

COURT OF APPEAL

McMURDO P

Appeal No 1453 of 2004

ORRCON PTY LTD

Respondent/Plaintiff

v.

SPACERACK PTY LTD

Not party to appeal/First Defendant

and

DENIS O'HAIRE

First Applicant/Second Defendant

and

ROBERT GORDON SEALEY

Second Applicant/Third Defendant

and

ROMUALD AMBROSE

Third Applicant/Fourth Defendant

BRISBANE

..DATE 23/04/2004

ORDER

THE PRESIDENT: The background of the matter, as I understand it, is this. An application for an extension of time to appeal from a Supreme Court order was filed on 12 February 2004. The Supreme Court order was made on 11 June 2003. The application is listed for hearing on 4 May 2004.

Shortly after the application was filed the applicants advised that they would like the appeal determined at the same time as the extension application and that they would provide a record book instead of a paginated bundle. Whether that occurs, of course, will be a matter for the Court hearing the extension of time application, if the matter gets that far.

A timetable letter was issued by the Registry as to the preparation of the record book and outlines on 18 February 2004. That timetable required that the settled index be lodged by 6 April 2004 and a record book be filed and served by 15 April 2004. The applicants have not complied with either of those timelines, which is most concerning because the matter is listed for hearing very shortly, on 4 May 2004.

A further very relevant fact is that on 27 January 2004, the applicant successfully had the judgment of 11 June 2003 stayed for two months upon their undertaking to file their application in this Court and to prosecute it and any appeal diligently. On 29 March 2004, by consent, that stay was extended to 4 May 2004, the date of the hearing of the application in this Court.

The respondent's affidavit material establishes that the delay in prosecuting this application has not been contributed to by any fault of the respondent and that material has not been contradicted by any material filed by the applicants. The respondent argues that the applicants, in the circumstances, are in breach of their undertaking to the Supreme Court to prosecute this matter diligently and submits that the application should be dismissed for want of prosecution.

...

THE PRESIDENT: In the circumstances set out by me above, the only conclusion is that the applicant is, indeed, in breach of its undertaking to the Supreme Court to prosecute this matter diligently. They have not done so and in this circumstances the application for an extension of time should be struck out for want of prosecution with costs to be assessed, and I so order.

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