

**COURT OF APPEAL**

**MUIR JA**

**Appeal No 11921 of 2012  
Appeal No 11926 of 2012  
SC No 10154 of 2012  
DC No 3785 of 2012**

**RHG MORTGAGE CORPORATION LIMITED  
ABN 48 065 912 932**

**Applicant**

**v**

**TREVOR COLIN SAVA**

**Respondent**

**BRISBANE**

**FRIDAY, 10 MAY 2013**

**JUDGMENT**

**MUIR JA:** On 7 February 2013 a judge of this court ordered in appeals 11921 of 2012 and 11926 of 2012 that by 4.00 pm on 22 March 2013 the appellant, Mr Sava, provide security for the respondent's, RHG Mortgage Corporation Limited's, costs of resisting both appeals in the total amount, for both appeals, of \$10,000 in a form satisfactory to the registrar. The security ordered was not provided and the respondent/applicant has brought this application under r 774 of the *Uniform Civil Procedure Rules*, seeking an order that each appeal be dismissed. The history of the litigation is set out in Fraser JA's ex tempore reasons delivered on 7 February 2013. I see no need to repeat what his Honour there said and gratefully adopt it. Nothing before me persuades me that the security ordered is likely to be provided.

I also consider it highly unlikely that the appeals have any prospects of success. The grounds of appeal in each case revolve around an alleged failure on the part of judge to adjourn the “last hearing” “to allow crucial evidence – phone recordings between [the appellant and the respondent] ... held by [the respondent] and needed to prove [the respondent’s] misleading conduct and justify Appellants [sic] cause of action ...”

The alleged misleading conduct was raised by the appellant in an application brought by the appellant to set aside an enforcement warrant. The judge of the Supreme Court who heard the application rejected the appellant’s claims in that regard and dismissed the appellant’s application. In another matter, commenced by the appellant in the District Court, the judge struck out the appellant’s statement of claim saying, in his reasons, that it was unnecessary for the appellant to have the telephone records in order to enable him to put “some evidence before a court relating to [the] conversations”. An adjournment sought on that basis was refused.

The application for adjournment was supported on other bases which the judge, understandably, found unmeritorious. The appellant’s submissions this morning relied on the necessity for the appellant to obtain the same telephone records. Consequently, the appellant has put forward no good reason for believing that any case he may wish to argue on appeal has any merits. The prolongation of these proceedings would involve both parties in unnecessary further expense, with no real prospect of any possible benefit to the appellant.

Accordingly, I order in each appeal that the appeal be struck out and that the appellant pay the respondent’s costs of and incidental to the application.

It does not seem to me, having regard to the history of the matter and to the fact that, although the appellant’s case has no merits, he is genuinely attempting to pursue an avenue which he regards as having some prospects of success, that it is appropriate to order indemnity costs.