

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
BEFORE THE COURT OF APPEAL
CIVIL DIVISION**

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)**

Appellant

and

**ANSETT AUSTRALIA LIMITED (Subject to
Deed of Company Arrangement)
(ACN 004 209 410) & ORS**

Respondents

CERTIFICATE IDENTIFYING EXHIBIT

This is the exhibit marked 'RNF-6' now produced and shown to **ROSS NORMAN FREEMAN** at the time of swearing his affidavit on 6 June 2003.

before me

Annabelle Mann
.....

ANNABELLE LYN MANN
525 Collins Street, Melbourne
A current practitioner within the
meaning of the Legal Practice Act 1996

**'RNF-6' copy of
Authenticated Order of
Justice Warren dated 20
February 2003.**

Filed on behalf of the appellant

MINTER ELLISON
Lawyers
Rialto Towers
525 Collins Street
MELBOURNE VIC 3000

DX 204 MELBOURNE
Telephone (03) 8608 2000
Facsimile (03) 8608 1000
Reference RNF 30-4185285

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

F.5382

No. 2115 of 2001

B E T W E E N:

ANSETT AUSTRALIA GROUND STAFF SUPERANNUATION
PLAN PTY LTD (A.C.N. 065 590 178) (as Trustee of the ANSETT
AUSTRALIA GROUND STAFF SUPERANNUATION PLAN) and
ANSETT AUSTRALIA PILOTS/MANAGEMENT
SUPERANNUATION PLAN PTY LTD (A.C.N. 065 590 043)
(as Trustee of the ANSETT TRANSPORT INDUSTRIES
LIMITED PILOTS/MANAGEMENT SUPERANNUATION PLAN)

Plaintiffs

- and -

ANSETT AUSTRALIA LIMITED (Subject to Deed of Company Arrangement)
(A.C.N. 004 209 410) and others (according to the schedule attached)

Defendants



GENERAL FORM OF ORDER

JUDGE: The Honourable Justice Warren

DATE MADE: 20 February 2003

ORIGINATING PROCESS: Originating Motion Between Parties

HOW OBTAINED: Pursuant to Rule 59.07 of the *Supreme Court (General Civil Procedures) Rules 1996*.

ATTENDANCE: Mr. D. McLean of Counsel for the Plaintiffs.
Mr. L. Zweir, the Solicitor for the First and Secondnamed Defendants.
Mr. A. Cox of Counsel for the Thirdnamed Defendant.
Mr. A. Stops, the Solicitor for the Fourthnamed Defendant.

OTHER MATTERS:

1. The reasons for the judgment in the proceeding were delivered on 20 December 2002.
2. The Court file does not disclose the filing of a fourth amended originating motion as intended by the Plaintiffs.
3. A fourth amended originating motion is necessary to reflect the parties before the Court at the time of delivery of the judgment on 20 December 2002.

4. The solicitors for the Plaintiffs have provided the Court with a proposed form of the fourth amended originating motion to which all parties to the proceeding consent to the filing of.

THE COURT ORDERS THAT:

1. The Plaintiffs have leave nunc pro tunc to file and serve a fourth amended originating motion in the form annexed to this order.

DATE AUTHENTICATED: 24 March 2003

SRM: 24/03/03
8510
54
11299
19741



SCHEDULE OF PARTIES

F.5382

No. 2115 of 2001

BETWEEN:

ANSETT AUSTRALIA GROUND STAFF
SUPERANNUATION PLAN PTY LTD (A.C.N. 065 590 178)
(as Trustee of the ANSETT AUSTRALIA GROUND STAFF
SUPERANNUATION PLAN)

Firstnamed Plaintiff

ANSETT AUSTRALIA PILOTS/MANAGEMENT
SUPERANNUATION PLAN PTY LTD (A.C.N. 065 590 043)
(as Trustee of the ANSETT TRANSPORT INDUSTRIES
LIMITED PILOTS/MANAGEMENT SUPERANNUATION PLAN)

Secondnamed Plaintiff

- and -

ANSETT AUSTRALIA LIMITED
(Subject to Deed of Company Arrangement)
(A.C.N. 004 209 410)

Firstnamed Defendant

MARK FRANCIS XAVIER MENTHA and
MARK ANTHONY KORDA

Secondnamed Defendants

RUSSELL THOMAS BOOTH

Thirdnamed Defendant

WAYNE STEVEN CLARKE

Fourthnamed Defendant



BETWEEN

ANSETT AUSTRALIA GROUND STAFF SUPERANNUATION PLAN PTY LTD
ACN 065 590 178 (as trustee of the Ansett Australia Ground Staff Superannuation
Plan) and ANSETT AUSTRALIA PILOTS/MANAGEMENT SUPERANNUATION PLAN
PTY LTD ACN 065 590 043 (as trustee of the Ansett Transport Industries Limited
Pilots/Management Superannuation Plan)

Plaintiffs

and

ANSETT AUSTRALIA LIMITED (~~administrators appointed subject to deed of company
arrangement~~) (ACN 004 209 410) AND OTHERS ACCORDING TO THE SCHEDULE
ATTACHED

Defendants

FOURTH AMENDED ORIGINATING MOTION BETWEEN PARTIES
Amended pursuant to the order of the Honourable Justice Warren
made on 19 August 2002

Date of document 20 February 2003

Filed on behalf of the plaintiffs

Prepared by
MINTER ELLISON
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Rialto Towers
525 Collins Street
MELBOURNE VIC 3000

Solicitors Code 8510
DX 204 MELBOURNE
Telephone (03) 8608 2642
Facsimile (03) 8608 1000
Reference JFA RNF 30-4185285
Ross Freeman

TO THE DEFENDANTS

TAKE NOTICE that this proceeding by originating motion has been brought against you by the
plaintiffs for the relief or remedy set out below.

IF YOU INTEND TO DEFEND the proceeding you must attend before the Court at the time
and place named in the summons served with this originating motion.

FILED

Prothonotary

THIS ORIGINATING MOTION is to be served within one year from the date it is filed or within such further period as the Court orders.

REMEDIES AND RELIEF SOUGHT BY THE PLAINTIFFS

The plaintiffs seek the following remedies and relief:

Answers to the following questions, declarations and orders.

1. Are all or any of the members of the Ansett Australia Ground Staff Superannuation Plan (*Ground Staff Plan*) who have been made redundant by the administrators (*Administrators*) of Ansett Australia Limited (*Ansett*) since 12 September 2001 entitled to retrenchment benefits under rule 1.13 of the First Schedule to the Ground Staff Plan's Trust Deed dated 17 August 1999 made between Ansett and Ansett Australia Ground Staff Superannuation Plan Pty Ltd?
2.
 - (a) Have there been retrenchments of members for the purposes of the Ansett Transport Industries Limited Pilots/ Management Superannuation Plan so as to entitle them to retrenchment benefits under Rule 1.11(a) of Schedule 1 or Rule 2.12(1) of Schedule 2 to the said Plan's Trust Deed Dated 10 April 1991 made by Ansett (as amended), pursuant to letters dated 17 October 2001 and 9 November 2001 sent by the Administrators to employees of Ansett who are members of the said Plan?
 - (b) Have there similarly been retrenchments mutatis mutandis of all other members of the said Plan who have ceased service with Ansett on account of redundancy at all other times since 13 September 2001, other than pursuant to the said letters?
3. *Not used*
4. Are the Administrators:
 - (a) entitled; or
 - (b) obliged

to give any necessary declarations so as to entitle members who have been made redundant since 12 September 2001 to retrenchment benefits under Rule 1.13 of the First Schedule to the Ground Staff Plan's Trust Deed dated 17 August 1999?

5. Are the Administrators:

(a) entitled; or

(b) obliged

(i) to give any necessary declarations under the Ansett Transport Industries Limited Pilots/Management Superannuation Plan so as to entitle members to retrenchment benefits under Rule 1.11(a) of Schedule 1 or Rule 2.12(1) of Schedule 2 to the Plan's Trust Deed dated 10 April 1991 pursuant to letters dated 17 October 2001 and 9 November 2001 sent by the Administrators to employees of Ansett who are members of the said Plan?

(ii) to give any necessary declarations as aforesaid in respect of all other members of the said Plan who have ceased service with Ansett on account of redundancy at all other times since 13 September 2001, other than pursuant to the said letters?

6. *Not used*

7. Are the plaintiffs each entitled to determine as Trustee under their respective said Plans that the said members who have been made redundant since 12 September 2001 are entitled to receive retrenchment benefits as described above?

8. Should there be a declaration by the Court itself of a reduction of staff for the purposes of the Rules of the Ground Staff Plan so as to entitle those members of the Defined Benefit Section who were made redundant after

12 September 2001 to retrenchment benefits under Rule 1.13 of the First Schedule?

9.

(a) A declaration by the Court itself for the purposes of the Rules of the Defined Benefit Section for Pilots in the Ansett Transport Industries Limited Pilots/Management Superannuation Plan, in relation to members who ceased service pursuant to the said letters of 17 October 2001 and 9 November 2001, as follows:

- (i) a declaration by the Court of a reduction of staff for the purposes of the said Rules;
- (ii) a declaration by the Court for the purposes of the said Rules that the members ceased to be in their Employer's Service on account of retrenchment as the result of a re-organization or re-arrangement of staff for business policy reasons.

(b) Declarations as aforesaid in respect of all other members of the Defined Benefit Section for Pilots who ceased service with Ansett on account of redundancy at all other times since 13 September 2001, other than pursuant to the said letters.

10.

(a) A declaration by the Court itself of a reduction of staff for the purposes of the Rules of the Defined Benefit Section of the Ansett Transport Industries Limited Pilots/Management Superannuation Plan for Executive Managers, in relation to members who ceased service pursuant to the said letters of 17 October 2001 and 9 November 2001.

(b) A declaration as aforesaid in respect of all other members of the Defined Benefit Section for Executive Managers who ceased

service with Ansett on account of redundancy at all other times since 13 September 2001, other than pursuant to the said letters.

11. *Not used*

11A. Is Regulation 7(c) of the Regulations for the Ansett Transport Industries Ltd Pilots' Superannuation Plan comprised in the Deed made 9 July 1973 by Ansett Transport Industries (Operations) Proprietary Limited now valid and in force for the purposes of the Defined Benefit Section for Pilots of the Ansett Transport Industries Limited Pilots/Management Superannuation Plan?

12. Declarations as to whether Ansett is obliged to make further contributions, and if so what further contributions, to:

- (a) the Ground Staff Superannuation Plan;
- (b) the Ansett Transport Industries Limited Pilots/Management Superannuation Plan.

13. In the event that Ansett is not under any obligation to make further contributions to the said Plans:

- (a) does it have a power to make further contributions?
- (b) is that power exercisable by the Administrators?
- (c) can the Court compel any such power under (a) or (b) to be exercised?
- (d) can the Court compel the power to be exercised in a particular way?
- (e) can the Court exercise such a power itself?
- (f) if the answer to (c) and (d) is yes, an order compelling the exercise of such power so as adequately to fund the payment of benefit entitlements under the said Plans, as required.

- (g) if the answer to (e) is yes, an order exercising the power so as adequately to fund the payment of benefit entitlements under the said Plans, as required.
14. Declarations as to whether any such further contribution is:
- (a) an expense within the meaning of s 556(1)(a) of the Corporations Act 2001 (*Act*).
 - (b) a debt within the meaning of s 556(1)(c) of the Act.
 - (c) an expense within the meaning of s 556(1)(dd) of the Act.
 - (d) a superannuation contribution within the meaning of s 556(1)(e) of the Act.
15. An order appointing the third defendant to represent all members of the Ground Staff Plan who have been made redundant since 12 September 2001.
16. An order appointing the fourth defendant to represent members of the Ground Staff Plan who were members as at 12 September 2001, and who have not subsequently been made redundant.
17. Orders as to costs and any other necessary or further orders.

Dated: 20 February 2003

Muster Ellison

Solicitors for the plaintiffs

1. Place of trial: Melbourne

2. This originating motion was filed for the plaintiffs by Deacons, solicitors, of 385 Bourke Street, Melbourne, Victoria.

3. The address of the plaintiffs is 333 Collins Street, Melbourne, Victoria.

4. The address for service of the plaintiffs is c/- their solicitors, Deacons of 385 Bourke Street, Melbourne, Victoria.

5. The addresses of the defendants are:

First defendant: 501 Swanston Street, Melbourne, Victoria.

Second defendants: Level 35, The Tower, Melbourne Central, 360 Elizabeth Street, Melbourne, Victoria.

Third defendant: 40 Trethowan Avenue, West Melton, Victoria.

Fourth defendant: 4 Fortescue Avenue, Seaford² Wanaka
Drive, Taylors Lakes, Victoria.

SCHEDULE OF PARTIES

Ansett Australia Ground Staff Superannuation Plan Pty Ltd
(ACN 065 590 178) (as trustee of the Ansett Australia Ground Staff
Superannuation Plan) First plaintiff

Ansett Australia Pilots/Management Superannuation Plan
Pty Ltd (ACN 065 590 043) (as trustee of the Ansett Transport Industries
Limited Pilots/Management Superannuation Plan) Second plaintiff

Ansett Australia Limited (Administrators Appointed) (ACN 004 209 410) First defendant

Mark Francis Xavier Mentha and Mark Anthony Korda Second defendants

Russell Thomas Booth Third defendant

~~James Herbert Hennessy Wayne Steven Clarke~~ Fourth defendant

DATED 20 February 2003

Munder Ellison

Solicitors for the plaintiffs