



SPARK AND CANNON

Telephone:

Adelaide	(08) 8212 3699
Hobart	(03) 6224 2499
Melbourne	(03) 9670 6989
Perth	(08) 9325 4577
Sydney	(02) 9211 4077

**TRANSCRIPT
OF PROCEEDINGS**

FEDERAL COURT OF AUSTRALIA

VICTORIA DISTRICT REGISTRY

GOLDBERG J

DIRECTIONS

No VID 621 of 2005

IN THE MATTER OF ANSETT AUSTRALIA LTD

MELBOURNE

10.15 AM, TUESDAY, 19 JULY 2005

MR S.J. SHARPLEY (instructed by Arnold Bloch Leibler) appeared on behalf of the applicants

MR R. McCLURE (instructed by the Australian Government Solicitor) appeared on behalf of the Commonwealth of Australia

MR E.W. WOODWARD (instructed by Mallesons Stephen Jaques) appeared on behalf of the National Australia Bank

MS N. TOHOLKA (instructed by Minter Ellison) appeared on behalf of the Commonwealth Bank of Australia and BNP Paribas

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

HIS HONOUR: Thank you very much, Mr Sharpley.

5 MR McCLURE: Your Honour, I appear on behalf of the Commonwealth.

HIS HONOUR: Thank you, Mr McClure.

10 MR WOODWARD: If your Honour pleases, I appear with my learned leader Mr Scerri for the National Australia Bank.

HIS HONOUR: Yes, thank you, Mr Woodward.

15 MS TOHOLKA: If your Honour pleases, Toholka is my name. I appear on behalf of Commonwealth Bank of Australia and BNP Paribas.

HIS HONOUR: Thank you, Ms Toholka. Yes, Mr Sharpley, what's the current situation?

20 MR SHARPLEY: The current situation, your Honour, is - I believe my solicitors spoke to your associate and indicated we would be seeking an adjournment today, for four weeks.

HIS HONOUR: Yes.

25

MR SHARPLEY: The reason for that is this: that the administrators are presently negotiating with three large bank creditors, who are represented.

HIS HONOUR: Three large?

30

MR SHARPLEY: Three large bank creditors of one of the Ansett group companies. The outcome of those negotiations will impact upon the orders that we seek in this proceeding and it would also substantially affect - if those issues are resolved with the banks - the material that we would put in support
35 of that pooling application. So while there's - - -

HIS HONOUR: In what respect?

40 MR SHARPLEY: The three banks involved - which are the NAB, BNP and CBA - are creditors of one of the Ansett group companies that it seems very likely has a positive asset balance.

HIS HONOUR: Which company is that?

45 MR SHARPLEY: That's AAE, Ansett Aviation Equipment.

HIS HONOUR: Yes.

5 MR SHARPLEY: Subject to the intra-group difficulties we have in identifying the precise asset and liability position of each of the group companies, AAE has a large positive asset balance in its own right and the banks are substantial creditors of that Ansett group company.

10 HIS HONOUR: Does that mean that if there were no pooling, those banks would be paid out in full?

MR SHARPLEY: Not in full, your Honour, but I'm told between 30 and 50 per cent of their debt, which is in the tens of millions.

15 HIS HONOUR: Yes.

MR SHARPLEY: So as it stands, those banks may have a significant commercial interest in opposing the pooling of the assets of their company into the general pool.

20

HIS HONOUR: Yes, I understand.

MR SHARPLEY: There are issues also between the administrator and National Australia Bank regarding certain sweeping of Ansett accounts that occurred shortly after the administration occurred. So what the administrators are doing at the moment is negotiating with those three banks in an endeavour to reach a settlement of all the issues. It's hopeful that a settlement would also make the pooling application in respect of that company - well, it would certainly impact the orders we would seek in respect of that company, and perhaps the opposition or lack of by those banks to a pooling application bringing AAE into the pool.

30

HIS HONOUR: If there were pooling, what's the likely return to creditors generally?

35

MR SHARPLEY: If there is pooling, the only creditors who will receive a distribution are the priority creditors in AAL, which is the employees will receive a further distribution, and the Commonwealth, standing in the shoes in respect of the SEESA scheme. The effect of pooling will be - at the moment it appears there are perhaps eight to 10 of the 40-odd companies have a positive asset balance in their own right. So if there was no pooling then subject to the unravelling of extremely - which may be impossible - of extremely complicated intra-group debt and asset positions, the creditors of those eight to 10 companies would receive some distribution, in some cases a very small distribution of less than a quarter of a cent but they would receive a

45

distribution.

5 If all the Ansett group companies are pooled - all the assets and liabilities are pooled into AAL - those creditors, except to the extent they're priority creditors - and only a small group of them are. Some employees of one of the eight to 10 companies - two of them have some employees, and they would get a distribution. They've already received a SEESA distribution and a distribution from AAL. They would receive a distribution in the individual 10 administrations. It appears they would receive a slightly lower distribution if they were pooled into AAL. But all the other creditors of those eight to 10 companies would effectively receive nothing, as they're not priority creditors in administration of AAL.

15 HIS HONOUR: Yes, I understand.

MR SHARPLEY: So the reason we seek an adjournment is because of the negotiations with the banks, because the assets of AAE are substantial and the banks' claims are substantial.

20 HIS HONOUR: Is there any issue about the admission of the claims, or are the claims settled now?

25 MR SHARPLEY: The quantum of the claims by the banks? Yes, I'm instructed no formal proofs of debt have been lodged by those creditors. Part of the negotiation that's ongoing is directed towards quantifying those claims and admitting formal proofs of debt.

30 HIS HONOUR: Because it would be necessary, before any pooling operation or pooling consideration goes ahead, for there to be an understanding of the nature of the quantum of the debt.

35 MR SHARPLEY: Yes. I would expect, your Honour, in respect of each of the companies that appear to have a positive asset balance in their own right, the creditors entitled to claim in those companies are the persons who are adversely affected by pooling into AAL.

HIS HONOUR: Yes, I understand.

40 MR SHARPLEY: So they are the persons who have a direct interest in - - -

HIS HONOUR: Is the position this: that if these negotiations reach a stage of accommodation with these bank creditors then that will lessen the extent of any resistance to the pooling application?

45 MR SHARPLEY: Yes, we believe so, your Honour.

HIS HONOUR: So there will still be a need of course to have representatives of parties in favour of pooling, I suppose, and you will probably still need the representative against pooling nevertheless, won't you?

5

MR SHARPLEY: We will, your Honour. In some of the eight to 10 companies it's potential there are a very large number of small creditors. For example, in one company the only creditor is the Australian Tax Office. So part of the exercise we're doing is trying to identify those creditors who are going to be worse off by way of pooling and make a decision as to how many of them we notify or by what form we notify. So certainly all the major creditors of those companies, who will be worse off if pooling is allowed, we will attempt to notify for the purpose of this.

10

15 HIS HONOUR: So that means even if you reach an accommodation with the banks - - -

MR SHARPLEY: Yes.

20 HIS HONOUR: - - - there will still be creditors adversely affected by the pooling?

MR SHARPLEY: The banks are only creditors of one of the eight.

25 HIS HONOUR: AAE, I understand that.

MR SHARPLEY: AAE, yes. The direction that has been foreshadowed is that - or the process that we're anticipating for pooling - is to hold meetings under section 445F to seek a variation of the DOCAs, for the creditors in each group company to vote on a variation of the DOCA which would assign the debts and liabilities into AAL. Part of what the administrators will be seeking is in each of those companies - for 30 of the companies it doesn't really make any difference. There are no assets, so the creditors are not going to get anything whether it's pooled or not. So they don't have any interest in whether pooling occurs or it doesn't occur. They don't stand to get anything either way.

30

35

In the companies where they do stand to gain if pooling occurs, the administrators would be wearing their hats as administrators of other group companies. In most of those companies there are intra-group or inter-company debts which the administrators would be entitled to vote in each of those eight to 10 meetings. Based on our best calculations, in some of those companies - if the administrators were to exercise their vote as creditors in favour of pooling, along with their casting vote should that be necessary - in some companies that would be sufficient to force pooling through. The administrators control the majority of the votes in quantum. In other companies it would only have an

40

45

effect on the chances of pooling occurring.

HIS HONOUR: Yes.

5 MR SHARPLEY: So if the administrators seek a direction in this proceeding
that they be entitled to vote in a particular way, that will in some companies
effectively guarantee that those companies vote to join the pool and thus will
be to the detriment of the creditors who would gain if pooling didn't occur. In
other companies it would only shift the weight of the vote towards pooling. So
10 part of what we're looking at is - aside from the issue of the banks and aside
from some creditors where it's very clear what their claim is - trying to identify
the persons who will be adversely affected by pooling, so we can make a
consideration as to who has to be notified about this application.

15 HIS HONOUR: Yes, I understand. What's the attitude of the other parties
today? Mr McClure?

MR McCLURE: Your Honour, I have no specific instructions. Obviously
we're awaiting further information from the administrators. As to the
20 adjournment, the Commonwealth doesn't oppose that.

HIS HONOUR: Thank you. Mr Woodward?

MR WOODWARD: Your Honour, I'm indebted to my learned friend for
25 outstanding to your Honour the interests of the banks and in particular the
National Australia Bank, particularly as it affects Ansett Aviation Equipment
Pty Ltd. He has correctly articulated the interest and indeed the extent of the
interest, which is in the millions. Those negotiations are ongoing,
your Honour, and in the meantime the bank does oppose any pooling. If the
30 negotiations are unsuccessful, I can foreshadow that that would be the nature of
their position in any application in due course that would seek to facilitate the
pooling. But in the meantime, your Honour, we consent to the adjournment
and we think it's appropriate to allow the plaintiffs time.

35 HIS HONOUR: Yes. Mr Sharpley mentioned something about a suggestion
that some accounts might have been swept shortly after the administration
started. Is that going to be an issue?

MR WOODWARD: It's only an issue in the sense that there is an issue
40 between the administrators and the National Bank over that matter. That also
is the subject of discussion. It doesn't directly impact on the pooling proposal.
However, because it's an issue between those parties - they also have an issue
in respect of pooling - it seemed appropriate on both sides that it be included,
to see if a resolution can be achieved on all matters that are outstanding
45 between those parties. So it may or may not ultimately form part of the

package that resolves this issue.

5 HIS HONOUR: Yes, well, I would hope that we can get to a situation where we can bring - as far as the court is concerned - a finality to the administration if possible.

MR WOODWARD: Yes, your Honour.

10 HIS HONOUR: So any outstanding issues - if they can be picked up and swept into the application, that would be helpful.

MR WOODWARD: Certainly the parties seem to see the commonsense in that approach, your Honour.

15 HIS HONOUR: And you don't oppose the adjournment for the time being?

MR WOODWARD: No.

20 HIS HONOUR: Ms Toholka?

MS TOHOLKA: Similarly, your Honour, we support the adjournment. For the record, my clients oppose the pooling application.

25 HIS HONOUR: Yes, I understand that. Mr Sharpley - - -

MR SHARPLEY: Your Honour, could I interject. We've also spoken to the ACTU's representative and they have no objection to the pooling and asked us to communicate that position. Similarly, we have spoken to Mr Noel Saville, who's the person at ASIC responsible, and he asked us to communicate that
30 ASIC has no objection to the pooling and to communicate that to your Honour - I'm sorry, no objection to the adjournment. They don't have any position on the - - -

35 HIS HONOUR: I listened to what you meant, not to what you said.

MR SHARPLEY: Yes.

40 HIS HONOUR: A frequent observation. Are the committee of creditors involved in any of these issues?

MR SHARPLEY: I'll have to get some instructions. I'm instructed the last meeting was on 30 June, at which time a general update was given to the committee of creditors. The parties who are represented here today are also members of the committee of creditors and they're the ones who obviously
45 have the most direct interest.

HIS HONOUR: Yes. Well, at this stage I should simply adjourn the directions hearing for four weeks to, what, 16 August?

5 MR SHARPLEY: Yes, your Honour.

HIS HONOUR: I'll adjourn the further directions hearing to 16 August, reserve any questions of costs. Again I would expect that the 16th would only be a further directions hearing probably, wouldn't it?

10

MR SHARPLEY: Yes, your Honour.

HIS HONOUR: Because issues of material - and there may be issues of documentation discovery, I'm not sure. Well, I'll adjourn the matter to 15 16 August, reserve costs on the basis that at that stage, if possible, further directions will be given for the final hearing of the application, depending upon the attendance of relevant parties.

15

MR SHARPLEY: Thank you, your Honour.

20

HIS HONOUR: I thank the parties for their attendance.

**MATTER ADJOURNED AT 10.31 AM UNTIL
TUESDAY, 16 AUGUST 2005**

25