

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 a Deed of Company  
Arrangement) & **ORS** (ACN 004 209 410)

Respondents

AND BETWEEN:

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

Cross Appellants

and

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

Cross Respondents

**AFFIDAVIT OF CARMEL LYNDSAY FLYNN**

---

Date of document: 23 April 2003

Filed on behalf of the Respondents and Cross Appellants

Prepared by:


Arnold Bloch Leibler  
Lawyers and Advisers  
Level 21  
333 Collins Street  
Melbourne Vic 3000

Solicitors' Code: 54  
DX: 455 Melbourne  
Tel: 9229 9999  
Fax: 9229 9900  
Ref: LZ:JXB

---

I, **CARMEL LYNDSAY FLYNN** of KordaMentha, Level 24, 333 Collins Street,  
Melbourne, Victoria, Accountant, **MAKE OATH AND SAY:**

1. I am a director in the corporate advisory area of the accounting firm KordaMentha. I became a Certified Practising Accountant in 1995. Prior to the appointment of Mr Mentha and Mr Korda as administrators of the Ansett Group I worked in Andersen Outsourcing department. This area of Andersen



undertook consulting in relation to outsourcing and project management activities. I have been a director at KordaMentha since about 15 April 2002.

2. I refer to the affidavit of Anthony Leigh Middleton affirmed 15 April 2003, made in support of the Trustee's application that the hearing of the appeal be expedited ("the Middleton affidavit").
3. I refer to paragraph 2 of the Middleton affidavit. By way of amplification, on 27 March 2002, the Second Meeting of Creditors of the Ansett Group was held. The Second Meeting had been adjourned from 29 January 2002. The purpose of the adjourned meeting was for the creditors to consider whether to execute a Deed of Company Arrangement ("DOCA") or for the companies to be wound up. The creditors of Ansett voted, by a very substantial majority (91.64% in value and 97.18% in number), in favour of the Ansett DOCA. Now produced and shown to me marked "CLF-1" is a copy of the poll results approving the proposed DOCA.
4. On 2 May 2002, the Administrators executed the Ansett Group DOCA's. Now produced and shown to me marked "CLF-2" is a copy of the Ansett DOCA.
5. The DOCA makes provision for the priority of the payment of amounts available for distribution to creditors in clause 18. The priority of the Trustees claim, referred to as the "Top Up Retrenchment Claim", is provided for in clause 18.2.5 of the DOCA. The "Top Up Retrenchment Claim" has priority equal to that of an unsecured creditor.
6. By paragraph 14 of the Fourth Originating Motion between Parties dated 20 February 2003 in this proceeding ("the Originating Motion"), the Trustee sought declarations as to whether any obligation on Ansett to make further contributions to the Plan has priority under s. 556(1) of the *Corporations Act*, that is, on the basis that Ansett is in liquidation. The issue of priority under the DOCA was not, by agreement between the parties, before Justice Warren in this proceeding.



7. I refer to paragraph 6 of the Middleton affidavit. By way of clarification, Ansett and the Administrators have cross-appealed against the orders made by Justice Warren in response to paragraph 12(a) of the Originating Motion. In paragraph 12(a), the Trustee sought "[d]eclarations as to whether Ansett is obliged to make further contributions, and if so what further contributions, to the Ground Staff Superannuation Plan".
8. On 7 February 2003, Justice Warren, in response to question 12(a), declared that "Ansett ... is obliged to make further contributions for Membership Groups 1 and 3 in accordance with the requirements of the Funding and Solvency Certificate dated 24 April 2002 issued by the actuary of the Ground Staff Plan ("FSC5"). It is unnecessary to answer in relation to Membership Group 2."
9. FSC5 was made by the actuary pursuant to the *Superannuation Industry (Supervision) Act* 1993 ("the SIS Act"). Now produced and shown to me marked "CLF-3" is a copy of FSC5. In general terms, the Ansett and the Administrators seek orders that Ansett is under no obligation, pursuant to the terms of the Plan's Trust Deed and/or the *SIS Act* and Regulations, to make further contributions in accordance with FSC5.
10. I refer to paragraph 10 of the Middleton affidavit. By way of amplification, on 21 June 2002, the Trustee sought to have the DOCA proceeding set down for hearing prior to the trial of this proceeding, which was to commence on 16 July 2002. Justice Goldberg refused to set down the DOCA proceeding due to the imminence of the trial of this proceeding. Instead His Honour made orders as to the filing of pleadings and affidavit material. Now produced and shown to me marked "CLF-4" is a copy of the transcript and orders of Justice Goldberg dated 21 June 2002.
11. On 3 September, by the consent of the parties, the orders of Justice Goldberg dated 21 June 2002 were vacated and the DOCA proceeding was subsequently adjourned to 5 February 2003, pending the judgment of Justice Warren. The DOCA proceeding was further adjourned on 5 February 2003 pending the making of final orders.

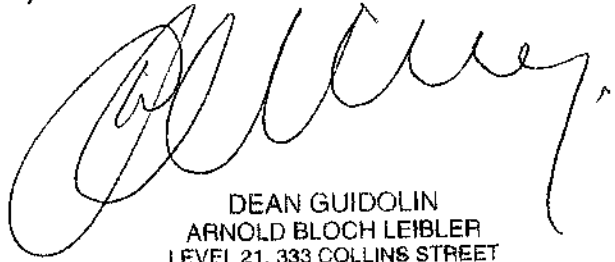
A handwritten signature in black ink, appearing to be 'P. J. O.' or similar, located at the bottom right of the page.

- 12. On 28 March 2003, Ansett and the Administrators, by Notice of Motion, sought to have the DOCA proceeding, other than insofar as it relies upon non-disclosure, set down for trial and fixed for hearing. Now produced and shown to me marked "CLF-5" is a copy of the Notice of Motion dated 28 March 2003. The Motion was heard by Justice Goldberg on 9 April 2003. The Respondents submitted that, for various reasons, it was preferable to set down the DOCA proceeding now rather than await the outcome of this Appeal and Cross - Appeal. Now produced and shown to me marked "CLF-6" is a copy of the Respondents outline of facts and contentions dated 7 April 2003.
- 13. Justice Goldberg did not set down the DOCA proceeding for hearing but made orders for interlocutory steps to be completed. The transcript and orders are exhibits ALM-9 and ALM-8 respectively to the Middleton affidavit.
- 14. Justice Goldberg has requested that the parties to the DOCA proceeding inform him of the outcome of this application for expedition of the Appeal.
- 15. I refer to the concluding sentence in paragraph 10 of the Middleton affidavit and the affidavit of Damien Jon Pound referred to therein. The Administrators are eager to have the issue of priority under the DOCA resolved as expeditiously as possible, as the continued litigation is affecting the ability of the Administrators to make distributions from the administration. Now produced and shown to me marked "CLF-7" is a copy of the Pound affidavit. I refer to paragraphs 7-11 of the affidavit.

SWORN by **CARMEL LYND SAY FLYNN** )  
 at Melbourne In the State of Victoria on )  
 23 April 2003 )



Before me:



DEAN GUIDOLIN  
 ARNOLD BLOCH LEIBLER  
 LEVEL 21, 333 COLLINS STREET  
 MELBOURNE 3000  
 A NATURAL PERSON WHO IS A CURRENT  
 PRACTITIONER WITHIN THE MEANING OF  
 THE LEGAL PRACTICE ACT 1996.