

COURT OF APPEAL

DAVIES JA
McPHERSON JA
WILLIAMS JA

Appeal No S364 of 2001

MAM MORTGAGES LIMITED
(IN LIQUIDATION)

First Plaintiff
(Not a Party to Appeal)

and

MELBOURNE ASSET MANAGEMENT
NOMINEES PTY LTD (IN LIQUIDATION)

Second Plaintiff
(Not a Party to Appeal)

and

CAMERON BROS (A FIRM)

First Defendant
(First Respondent)

and

DAVID ALAN STUART CAMERON

Second Defendant
(Second Respondent)

and

RICHARD WILLIAM CAMERON

Third Defendant
(Third Respondent)

and

DAVID ALAN STUART CAMERON and
WAVERLEY JOHN CAMERON AS EXECUTORS
AND TRUSTEES OF THE ESTATE OF
JOHN WALLACE CAMERON

Fourth Respondent
(Fourth Respondent)

and

HIH CASUALTY & GENERAL INSURANCE LIMITED
(IN LIQUIDATION)

Third Party
(Appellant)

BRISBANE

..DATE 22/02/2002

JUDGMENT

DAVIES JA: This is an application by Richard William Cameron on his own behalf and David Alan Stuart Cameron and Waverley John Cameron as executors and trustees of the estate of John Wallace Cameron.

Respondents to the appeal before us, which is CA No 5364 of 2001, for security for costs against HIH Casualty and General Insurance Limited, provisional liquidators appointed, is the appellant in that appeal.

The appeal or purported appeal is scheduled to be heard with another appeal by the appellant which seems to raise much the same points. This appears to be a notice of appeal and is, on its face, a notice of appeal which appeals against a cost order only, both in the operative part of the appeal indicating the order against which the appeal is sought and in the orders sought.

The order against which the appeal purports to be was made by the Supreme Court on 18 May 2001 and amended by an order of that Court of 24 May 2001. No leave has been obtained from the Judge who made these orders to appeal against them. The orders are, as I have said, relevantly orders as to costs only within the meaning of section 253 of the Supreme Court Act 1995. Accordingly, they are not subject to any appeal except by leave of a Judge who made them. No leave having been obtained the appeal is incompetent.

Mr Taylor, who, as I understand, was not involved in the settlement of the notice of appeal and who has said everything that possibly could be said for the respondent company here and has argued this case very well, has urged upon us that the notice of appeal was originally intended to be not only in respect of a costs order but in respect of a substantive order also and has indicated his clients' intention to seek leave to amend this notice of appeal or perhaps to file a competent notice of appeal against that substantive order.

It is plain that any such appeal is now out of time and in order to succeed in either of those courses a satisfactory explanation would need to be given as to the circumstances and reason for delay. It is impossible to do that today and, accordingly, Mr Taylor, has sought an adjournment of the application before us to a date to be fixed. As I understand it, that application is not opposed by Mr Duffy, for the respondent, subject to an order for costs being made in favour of his client and that, it seems to me, is the appropriate order. I would, accordingly, propose that this application be adjourned to a date to be fixed and that the respondent, HIH, pay the costs thrown away by the adjournment to the applicants.

McPHERSON JA: I agree.

WILLIAMS JA: I agree.

DAVIES JA: The orders are as I have indicated.
