

1 COMMERCIAL LIST - DIRECTIONS HEARING

2 IN THE SUPREME COURT OF VICTORIA

3 COURT 1 OLD HIGH COURT

4 BEFORE THE HONOURABLE JUSTICE WARREN

5 FRIDAY 22 MARCH 2002

6 ANSETT AUSTRALIA GROUND STAFF SUPERANNUATION PLAN PTY LTD & ORS

7 v

8 ANSETT AUSTRALIA LTD & ORS

9 F5382

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12 MR J.K. SANTAMARIA with MR D. McLEAN APPEARED ON BEHALF OF THE
13 PLAINTIFFS.

14
15 MR S. WHELAN QC with MR T.J. WALKER APPEARED ON BEHALF OF THE
16 FIRST AND SECOND DEFENDANTS.

17 MR A. ROBINS APPEARED ON BEHALF OF THE THIRD DEFENDANT.

18 MR C.C. MACAULEY APPEARED ON BEHALF OF THE FOURTH DEFENDANT.

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21 HER HONOUR: Are you ready to proceed, Mr Santamaria?

22 MR SANTAMARIA: We are, Your Honour. And Your Honour, we have
23 supplied to your Associate a pro forma draft minutes of
24 orders. Does Your Honour have that?

25 HER HONOUR: Yes I have, but I have not had the opportunity to
26 read the minutes, Mr Santamaria.

27 MR SANTAMARIA: No, I - can I just - before you start reading
28 make some sort of macro amendments to them. Would Your
29 Honour please delete No. 1, because that's not necessary
30 and could you delete No. 8 which deals with the ACTU and
31 Mark Wallan. And could you delete No. 11, that's ACTU and
32 Mark Wallan. What has happened, Your Honour, when we came
33 before you at an earlier directions hearing the ACTU sort
34 of declared a sort of an interest, it puts its toe in
35 water but didn't become a party, and Mr Wallan turned up

1 and put his toe in the water to represent unsecured
2 creditors. Our understanding is now that the
3 administrators see no difficulty in their representing the
4 interest of unsecured creditors. The ACTU's not here and
5 therefore Mr Wallan's unnecessary. So we've agreed to
6 take out the references to the ACTU.

7 The second thing is, the art in this - if there is
8 art - is that you didn't tell us that there were two
9 blocks of time available. One was in June and one was in
10 July, and this set of minutes is focused on a start date
11 in July, and that appears - - -

12 HER HONOUR: Is that agreed among the parties?

13 MR SANTAMARIA: We are agreed that it should start in July
14 rather than June and - - -

15 HER HONOUR: Well, I have to reserve the date, await the
16 parties position of 15 July and I still would be disposed
17 to fix the matter on that day.

18 MR SANTAMARIA: Yes. The 15 July is a Monday - never a good
19 day to start a case, Your Honour. It's also the first day
20 back after a break - - -

21 HER HONOUR: Well, Mr Santamaria, the block of time I had
22 allowed was until 25 July, so as long as you can finish in
23 that period between 15 to 25 July - and I can even sit on
24 the Friday afternoon of 26 July, all going well, so it is
25 that two week block, but it starts to call difficulties if
26 you run over that.

27 MR SANTAMARIA: The 16 July - - -

28 HER HONOUR: Yes, well as long as the parties understand that
29 it needs to finish by the 26th at the latest. Now, I will
30 fix it on 26 July. Do I take it then that in paragraph
31 12, the date, 16 July should be inserted - - -

1 MR SANTAMARIA: So 12 becomes the 16th, but the other little
2 bit in this that we've put, we've got a directions hearing
3 on 14 June. The 14 June is a Friday and we expect it to
4 be one of your directions days, and that's just put in
5 there out of an abundance of caution. Everything should
6 have finished by then, but we've put it in, maybe that we
7 can adjourn it by consent if things are going smoothly,
8 Your Honour.

9 HER HONOUR: Yes, certainly, I'm quite content to embark on
10 that course.

11 MR SANTAMARIA: Now, you've got a blank document in front of
12 you, but can I still use the paragraph numbers of this, so
13 we know what we're talking about. No. 2, plaintiffs file
14 and serve a supplementary statement of relevant facts on
15 law by four o'clock. That should be on 12 April, and 3
16 also will be 12 April. Your Honour, what has happened is
17 that there have been - as you know - further large scale
18 redundancies in Ansett, and the amended originating motion
19 which we filed - with the court's consent yesterday -
20 takes in those further amendments.

21 What we'll do is file a supplementary statement of
22 relevant facts, which will bring our early document up to
23 date, and we'll file some more affidavits to bring the
24 matter up to date. Then the administrators of the first
25 and second defendants - this is paragraph 4 - that should
26 be 26 April that they serve their affidavits on us, and
27 paragraph 5 similarly should be 26 April, that's Mr
28 Whelan's.

29 Then paragraphs 6 and 7, third and fourth
30 defendants - this is Mr Robins and Mr Stopps, they're
31 going to be 10 May. So six becomes 4.00 p.m. on 10 May.

1 Seven, similarly, is 4.00 p.m. on 10 May. Eight has
2 dropped out, Your Honour. Then 9, us, that the plaintiffs
3 file and serve our written submissions by 31 May. Ten,
4 Your Honour, is the - it's the defendants - sorry - the
5 first and second defendants - ten - so first and second
6 should be put before defendants, are to file and serve
7 their written submissions on 7 June.

8 Your Honour, I said to strike out 11, but in fact
9 our agreement is that the third and fourth defendants file
10 and serve their written submissions by 13 June. So if you
11 could reinstate 11, delete ACTU and Mark Wallan,
12 substitute third and fourth defendants and the date should
13 be 13 June. Then 12 becomes 16 July. Thirteen, that's
14 that directions hearing I was mentioning to you, 14 June.
15 Liberty to apply and reserve costs. It's not
16 inconceivable but we'll have to come back.

17 There are many difficult issues really arising with
18 respect to A the funds, Your Honour and B, other parties
19 that might have an interest in the disposition of this
20 proceeding.

21 HER HONOUR: There is one further order I could contemplate, Mr
22 Santamaria and it is that the plaintiff file and serve a
23 court book for the purposes of the Trial judge by 4.00
24 p.m. on 12 July. I do not contemplate that it would be a
25 court book in the usual sense in a trial in this list,
26 rather it is to be working document for the purposes of
27 the Trial judge. It does not need to contain the
28 submissions, but it should contain the final pleadings, or
29 the final originating motion, and the affidavits and the
30 exhibits to those affidavits that will be the subject of
31 the trial.

1 MR SANTAMARIA: Yes, happily, Your Honour.

2 HER HONOUR: As to whether it needs to be served on the other
3 parties, that may not be necessary.

4 MR SANTAMARIA: Well, I'll tell you what we'll do, we'll
5 certainly serve our index to it on the other parties, and
6 - - -

7 HER HONOUR: Well, I'm simply direct the plaintiff, file it and
8 I'll leave it to the parties to sort it out among
9 themselves as to what they need.

10 MR SANTAMARIA: Thank you, Your Honour.

11 HER HONOUR: Save for those matters, they are the orders you
12 seek, Mr Santamaria?

13 MR SANTAMARIA: Yes, Your Honour.

14 HER HONOUR: Do you agree to those orders, Mr Whelan.

15 MR WHELAN: Yes, Your Honour.

16 HER HONOUR: Mr Robins.

17 MR ROBINS: Yes, I do agree to those orders, but may I say to
18 very brief things, Your Honour. On the question of the
19 estimate, as I indicated to Your Honour on the last
20 occasion the scope for my client, representative position
21 has expanded considerably and much will depend upon
22 discovery. I've spoken to my learned friends and I
23 understand that discovery will be provided without an
24 order, but in the event that something came out of that
25 discovery that concerned me about the estimate I would
26 indicate that to Your Honour as soon as we reasonably
27 could.

28 The other point I did wish to raise was, Your
29 Honour, we're very concerned about the contents of the
30 draft deed of arrangement that the first and secondnamed
31 defendants have on their web site. That proposed deed has

1 indicated that there will be an alteration in the
2 priorities of unsecured creditors, and that would
3 adversely affect my client. If that were to happen next
4 week, if that deed were to be approved by the creditors
5 next week, well that may substantially expand the ambit of
6 these proceedings, and would certainly throw the timetable
7 off the rails.

8 HER HONOUR: Mr Stopps.

9 MR STOPPS: I have nothing to add, Your Honour.

10 HER HONOUR: Mr Macauley.

11 MR MACAULEY: Nothing, Your Honour. That's Mr Stopps.

12 HER HONOUR: I beg your pardon, thank you, Mr Stopps. Yes,
13 well subject to the amendments as flagged by Mr Santamaria
14 I make orders in accordance with the minutes. Mr
15 Santamaria, it would be helpful if a re in gross minute
16 could be provided through the course of the day - - -

17 MR SANTAMARIA: Yes, I'll provide those to Your Honour's
18 Associate, yes.

19 HER HONOUR: Very well, I make those orders.

20 MR SANTAMARIA: By fax or by email, Your Honour?

21 HER HONOUR: You can negotiate that with my Associate. I will
22 temporary adjourn.

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