

COURT OF APPEAL

McMURDO JA

**Appeal No 11958 of 2018
SC No 154 of 2016**

**CHESHIRE CONTRACTORS PTY LTD
ACN 124 700 385**

Respondent/Applicant

v

MARK LANSDOWNE EVERETT

Appellant/Respondent

BRISBANE

THURSDAY, 18 APRIL 2019

JUDGMENT

McMURDO JA: This is an application to dismiss an appeal for want of prosecution. After an 11 day trial, the respondent was given judgment against the appellant in the amount of \$450,493.59. The appellant filed his notice of appeal on 5 November 2018. The respondent applied for security for costs of the appeal on 29 November 2018. Orders were made by consent, requiring the appellant to provide security in the sum of \$60,000, by 7 January 2019. The appeal was stayed pending the provision of that security.

When the security was not provided by the due date, the respondent immediately applied to dismiss the appeal. The appellant sought and was granted an extension of time for the provision of security. In doing so, he relied upon a medical certificate, but dated in 2016, as to his own health condition. The appellant was legally represented at the trial, but is

unrepresented in the appeal. The court listed the respondent's application for hearing on 25 February, to provide the appellant with time to seek legal assistance. On that date, the appellant, still unrepresented, was given an extension of time for the provision of security to 31 March and the amount of the security was increased to \$65,000.

No security has been provided or promised within any particular time, so the respondent again applies for the summary dismissal of the appeal. The appellant has not appeared, either in person or by telephone, for this morning's hearing. It is sufficient to say that correspondence between the registry and the appellant and, as I will mention, the appellant's son, demonstrates an awareness of today's hearing. The registry has recently received communications from the appellant's son advising that the appellant is in poor health, has recently granted power of attorney to the son, and, through him, is seeking an adjournment of the order of eight weeks, so that the son can investigate the case and perhaps arrange, by some means, the provision of security.

But at the same time, it is clear that the appellant is in financial difficulty and cannot presently provide that security and there is no indication of any particular prospect of its provision and, more generally, for the due prosecution of this appeal. In these circumstances, the appeal should be dismissed. The order will be that the appeal is dismissed with costs.