

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

Date of document 15 April 2003

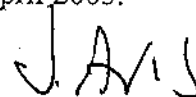
Filed on behalf of the appellant

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Ross Freeman

This is the exhibit marked 'ALM-7' now produced and shown to ANTHONY LEIGH
MIDDLETON at the time of affirming his affidavit on 15 April 2003.

before me



JULIA FRANCES AVIS
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A current practitioner within the
meaning of the Legal Practice Act 1996

**'ALM-7' Transcript of
hearing before Warren J on
20 February 2003**

TRANSCRIPT OF PROCEEDINGS

SUPREME COURT OF VICTORIA

CIVIL JURISDICTION

MELBOURNE

THURSDAY 20 FEBRUARY 2003

BEFORE THE HONOURABLE JUSTICE WARREN

B E T W E E N

ANSETT AUSTRALIA GROUND STAFF SUPERANNUATION PLAN P/L

Plaintiff

- and -

ANSETT AUSTRALIA LTD (ADMINISTRATOR APPOINTED) & ORS

Defendants

1 MR MACLEAN: If Your Honour pleases, I appear for the
2 firstnamed plaintiff.

3 MR ZWAIRE: Your Honour, I appear on behalf of the first and
4 second defendants, the Ansett administrators.

5 MR STOPS: Your Honour, I appear for the fourth defendant.

6 HER HONOUR: Yes, Mr Stops. And I see Mr Cox' name has been
7 entered but he's not here.

8 MR MACLEAN: Yes, we had to, if I can make a joint apology,
9 Your Honour, he must be lost, we don't know what's
10 happened to him, and we feel we've taken up enough of
11 Your Honour's day.

12 HER HONOUR: In any event, as I understand the position, orders
13 are sought by consent, extending the time for when any
14 notice of appeal may be lodged by any party. Is that the
15 gist of it?

16 MR MACLEAN: Yes, Your Honour, it is, Your Honour, yes.

17 HER HONOUR: I take it then, do I, Mr Maclean, that all the
18 parties consent including as you are instructed, Mr Cox,
19 on behalf of his client.

20 MR MACLEAN: Yes. I have a fax from Poynton Partners. I must
21 say I don't know what - I think the ACTU was made a party
22 of the proceeding - not a party?

23 HER HONOUR: My recollection was that the ACT sought leave to
24 intervene but was not a party.

25 MR MACLEAN: In that case, Your Honour, we don't worry about
26 them. The extension sought by consent, Your Honour, is
27 until 24 March.

28 HER HONOUR: Yes. But this is a matter of public interest.
29 Are there any matters that need to be stated on the
30 transcript for the purposes of the public record as to
31 why the extension is sought and agreed to?

1 MR MACLEAN: Yes. I say very little, but Mr Zwaire is in a
2 position to say more.

3 HER HONOUR: Yes.

4 MR MACLEAN: From the trustees point of view what we would say
5 is that the parties are attempting to resolve all issues
6 between them, all issues, but the negotiations are taking
7 some time.

8 HER HONOUR: Yes. Is there anything else, Mr Maclean?

9 MR MACLEAN: No, Your Honour.

10 HER HONOUR: Mr Zwaire?

11 MR ZWAIRE: Your Honour, is correct in observing that this
12 matter is in the public interest and there is a great
13 deal of public attention focused on it. The
14 administrators by way of background, Your Honour, are
15 presently sitting on about \$331m in cash. There is
16 presently insufficient money in the administration for
17 any creditors beyond the priority creditors to be paid
18 their entitlements, that is, the only amount of money
19 that would be paid in this administration would be either
20 to the superannuation funds or to the employees in
21 relation to their entitlements, or insofar as the
22 Commonwealth has advanced moneys and is now in the shoes
23 of the employees for the purpose of repayment to the
24 Commonwealth.

25 The administrators wish to leave no stone left
26 unturned to find a commercial resolution to what are
27 ongoing disputes between the parties. The administrators
28 presently are of the view that a short extension of time
29 may enable all the parties to reach that settlement. If
30 they are unable to do so, Your Honour, then obviously it
31 may require one or more of the other parties to proceed

1 with an appeal and all the parties would thereafter, and
2 perhaps I'm overstating it, seek expedition, and would
3 not want this short adjournment to be seen as suggesting
4 that there is no urgency, Your Honour.

5 HER HONOUR: Yes. Is there anything else, Mr Zwaire?

6 MR ZWAIRE: No, Your Honour.

7 HER HONOUR: Mr Stops?

8 MR STOPS: Only, Your Honour, that I did speak to Mr Cox after
9 we were told of this afternoon's appointment and he did
10 indicate he was coming and would agree, so for the
11 purpose of the record, it might be appropriate just to
12 record that, Your Honour.

13 HER HONOUR: Yes, thank you for that, Mr Stops, I'm sure
14 something has gone awry with Mr Cox's attendance this
15 afternoon, it does seem to be somewhat out of character.
16 WE can only assume perhaps he went to the wrong building.
17 But on the basis of the communication indicated by Mr
18 Maclean and the matters stated by Mr Stops, I am disposed
19 to make orders, would it also be appropriate to make
20 additional orders granting liberty to apply and reserving
21 costs.

22 MR MACLEAN: Yes, Your Honour. Any other matter - Your Honour,
23 there's some confusion on our part as to whether Your
24 Honour has already made an order on the papers for the
25 nunc pro tunc filing of the fourth motion.

26 HER HONOUR: No orders were made. It seemed to me, looking at
27 the matter, that perhaps the best way to tidy it all up
28 was to make the order that my Associate as I understand
29 it, forwarded to your instructing solicitor, and if the
30 parties are content for such an order to be made, that
31 would then facilitate the order being made that was

1 provided after the last hearing which made reference to
2 the fourth amended originating motion.

3 MR MACLEAN: Yes. We all agree that it's appropriate. The
4 only point we thought of, Your Honour, was this, does
5 Your Honour need to make that order today or would it be
6 convenient?

7 HER HONOUR: I can make that order today as well, and the only
8 matter I would draw to the attention of the parties is
9 that the reasons for judgment including in the revised
10 version of the reasons in fact refers to the third
11 amended originating motion.

12 MR MACLEAN: Yes.

13 HER HONOUR: And it will remain that way, but it did not seem
14 to me it was necessary to produce a further revised set
15 of reasons to make reference to the fourth amended
16 originating motion, but I simply draw that to your
17 attention. If it transpired that that needed to be
18 rectified, then perhaps my Associate could be contacted.

19 MR MACLEAN: Yes. I don't think we would ever take any point
20 about it, Your Honour.

21 HER HONOUR: Yes. Is there anything else, Mr Maclean?

22 MR MACLEAN: No, Your Honour.

23 HER HONOUR: Mr Cox, in your absence, apologies have been
24 conveyed on your behalf so do not be troubled about
25 apologising for your late arrival. I have been provided
26 with a minute of order seeking to extend the time for any
27 notice of appeal by any party to 24 March. I have
28 indicated that on the basis of the consents indicated, I
29 will make such an order and I have also proposed making
30 an order of liberty to apply and costs reserved. There
31 was also the matter of an order to be made nunc pro tunc

1 to rectify the court record to properly record the filing
2 of the fourth amended originating motion. Do you consent
3 to all those steps being taken?

4 MR COX: We do, Your Honour.

5 HER HONOUR: Is there anything you wish to say at this
6 occasion, Mr Cox?

7 MR COX: No, Your Honour.

8 HER HONOUR: Very well. I will make all of those orders as
9 indicated. Are there any other matters, Mr Maclean?

10 MR MACLEAN: No, Your Honour.

11 HER HONOUR: Very well. Adjourn the court.

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