

COURT OF APPEAL

PHILIPPIDES JA

**Appeal No 7948 of 2018
SC No 1564 of 2015**

**AREVA SOLAR KCP PTY LTD
ACN 149 114 134**

Applicant

v

**NORTASK PTY LTD
ACN 077 690 852**

Respondent

BRISBANE

MONDAY, 29 OCTOBER 2018

JUDGMENT

PHILIPPIDES JA: This is an application to stay a judgment of Justice Lyons, pending the determination of an appeal and cross-appeal. I understand the hearing of the appeal and cross-appeal is set down for 4 March 2019. The matters that are relevant in relation to the grant of a stay concern the prospects of success in terms of whether there is a good arguable case. In my view, both in relation to the appeal and the cross-appeal, that consideration is neutral because, as has been accepted by both parties, there is no reason to think that there is not a good arguable case in relation to both those matters.

In relation to the balancing of the prejudice to the respective parties, if a stay is granted or not, one has to consider that the starting point is that a party is entitled to the benefit of its judgment and that the decisions of the Court are not to be viewed as provisional. The

applicant points to the short time period until the hearing of the appeal, as indicating the risk to the respondent, is slight. It also argues that the respondent has not put forward material as to its financial circumstances that is cogent. I note that the respondent has put in affidavit material. There has been no request to have the deponent available for cross-examination. There is no basis to not accept the material put forward by the respondent. In those circumstances, I consider that the applicant has not demonstrated that the prejudice to it would be greater than the prejudice to the respondent if the stay were not granted. As I said, this is not a case where the applicant has come armed with an undertaking and/or offer to pay the moneys, the subject of the judgment, into Court or into a trust account. In those circumstances, the appropriate exercise of the discretion is to dismiss the application for a stay.

MR DUNNING: Your Honour, the respondent asks for its costs in today's application.

PHILIPPIDES JA: Do you say anything about that?

MR STEELE: I do not make any submission, your Honour. No.

PHILIPPIDES JA: I would let the applicant pay the respondent's costs of and incidental to this application.

MR DUNNING: I have that draft order if that is convenient?

PHILIPPIDES JA: Thank you. Have you seen this?

MR STEELE: Yes, I have, your Honour. Thank you.