

COURT OF APPEAL FOR ONTARIO

CITATION: Alyange Holdings Inc. v. Dewdney Mountain Farms Ltd., 2025 ONCA  
440

DATE: 20250616

DOCKET: M55998 (COA-25-CV-0018)

Monahan J.A. (Motion Judge)

BETWEEN

Alyange Holdings Inc.

Plaintiff  
(Respondent/Moving Party)

and

Dewdney Mountain Farms Ltd.\*, Fragin Holdings Limited, His Majesty the King in  
Right of Canada as represented by the Minister of National Revenue, Cynthia  
Ritchie\* and Paul Ritchie\*

Defendants  
(Appellants/Responding Parties\*)

Eric Turkienicz, for the moving party

Richard Mazar, for the responding parties

Heard and released orally: June 12, 2025

ENDORSEMENT

[1] The moving party, Alyange Holdings Inc. (“Alyange”), has brought a motion for an order striking out portions of the responding parties’ Appeal Book and Compendium on the basis that these documents were not before the motion judge.

## Background

[2] Alyange is the second mortgagee of a rural property owned by the respondent Dewdney Mountain Farms Ltd. (“Dewdney”) in Bobcaygeon, Ontario. The property was split into two parcels in 2014 and the second mortgage automatically attached to both parcels. Dewdney is the registered owner and mortgagor of the property. The other responding parties Cynthia Ritche and Paul Ritchie live on the property and are the guarantors of the mortgage loan advanced by Alyange to Dewdney.

[3] Alyange claimed that Dewdney had not made any payments on its second mortgage, which was in default. On September 10, 2019, Alyange issued a notice of application against the responding parties seeking a declaration that it was entitled to vacant possession of the property and for leave to issue a writ of possession. On June 7, 2020, Di Luca J. ordered that the application proceed as an action, with Alyange’s notice of application being treated as the statement of claim and the responding parties having 30 days to file their statement of defence.

[4] In August 2022, the parties reached a settlement. In December 2023, Alyange asked the responding parties to execute a consent to judgment, but the responding parties refused. Alyange moved under r. 49.09 of the *Rules of Civil Procedure*, R.R.O. Reg. 194 to enforce its settlement agreement with the responding parties and for judgment for payment of the amount owing under the

mortgage loan made by Alyange to the responding parties (the “Settlement Motion”). The Settlement Motion also sought possession of the property and leave to issue a writ of possession.

[5] On December 2, 2024, the motion judge granted judgment in favour of Alyange, in accordance with the parties’ 2022 settlement agreement. On December 30, 2024, the responding parties served a Notice of Appeal seeking to appeal that judgment, and served their Appeal Book and Compendium on or about February 19, 2025.

[6] The moving party brings this motion seeking an order striking out portions of the responding parties’ Appeal Book and Compendium (the “Impugned Documents”) on the basis that they were not part of the motion record on the Settlement Motion. The Impugned Documents include various affidavits and related documents that were before Di Luca J. in the 2019 application but were not put before the motion judge on the Settlement Motion.

[7] The responding parties refused to remove the Impugned Documents, arguing that they were appropriately included in the Appeal Book and Compendium by virtue of r. 61.10(1) of the *Rules of Civil Procedure* and, in particular, subsections (f) and (i) thereof. These subsections provide that the Appeal Book and Compendium shall contain:

(f) a copy of the pleadings or notice of application or of any other document that initiated the proceeding or defines the issues in it;

...

(i) a copy of any other documents relevant to the hearing of the appeal that are referred to in the appellant's factum.

[8] The responding parties argue that because Di Luca J. ordered that the 2019 notice of application be treated as the statement of claim, and because that notice of application included the Impugned Documents, these documents formed part of the statement of claim and were properly included in the Appeal Book and Compendium.

[9] I do not agree.

[10] It is well established that the evidence considered on appeal should be limited to that which was before the lower court that issued the decision. The reason for this is obvious. As this court explained in *Pollon v. American Home Assurance Co.* (1991), 3 O.R. (3d) 59 (C.A.), at para. 4, if parties are free to expand the record on appeal beyond that put before the lower court, "the appeal would thereby cease to be from the case on which the judgment below was rendered." Moreover, as the Supreme Court pointed out in *Barendregt v. Grebliunas*, 2022 SCC 22, [2022] 1 S.C.R. 517, at para. 39, such an approach would be profoundly unfair, since it would give a party who has failed to act with due diligence at first

instance a “second kick at the can”, while requiring the opposing party to answer a new case on appeal.

[11] There is nothing in r. 61.10(1)(f) or (i) that would support a different result.

[12] With respect to subsection (f), which refers to inclusion of the pleadings in the Appeal Book, r. 25.06 provides that “pleading[s] shall contain a concise statement of the material facts on which the party relies for the claim or defence, *but not the evidence* by which those facts are to be proved” (emphasis added). To the same effect is r. 38.04, which provides that a notice of application shall “state the documentary evidence to be used at the hearing” but, consistent with r. 25.06, not include the evidence itself. Thus, when Di Luca J. ordered that the 2019 notice of application be treated as a statement of claim, it did not have the effect of including the evidence relied on in the application, since to do so would have been contrary to rr. 25.06 and 38.04.

[13] Nor does subsection (i) of r. 61.10(1) assist the responding parties, since a party cannot expand the record on appeal simply by referring to fresh evidence in their factum. This would offend the principles of finality and fairness identified by the Supreme Court in *Barendregt*. If a party wishes to expand the record on appeal, the proper procedure is to bring a fresh evidence application, which the responding parties have not done.

[14] Accordingly, I grant Alyange's motion, and order that the Impugned Documents be expunged from the Appeal Book and Compendium. The moving party is entitled to their costs of the motion in the amount of \$2,138.50, on an all-inclusive basis.

"P.J. Monahan J.A."