[2015] QCA 204

COURT OF APPEAL

FRASER JA

Appeal No 7422 of 2015
DC No 306 of 2014

COMMONWEALTH BANK OF AUSTRALIA **Applicant/Respondent**

v

STEPHEN ATIS BOOTHBY **Respondent/Appellant**

BRISBANE

MONDAY, 26 OCTOBER 2015

JUDGMENT

FRASER JA: This is an application for security for costs of an appeal. The application is made by the bank, which is a respondent to an appeal by Mr Boothby. The primary judge, a judge of the District Court, found that the appellant had granted a mortgage and entered into a loan agreement with the bank, that the appellant had defaulted in payment under the mortgage, and that the bank was entitled to recover the debt.

The primary judge dealt with quite a number of other arguments advanced by the appellant and found that there was nothing of substance in them and that there was no need for a trial. Accordingly, the primary judge gave judgment in favour of the appellant. The judgment granted the respondent, the applicant today, an order that it recover possession of the appellant's property and that the appellant pay the bank a sum in excess of half a million dollars plus interest and costs assessed on the indemnity basis.

The appellant has appealed on many grounds which either completely, or at least mostly, replicate the arguments that the appellant advanced below. The main basis of the bank's application for security is that the appeal has no prospects of success and that the respondent is being put at risk of costs given the nature of the orders that were made against the appellant.

The first point made by the appellant in resisting security was that he was not shown or given an original or duly certified copy of the mortgage. The primary judge disposed of that point by finding that there was evidence of the authenticity of the relevant documents and that they were, in any event, admissible as business records under s 92 of the *Evidence Act* 1977 (Qld). In an allied submission, the appellant submitted that there was no contract made between him and the bank. The primary judge disposed of that in the same way that I have mentioned.

The next point made by the appellant was that under the *Magna Carta* the matter should be tried by a jury. He made the point that he had asked for a jury in his defence to the claim. In this case, however, there was no need for a trial because the primary judge had found that it was a case fit for summary judgment.

The third point made by the appellant was that the District Court and, I think, this Court, is not a Chapter III Court. The appellant cited many decisions concerning the significance of whether or not a court is a Chapter III Court. That point is not relevant. The District Court plainly had jurisdiction to make the orders which it made.

The fourth point the appellant made was that only a court with jurisdiction in bankruptcy could deal with this matter, presumably a reference to the Federal Circuit Court or the Federal Court. This however is not a matter involving bankruptcy but rather recovery of a debt and real property under a mortgage.

The fifth point the appellant made was that there had not been compliance with requirements of the *Bills of Exchange Act* 1909 (Cth). That argument assumed that the mortgage or the loan agreement or both were a bill of exchange, which is plainly not the case.

The sixth point the appellant made relied upon what was said to be a requirement of s 115 of the Constitution that the currency comprise silver or gold. This is a point which has been found in many decisions to lack any substance.

The notice of appeal sets out a number of other points, including that the primary judge had committed an offence under the *Crimes Act* 1914 by:

> "Sitting in a private capacity without the authority of a court or judge as per Service and Execution Process Act 1992, section 3."

The appellant also argued that he had not given consent:

> "For the matter to be heard, as required by Justices Act 1886, section 23EA(2)(c)."

This is, of course, not a criminal proceeding and those points cannot take the appellant's case anywhere. It is unnecessary to refer to every other ground of appeal by the appellant. They are all similar in not making legal sense. The appeal, on its face, cannot succeed. It has no prospect of success. This is an appropriate case for an order for security for costs.

I will order that today's costs be costs in the appeal.