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TRANSCRIPT OF PROCEEDINGS

O/N 12583

FEDERAL COURT OF AUSTRALIA

VICTORIA DISTRICT REGISTRY

GENERAL DIVISION

GOLDBERG J

No VID621/2005

DIRECTION

In the matter of Ansett Australia Limited

MELBOURNE

10.17 AM, TUESDAY, 16 AUGUST 2005

DAY ONE

MR S. SHARPLEY appears for the applicant

MR T.R. LUXTON appears for ASIC

MR KM.A. TROIANI appears for National Australia Bank

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MR S. SHARPLEY: I appear on behalf of the applicants, your Honour.

HIS HONOUR: Mr Sharpley.

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MR M.A. TROIANI: I appear on behalf of the National Australia Bank, your Honour.

HIS HONOUR: Thank you, Mr Troiani.

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MR T.R. LUXTON: I appear on behalf of the Australian Securities Investments Commission, your Honour.

HIS HONOUR: Thank you, Mr Luxton. What is the state of play, Mr Sharpley?

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MR SHARPLEY: As we discussed, last time, your Honour, there is negotiations going on between the administrators and representatives of three banks who have claims in the subsidiary that has a positive asset balance in its own right. The Commonwealth is also involved in those discussions. Those negotiations are continuing.

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HIS HONOUR: How long have they been going on for?

MR SHARPLEY: About, in the most recent phase, about two weeks. I am told six weeks all up, but the most activity in the past two weeks, your Honour.

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HIS HONOUR: Yes.

MR SHARPLEY: They are progressing. There has been some clarification of the parties positions and there are ongoing negotiations which will continue and it is for that reason that the only order we seek today is that this matter be adjourned for a further mention towards the end of next week at which time we hope to be in a better position to inform your Honour as to the further progress of this application.

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HIS HONOUR: What concerns me, I assumed that the application was made, the pooling application has been made because the administration is getting towards a final phase.

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MR SHARPLEY: Yes.

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HIS HONOUR: Is that right?

MR SHARPLEY: Yes, your Honour.

HIS HONOUR: What I do not want to have happen is for the administration to drag on with negotiations and negotiations and costs being incurred and costs being incurred and costs going out of circulation, money going out of circulation, which can be otherwise used for the benefit of creditors.

45

MR SHARPLEY: Yes.

5 HIS HONOUR: And I think there is going to come a point of time, and I am
interested in the views of the Commission in this respect, that there must come a
point of time when you have had sufficient time to negotiate with the parties, if there
is to be a pooling arrangement or is not to be a pooling arrangement to finalise this
administration. If it cannot be done by - a substantial amount by agreement because
ultimately I expect it will need a Court order, I want to bring it to a head straight
10 away. I am very conscious of another aspect of this administration, the issue that
arose between the superannuation trustees, you may recall, and the administrators
where millions of dollars were spent in legal costs and the matter was ultimately
resolved by mediation.

15 My only regret in that matter that I wasn't in a position to impose a mediation regime
on the parties much, much earlier. And I do not want this dialogue that is going on in
this particular aspect of the administration to replicate that. I think the parties should
have every opportunity to try and negotiate the resolution of outstanding issues. But
if at the end of a relatively reasonable period of time they cannot reach an agreement
20 I don't want the administration to drag on with costs being incurred in the
administration simply for the purpose of, well not simply for the purpose, which will
have the effect of perpetuating the administration without bringing the finality of the
administration to a head, so that the administration can finally be wound up, there can
be a final distribution to relevant creditors and people can pick up their activities and
25 their lives and put this behind them. That is what worries me.

MR SHARPLEY: Yes. Yes, your Honour. Against that of course you have to
balance that the dispute that has been negotiated is a very substantial dispute. The
assets in the subsidiary are between 35 and \$38,000,000.

30 HIS HONOUR: Yes, but the issues in relation to that must be fairly well crystallised
by now and the parties must know what the issues are. Do you need the help of a
mediator, should I perhaps refer this matter to mediation now?

35 MR SHARPLEY: The current thinking is, your Honour, that we can progress the
matter by way of negotiation without that sort of formal process. All I can say is,
your Honour, towards the end of next week we will be in a much better position to
come back to your Honour and explain where we are up to.

40 HIS HONOUR: I once said, I am told I said, although I don't remember it, I told
parties if they couldn't reach an agreement I would reach an agreement for them. I
am not suggesting that at this stage yet, but there will come a time.

45 MR SHARPLEY: I understand that, your Honour. The point I was going to make is
that resolution of this dispute by agreement, by some form of agreement, is highly
cost effective as opposed to the alternatives, the substantial litigation over the issues
that arise in this company, the complexity of potentially this company not going into
a pool at the end and litigation as to whether it should or not. And then having to

work out the position of this company vis a vis the remainder of the group. You are looking at potentially years of dispute if we cannot resolve it by - - -

5 HIS HONOUR: No, you are not, not years of dispute, maybe months, but not years. Well, not while I am in control anyway. I am not suggesting you shouldn't have the opportunity to have full, comprehensive and informed negotiations and dialogue for settlement. But what I don't want to have happen is for you to come along to me, instead of it being Tuesday, 16 August, you come along to me on Tuesday, 13
10 December and say, it is just before Christmas your Honour, and the parties will be away for three weeks, can we adjourn until February.

MR SHARPLEY: Well, your Honour, at this stage all I am seeking is to come back and talk to you perhaps on 24, 25 or 26 August.

15 HIS HONOUR: Well, I am certainly going to give you that opportunity, but I thought I should foreshadow that there will come a time, and I know I am repeating myself, where I will basically say enough is enough, we have to get this matter resolved, if not consensually by Court determination.

20 MR SHARPLEY: Yes, your Honour. I appreciate those comments.

HIS HONOUR: Let me just hear what the others have to say about it first. Mr Troiani?

25 MR TROIANI: I don't have anything to add to what Mr Sharpley has put to your Honour.

HIS HONOUR: You have heard my observations.

30 MR TROIANI: We do, and in fact between the parties there has been a suggestion of a mediation. The National Australia Bank would embrace it, your Honour.

HIS HONOUR: Would embrace it.

35 MR TROIANI: It would indeed.

HIS HONOUR: Yes. Mr Luxton.

40 MR LUXTON: Your Honour, as it doesn't impose an adjournment, the adjournment just sought by Mr Sharpley, in terms of expressing a position about the matter more generally, ASIC would wait until the substantive affidavit has been provided.

45 HIS HONOUR: Yes, I understand that. You will appreciate my concern is not to have an administration that goes on for years and years. It reminded me of an equity case over the construction of a will. I think it was in the late 19th century, the case went on for 20 years and by the time the case was over the estate was exhausted, there was no money left for the beneficiaries. I want to avoid that situation by parity

of example here, but I don't expect you to comment on that at this stage. Thank you very much for that.

5 MR LUXTON: No, your Honour. Thank you.

MR SHARPLEY: Yes, your Honour. Subject to your Honour's availability, could we seek to come back on either next Thursday or Friday, 25 or 26?

10 HIS HONOUR: On 25 and 26 I will be in Brisbane for a Judge's meeting. How about Tuesday, 30 or Wednesday 31?

MR SHARPLEY: The 30th would be suitable, your Honour.

15 HIS HONOUR: Well, I will adjourn the matter to Tuesday, 30 August. I reserve costs generally and I will wait patiently.

MR SHARPLEY: Thank you, your Honour.

20 HIS HONOUR: Thank you for your attendance. Nothing further?

MR SHARPLEY: No, your Honour.

MATTER ADJOURNED at 10.25am UNTIL TUESDAY, 30 AUGUST 2005