

COURT OF APPEAL

FRASER JA

**Appeal No 11300 of 2012
SC No 48 of 2008**

**THE BODY CORPORATE FOR No 9
PORT DOUGLAS ROAD COMMUNITY
TITLE SCHEME 24368**

Applicant/Respondent

v

**FAMESTOCK PTY LTD
ACN 010 499 989**

Respondent/Appellant

BRISBANE

DATE 13/02/2013

ORDER

FRASER JA: This is an application by the respondent to an appeal for security for costs of the appeal. The parties have sensibly resolved most of the issues and I have been presented with a draft order, which leaves for determination only one issue, that is, the time within which the agreed amount of security of \$21,000 should be provided.

The appellant seeks an order that it be provided within 21 days prior to the hearing. It was said from the Bar table on behalf of the appellant that this would be desirable because the appellant is committed to various legal proceedings, after which it is thought that the appellant will be in a better position or in a position to supply the ordered security. There is no evidence to support the submission, however I can understand that something along those lines might be the case.

In any event, the respondent, who is the applicant for security, opposes that on the basis that the respondent is likely to incur costs in preparing for the appeal, for example, in relation to the necessary cooperation in settling the index to the Appeal Book at a time when, on the appellant's proposal, the respondent would be unsecured for the costs. That seems to me to be a substantial reason for not acceding to the appellant's suggestion.

One argument which the appellant advanced in support of its proposal was that the respondent has lodged a cross appeal. However, the argument was not developed, save for a reference to the possibility that the appellant might seek security for costs of the cross appeal. If it does, that is a matter for a subsequent hearing.

A further argument advanced for the appellant in support of its proposal about the time within which security should be provided concerned the fact that the respondent has the benefit of security which was lodged in the trial division which could be extended to cover the appeal. The amount of security lodged in the trial division was \$75,000. An affidavit by the solicitor for the respondent, which is uncontradicted, supplies evidence that the security in the trial division will be entirely eaten up when the respondent pursues its entitlement under costs orders in its favour in the trial division in the total sum of about \$120,000. So, there is, on the evidence at least, no substance in that argument.

In the circumstances, I would not be prepared to put off the provision of security until 21 days prior to the hearing. The appropriate order would seem to me to be - and when I mentioned this it did not seem to be opposed by either party - that the time for provision of the security be extended, somewhat unusually, to about six weeks, and that in the meantime there be a stay, which will mean that the respondent to the appeal does not have to take any steps pending the provision of the security.

In the circumstances, the appropriate order is that:

1. The appellant provide security for the respondent's costs of the appeal in the amount of \$21,000, in a form satisfactory to the Registrar, by 4 pm on Friday 29 March 2013.
2. The appeal is stayed so far as it concerns steps to be taken by the respondent until such security is provided.
3. The costs of the application are reserved.

I do not think that liberty to apply is necessary. The liberty to apply is always there in relation to interlocutory orders.

...

FRASER JA: Once the period for security has expired and if security is not provided, then the appeal is automatically stayed as a whole by the operation of the rules, so we do not need an order for that.

...

FRASER JA: I make the orders which I articulated.