

COURT OF APPEAL

McMURDO P

Appeal No 3709 of 2002

BURRAWONG INVESTMENTS PTY LTD
(ACN 000 211 503)

Respondent/Plaintiff

and

ALBERT HUGH LINDSAY

First Appellant/First Defendant

and

DELMA RUTH LINDSAY

Second Appellant/Second Appellant

BRISBANE

..DATE 23/08/2002

ORDER

THE PRESIDENT: This appeal was filed on 23 April 2002. The appellants' legal representatives applied for and were granted leave to withdraw on 1 July 2002. The settled index and record book were not filed within the time provided in the program for progressing the appeal.

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The appellants have informed the Registry that the appeal is not proceeding. They have been informed of today's hearing and have not appeared. The respondent has filed an application for an order that the appeal be dismissed for want of prosecution and requesting indemnity costs.

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The reason for their request for indemnity costs is because, in affidavit material before this Court which was served on the appellants, the solicitor deposes to a conversation with one of the appellants telling him that the appeal was filed to delay and give him time to try to find the money with his associate Chris Smith to pay the respondent.

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In those circumstances, it seems on balance, and in the absence of any other explanation, that this appeal was filed merely for the purposes of delay and such a course is an abuse of process and in those circumstances the respondent is entitled to the indemnity costs he seeks. I order that the appeal be dismissed for want of prosecution and that the appellants pay the respondent's costs of and incidental to the appeal on the indemnity basis.

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ORDER