

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL AND EQUITY DIVISION
COMMERCIAL LIST

F.5382
No. 2115 of 2001

BETWEEN:

**ANSETT AUSTRALIA GROUND STAFF SUPERANNUATION PLAN PTY LTD
(ACN 065 590 178) (as Trustee of the Ansett Australia Ground Staff
Superannuation Plan) AND ANOTHER**

Plaintiffs

and

**ANSETT AUSTRALIA LIMITED (subject to deed of company arrangement)
(ACN 004 209 410) AND OTHERS**

Defendants

AFFIDAVIT OF MARK ANTHONY KORDA

Date of document: 2/ June 2002

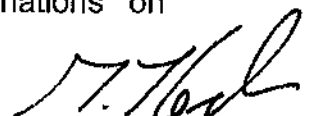
Filed on behalf of: the first and second defendants

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I, **MARK ANTHONY KORDA** of Level 25, 367 Collins Street, Melbourne, in the State of Victoria, Accountant, **MAKE OATH AND SAY:**

- 1 I am an Official Liquidator of the Supreme Court of Victoria, a Member of the Institute of Chartered Accountants in Australia, and a Member of the Insolvency Practitioners Association of Australia. Since 15 April 2002, I have been a director of Korda Mentha & Colleagues Pty Ltd of Level 25, 367 Collins Street, Melbourne. Prior to that I was a partner of the firm of Andersen, Chartered Accountants of 360 Elizabeth Street Melbourne. Save where I say to the contrary, the matters deposed to in this affidavit are deposed to from my own knowledge of the facts. Where I swear to matters from information or belief, I verily believe those matters to be true.
- 2 On 17 September 2001, Mark Francis Xavier Mentha and I were appointed by order of the Federal Court as voluntary administrators of Ansett Australia Limited ("Ansett"). Those appointments followed the resignations on



17 September 2001 of Peter Hedge, Greg Hall and Allan Watson as voluntary administrators of Ansett. Messrs. Hedge, Hall and Watson ("the First Administrators") had been appointed voluntary administrators of Ansett on 12 September 2001.

- 3 Mark Mentha and I were also appointed as voluntary administrators of a number of other companies in a group known as the "Ansett Group". Now produced and shown to me marked "MAK 1" is a list of the companies over which we were so appointed.
- 4 Ansett entered into a deed of company arrangement on 2 May 2002. A copy of that deed is document number 7.1.30 in the plaintiffs' index of documents. Mark Mentha and I are the deed administrators.

Financial Position of Ansett

- 5 An estimate of the Ansett Group's financial position on a consolidated basis is set out in the Second Report by Administrators dated 15 March 2002 a copy of which is numbered 7.1.130 in the plaintiffs' index of documents.
- 6 The financial position of Ansett as at 12 September 2001 (the day the administration commenced) according to its financial records, showed that it had a deficiency of assets over liabilities of \$106,018,000 (that is total liabilities exceeded total assets by that amount). Ansett's assets and liabilities according to its financial records as at 12 September 2001 are set out in Appendix 8 to our First Creditors' Report, a copy of which is document numbered 7.1.12 in the plaintiffs' index of documents.

Airline Closure & Ansett kick-start

- 7 The First Administrators of Ansett ceased all Ansett Group flight operations on 14 September 2001.




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7.1.120
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- 8 Within a short time of our appointment on 17 September 2001 Mark Mentha and I decided in accordance with the objects of Part 5.3A that to maximise the chances of Ansett's business continuing in existence, we needed to recommence the airline flying on the major domestic passenger and cargo routes albeit on a reduced basis. Less staff were needed for the reduced business. The process of re-commencement of flights were referred to as "Ansett Kick Start".

Staff reductions by administrators

- 9 I believed, from my discussions with a number of representatives of Ansett employees in September and October 2001, that some employees would prefer to stay with Ansett and some would prefer to leave. Mark Mentha and I therefore invited employees to apply for redundancies.
- 10 I am informed by Mark Mentha and believe that by letters dated 17 October 2001 from Mark Mentha to most Ansett employees, we invited the employees to apply for redundancy. (There were some groups of employees, such as some call centre staff, that were not invited to apply for redundancy as we had decided that their positions were to be terminated. There were some other key staff that we wished to retain and, accordingly, we did not send the letter to them.) The pro forma of those letters is document number 3.1.60 in the plaintiffs' index of documents.
- 11 The redundancy entitlements as set out in the 17 October 2001 letter were determined in consultation with the ACTU and unions.
- 12 The redundancy payment entitlements set out in the 17 October 2001 letter, reflect the payments (but not other benefits) provided for in the Collective Bargaining Agreement (which is document number 4.2.470 in the plaintiffs' index of documents). (Management staff were subject to different arrangements but those personnel were not members of the Ground Staff Plan).



13 Paragraph (g) on page 3 of the 17 October 2001 letter stated:

"Your benefits under the relevant superannuation scheme are separate to these proposed arrangements. If your application for redundancy is accepted, your fund will supply you with details of your superannuation entitlements."

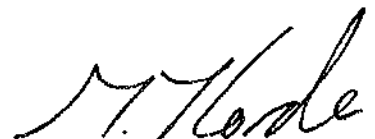
14 The letters referred to in paragraphs 10 were not intended to be a declaration for the purposes of Rules 1.1 and 1.13 of the Ground Staff Plan. At the time, I was not personally aware of Rules 1.1 and 1.13.

15 Since the commencement of the administration, Ansett has been sending, on a weekly basis, to NSP Buck (the administrators of the Ground Staff Plan) a list of the Ansett staff whose employment has been terminated. The Ansett list does not identify whether the employee is a member of one plan or another.

16 The Ansett payroll and remuneration system does record, with respect to each employee, the employee's superannuation scheme, but that system is not linked to the Ansett system that generates the list of terminated employees. A manual employee by employee check against the payroll and remuneration system would be required to establish which members of each fund have had their employment terminated.

17 I am informed by Janet Belleli of Arnold Bloch Leibler and believe that a record of NSP Buck (being document 7.1.110 in the plaintiffs' index of documents) shows that of the 8,663 members of the Ground Staff Plan, 4,734 members applied for redundancy and 4,569 of those members were made redundant.

18 The redundancies made since my appointment are a consequence of Ansett's insolvency and decisions made by Mark Mentha and me in our capacities as voluntary administrators and deed administrators. They were



not made "pursuant to" any business recovery program established prior to our appointment.

19 Since 17 October 2001, Mark Mentha and I have decided from time to time, with the assistance of our staff, which employment positions are no longer required. A number of employees' positions have been terminated compulsorily as a result of those decisions and employees have been advised accordingly.

20 The Ansett mainline business was sold subject to a number of conditions to an entity associated with Mr Lindsay Fox and Mr Solomon Lew named Tesna Pty Ltd on 8 November 2001. The sale was not completed. Tesna withdrew from completion on about 26 February 2002. If that sale had completed, about 3,000 employees would have "transferred" to a new entity. When it became clear that the sale to Tesna Pty Ltd would not complete further terminations occurred.

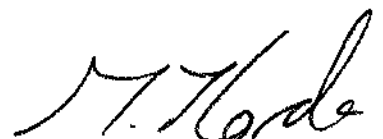
21 As we decided that employment positions were no longer required, I am informed by Mark Mentha and believe that he wrote to the Ansett employees advising them that their positions were no longer required, and that their employment would conclude by reason of redundancy. Mark Mentha's letters followed one of a number forms. The pro formas of these letters are numbered 3.2.40, 3.2.42, 3.2.44, 3.2.57, 3.2.59, 3.2.60, 3.2.70 and 3.2.80 in the plaintiffs' index of documents.

22 As to superannuation benefits, the letters contained the following clauses:

22.1 In document 3.2.40:

"Your benefits under the relevant superannuation scheme are separate to these arrangements and your fund will supply you with details of your superannuation entitlements."

22.2 In documents 3.2.42, 3.2.44, 3.2.57, 3.2.59, 3.2.70, 3.2.80 and 3.2.90:



"Your benefits under the relevant superannuation scheme are separate to these proposed arrangements and your fund will supply you with details of your superannuation entitlements."

Document 3.2.60 does not refer to superannuation benefits.

- 23 Attached to two of the series of letters (documents 3.2.42 and 3.2.44) is a document headed "Frequently asked questions". Question 24 in each of the attachments is the following:

"Can I access my superannuation benefit?"

The answer:

"Your superannuation fund will be able to provide you with more details in relation to your superannuation entitlements."

- 24 The letters referred to in paragraph 21 were not intended to be a declaration for the purposes of Rules 1.1 and 1.13 of the Ground Staff Plan.

- 25 In relation to those employees who did not apply for redundancy and whose positions were made redundant, these redundancies were also a consequence of Ansett's insolvency and decisions Mark Mentha and I have made as administrators. They are not redundancies "pursuant to" any prior business recovery program.

No declaration for the purposes of the Ground Staff Plan

- 26 Neither I nor Mark Mentha have made declarations of retrenchment for the purposes of Rule 1.1 and 1.13 of the Ground Staff Plan. We believe that to do so would be contrary to the interests of Ansett and to the interests of its creditors as a whole. This is because of the risk that such a declaration might have the affect of increasing Ansett's liabilities in circumstances where Ansett is already insolvent.




SWORN by MARK ANTHONY KORDA)
at Melbourne in the State of Victoria on)
21 June 2002)

M. Korda

Before me:

[Signature]

Print name:

JOHN STATHAKOPOULOS
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A CURRENT PRACTITIONER
UNDER LEGAL PRACTICE ACT
1996