

CITATION: Accurate General Contracting Ltd. v. 485 Logan Developments Inc, 2025 ONSC 3498

COURT FILE NO.: CV-24-714781

DATE: June 11, 2025

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Accurate General Contracting Ltd. v. 485 Logan Developments Inc., Westmount Guarantee Services Inc. and Romspen Investment Corporation;

BEFORE: ASSOCIATE JUSTICE C. WIEBE

COUNSEL: Michael Mandarino *for 485 Logan Developments Inc.*;
Lauren Tzogas *for Accurate General Contracting Ltd.*;

HEARD: June 3, 2025.

REASONS FOR DECISION

[1] The defendant, 485 Logan Developments Inc. (“Logan”), brings this motion on notice seeking an order under old *Construction Act*, R.S.O. 1990, c.C.30 (“CA”) section 47 declaring the claim for lien registered by Accurate General Contracting Ltd. (“Accurate”) in the amount of \$272,689.75 on the subject improvement on December 15, 2023, expired due to a failure by Accurate to preserve and perfect the lien in time.

[2] Logan obtained a court order on January 19, 2024 vacating the Accurate claim for lien using a lien bond issued by Westmount Guarantee Services Inc. (“Westmount”) in the amount of \$340,861.25. Logan also seeks an order dismissing the Accurate action to enforce the lien, requiring a return of the posted security to Logan and payment of damages of \$29,120.06 for the costs of the lien bond and legal expenses. The plaintiff, Accurate General Contracting Ltd. (“Accurate”), of course, opposes the motion.

a) Evidence

[3] Logan filed three affidavits sworn by its president, David Martino. Accurate filed two affidavits sworn by a director and officer, Javad Darzi Ramandi. There was a preliminary issue as to the admissibility of Accurate’s supplementary responding motion record which contained the second Ramandi affidavit. It was served on March 20, 2025, namely after the service of the Logan reply motion record and well after the deadline for the responding motion record in my motion scheduling order of December 23, 2024.

[4] I decided nevertheless to admit the Accurate supplementary responding motion record given the gravity of this motion and the lack of any prejudice to Logan (as it served a supplementary reply

motion record in response and cross-examinations had not taken place). However, I made it clear that this schedule breach would be dealt with in my costs order.

b) Governing law

[5] Concerning section 47 motions like this, I reiterate what I stated in my decision in *2708320 Ontario Ltd. cob Viceroy Homes v. Jia Development Inc.*, 2023 ONSC 2301 (CanLII) in paragraph 27:

The process to be followed in a section 47 motion has now been clarified. The moving party must prove that there is no triable issue as to the basis on which the lien is sought to be discharged; see *Maplequest (Vaughan) Developments, Inc. v. 2603774 Ontario Inc.*, 2020 ONSC 4308 (CanLII) at paragraph 25. Both parties must “put their best foot forward” in the evidence to assist the court in making this determination, and the court is entitled to make this assumption; see *GTA Restoration Group Inc. v. Baillie*, 2020 ONSC 5190 (CanLII) at paragraph 56. The lien claimant has this onus because it is invariably in the best position to provide the evidence; see *GTA, op. cit.*, paragraph 55.

[6] Orally at the outset I dismissed the part of the motion concerning perfection. This was not seriously opposed by Logan. The reason was that, based on my previous directions in this reference, I counted at least ten other lien actions on this improvement that were commenced before the Accurate lien was purported to be preserved. Therefore, by virtue of the rules of sheltering in *CA*, section 36(4)1(i), the Accurate lien was perfected when it was preserved. The issue, therefore, boiled down to whether the Accurate lien was preserved in time.

[7] It was undisputed that Accurate was a “contractor” as defined by *CA*, section 1(1), as Accurate contracted with Logan, the “owner.” There was no certificate of substantial performance at the relevant time. Therefore, under *CA* section 31(2)(ii), Accurate had forty-five days from the date it “completed” or “abandoned” its contract to preserve its lien, namely register a claim for lien.

[8] It was also undisputed that Accurate did not “abandon” its contract. It purported to complete its work. *CA* section 2(3) deems a contract to be “completed . . . when the price of completion, correction of a known defect or last supply is not more than the lesser of, (a) 1 per cent of the contract price; and (b) \$1,000.”

[9] It was also undisputed that relevant part of the monetary test in *CA* section 2(3) is the \$1,000 threshold as 1% of the contract price in this case is in excess of \$12,000.

[10] It was also undisputed that the phrase, “correction of a known defect,” must be read down to exclude deficiencies in the contractor’s own work and include deficiencies in the work of other; see *Micon Interiors General Contractors Inc. v. D’Abbondanza Enterprises Inc.*, 2008 CanLII 53869 (ONSC) at paras. 48-50. There is a general principle that a contractor should not gain the benefit of extending its own lien preservation period with the repair of its own defective work.

[11] There is finally another important principle to bear in mind. “Bootstrapping,” the process whereby a lien claimant attends on site without authority to do inconsequential work for the purpose of extending the lien preservation lien, does not in fact extend the lien preservation period; see *1442968 Ontario Limited v. Houston Engineering & Drafting Inc.*, 2008 CanLII 16187 (ON SC) at para. 66, and *Cos Shore Inc. v. Unimac-United Mgmt. Corp.*, 2017 ONSC 4813 at para. 61.

c) Preservation

[12] Accurate registered its claim for lien on December 15, 2023. Therefore, the issue is whether there is a triable issue as to whether Accurate “completed” its work after October 31, 2023.

[13] Accurate asserts that it did four items of work after October 31, 2023 that meet the test. They are the following: electrical work on amp service and wire changes in the elevators; the repair of a pressure switch; the relocation of smart switches; and the installation of transformers for the video doorbells. Does the evidence of this work create a triable issue as to timely lien preservation?

c.1) Elevator work

[14] This work was the installation of amp service concerning the car-lift and passenger elevators. Concerning the car-lift elevator, by October 18, 2023 the Technical Standards and Safety Authority (“TSSA”) had approved putting this elevator into service. In cross-examination Mr. Ramandi admitted that the car-lift was in order and in service as of October 18, 2023.

[15] Concerning the passenger elevator, the TSSA required a change in the amp service fuse disconnect. Accurate rendered an invoice in the amount of \$5,000 on November 20, 2023 for this work. Mr. Martino asserts in his reply affidavit that this work was performed on October 21, 2023. In cross-examination Mr. Ramandi could not recall the exact day this work was done and admitted that Accurate kept no records of when this work was done. Ms. Tzogas admitted in argument that Accurate did not know when this work was done.

[16] Accurate is supposed to “put its best foot forward” on this issue of lien timeliness, particularly since it is asserting the lien. As a result, I find that the timing of the elevator work does not create a triable issue that the Accurate lien was preserved in time.

c.2) Pressure switch

[17] This work concerns the alleged repair done by Accurate on December 9, 2023 concerning a pressure switch damaged by other trades. The switch related to the compressor of the sprinkler system which was installed by Lifeline Fire Protection. Mr. Ramandi in cross-examination admitted that Lifeline in the end did the repair. He asserted that Accurate “inspected” the work. There was no document corroborating this “inspection” work. If this “inspection” work was done, there should have been at least an invoice for it as it was extra work. There was no such invoice.

[18] This leads me to a point made by Ms. Tzogas about the absence of invoices here and more generally for all the alleged extra work done by Accurate after October 31, 2023. She argued that there was a payment made by Logan in the amount of \$10,000 on December 1, 2023. By the end of November, 2023 there was a serious dispute between Accurate and Logan concerning well over \$300,000 worth of Accurate accounts. On November 30, 2023 Mr. Martino sent a text stating, “guys, the billing is not done, but I will send 10K this morning.” That payment was made the next day.

[19] Mr. Martino states in his affidavit and in cross-examination that this payment was to help Accurate with cash flow given the dispute. Accurate asserts that this was also in part a payment for the future extra and repair work done by Accurate on December 7 and 9, 2023. There is no document corroborating this position. In his affidavits Mr. Martino denies this.

[20] I find the Accurate assertion lacking all credibility. It is undisputed that, by the end of November, 2023 there was no goodwill between the parties. For Accurate to do extra work without billing for it and for Logan to pay for such work before the work was done, simply is not credible given the circumstances. I do not accept this point. Therefore, I find that the absence of Accurate invoices for the extra work it says it did after October 31, 2023 indicates that that work was not done.

[21] Concerning the pressure switch work, I find that, for the reasons given and in particular the absence of corroborating documentation, this work does not create a triable issue that the Accurate lien was preserved in time.

c.3) Smart switches

[22] Accurate asserts that it relocated and installed Lutron-brand smart switches on December 7, 2023. These are switches that connect cellphones to the light switches.

[23] The evidence shows that Accurate installed some of these switches in July, 2023, but not all of them. In a text message dated October 16, 2023 Mr. Martino instructed Accurate to finish the smart switches. In an text response the same day, Mr. Ramandi denied that this work was in Accurate's contract. In its November 20, 2023 invoice, Accurate included a second charge of \$3,300 for the installation of all 110 smart switches despite the fact that not all were installed. On November 27, 2023 Logan advised Accurate in a text that this invoice included work that was not done. Mr. Ramandi responded by text, agreeing.

[24] On December 1, 2023, in response to an email from Logan complaining in part about missing smart switches, Accurate emailed stating that its job was "total finish." It stated firmly that the only outstanding work was the supply of a few transformers for the doorbells, and that "rest your problem." The text shows Accurate's frustration over alleged non-payment.

[25] Mr. Martino stated in his first affidavit that, because of Accurate's position, Logan retained a third party, Netex Enterprises, to supply and install smart switches. Netex emails in the evidence indicate that it started this work in January, 2024.

[26] Mr. Ramandi asserted in his late supplementary affidavit that in September, 2023 Logan changed the design of the master bedroom doors resulting in a change of placement of the smart switches. He asserted that Accurate attended the site on December 7, 2023 to change the location of and install smart switches. There was no documentary corroboration for this position – no documents concerning the alleged September, 2023 design change and no Logan correspondence instructing Accurate to do this relocation work in December, 2023. Importantly, there was no Accurate invoice for this work, which, if Mr. Ramandi is correct, would have been compensable as a change. Mr. Martino stated in his supplementary reply affidavit that this relocation work in fact occurred in April, 2023 when the drywall was not complete. He attached an architect's site

instruction dated April 19, 2023 containing the door design change. I find that the Martino evidence more credible.

[27] Accurate purported attendance at the site on December 7, 2023, to do switch related work, therefore, lacks all credibility. Mr. Ramandi's late supplementary affidavit contains pictures taken on December 7, 2023 of Mr. Ramandi, taken by his partner Arash Ahmadi, working on, according to Mr. Ramandi, switches in Units 306, 315 and 316. This all seems very contrived. Why go to this trouble of taking photographs if the work was genuine and authorized? Simple time sheets would have sufficed as proof of the work if it was authorized.

[28] Furthermore, Mr. Martino's affidavits contain texts dated December 7 and 11, 2023 and February 5 and 11, 2024 referring to complaints from several homeowners about uninstalled smart switches. One of the homeowners complaining about missing smart switches was the one in Unit 316, one of the units in the Accurate December 7, 2023 photographs. If the December 7, 2023 work by Mr. Ramandi was a genuine effort to complete the installation of the smart switches, why were there homeowners, particularly the homeowner in Unit 316, complaining about uninstalled smart switches?

[29] I note that December 7, 2023 was probably just past the 45-day lien preservation period running from October 21, 2023, the probable last day of work on the elevators. Accurate would, therefore, have had an obvious incentive to do work it had just denied six days earlier on December 1, 2023 was its responsibility. That incentive was to extend its lien preservation period.

[30] In short, I draw the inference from this evidence that there is no triable issue that the Accurate smart switch work on December 7, 2023 was "bootstrapping," and not capable of extending the lien preservation period.

c.4) Video Doorbells

[31] There were upgrades to certain units that included video doorbells. These devices allowed homeowners to see and speak to visitors as well as know of their presence, usually through cellphones. What was required was the installation of transformers and the doorbells themselves.

[32] Accurate claims it purchased and installed transformers on December 7, 2023. Mr. Ramandi asserted in his affidavits that he installed transformers and that the photographs discussed above taken on December 7, 2023 show him doing this work as well. In his supplementary affidavit, Mr. Ramandi attached an invoice from Rana Electrical Supply dated December 6, 2023 in the amount of \$428.79 for 10 transformers, which he asserted were the ones he installed on December 7, 2023. The invoice was made out to Logan, but Mr. Ramandi also attached a Rana summary of invoices which shows that Rana considered this invoice to be an Accurate debt.

[33] Logan maintains that it ordered the transformers and that Nedex installed them. There were several emails between Logan and Nedex in November and December, 2023 and January, 2024 indicating that Accurate did not install the transformers and that Nedex did so. There is an email from Grace Boukhers of Nedex to Mr. Martino dated November 27, 2023 stating that homeowners were complaining that the transformers were not installed. Ms. Boukhers asked Mr. Martino to get the electrician to install the transformers. There is then a telling email from Ms. Boukhers to Mr.

Martino dated December 15, 2023, namely after the Accurate site attendance on December 7, 2023, asking for “updates” on the transformers and stating that, “if the electrician cannot install them we will, just provide them to us so we can finish the job.” There are then several emails indicating that Mr. Martino retained Nedex to complete this work and that Nedex did so. This shows that, whatever Accurate did on December 7, 2023 concerning transformers, if anything, was negligible and certainly did not significantly advance the overall completion of the transformer installation.

[34] I note, again, that Accurate never rendered an invoice for this work. This is upgrade work for which Accurate would be entitled to extra pay. I reiterate that this is a time of considerable tension between Accurate and Logan about Accurate billings. For Accurate to do legitimate extra work without billing for it simply makes no sense. I also reiterate my earlier comment about the photographed Accurate December 7, 2023 work, namely that it seems contrived.

[35] The most that can be said based on the evidence is that Accurate probably purchased 10 transformers for \$428.79, an amount that is well below the \$1,000 threshold for deemed completion. If these were installed, the work was negligible and did not significantly advance the project. But it is not all clear that Accurate in fact installed these transformers.

[36] For these reasons, I conclude that there is no triable issue that the alleged Accurate transformer work on December 7, 2023, if done, was anything more than “bootstrapping.”

d) Conclusion

[37] For these reasons, I conclude that Logan has met its onus of proving that there is no triable issue that the Accurate lien was preserved out of time and that it has expired. I order that the Accurate lien be vacated and the Logan security for this lien be returned to Logan. I also order that the Accurate action to enforce the lien be dismissed.

[38] Logan wants an order requiring Accurate to pay Logan \$29,120.06 in damages for the costs of the lien bond it posted for the Accurate claim for lien and for the legal costs involved in having the security posted. Mr. Martino’s affidavit contains a letter from Westmount dated January 16, 2024 stating that the bonding premium would be 2% per annum of the amount of the bond. 2% of the \$340,861.25 for the Accurate lien bond is \$6,817.22. It has been about 17 months since the bond was posted. The bonding premium for this 17-month period is, therefore, \$9,657.

[39] I have decided to order that Accurate pay Logan this \$9,657 as damages under *CA* section 35(1)2. That section states that a person who preserves a claim for lien when “the person knows or ought to know that he or she does not have a lien,” is liable for the damages that flow from doing so. Given my rulings about “bootstrapping,” I find that Accurate should have known it did not have a lien when it registered its claim for lien on December 15, 2023. Therefore, it should pay the lien bonding premium in the amount of \$9,657 as damages. I so order.

[40] I ordered orally that I would not award damages for legal costs as requested. These costs should be part of the overall assessment of costs in this action.

[41] Concerning costs of the motion, Logan served and filed a costs outline showing \$33,661.86 in partial indemnity costs, and \$49,375.54 in substantial indemnity costs. Accurate served and filed a

costs outline showing \$36,481.72 in partial indemnity costs. The parties are encouraged to resolve the issue of costs. If they cannot resolve the issue, they must serve and file written costs submissions.

[42] Logan would appear to be entitled to costs as it was the successful party. If the costs issued cannot be resolved by the parties, Logan must serve and file written submissions on costs of no more than 2 pages on or before June 17, 2025. Accurate must then serve and file responding written submissions on costs of no more than 2 pages on or before June 24, 2025. Logan may then serve and file reply written submissions on costs of no more than 1 page on or before June 27, 2025.

DATE: June 11, 2025

ASSOCIATE JUSTICE C. WIEBE