

COURT OF APPEAL FOR ONTARIO

CITATION: Alyange Holdings Inc. v. Dewdney Mountain Farms Ltd., 2025 ONCA
757

DATE: 20251105

DOCKET: COA-25-CV-0018

Gillese, Favreau and Rahman JJ.A.

BETWEEN

Alyange Holdings Inc.

Plaintiff (Respondent)

and

Dewdney Mountain Farms Ltd.*, Fragin Holdings Limited, Her
Majesty the Queen in Right Of Canada as Represented by the
Minister of National Revenue, Cynthia Ritchie* and Paul Ritchie*

Defendants (Appellants*)

Richard Mazar, for the appellants

Eric Turkienicz and Angela Ribarich, for the respondent

Heard: September 22, 2025

On appeal from the judgment of Justice Sharon Lavine of the Superior Court of
Justice, dated December 2, 2024.

Gillese J.A.:

I. OVERVIEW

[1] Dewdney Mountain Farms Ltd. (“**Dewdney**”) is the registered owner and
mortgagor of a rural property located in Bobcaygeon, Ontario (the “**Property**”).

Alyange Holdings Inc. (“**Alyange**”) holds a second mortgage on the Property. Paul Ritchie is Dewdney’s owner and operator. He and his wife Cynthia Ritchie occupy the Property. They are the guarantors of the second mortgage. I will refer to Dewdney and the Ritchies together as the “**Appellants**”.

[2] Alyange started mortgage enforcement proceedings against the Appellants. The parties resolved the proceedings by means of a settlement agreement (the “**Settlement Agreement**”). Alyange performed its obligations under the Settlement Agreement but the Appellants refused to provide them with consent to judgment, as required by the Settlement Agreement. The stated reason for their refusal was that the Settlement Agreement was unenforceable because Alyange had not complied with the notice requirements in s. 244(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”) before taking steps to enforce its mortgage charge.

[3] Alyange then moved under r. 49.09 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, for enforcement of the Settlement Agreement (the “**Motion**”).

[4] The motion judge soundly rejected the Appellants’ arguments. By judgment dated December 2, 2024 (the “**Judgment**”), she ordered them to perform their obligations under the Settlement Agreement. The Appellants appeal against the Judgment.

[5] For the reasons that follow, I would dismiss the appeal.

II. BACKGROUND

[6] The Property is subject to first and second mortgages. In July of 2012, Fragin Holdings Limited (“**Fragin**”) registered a first mortgage charge on the Property in the amount of \$700,000. A second mortgage was registered on title that same month. In July 2014, the second mortgage was assigned to Alyange.

[7] The Property was severed into two parcels in January 2014, the “**Hunt Camp**” and the “**Quarry Property**”. The first and second mortgages automatically attached to both parcels. Dewdney intended to develop the Quarry Property into an operating quarry.

[8] Dewdney made no payments to Alyange on its second mortgage so, in September 2019, Alyange commenced an application against the Appellants for mortgage enforcement.

[9] Fragin brought its own action against the Appellants arising from their default on its mortgage charge.

[10] Alyange’s application was ordered to proceed to trial as an action, with the notice of application to be treated as the statement of claim.

[11] On February 4, 2020, the Appellants served their statement of defence. At paragraph 19 of their statement of defence, the Appellants asserted that the action should be stayed because Alyange had failed to give notice under s. 244 of the *BIA* prior to enforcing its mortgage security.

[12] On February 28, 2020, Alyange served a reply and defence to the Appellants' counterclaim, in which they denied that Dewdney was entitled to notice under s. 244 of the *BIA*.

[13] In April 2022, the Appellants advised Alyange and Fragin that they had entered into an agreement to sell the Hunt Camp parcel of land.

[14] In August 2022, the Appellants entered into separate settlement agreements with each of Fragin and Alyange. The terms of the two agreements mirrored one another, although Fragin was entitled to receive \$1,000,000 from the sale of the Hunt Camp whereas Alyange was to receive \$600,000.

[15] The Settlement Agreement between the Appellants and Alyange took the form of a letter dated August 25, 2022, from counsel for Alyange to counsel for the Appellants. Under its terms, the Appellants and Alyange agreed:

1. Alyange would receive \$600,000 from the proceeds of sale of the Hunt Camp to be applied first against interest owing on the Alyange mortgage and the balance remaining against the principal;
2. Alyange would provide a discharge of its mortgage over the Hunt Camp only and not the Quarry Property;
3. The Appellants would consent to judgment for: payment to Alyange of the outstanding principal and interest under the mortgage loans; an order for possession of the Quarry Property by Alyange; an order granting

Alyange leave to issue a writ of possession for that property; and an order dismissing Dewdney's counterclaim on a without costs basis;

4. If a further court action became necessary to give effect to the consent judgment described in point 3 above, the Appellants would consent to a judgment on identical terms in the new action;
5. Alyange would not take any steps to enforce the judgment or its mortgage until the earlier of December 31, 2023, or the date on which the Quarry Property was disposed of; and
6. Alyange would maintain its position as second mortgagee on the Quarry Property and its rights under its mortgage would remain in full force and effect.

[16] Alyange agreed to accept less than the balance owing on its mortgage to allow Dewdney to receive a portion of the sale proceeds. In exchange, as can be seen from the terms of the Settlement Agreement set out above, Alyange was to receive, among other things, a consent to judgment.

[17] Fragin had entered into a settlement agreement with the Appellants on similar terms. In their respective settlement agreements, Fragin and Alyange agreed to forbear on execution of judgment until December 31, 2023, to give the Appellants approximately sixteen months to continue to work on obtaining the necessary approval for an operational quarry and to sell the Quarry Property.

[18] In September 2022, when Alyange granted the partial discharge of its second mortgage on the Hunt Camp, the Appellants executed an “Acknowledgement of Terms and Conditions” in favour of Alyange (the “**Acknowledgment**”). In the Acknowledgment, the Appellants “acknowledge and agree to the terms and conditions” in the Settlement Agreement.

[19] In early December 2023, Alyange asked the Appellants to execute a consent to judgment in accordance with the Settlement Agreement but the Appellants refused to provide their consent.

[20] In June 2024, Alyange brought the Motion for enforcement of the Settlement Agreement.

[21] On the Motion, the Appellants did not contest the validity of the Settlement Agreement or that they had intended to create a legally binding agreement when they entered into it. However, they claimed that the Settlement Agreement could not be enforced because Alyange failed to give notice under s. 244(1) of the *BIA* before enforcing its mortgage charge. They further maintained that they did not relinquish this claim when they entered into the Settlement Agreement. Alternatively, the Appellants asked that judgment include a term delaying Alyange’s enforcement of its mortgage until the Appellants obtained a licence for the operation of a quarry.

III. THE MOTION DECISION

[22] The motion judge began her analysis by focusing on the Settlement Agreement. She observed that a settlement agreement is a contract that may be enforced by the court and there is a strong presumption in favour of the finality of settlements: *Deschenes v. Lalonde*, 2020 ONCA 304, 447 D.L.R. (4th) 132, at para. 27, leave to appeal refused, [2020] S.C.C.A. No. 244, affirming *Mohammed v. York Fire and Casualty Insurance Co.* (2006), 79 O.R. (3d) 354 (C.A.), at para. 34, leave to appeal refused, [2006] S.C.C.A. No. 269. As a contract, a settlement agreement may be rescinded for fraud, misrepresentation, duress, undue influence, unconscionability, or mistake: *Deschenes*, at para. 28. The motion judge found that none of those vitiating factors were present in the case before her.

[23] The motion judge found that the Appellants relinquished their position that Alyange's action was a nullity when they entered into the Settlement Agreement. At that time, the Appellants were represented by counsel and they chose not to pursue their claim about notice under s. 244 of the *BIA*, which they had raised in their statement of defence. She relied also on the fact that the parties had partially performed the terms of the Settlement Agreement.

[24] The motion judge then considered the Appellants' position based on the *BIA*. She found it was without merit.

[25] Section 244 of the *BIA* provides for a period of advance notice when a secured creditor "intends to enforce a security on all or substantially all of the

inventory, the accounts receivable, or the other property of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person”. The motion judge noted there were no insolvency proceedings, and that the issue of whether the criteria under s. 244 that would require the sending of a notice existed in May 2019 when Alyange served its notice of sale was not developed in the record before her.

[26] The motion judge also noted that the Appellants had not provided any authority to support their position that, in circumstances where dual notice is required under both the *BIA* and the *Mortgages Act*, R.S.O. 1990, c. M.40, failure to send a notice under the *BIA* is a complete bar to proceedings under the *Mortgages Act*.

[27] Finally, the motion judge noted that s. 248 provides a remedy where there is non-compliance with the provisions of s. 244. She concluded that, even assuming Alyange was required to send a s. 244 notice before taking steps to enforce its mortgage charge, its failure did not preclude voluntary settlement by the parties of Alyange’s claim.

[28] Accordingly, the motion judge issued the Judgment, which enforces the Settlement Agreement.

IV. THE ISSUES ON APPEAL

[29] The Appellants did not set out the issues they sought to have decided on this appeal in their notice of appeal, their factum, or their oral argument. Nor did they address the standard of review that applied to the motion judge's various determinations. Rather, they simply reiterate the claim they made on the Motion, namely, that the Motion was for enforcement of the mortgage and before Alyange could enforce its rights under the mortgage, it had to send them a s. 244 notice because Dewdney was an insolvent person. According to the Appellants, because Alyange failed to send such a notice, Alyange could not enforce its rights under the mortgage.

V. ANALYSIS

[30] In my view, this appeal can and should be resolved solely on the basis of the Settlement Agreement. Further, I see no basis for appellate intervention with the motion judge's decision to enforce the Settlement Agreement.

[31] The motion judge articulated the correct legal principles for determining whether to enforce a settlement agreement, as set out in *Deschenes* and *Mohammed*. She also found there was nothing in the record that could be seen to vitiate the validity of the Settlement Agreement.

[32] Thereafter, the motion judge made the findings of fact which underlay her determination that the Settlement Agreement should be enforced. Those findings

were fully open to her and include that: the Appellants were represented by legal counsel when they entered into the Settlement Agreement; the Appellants voluntarily gave up any claim based on s. 244 of the *BIA* with the full knowledge of that claim, as evidenced by their reliance on it in their statement of defence; and, the parties to the Settlement Agreement had acted upon its terms.

[33] The Appellants dispute only one of those findings, namely, that they had given up any claim based on s. 244 when they entered into the Settlement Agreement. In my view, there is no basis to interfere with the motion judge's finding that the Appellants voluntarily relinquished any such claim when they entered into the Settlement Agreement. Indeed, on the record, that finding is inescapable. As the motion judge pointed out, the Appellants were represented by counsel when they entered into the Settlement Agreement and must have been fully aware of that claim, having relied on it in their statement of defence to the action. The same observation can be made in relation to the Acknowledgment. Under its terms, in response to Alyange having discharged its mortgage over the Hunt Camp parcel of land, the Appellants expressly reiterate their acknowledgment of, and agreement to, the terms and conditions of the Settlement Agreement.

[34] Consequently, I see no basis for appellate interference with the motion judge's decision to enforce the Settlement Agreement, or in finding that by entering into it, the Appellants relinquished any claim they might have had relating to s. 244 of the *BIA*.

[35] For these reasons, in my view, it is not necessary to decide the s. 244 notice issue. Having said that, I cannot see how that issue arises on the facts of this case. I give two reasons for my view.

[36] First, the Appellants' position on appeal and below is based on its assertion that Alyange was required to give a s. 244 notice before enforcing its mortgage. But Alyange's Motion was not for enforcement of its mortgage; the Motion was for enforcement of the Settlement Agreement. Accordingly, even if the *BIA* may have been implicated when Alyange brought its action, it was not relevant to the Motion before the motion judge.

[37] Second, s. 244 applies when a secured creditor intends to enforce a security "of an insolvent person". It was the Appellants' burden to prove Dewdney was an insolvent person: *917488 Ontario Inc. v. Sam Mortgages Ltd.*, 2013 ONSC 2212, 2 C.B.R. (6th) 112, at paras. 38-39. They maintain they met this burden because Dewdney was in default of its obligations under both the Alyange mortgage and the Settlement Agreement. It strains credulity to contemplate that a party could prove insolvency by simply alleging it and pointing to its own defaults. Even if that were possible, there is nothing in the record to show that Dewdney could not meet its obligations as they generally fell due, or had ceased paying its current obligations in the ordinary course of business. Indeed, the evidence before the court was to the contrary because it indicated that Dewdney was not insolvent and had other assets.

[38] I would add that if s. 244 were relevant, the motion judge made it clear that she would not have exercised the discretion given by s. 248 to provide relief to the Appellants because of Alyange’s non-compliance with s. 244. The Appellants did not point to any alleged error in the exercise of her discretion and I see none.

[39] I would conclude with this observation. Alyange submits that the Appellants’ conduct “borders on unconscionable”. It notes that the Appellants reaped the benefit of the Settlement Agreement to Alyange’s detriment, including by receiving money they otherwise would not have been entitled to. I see real force in this submission.

VI. DISPOSITION

[40] Accordingly, I would dismiss the appeal with costs to the respondent fixed at the agreed-on sum of \$4,000, all inclusive.

Released: November 5, 2025 “E.E.G.”

“E.E. Gillese J.A.”
“I agree. L. Favreau J.A.”
“I agree. M. Rahman J.A.”