

COURT OF APPEAL

**MARGARET McMURDO P
MORRISON JA
JACKSON J**

**Appeal No 7422 of 2015
DC No 306 of 2014**

STEPHEN ATIS BOOTHBY

Appellant

v

COMMONWEALTH BANK OF AUSTRALIA

Respondent

BRISBANE

WEDNESDAY, 2 DECEMBER 2015

JUDGMENT

JACKSON J: The respondent applies for an order that the appeal be dismissed. The ground is that the appellant has not complied with an order for security for costs of the appeal. See *Uniform Civil Procedure Rules* 1999, rule 774, paragraph (b). On 15 July 2015, the District Court gave judgment on the respondent's claim as plaintiff against the appellant as defendant and on the appellant's counter-claim against the respondent as defendant by counter-claim. The judgment on the respondent's claim was given under rule 292 of the *Uniform Civil Procedure Rules*. The judgment on the appellant's claim was given under rule 293 of the *Uniform Civil Procedure Rules*.

The substantive orders were that the respondent recover possession of land situation at 315 Meissners Road, Biloela and that the appellant pay the sum of \$522,788.02 to the

respondent. It was also ordered that the appellant pay the respondent's costs of and incidental to the proceeding, including the application for summary judgment, to be assessed on an indemnity basis.

On 29 July 2015, the appellant filed a notice of appeal seeking orders for a stay of the judgment of the District Court, the transfer of the proceeding to "Federal Bankruptcy Court or the Federal Circuit Court" for "the High Court to interpret the conflict of state statute, which is inconsistent with the Constitution and federal statute in their operation" and for judicial review to be conducted "as per *Administrative Decisions (Judicial Review) Act 1977* sections 5, 9, 11 and 18". He also filed a separate application in the appeal seeking the same orders.

On 26 October 2015, this Court ordered that the appellant provide security for the respondent's costs of the appeal in the amount of \$24,000 in a form satisfactory to the registrar by 4 pm on 6 November 2015. In the course of his reasons for judgment on the application for security for costs, Justice Fraser said that:

"The appeal on its face cannot succeed. It has no prospects of success.
This is an appropriate case for an order for security for costs."

The appellant has not provided the security ordered. The appeal, including the application relating to it, are stayed under the order for security for costs.

The question is whether the appeal should be dismissed because of the appellant's non-compliance with the order for security or whether it should be adjourned to a later date to see whether the appellant might yet provide the security ordered. In his oral submissions today, the appellant showed no interest in the latter course. Each case turns on its own circumstances, but in an appropriate case, a proceeding stayed for non-compliance with an order for security for costs may be dismissed. See *Thompson v Robinson* [2005] QCA 387, *Farnell v Penhalluriack* (2010) 29 VR 727, and *Ballard v Brookfield Australia Investments Limited* [2013] NSWCA 82.

In the present case, in my view, the appeal and the application should be dismissed. First, there is no serious question that the proceeding in the District Court or the judgment of that Court went beyond jurisdiction. The appeal to this Court is brought pursuant to section 118 of the

District Court of Queensland Act 1967 (Qld). That section grants a statutory right of appeal from a judgment of the District Court to this Court. This Court has no power on such an appeal to transfer the matter to the Federal Circuit Court. There is no such Court as the Federal Bankruptcy Court.

Equally, this Court has no power on an appeal to transfer a proceeding to the High Court of Australia, let alone make any direction as to how that Court should proceed. Lastly, a judgment of the District Court is not amenable to judicial review under the *Administrative Decisions (Judicial Review) Act 1977 (Cth)*, and this Court is not invested with jurisdiction under that Act. In other words, except for the order sought that there should be a stay of the decision in the District Court, none of the others sought by the notice of appeal or the application is one that this Court can make.

Further, even if it were assumed that the order sought by the appellant in his appeal is to set aside the judgment of the District Court and in lieu thereof to make some other order, none of the grounds of appeal on its face raises any arguable prospect of success, as Justice Fraser held on 26 October 2015. It is unnecessary to further discuss the separate grounds of appeal, including the subgrounds. In my view, the application brought in the appeal should be dismissed. It should also be ordered that the appellant pay the respondent's costs of the appeal and of this application to dismiss the appeal, to be assessed on the indemnity basis.

THE PRESIDENT: I agree.

MORRISON JA: I also agree.

THE PRESIDENT: The orders are that the appeal and the appellant's application are dismissed. The appellant is ordered to pay the respondent's costs of the appeal and the related application and this application on the indemnity basis. A transcript is required and is to be placed on the file. Adjourn the Court.