmed testified that Diamond Luxury Builders Inc. (“DLB”) simply holds title to real property. There is one building application from the City of St. Thomas prepared by Mr. Del Grosso which references DLB as the owner of the subject property, and the issued building permit reflects DLB as the property owner.

[5] DLB, as owner of the property, received mortgage financing from Morrison Financial Mortgage Corporation (“Morrison”). Mr. Ahmed testified that the funds were then transferred to DLD Corp. as it was the general contractor, to pay the trades providing services to the project. Mr. Ahmed signed the cheques, but he relied on his accounting staff to confirm the amounts owing and to verify that the work had been performed. The business operations were conducted under DLD Corp.

[6] The plaintiff was asked to provide architectural drawings for three projects – St. Thomas, Mississauga Heights, and Wareham Drive with the latter being a project referred by Mr. Ahmed on behalf of a contact who was seeking drawings for a custom luxury home. Although Wareham Drive is not a DLD project, Mr. Del Grosso testified that Mr. Ahmed promised he would be paid for the work.

[7] As both Mr. Del Grosso and Mr. Ahmed feel they have been wronged, they were both emotionally charged when giving their evidence. Mr. Ahmed, however, was particularly argumentative, combative, and non-responsive to direct questions asked of him. He has his version of the events that transpired between the parties, and he insisted on conveying it irrespective of the questions asked of him. In this respect, he frequently provided evidence in cross-examination that was not contained in his trial affidavit.

Issues in Dispute

[8] The issues to be determined in this matter is what, if anything do the defendants owe to the plaintiff in respect of four invoices rendered for services provided; and what, if anything does the plaintiff owe DLD Corp. for damages allegedly sustained from the plaintiff's failure to provide architectural drawings on a timely basis, and for Mr. Del Grosso allegedly maligning DLD Corp. to the City of St. Thomas and to the workers on the St. Thomas project.

[9] The plaintiff advances its claim under the principles of breach of contract, quantum meruit and breach of trust. The defendant DLD Corp. asserts breach of contract, willful and/or negligent misrepresentation, and claims special damages from the unnecessary delays in the St. Thomas project due to the plaintiff's conduct.

[10] The plaintiff seeks \$38,931.12 for its unpaid invoices. By counterclaim, DLD Corp. seeks \$1,232,247.49 in damages but as this matter proceeded under Rule 76 Simplified Procedure, DLD Corp. limited its claim at trial to \$200,000.

Breach of Trust

[11] It is admitted that DLB received the construction financing advances and then transferred the funds to DLD Corp. to pay the trades on the St. Thomas project. The plaintiff asserts a breach of trust claim under the common law and in equity, as well as a breach of trust under the provisions of the *Construction Act*¹ against both corporate entities and against Mr. Ahmed as their directing mind, for misappropriating or causing a defalcation of funds while acting as fiduciaries.

¹ R.S.O. 1990, c. C.30

[12] To establish a breach of trust claim, a subcontractor bears the initial onus of proving the existence of a trust by showing the contractor received monies on account of its contract for the project. The subcontractor must then establish monies are owed for materials or services provided for the improvement of the project. It then falls to the contractor to demonstrate that it paid out trust funds in accordance with the provisions of the *Construction Act* and did not appropriate funds for its own use or for a use that is inconsistent with the trust.² The monies received must first be used to pay those who provided materials or services to the project, and a failure to do so amounts to a breach of trust.³ The contractor's detailed accounting or bank records are required to establish compliance with their trust obligations.⁴

[13] It was admitted that DLB received funding from Morrison. It was also admitted the funds were then transferred from DLB to DLD Corp. to pay the trades providing services and materials for the St. Thomas project. The plaintiff has proven materials and services were provided to DLD Corp. for which it has not been paid in full. Therefore, the statutory requirements have been met to engage s. 8 of the *Construction Act*. I am satisfied the funds received from Morrison for the St. Thomas project were impressed with a trust.

[14] DLB and DLD Corp. are required to account for the trust funds and justify all expenditures from the trust funds. Neither defendant produced any documents to verify the propriety of the payments made from the trust fund. There are no accounting records and no bank records to demonstrate they acted in compliance with their obligations as fiduciaries. Therefore, they have failed to meet their burden, and they are liable for breach of trust.

[15] As a director and officer of DLD Corp., and the sole director of DLB, Mr. Ahmed is liable for the breach of trust by these corporate defendants.⁵ Mr. Ahmed admitted he was the only person in control of the St. Thomas and Mississauga Heights projects.

² S. 8(1) and 8(2); *Dietrich Steel Ltd. v. Shar-Dee Towers (1987) Ltd.*, 1999 CanLII 2757 (ONCA).

³ *St. Mary's Cement v. Construction Ltd.*, 1997 CanLII 12114 (ONSC).

⁴ *Colautti Construction Ltd. v. Ashcroft Development Inc.*, 2011 ONCA 359, paras. 81 & 83.

⁵ *Construction Act*, s. 13

Wareham Drive

[16] The Wareham Drive project is not one for which Mr. Ahmed has any financial control. The evidence of both Mr. Del Grosso and Mr. Ahmed was that the Wareham Drive drawings were for a contact of Mr. Ahmed. It is alleged he made an oral promise the plaintiff would be paid for the work completed for the benefit of his referral. There is no evidence DLD Corp. received any funds in respect of the Wareham Drive project. There is no basis on which to impress funds with a trust. Mr. Ahmed may have failed to honour an oral promise, but he is not personally liable for breach of trust respecting this invoiced amount. Equally, the DLD defendants are not liable for the Wareham Drive claim as they were not involved in the project. If it was given, Mr. Ahmed's promise is his alone. The question then is whether he would be liable to the plaintiff in damages for breaching that promise. The simple answer is yes.

[17] On more than one occasion in his testimony, Mr. Del Grosso emphatically stated "I don't work for nothing". That is entirely understandable. He is a trained professional and his work product is his livelihood. It was agreed by both Mr. Del Grosso and Mr. Ahmed that all their dealings were based on oral agreements. Mr. Ahmed was the only point of contact on the Wareham Drive project for the plaintiff, and he was the only contact between the owner of Wareham Drive and the plaintiff. Mr. Ahmed's affidavit stated that he had no knowledge of, nor involvement in, any project or work related to Wareham Drive. Mr. Ahmed tried to distance himself from any responsibility for the project, but the documentary evidence clearly contradicts his affidavit and his oral testimony.

[18] Despite his protestations to the contrary, it is clear Mr. Ahmed was actively involved in the project, at least to the extent of the plaintiff's engagement. Mr. Ahmed provided the instruction by email dated November 5, 2021, to proceed with working drawings. He confirmed the price for all drawings was \$6,000. He sent emails to obtain updates as to the status of the drawings. None of the emails are copied to the owner of the Wareham Drive property.

[19] Invoice #200 in the amount of \$8,192.52 was issued for the Wareham Drive project on March 5, 2022, to DLD and Mr. Ahmed. The invoice contains no reference to the owner of Wareham Drive. I accept Mr. Del Grosso's evidence that Mr. Ahmed was his sole point of contact

for this project and that Mr. Ahmed promised he would be paid for any work done for the benefit of this project. I also accept Mr. Del Grosso's evidence that the account remains outstanding.

[20] Mr. Ahmed accuses Mr. Del Grosso of simply using old drawings with the property address changed to Wareham Drive. Some of the drawings have September and November 2020 references which predate the first contact with the referral. Mr. Ahmed refused to pay the invoice on the basis he believes the drawings were not unique to the Wareham Drive project. Even if he is correct in his belief, the plaintiff is entitled to be paid for its work product. If there were issues with the drawings, they should have been brought to Mr. Del Grosso's attention with a request for modifications to be made. It is not a basis to now refuse payment for the working drawings that were produced on the direct instructions of Mr. Ahmed.

[21] The invoice is for \$7,250 + HST for architectural drawings and for HVAC drawings. Mr. Ahmed's email was explicit that the fee would be \$6,000 for all drawings, including HVAC. There is no evidence this fee was disputed by the plaintiff. Therefore, the invoice shall be personally paid by Mr. Ahmed for the breach of his oral contract but revised to \$6,000 + HST.

Mississauga Heights

[22] The plaintiff issued Invoice #201 on March 5, 2022, in the amount of \$9,040. It is acknowledged by the plaintiff that \$6,000 was paid on July 11, 2022. A payment receipt issued by the plaintiff's accounting software indicates the account was paid in full on Sept 12, 2022. The plaintiff's own Statement of Account for the period of Jan 1, 2020 to Oct 30, 2022 shows that Invoice #201 was paid in full on Sept 12, 2022. The plaintiff now maintains this was a computer "glitch" and that \$3,040 remains outstanding but offers no evidence to support this statement. He could not explain why a payment receipt was issued when the account had not been paid in full.

[23] Mr. Ahmed testified that Mr. Del Grosso's wife agreed to reduce the invoice to \$6,000 as the project did not proceed to the permitting phase, and that amount was paid. The plaintiff submits it is the defendants' obligation to produce a cheque confirming payment of \$9,040, but the plaintiff's own documents state the account was paid in full. I am satisfied there was a compromise of this account, and that the account has been paid in full. Therefore, I find there is no amount owing on Invoice #201.

St. Thomas

[24] This was the largest of the projects for which the plaintiff provided architectural services. The plaintiff was to provide plans for six custom homes and submit them for building permits from the City of St. Thomas. DLD Corp. intended to use the six plans as templates for the other 24 lots in the subdivision. The terms of the agreement were outlined in the plaintiff's proposed contract that was not signed by any of the defendants, although Mr. Ahmed confirmed that it reflects the oral agreement reached between the parties.

[25] The cost for the architectural drawings was \$3.00 per sq. ft. for each model type. This included preliminary sketches and final drawings with a site/grading plan, all floor plans, foundation/basement plan, wall sections, elevations, decks, and walkouts. Not included in the price were fees related to obtaining permits, and HVAC layouts. The payment terms were a 10% retainer, 40% once the preliminary sketches are approved and the working drawings are completed, with the balance paid when the permits were issued.

[26] The first invoice for this project, Invoice #174, was \$6,000 representing the initial retainer. \$5,650 was paid, leaving a balance owing of \$1,130. This outstanding amount was carried over to the next invoice issued by the plaintiff.

[27] The second invoice dated October 13, 2022, Invoice #209, was the subject of disagreement between the parties. After some negotiations, the invoice was amended to reduce four of the claimed amounts to 40% of the total, in accordance with the staged payment terms. Both Mr. Del Grosso and Mr. Ahmed signed the revised invoice to confirm they accepted the changes, although Mr. Del Grosso testified he did so begrudgingly and only because he needed the money. The revised invoice was then paid in full, including the amount carried over from Invoice #174.

[28] The third invoice issued by the plaintiff was dated February 12, 2023, Invoice #217, and it was directed only to DLD Corp. By this time, disputes had arisen between the parties. Mr. Del Grosso testified the final drawings were prepared and ready for release in February 2022, but he knew other trades were not being paid on the St. Thomas project. He was not going to suffer the same fate, so he refused to release the drawings until he received payment for the outstanding 60%

related to Invoice #209 plus the additional fees charged for services not included in the original scope of work.

[29] Mr. Del Grosso was also owed money by Mr. Ahmed's brother for a different project, so he was all the more determined he was going to be paid for his work. He withheld the final drawings and although he denied it at first, I am satisfied from the evidence that Mr. Del Grosso tried to leverage the release of the drawings with the payment of DLD Corp.'s debt as well as the brother's indebtedness. Email correspondence between Mr. Del Grosso and counsel for DLD confirms he was tying the debts together and seeking payment of both before any Phase 2 drawings would be released for the St. Thomas project.

[30] The St. Thomas project was delayed for various reasons, but Mr. Ahmed assigns blame exclusively to Mr. Del Grosso refusing to release the final drawings without first being paid, despite the agreed upon terms were that payment would be made after the final drawings were provided and permits were issued. However, there was also no assurance from Mr. Ahmed that the balance owing would be paid. His position was that the 40% payment represented full payment for those drawings and that the plaintiff had been overpaid as a result of a \$3,000 gratuitous payment made by DLD Corp. to assist Mr. Del Grosso when he was in financial need. The parties were at a standstill.

[31] Eventually, Mr. Ahmed retained another design firm to complete final drawings based on the drawings that had been produced by the plaintiff. Mr. Del Grosso testified there were minor changes made to his drawings without his knowledge or consent. The revised drawings were then submitted to the City of St. Thomas for approval and permitting. The defendants offered no evidence to contradict the allegation that the changes made to the plaintiff's drawings were minor and that permits were issued based largely on the drawings produced by the plaintiff.

[32] Mr. Ahmed accuses Mr. Del Grosso of creating Invoice #217 strictly for the purposes of litigation. The format is not in the plaintiff's usual invoice style. Mr. Del Grosso testified it is an invoice prepared on an old accounting system, and it had not been migrated to his new accounting program as once a formal invoice is generated, the amount billed is subject to tax implications,

whether it is paid or not. He did not want to pay tax on an invoice that he knew would not be willingly paid by DLD or Mr. Ahmed.

[33] Invoice #217 captures the outstanding 60% for Plans A, C, and C-7, as well as additional charges not included in the original \$3 per square foot pricing agreement. The total with HST is \$28,147.62, with a reduction for the \$3,000 payment previously made by DLD Corp., for a net total of \$25,147.62. Mr. Ahmed did not challenge the amounts claimed in this invoice, he just repeatedly asserted it was not a valid invoice as it was in a different format, and it was only sent to him immediately prior to the commencement of this action.

[34] I accept Mr. Del Grosso's evidence that Invoice #217 is a valid invoice and accurately reflects the amount he is owed for the work described therein, except for the five site visits. This charge was not referenced in his own contract and there is no evidence the parties agreed to a cost provision for site visits. Therefore, Invoice #217 shall be reduced by \$3,750 + HST.

[35] The final invoice issued by the plaintiff is Invoice #221, dated March 20, 2023. It represents a claim for 35% of the cost for preliminary drawings for Plan G-SP. Mr. Ahmed disputes the validity of this invoice as it was issued ten days prior to the commencement of this action. He did not provide any evidence disputing the amount claimed. Again, I accept Mr. Del Grosso's evidence and I am satisfied it is a proper invoice reflecting work completed by the plaintiff.

The Counterclaim

[36] DLD Corp. alleged Mr. Del Grosso contacted the City of St. Thomas with malicious intent and that he issued threats to the workers and the project manager at the St. Thomas project. There are no particulars in the counterclaim as to the malicious intent or the issued threats but in response to a request for particulars, DLD Corp. alleged Mr. Del Grosso contacted the City with concerns regarding liability for changes made to his drawings without his knowledge, and that he told various tradesmen he was never paid for his work and that they too would not be paid.

[37] DLD Corp. provided no independent evidence of negligent or willful misrepresentation. The allegation was made that Mr. Del Grosso maligned DLD Corp. to the City of St. Thomas and

to the workers on that site however, no evidence was led to prove the allegations. There is no evidence respecting damage or irreparable harm to the reputation of DLD Corp.

[38] The fact remains that the plaintiff has not been paid for its work product. Any statement to that effect is not a misrepresentation.

[39] Mr. Del Grosso admits he contacted the City of St. Thomas to inquire about changes made to his drawings without his knowledge and that he would take no responsibility for any deficiencies arising from the changes. This is not a misrepresentation and there is no proof of a malicious intent. The relationship between the plaintiff and DLD Corp. had irreparably broken down and DLD Corp. hired a new designer without informing the plaintiff. It was appropriate for Mr. Del Grosso to formally advise the City of St. Thomas that he would not assume any liability for deficiencies and that he was removing himself from any association with the project. To the extent this may have caused delays in the inspection process is a concern of the defendants' own making. Had they advised that a new designer had been retained to complete the drawings, the plaintiff could have attended to removing itself from the project in the ordinary course of business. The situation need not have caused alarm with the City of St. Thomas.

[40] DLD Corp. seeks to recover the costs it paid to the new designer retained to complete the final drawings. Invoices were produced for this cost in the total amount of \$22,392.49. I accept Mr. Ahmed's testimony that the invoices were rendered and paid. However, there is no evidence as to the scope of the services provided or the necessity of those services. The plaintiff's evidence was that the changes made to its drawings were modest. There is no evidence to contradict that assessment. There is no basis on which to determine if the amounts paid were reasonable, or if the plaintiff should be held liable for this cost.

[41] DLD Corp. counterclaims alleging the plaintiff failed to meet its obligations under their agreement. It is clear the work contracted for was completed by the plaintiff, but it was not provided to DLD Corp. as payment remained outstanding for that work. If there were any deficiencies related to the plans that were produced, no notice was given to the plaintiff until the exchange of pleadings, and no particulars of the deficiencies were provided. The plaintiff was provided no opportunity to rectify any alleged deficiencies. I am satisfied this allegation was

advanced only after the commencement of this action in an effort to better position the defendants in this litigation. There is no evidence of any deficiencies in the plans prepared by the plaintiff.

[42] It is true that the plaintiff withheld the final drawings while it insisted on being paid for its work product. The delay in releasing the final drawings led to a delay in obtaining permits from the City of St. Thomas. The permitting delay caused construction delays which then led to an increase in the financing costs owed to Morrison. DLD Corp. seeks to recover those additional financing costs from the plaintiff as it assigns all blame for the delays to the conduct of the plaintiff.

[43] Mr. Ahmed states in his affidavit that DLD Corp. incurred a renewal fee of \$165,340 plus additional accrued interest on the Morrison financing in the amount of \$764,302.24. The renewal fee is reflected in the Morrison amended commitment letter dated June 28, 2023. It is unclear how the interest component was calculated, and Mr. Ahmed provided no evidence in this regard except to say in his affidavit that this amount represents one year of additional interest that was capitalized and added to the principal balance of the Morrison loan. The counterclaim pleading seeks full recovery of these costs, but at trial counsel confirmed on behalf of DLD Corp. that it reduced the counterclaim to \$200,000 to comply with the limits imposed by Rule 76 Simplified Procedure.

[44] David Morrison is the principal and owner of Morrison. He provided his testimony in a direct and forthright manner. His evidence was credible and reliable. He has no personal or professional interest in this proceeding.

[45] Mr. Morrison's evidence was that the project suffered some of the typical delays in the construction industry, but it also suffered a significant delay due to issues related to the registration of the Tarion warranty that is required for all new construction. Mr. Morrison also testified that the real estate market suffered a steep decline starting February 2022. He said it was the deepest real estate recession that he had experienced in his forty years in business. He knew DLB was having cash flow problems when it requested a \$300,000 advance to fund trade payables. He had no recollection of speaking with Mr. Ahmed about the construction delays being caused by delays in obtaining the final drawings from the plaintiff.

[46] I am satisfied there were other factors contributing to the project delays and that blame cannot be attributed solely to the conduct of the plaintiff. Its refusal to release the final drawings undoubtedly had a role to play in the delays however, it was not the only cause of delay. The issue could easily have been addressed and mitigated with payment of the amount owing to the plaintiff.

[47] DLD Corp. has failed to prove on a balance of probabilities, any of the claims asserted in its crossclaim. The crossclaim is therefore dismissed.

[48] Judgment shall issue in favour of the plaintiff for its unpaid invoices in the amount of \$29,710.38 plus HST of \$3,862.35, for a total owing of \$33,572.73. This amount reflects deductions of \$1,250 on Invoice #200, \$3,040.00 on Invoice #201, and \$3,750.00 on Invoice #217, plus the related HST. As it is grounded in breach of trust and breach of contract, the judgment is joint and several between the defendants DLB, DLD Corp., and Mr. Ahmed in respect of Invoices #217 and #221. Mr. Ahmed alone is liable for the judgment in respect of Invoice #200.

[49] Having been largely successful on its claim, the plaintiff is entitled to its costs of this action. It must be noted however that the amount recovered is within the jurisdiction of the Small Claims Court. This will be a consideration in any cost order made.

[50] The plaintiff may file written submissions by May 11, 2026, limited to three double-spaced pages plus a Bill of Costs and any offers to settle. The defendants shall have until May 18, 2026 to respond, subject to the same page restrictions. There shall be no right of reply.

J. E. Mills J.

Released: April 30, 2026

CITATION: 2493572 Ontario Inc. v. Diamond Luxury Builders Inc., 2026 ONSC 2577
COURT FILE NO.: CV-23-0983
DATE: 2026-04-30

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

2493572 Ontario Inc.

Plaintiff

– and –

Diamond Luxury Builders Inc., Diamond Luxury
Developments Corp., and Imran Ahmed c.o.b. as
Diamond Luxury Developments

Defendants

REASONS FOR JUDGMENT

J.E. Mills J.

Released: April 30, 2026