

COURT OF APPEAL

DAVIES JA  
THOMAS JA  
MUIR J

Appeal No 238 of 2000

BRUCE POUNTNEY MILNER (First Plaintiff)

and

ALAN RICHARD TAYLOR (Second Plaintiff)

and

CONETIP PTY LTD (First Defendant)  
(ACN 062 625 469)

and

PALM SPRINGS VILLAGE PTY LTD (Second Defendant)  
NOT PARTY TO APPEAL

BRISBANE

..DATE 11/03/2002

JUDGMENT

DAVIES JA: This purports to be a notice of appeal against judgments delivered in the trial division of the Supreme Court on 20 November 2001 and 13 December 2001.

However the substance of the notice of appeal document indicates that it is only an appeal against orders for costs made on 20 November and 13 December 2001.

The application for leave to appeal appears to be based on the assumption that, because the notice of appeal was filed more than 28 days after the judgment given on 30 November, an extension of time might be necessary.

The only substantive order sought in this purported appeal is that part of the order numbered 4 made by the learned primary Judge concerning the assessment of the appellant's entitlement to recover costs be set aside and that the applicant appellant be entitled to costs not merely on a standard basis, as his Honour ordered, but on an indemnity basis.

The application and appeal is plainly in respect of an order as to costs only within the meaning of section 253 of the Supreme Court Act 1995. Accordingly it cannot be made except by leave of the Judge making the order, and no application having been made to the Judge for leave, the appeal is not competent.

It follows that the application is not either, and I therefore strike out the notice of appeal and the application for leave.

THOMAS JA: I agree.

MUIR J: I agree.

DAVIES JA: The notice of appeal and the application for leave to appeal are both struck out.

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