

**COURT OF APPEAL**

**GOTTERSON JA**

**Appeal No 7177 of 2016  
DC No 1777 of 2015**

**COMMONWEALTH BANK OF AUSTRALIA  
ACN 123 123 124**

**Respondent/Applicant**

**v**

**MARIO JOHN MENSIO**

**Appellant/Respondent**

**BRISBANE**

**FRIDAY, 22 JUNE 2018**

**JUDGMENT**

**GOTTERSON JA:** On the 24th of May 2016, the Commonwealth Bank obtained a judgment against Mr Mario Menso in the District Court at Brisbane. Mr Menso appealed to this Court against the judgment. On the Bank's application, a judge of this Court made an order that Mr Menso provide security for its costs of the appeal in the amount of \$30,000, in a form satisfactory to the Registrar, by 4 pm on the 23rd of January 2017. That order was made on the 29th of November 2016. At the same time, orders were made staying the appeal until the security was provided, and requiring Mr Menso to pay the Bank's costs of that application on the standard basis.

Mr Menso did not provide security by the appointed date; he still has not done so, notwithstanding requests to him by the Bank's solicitors that he do so. In these

circumstances, the Bank has applied to the Court under r 774(b) of the *Uniform Civil Procedure Rules* 1999 to dismiss the appeal. It is clear that the Court's jurisdiction to dismiss under that rule has been enlivened. Mr Menso has not filed any affidavit by which his failure to provide the security is explained. He has not sought a discharge of or a variation to the security for costs order. He has filed, however, a handwritten outline of submissions, which he himself wrote and which he has elaborated upon in oral submissions made this morning. He asserts in the submissions matters that he wishes to raise by way of substantive appeal, particularly relating to disclosure by the Commonwealth Bank. He does not, however, address directly the failure to provide security as directed.

These factors are to be taken with the opinions expressed by the judge who heard a stay application made by Mr Menso and by a different judge of this Court who heard the security for costs application. Both of them expressed the view that the appeal by Mr Menso has no measurable prospect of success. Together, these matters weigh heavily in favour of exercising the discretion under r 774(b). I propose to do so. There will be an order that the appeal be dismissed. The Bank has sought costs on an indemnity basis. In all the circumstances, I consider that costs should be on the standard basis. The orders of the Court are:

1. The appeal is dismissed.
2. The appellant is to pay the respondent's costs of the appeal and of this application on the standard basis.

Adjourn the Court.