

COURT OF APPEAL

**MARGARET McMURDO P
FRASER JA
APPLEGARTH J**

**Appeal No 8456 of 2011
SC No 6441 of 2011**

LORAIN RONDA McELLAGOTT

Appellant

v

COMMONWEALTH BANK OF AUSTRALIA

Respondent

BRISBANE

DATE 02/03/2012

JUDGMENT

THE PRESIDENT: Justice Applegarth will give his reasons first on the adjournment application.

APPLEGARTH J: The appellant, Ms McElligott, applies to adjourn her appeal until a proceeding that she recently lodged in High Court can be heard. She also seeks the adjournment on the grounds that she wishes to add the National Australia Bank as a party to this appeal.

On 14 February, 2012, she lodged documents with the High Court in which she applied for special leave to Appeal from a judgment of this Court constituted by Justices Muir, Chesterman and White, given on 3 June, 2011. The Court dismissed an application for an extension of time within which to appeal against an order that Westwood Enterprises Queensland Pty Ltd be wound up.

The recent application to the High Court was made out of time, and there's nothing before us to indicate that the Court is likely to grant an extension of time to appeal that application. If, however, an extension of time was granted, and if special leave was granted, and if a subsequent appeal was wholly successful, then the result would be an order setting aside the winding up of Westwood.

The respondent to this appeal is the Commonwealth Bank of Australia, but it not a party to the High Court proceeding, and has no interest in it. The respondents to the High Court proceedings are members of a solicitors firm Butler McDermott Lawyers which issues a statutory demand against Westwood and two other respondents who did not appear when the appeal was heard on 19 May, 2011. The only real connection this matter has with the High Court proceeding is that the caveat that was removed made allegations against Butler McDermott lawyers. The CBA is not alleged to be a party to any wrong doing against that firm. The CBA is entitled to seek uphold the judgment under appeal is proceeding, and to confirm its interest in the land, and not to have this proceeding delayed without proper justification and the incurring of further costs occasioned by an adjournment.

As to the second ground for the adjournment, which is a desire to add the National Australia Bank, the National Australia Bank was not a party at the proceedings before the primary judge. When the matter came before the primary judge, and in the course of argument, the appellant said to the primary judge that she believed the property had been sold at an under-value, and she said it didn't go to an auction.

The primary judge if there was any evidence of this in the material before him, and the second respondent answered that there wasn't.

It seems to me that it's quite inappropriate for the National Australia Bank to be joined in these proceedings, and there be utility in granting an adjournment in order to permit it to be joined. The appellant hasn't demonstrated that it's in the interest of justice to adjourn the

appeal listed for hearing today, and I would decline the application for an adjournment.

THE PRESIDENT: I agree.

FRASER JA: Yes. I agree with those reasons. I would add that on the basis of the submissions that we have heard so far, adjourning the appeal would appear to be futile. The evidence adduced by leave this morning on behalf of the respondent, which the appellant confirms is true, is to the effect that the property has been transferred into the name of the third party. That third party has become the registered proprietor.

On the basis of the submissions today, there is no possibility of this Court setting aside the order below and re-instating the caveat, since to do so would be futile.

THE PRESIDENT: So, for those reasons, Ms McElligott, your application for an adjournment is refused.