

CITATION: Accurate General Contracting Ltd. v. 485 Logan Developments Inc, 2025 ONSC4118
COURT FILE NO.: CV-24-714781
DATE: July 10, 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.*;

DECISION: June 11, 2025.

COSTS DECISION

[1] The parties have now served and filed written costs submissions concerning the Logan successful motion to have the Accurate lien declared expired due to a failure to preserve. Logan asserts that it should be paid substantial indemnity costs as indicated in its costs outline, namely \$49,375.54. Accurate asserts that Logan should be paid partial indemnity costs of \$25,000.

[2] There now appears to be an issue as to the result. Accurate maintains that there was a divided success and that the costs award should reflect this result. The alleged “success” of Accurate was in getting its late supplementary responding motion record admitted. I do not agree that this was a “success” at all. I made it clear in my ruling that this was an indulgence I gave to Accurate given the gravity of the motion and the lack of prejudice on the part of Logan. I nevertheless considered this to be a “schedule breach” that would be dealt with in the costs award. That accounting is now. This is not a “success” for Accurate. It is in fact a basis on which the costs award against Accurate should be, and will be, enhanced.

[3] As for the overall result, I find that Logan was clearly the successful party. It succeeded in its objective in having the Accurate lien declared expired and the posted security returned to Logan. Logan deserves to get costs.

[4] The key issue is whether I should award substantial indemnity costs. I find that *Construction Act*, section 86(1) applies directly to this case and this motion. This is the section that expressly authorizes the court to award substantial indemnity costs on a motion where a party knowingly participates in the preservation of a lien “where it is clear that the claim for lien is without foundation . . .” That is what I found on this motion. I found that Accurate attended the site on December 7, 2023 after the Accurate lien had expired to create evidence of a later lien period, thereby reviving its lien. It purported to install smart switches and transformers for video doorbells, not to advance that work but to create a new lien period. It was careful to take photographs of this

work as proof. This is “bootstrapping.” Such abusive conduct is exactly what section 86(1) was intended to deter. I, therefore, award Logan substantial indemnity costs.

[5] Ms. Tzogas argued that there was no finding of misconduct as against Accurate in the conduct of this motion, as opposed to the act of preserving its lien. Referring to a costs decision of Master Albert in *Federated Contractors Inc. v. Ann-Maura Developments Inc. et al*, 2010 ONSC 1664 (CanLII) at paragraph 5, she argued that I should not, therefore, award substantial indemnity costs against Accurate. The decision in the *Ann-Maura* case does not elucidate what the misconduct in issue was in that case.

[6] I do not find that this decision assists Accurate. First, as stated above, I found that Accurate was indeed guilty of misconduct in this motion by serving its supplementary responding motion record late and in breach of my scheduling order. Furthermore, I note that Logan sent two letters to Accurate on August 16, 2024 and December 3, 2024 identifying the late preservation issue in detail and seeking Accurate’s consent to the order Logan eventually succeeded in getting on this motion, but on a without costs basis. Accurate obviously did not consent, despite its knowledge of the evidence that came out in this motion. In short, Accurate needlessly forced this motion on and the costs associated with it and should now have to pay for this reckless strategy.

[7] Second, I respectfully disagree concerning the distinction drawn between the conduct on a motion and the conduct in registering the lien. The two cannot be isolated where the entire basis of a motion, such as this one, is the propriety or impropriety of the underlying lien preservation. Furthermore, section 86(1) makes it explicit in its words that substantial indemnity costs can be awarded against a party on a motion that stems from the act of knowingly registering a baseless lien. That is what happened here. I reject this argument.

[8] I will, however, make some adjustment in the award on account of quantum. I am not sure that the cross-examinations were necessary or helpful. I also found some of the written argument excessive and unnecessary. While I appreciate that this motion was very important to Logan, given the amount of money it had posted as security, I found some of its work as indicated in its costs outline excessive.

[9] I have decided to award Accurate **\$45,000** in substantial indemnity costs, and order this be paid to Logan in **forty-five (45) days** from today. This is a reasonable award in the circumstances and a reasonable payment period given the size of the award. It is also in the range of what Accurate should reasonably have expected to pay in substantial indemnity costs, as its costs outline shows a claim for partial indemnity costs that is over \$4,000 greater than the Logan claim for partial indemnity costs. I also find this amount to be proportional, given the size of the Accurate claim for lien and amount of security posted. So ordered.

DATE: July 10, 2025

ASSOCIATE JUSTICE C. WIEBE