

INTERNATIONAL AIR TRANSPORT ASSOCIATION v ANSETT
AUSTRALIA HOLDINGS LIMITED & ORS (M51/2007 & M52/2007)

Court appealed from: Court of Appeal, Supreme Court of Victoria

Date of judgment: 10 November 2006

Date special leave granted: 24 April 2007

The appellant established the IATA Clearing House with responsibility for the clearance of accounts between member international airline operators arising from transactions entered into by those airline operators under various agreements, including the Interline Passenger Agreement ('the Agreement'). The Agreement provided for payments to be subject to the Clearing House Regulations. The respondent was a member of the Clearing House.

On 12 September 2001 administrators were appointed to the respondent and a Deed of Company Arrangement was executed pursuant to Part 5.3A of the *Corporations Act 2001 (Cth)* ('the Act'). A question arose as to whether the appellant was a creditor of Ansett in respect of certain Clearing House payments. The appellant submitted that the terms of reg. 9(a) of the Clearing House Regulations had the effect that transactions between airline operators who were members of the Clearing House resulted in no sum becoming payable between members, but gave rise only to a contractual right on behalf of the carrying airline to include its charge as a credit in a monthly account to be supplied to the Clearing House. If one member airline went into liquidation, the property of that airline could not include any entitlement to receive payment from any other member, irrespective of whether clearance of the transaction had been effected prior to the date of liquidation. The respondent claimed that by virtue of the Deed of Company Arrangement, the Clearing House arrangement ceased to apply to the debits and credits between Ansett and the other airlines, which had not been cleared as at the date of Ansett's insolvency.

Mandie J found that reg. 9(a) of the Clearing House Regulations established that no debt or chose in action ever arose as between members of the Clearing House and that the only debts that arose were between each member and the appellant.

Regulation 9(a) provides:

"With respect to transactions between members of the Clearing House which are subject to clearance through the Clearing House as provided in Regulations 10 and 11 and subject to the provisions of the Regulations regarding protested and disputed items, no liability for payment and no right of action to recover payment shall accrue between members of the Clearing House. In lieu thereof members shall have liabilities to the Clearing House for balances due by them resulting from a clearance or rights of action against the Clearing House for balances in their favour resulting from a clearance and

collected by the Clearing House from debtor members in such clearance.”

The appeal was allowed by the Court of Appeal (Nettle JA and Bongiorno AJA, Maxwell P dissenting). The majority of the Court found that when the meaning of the Agreement, including the Regulations, was determined objectively by construing each clause according to its natural and ordinary meaning in light of the contract as a whole, the relationship between issuing airline and carrying airline remained one of debt, and the debt so created remained in existence until cleared in accordance with the Clearing House Regulations or was otherwise satisfied. They noted that while reg. 9(a), when read on its own, could be read as implying the loss of the debt and its replacement with rights as against the Clearing House alone, this was not the case where the clause was read in conjunction with other clauses.

In dissent, Maxwell P found that the contractual relationship between the carrier and the issuer in respect of the relevant charge was not a relationship of debt, nor was there between them any chose in action generating liability for, or entitling recovery of, any amount. Having construed the Regulations, it was clear that their main object and intent was to establish a system of clearance which had at its foundation the sui generis scheme of rights and obligations, defined by reg. 9(a). The manifest commercial purpose was intended to confer commercial advantages and the Court had to seek to give effect to the contract as intended.

The grounds of appeal include:

- the majority of the Court of Appeal erred in concluding that, by reason of the Interline Agreements and the regulations of the appellant's Clearing House, the relationship between members of the Clearing House in connection with claims that are the subject of clearance is that of debtor and creditor, and that the relationship of debtor and creditor inures until the debt is cleared in accordance with the Clearing House procedures or otherwise settled.