

[2003] QCA 87

COURT OF APPEAL

McMURDO P

Appeal No 9018 of 2002

JOHN EDMOND WALKER

Appellant/Plaintiff

and

PRIMAC ELDERS LIMITED

Respondent/Defendant

BRISBANE

..DATE 04/03/2003

ORDER

No appearance by or on behalf of the appellant

MR T BOYS (instructed by McCullough Robertson) for the respondent

THE PRESIDENT: This appeal was filed on the 30th of September 2002 and is listed for hearing next week on the 13th of March 2003. The appellant has been slow in progressing this appeal. The undertaking about the record book was filed two days late. The appellant's outline was due on 21 October 2002 and was filed only after two reminder notices and two extensions of time on 17 December 2002. The settled index was due on 9 December 2002 but has never been received despite regular requests from registry staff. The appellant stated that he had not prepared the index believing that an offer to settle that he had made may be accepted by the respondent but that offer was rejected by the respondent.

On 21 February this year the matter was mentioned before me and I made the following orders:

"1. The settled index is to be filed and served within four days of today's date; the record book is to be filed and served within eight days of receipt of the settled index. In the event of non-compliance with these orders the matter is to be listed before me on a date to be fixed by the registrar to show cause why the appeal should not be struck out for want of prosecution."

When the settled index was not filed and served within four days registry staff spoke with the appellant but his mobile phone cut out. Efforts to ring the appellant failed. Later that day registry staff managed to speak by telephone with the appellant who said, "I don't care, I'm sick of the whole thing" and "tell them to do whatever they want to do". Later that day registry staff were able to leave a message on the appellant's home number with a person identifying himself as Col who used abusive language about the legal profession.

That day a letter and facsimile were sent to the appellant at his registered address for service informing him of today's mention at 9.30 a.m. and warning him that the appeal may be struck out. Because the appellant resides in Cairns it was arranged that the hearing would be by way of telephone hearing from the Supreme Court in Cairns. The appellant has not appeared this morning either in Cairns or here in Brisbane.

Mr Boys, I should say to you I propose to dismiss the appeal for want of prosecution. Is there anything you wanted to add at this stage?

MR BOYS: No, your Honour.

THE PRESIDENT: The appellant has been dilatory in progressing this appeal; he has made no effort to comply with my orders of 21 February; he has given no explanation for his non-compliance and nor has he shown why this appeal should not now

be dismissed for want of prosecution under section 43(1)(b) of the Supreme Court of Queensland Act 1991 (Qld).

I order that this appeal is dismissed with costs to be assessed for want of prosecution.

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