

COURT OF APPEAL

McMURDO P

Appeal No 7141 of 2003

SALVATORE DI CARLO

Respondent/Plaintiff

and

DR PHILIP JAMES DUBOIS

Respondent/First Defendant

and

DR PHILIP DUBOIS (MEDICAL)
PTY LIMITED

Respondent/Second Defendant

and

DENNIS RICHARD OSBORNE

Respondent/Third Defendant

and

PHILIP JAMES DUBOIS

Respondent/Third Defendant

and

STEPHEN BENNETT KELLER

Respondent/Third Defendant

and

PIYOOSH KOTECHA

Respondent/Third Defendant

and

GARY EDWARD O'ROURKE	Respondent/Third Defendant
and	
MARK JAMES READY	Respondent/Third Defendant
and	
PETER STOREY	Respondent/Third Defendant
and	
CHARLES BRUCE LEIBOWIZ	Respondent/Third Defendant
and	
PETER CHARLES LUSH	Respondent/Third Defendant
and	
NICHOLAS DAUNT	Respondent/Third Defendant
and	
DAVID ALEXANDER NOBLE	Respondent/Third Defendant
and	
PETER FERGUS LEGH	Respondent/Third Defendant
and	
QUEENSLAND X-RAY SERVICES	Respondent/Third Defendant
and	
DR MICHAEL CORONEOS	Appellant/Fifth Defendant

BRISBANE

..DATE 31/10/2003

ORDER

MR COOK for the appellant

MR SIVIA for the defendants

THE PRESIDENT: The position is this. The Notice of Appeal in this matter was filed on the 14th of August 2003 and to date the appellant has not completed any stages of the case management of the appeal. His outline was due to be filed on the 4th of September 2003. It has not been filed despite three reminder letters being sent to him by the Court.

On the 2nd of October 2003 he advised that he did not intend to continue with the appeal. He was provided with the form of a Notice of Agreement to Dismissal of the Appeal and, whilst he completed and returned that form, it was only signed by him and not by the other parties.

On the 8th of October 2003 he was advised that the signature of the respondents would also be required. He has made no further contact with the registry until the 29th of October, this week, when he again advised that he did not wish to continue with the appeal. The registry advised him that it was usual, where an appellant discontinues an appeal, for an audit for costs to be made in favour of the respondents and that if he wished to contest the making of a costs order against him then he should attend the mention of the matter.

He has been advised that the matter would be mentioned today at 9.30 a.m. He has not appeared. In the circumstances, I

propose to strike out the appeal for want of prosecution with costs to be assessed.

...

THE PRESIDENT: In the circumstances it is unfortunate that the appellant did not simply obtain the written consent of the other parties which would have saved the respondents from appearing today. But, although this was clearly explained to him by the registry and apparently by the respondent Dr Dubois and the related respondents' solicitors, he did not do so, so, in the circumstances, a costs order must be made against him.

I order that this appeal be struck out for want of prosecution and that the appellant pay the costs of and incidental to the appeal, including the costs of today's mention, to be assessed.
