

CITATION: AMF All-Metal Fabricating Limited v. Aplus General Contractors Corp.,
2026 ONSC4286

COURT FILE NO.: CV-21-654877

DATE: July 22, 2026

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: AMF All-Metal Fabricating Limited v. Aplus General Contractors Corp.

BEFORE: ASSOCIATE JUSTICE C. WIEBE

COUNSEL: Jacob Jones for Aplus General Contractors Corp.

HEARD: July 22, 2026.

REASONS FOR DECISION

[1] Aplus General Contractors Corp. (“Aplus”) brought this motion (pursuant to Rule 15.04(7) and *Construction Act* section 47) for an order dismissing the action of AMF All-Metal Fabricating Limited (“AMF”), discharging the AMF lien, requiring the return to Aplus of its lien security, dismissing the Aplus counterclaim without prejudice to it being brought back once the project is done and the owner’s back-charge for liquidated damages (if any) is crystallized, and the costs of the action and the motion. There was no response from AMF and AMF did not appear.

[2] This reference focused on the \$415,350.39 lien claim of AMF for unpaid invoices. The defendant, Aplus General Contractors Corp., defended and asserted a set-off and counterclaim in the amount of \$1.3 million concerning deficiency costs and delay. The reference (commenced by a union of AMF workers) started in December, 2022. I conducted nine trial management conferences. The union claim was quickly resolved. AMF remained very active.

[3] Aplus consistently asked for a delay in interlocutory matters as the owner, the Toronto Transit Commission, was asserting a back-charge against Aplus for delay liquidated damages, most of which Aplus attributed to AMF. The project remained (and still remains) uncompleted, with the liquidated damages being accumulated by the TTC in the meantime. I accommodated the Aplus request for a time; but then, at AMF’s insistence, I did not as the project seemed stuck.

[4] During the reference I ordered a Scott Schedule, production and discovery. At the trial management conference on August 18, 2025, I ordered the service of primary expert reports by October 31, 2026 and responding reports by December 31, 2025. At the trial management conference on September 16, 2025 I scheduled an 11-day summary trial to take place in August, 2026 starting August 5, 2026. I ordered the service of requests to admit by December 1, 2025 and the service of affidavits for evidence-in-chief with the plaintiff, AMF All-Metal Fabricating Limited, to serve its affidavits first by March 31, 2026. I ordered the service of a Joint Document Book, a trial record, discovery read-in briefs and case briefs, all to be done by July 17, 2026.

[5] On November 13, 2025 the lawyers for AMF brought a motion for an order removing them as lawyers of record for AMF. After a confidential discussion with the lawyer who appeared, I was satisfied that there was an irreparable breakdown in the lawyer-client relationship. I was concerned, however, about the effect of this order on the trial schedule. The lawyer advised me that his firm had made it absolutely clear to AMF as to the urgency of retaining counsel and preparing for the trial. I determined that if that advice and the removal order were complied with, AMF could still be ready for the scheduled trial, albeit with some potential changes in the pretrial schedule. I granted the removal order. The motion material today shows me that the removal order was served on AMF by mail on November 18, 2025.

[6] On July 8, 2026 Mr. Jacobs emailed me advising that AMF had not appointed a lawyer or obtained an order granting it leave to be represented by a non-lawyer. He advised me that AMF had not complied with any of my trial scheduling orders, including a failure to serve an expert report. The case was obviously not ready for trial. I scheduled this motion for July 22, 2026.

[7] On July 22, 2026 the Aplus uploaded material satisfied me that Mr. Jacobs had served the Aplus motion material on AMF at one of the addresses indicated in the removal order in a timely way. He also attempted to serve AMF through the email address indicated on the removal order, but that email address was not functional. No one appeared before me today on behalf of AMF.

[8] Mr. Jacob advised me that the AMF claim remained the same and that the Aplus set-off and counterclaim was in excess of \$728,000 for deficiency correction costs and in excess of \$456,000 for delay damages. The claims going to trial, therefore, totaled almost \$1.6 million.

[9] I granted the requested order in the circumstances. It became clear to me that AMF has abandoned this action. Mr. Jacobs wanted me to dismiss the Aplus counterclaim but without prejudice to being brought back once the TTC back-charge for liquidated damages is crystallized, if at all as the TTC may not impose that back-charge in the end. I granted that order as well

[10] As for costs, Mr. Jacobs filed two documents, a bill of costs for the action other than this motion and a costs outline for this motion. The bill of costs shows totals of \$320,739.68 in partial indemnity costs, \$417,908.48 in substantial indemnity costs, and \$456,776.02 in actual costs. Mr. Jacobs submitted that I should order the actual costs on the basis that they were in effect “costs thrown away.” The quantum of the depicted costs in the bill of costs was reasonable, given all the activity that has transpired in this action as described above and the quantum of the claims. Also, I note that a real effort was made to spread the work as much as possible to lower costing lawyers and clerks.

[11] As for the question of awarding actual costs, I was not at all sympathetic to AMF. Having pressed for the completion of this reference and the trial in the face of Aplus’ valid concern about doing so while the TTC delay back-charge was not crystallized, AMF suddenly abandoned its lawyers and this reference on the eve of the serious trial preparation work. Aplus went to the trouble and expense of getting a lengthy delay expert report by the deadline. AMF did not. The Aplus expert report appears to have convinced AMF to abandon this action. I decided that the costs of this action to Aplus was indeed at the level of costs thrown away. It appears that AMF forced the costs of this litigation onto Aplus to extract a quick resolution from Aplus and that AMF was not prepared to

follow through on that strategy once the trial became real. I awarded Aplus \$450,000 in actual costs for the action other than this motion.

[12] As for the costs of the motion, the Aplus costs outline shows \$11,590.52 in partial indemnity costs, \$15,859.09 in substantial indemnity costs and \$17,566.52 in actual. Mr. Jacobs wanted a costs order for the actual costs for the same reasons as for the costs of the action. I agreed. This motion was entirely due to AMF's flagrant non-compliance with my directions. AMF also disregarded this motion despite being properly served. The motion was important, given the immediacy of the trial. The quantum was reasonable as the depicted work was necessary and was done by lawyers and clerks at reasonable rates. I ordered that AMF pay Aplus \$17,000 in actual costs for this motion.

[13] In summary, I dismissed this action, discharged the AMF lien, required the return of the posted Aplus lien security to Aplus, dismissed the Aplus counterclaim without prejudice to it being brought back once the TTC back-charge for liquidated damages has crystallized (if at all), and ordered that AMF pay a total of \$467,000 in costs. I vacated the scheduled trial dates.

DATE: July 21, 2026

ASSOCIATE JUSTICE C. WIEBE