

COURT OF APPEAL

McMURDO P
WILLIAMS JA
ATKINSON J

Appeal No 11143 of 2001

FREDERICK JAMES MATHESON AS TRUSTEE
FOR THE MATHESON FAMILY TRUST TRADING
AS TRACTOR RENTALS QLD AND FREDERICK
JAMES MATHESON

Applicant

and

QUIN DEVELOPMENTS PTY LTD
(A.C.N. 058 884 594) AS TRUSTEES FOR
THE QUIN FAMILY TRUST TRADING AS
AUSTRALIAN MACHINERY TRADERS

Respondent

BRISBANE

..DATE 12/09/2002

JUDGMENT

THE PRESIDENT: This is an application to dismiss the appeal for want of prosecution.

The appeal was filed on the 19th of December 2001 against a judgment delivered in the District Court on 21 November 2001. The appellant has consistently failed to meet the timetable set for the progress of this appeal, both by the Registrar and by me in directions.

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The appellant is a party personally and also as a trustee for the Matheson Family Trust.

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The Registry has been advised that the appellant was declared bankrupt on 20 May 2002. The Registrar advised the trustee in bankruptcy of the mention of this matter before me on 6 June 2002. The trustee in bankruptcy advised the Registrar that the appeal by Mr Matheson in his own capacity is stayed until the trustee makes a decision to continue the appeal. Material filed today indicates that the trustee in bankruptcy does not wish to continue the appeal. Therefore, the appeal brought by Mr Matheson in his own right should be struck out.

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As to the appeal brought by Mr Matheson as trustee for the Matheson Family Trust, because the trust deed has not been produced to the Court, it is not entirely clear what effect the bankruptcy has on that trusteeship, but in any case, Mr Matheson as trustee for the Matheson Family Trust, has not progressed this appeal as he should and has, as I have said,

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not followed the directions of the Registrar, nor the directions of this Court.

On the last occasion when it was mentioned on the 6th of June, I said that if the directions were not complied with, the appellant was to show cause why the matter should not be struck out for want of prosecution. He has not demonstrated why the matter should not be struck out for want of prosecution; the applicant has demonstrated, in the circumstances, the matter should be struck out for want of prosecution.

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I would order that the appeal, both brought by Mr Matheson personally and as trustee for the Matheson Family Trust, should be struck out for want of prosecution, with costs to be assessed.

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WILLIAMS JA: I agree.

ATKINSON J: I agree.

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THE PRESIDENT: That's the order of the Court.

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