

COURT OF APPEAL

McMURDO P

Appeal No 8516 of 2003

BARRY COCKRAM

Respondent (Plaintiff)

and

MARTIN RUSSELL

Appellant (Defendant)

BRISBANE

..DATE 05/03/2004

ORDER

THE PRESIDENT: This appeal was filed on 25 September 2003 against an order made by a Supreme Court Judge on 28 August 2003. The appeal is listed for 13 April 2004. It was last mentioned on 6 February this year because of the appellant's non-compliance with the requirements to provide the record book. At that mention, despite objection from the respondents, as I recall, the appeal was delisted from 4 March 2004 and the appellant was ordered to comply with directions issued by the Senior Deputy Registrar.

On 6 February 2004 those directions were issued and they required the appellant to provide a settled index by 18 February 2004 and a record book by 3 March 2004. Neither direction was met.

On 17 February the appellant contacted the Registry to advise he was sending the index to the Registry by registered post. He was advised the index must be settled with the respondent and that he should first send it to them. After some resistance he agreed to send it to the respondent's solicitors' town agents.

On 20 February 2004 the respondent's solicitors advised that they required the addition of six documents. The Registry advised the appellant of that requirement and the need for those documents to be inserted in the correct place in the index. The appellant has refused to follow that direction and also refused to follow a further direction that the volume size of the record book not exceed 30 millimetres. He wants

one volume to be about 300 pages and another about 600 pages which well exceeds that limit and it means that the record books are likely to fall apart and become cumbersome and difficult to use during the hearing of the appeal.

Now the parties have been advised that the appeal is listed for mention today at 9.30 a.m. Obviously, the respondents have notice of that because they are here. A letter was sent by express post to the address for service and should have arrived at the address for service, which unfortunately is only a post office box, yesterday, so there is no excuse for the appellant not being here today even though it may be that he is not aware of it. Unfortunately, there is no fax or other direct means of communication.

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THE PRESIDENT: The appellant has been consistently lacking in diligence in the progression of this appeal and has refused to comply with the directions given by the Senior Deputy Registrar of Appeals and that has necessitated this mention again today. The matter has already been delisted from hearing once.

In the circumstances, it is appropriate that I make the following orders:

(1) I direct that the appellant prepare, file and serve a record book in terms of the index settled by the Senior Deputy Registrar (Appeals) in a form consistent with the requirements of the practice direction and the Court of Appeal guidelines by 4 p.m. on Thursday 18 March 2004. If the appellant fails to comply with that order the appeal is to be struck out with costs for want of prosecution without further order of this Court.

The appellant is to pay the costs of and incidental to today's hearing.

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