

# In the Court of Appeal of Alberta

**Citation:** The Toronto Dominion Bank v Manah, 2025 ABCA 321

**Date:** 20250925  
**Docket:** 2503-0105AC  
**Registry:** Edmonton

**Between:**

**The Toronto Dominion Bank**

Applicant

- and -

**Najeeb Rafic Manah and Kristin Renee Manah**

Respondents

**The Court:**

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**The Honourable Justice Jack Watson  
The Honourable Justice Dawn Pentelchuk  
The Honourable Justice Jane Fagnan**

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**Memorandum of Judgment**

Application to Dismiss an Appeal

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## Memorandum of Judgment

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### The Court:

### Introduction

[1] This is the latest installment in a lengthy course of litigation arising from the foreclosure of the respondents' property by the applicant, The Toronto Dominion Bank (TD). The background is detailed in this Court's decision in *The Toronto Dominion Bank v Manah*, 2025 ABCA 201; see also *The Toronto Dominion Bank v Manah* 2025 ABCA 275. The Manahs filed an appeal of an order dated May 13, 2025, dismissing their application for an extension of time to appeal the order of an Applications Judge dated March 10, 2025 (Sale Order), which granted the sale of the property to TD. TD applies to dismiss the appeal on the basis that it is moot, pursuant to Rule 14.74(b) of the *Alberta Rules of Court*, Alta Reg 124/2010.

[2] The Manahs' request to adjourn this application was denied, as was their request that the panel reconsider its decision. The parties were advised that the application would be determined based on the written materials filed. They filed materials on the date scheduled for the oral hearing and those materials, citing case authorities and detailing the position of the parties, have been considered.

[3] The Manahs contend that because they are unrepresented, the application by the Court and its officers of ordinary court processes amounts to "a direct violation of the principles in *Pintea* [v *Johns*, 2017 SCC 23]". By their materials in this record, the Manahs have demonstrated that they have in no way been disadvantaged by unfair procedures. Lack of success is not automatically the product of unfairness.

### TD's Affidavit Evidence

[4] In support of its application, TD filed an affidavit sworn on July 16, 2025 by Laurie Whiteman, an authorized representative of TD. The affidavit sets out the events since the Sale Order was granted. TD submits that the affidavit is admissible on this application as new evidence, pursuant to the four well-known criteria set out in *Palmer v The Queen*, [1980] 1 SCR 759, 1979 CanLII 8 (SCC) [*Palmer*]. The Manahs submit that the evidence should not be admitted.

[5] The *Palmer* criteria, which apply in the civil context, require courts to consider whether:

- (i) the evidence could not, by the exercise of due diligence, have been obtained for the trial (provided that this general principle will not be applied as strictly in a criminal case as in civil cases);
- (ii) the evidence is relevant in that it bears upon a decisive or potentially decisive issue;
- (iii) the evidence is credible in the sense that it is reasonably capable of belief; and
- (iv) the evidence is such that, if believed, it could have affected the result at trial.

See *Barendregt v Grebliunas*, 2022 SCC 22 at para 29 [*Barendregt*].

[6] *Palmer* does not apply when a respondent seeks to have an appeal dismissed solely on the basis of mootness. *Palmer* applies when evidence is adduced on appeal for the purposes of reviewing the proceedings in the court below, but not when the evidence goes to the validity of the trial process itself or to a request for an original remedy in the Court of Appeal: *Barendregt* at para 30. It is appropriate to admit new evidence on appeal for the narrow purpose of determining whether the appeal is moot: *Demars v Alberta (Director of SafeRoads)*, 2024 ABCA 132 at para 40; see also *Greig v Desjardins Financial Security Life Assurance Company*, 2021 BCCA 455 at para 16; *British Columbia (Technology, Innovation and Citizens' Services) v Columbus Real Estate Inc.*, 2018 BCCA 340 at para 36.

[7] TD's affidavit is admissible. It is credible sworn evidence relevant to the mootness issue.

[8] The evidence establishes the following. On April 9, 2025, the Manahs filed a notice of appeal from the Sale Order but did not apply for a stay of the order. On April 25, 2025, title to the property was transferred to TD. On April 29, 2025, the Manahs' appeal was struck for failure to comply with the timelines set out in Rule 6.14. The Manahs then filed for an extension of time to appeal the Sale Order, which was dismissed by the Court of King's Bench on May 13, 2025. On May 30, 2025, TD entered into a contract to sell the property to a third-party purchaser. On June 12, 2025, the Manahs appealed the May 13, 2025 order, which is the matter now before this Court. On July 11, 2025, the sale of the property closed, and title transferred to the third-party purchaser.

### Should this appeal be dismissed as moot?

[9] An appeal is moot if it “will not have the effect of resolving some controversy which affects or may affect the rights of the parties”: *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 at 353, 1989 CanLII 123 (SCC). A live controversy may no longer exist when “the question before the court has been eliminated due to subsequent events, when the decision would no longer have any practical effect on the rights of the parties, or where the practical relief sought is no longer available due to changes in either the factual or legal circumstances of the case”: *CM v Alberta*, 2024 ABCA 136 at para 22.

[10] This appeal is moot. As this Court previously noted, there are now binding court orders confirming that the Manahs are indebted to TD and that TD is entitled to foreclosure remedies. Since the Sale Order, the property has been sold to a third-party purchaser for value. The relief the Manahs ultimately seek—undoing the Sale Order in favour of TD—is no longer available due to the subsequent sale. That sale “cannot now be practically reversed”: *Habib v Habib*, 2025 ABCA 216 at para 7. As a result, this appeal cannot have any practical effect on the rights of the parties.

[11] The remaining question is whether this Court should exercise its discretion to hear this appeal despite its mootness: *Borowski* at 353. The factors to consider are i) the presence of an adversarial context between the parties, ii) the concern for the efficient use of judicial resources,

and iii) the awareness of the court’s proper law-making function: *Borowski* at 358-363; *Ellingson v Hall*, 2023 ABCA 245 at para 5.

[12] The Manahs submit that the public importance of the issues in this appeal warrants its determination, even if it is moot. It is notable that in this appeal the Manahs wish to repeat a plethora of technical requirements they say render the order invalid, for example, that the order did not follow the Government of Alberta’s Visual Identity Manual Edition 27. As the Manahs have previously been advised, there is no authority for the assertion these requirements must be followed nor that the failure to follow these inapplicable requirements renders the order of May 13, 2025 invalid. Arguments which are devoid of merit are not of public importance. We therefore decline to exercise our residual discretion to hear the appeal, notwithstanding it is moot.

### **Conclusion**

[13] The application to dismiss the appeal is granted.

[14] Solicitor and own client full indemnity costs are awarded to TD pursuant to the registered mortgage agreement. If the parties are unable to agree on a quantum, the quantum of costs will be determined by a review officer.

[15] Rule 9.4(2)(c) is invoked, and the Court will prepare the resulting order.

Written submissions received on August 13, 2025 and September 18, 2025

Memorandum filed at Edmonton, Alberta  
this 25th day of September, 2025

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Watson J.A.

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Pentelechuk J.A.

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Fagnan J.A.

**Appearances:**

D. Hughes (no submissions)

K.L. Sejr

for the Applicant

Respondent Najeeb Rafic Manah

Respondent Kristin Renee Manah