

# CASE STUDY



## LITIGATION & DISPUTE RESOLUTION

Airservices Australia v Ferrier (Compass Airlines case) (1996) 185 CLR 483

### FACTS

Airservices Australia provided terminal, en route navigation, meteorological and rescue and firefighting services to Compass Airlines. It debited Compass Airlines' account on the first day of each month for the services provided in the preceding month.

During the six months leading up to Compass Airlines going into provisional liquidation, Airservices Australia provided services to the value of \$19,035,873.91 and imposed penalties of \$719,580.49 in respect of late payment of the charges. During the same period, Compass Airlines made nine payments to Airservices Australia totalling \$10,351,523.90 in respect of the services and penalties.

The respondents, the liquidators of Compass Airlines, contended the payments gave Airservices Australia a preference, priority or advantage over other creditors and were void as against them by virtue of section 565 of the Corporations Law (Cth) (now section 565 of the Corporations Act 2001 (Cth)).

### DECISION

The trial judge held that the payments were part of a wider transaction, or "running account", between Airservices Australia and Compass Airlines. The Full Court of the Federal Court disagreed, holding that the payments had the effect of giving Airservices Australia a preference, priority or advantage over other creditors at the time it was made.

The principal of law in issue was important to Airservices Australia in terms of the provisions of services. It was advised by me to appeal to the High Court and did so. The appeal was successful.

Importantly in terms of the wider business community, the majority of the High Court held that if a payment is a part of a wider transaction, or a "running account", between the debtor and creditor, the purpose for which the payment was made and received will usually determine whether the payment has the effect of giving the creditor a preference, priority or advantage over other creditors. If the sole purpose of the payment is to discharge an existing debt, the effect of the payment is to give the creditor a preference over other creditors, unless the debtor is able to pay all of his or her debts as they fall due. But if the purpose of the payment is to induce the creditor to provide further goods or services as well as to discharge an existing indebtedness, the payment will not be a preference unless the payment exceeds the value of the goods and services acquired. In such a case, a court exercising jurisdiction under section 122 of the Bankruptcy Act 1966 (Cth) looks to the ultimate effect of the transaction. Whether the payment is or is not a preference has to be "... decided not by considering its immediate effect only but by considering what effect it ultimately produced in fact ..."



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The account in this case was an active one with daily dealings between the parties. Services rendered during the preceding month were debited to the account at the beginning of each month. In addition, penalties for late payment were debited monthly. The balance of the account rose and fell as debits and credits were recorded. There was but one account, not a series of separate accounts for each month or for each service.

### STRATEGY

Airservices Australia's strategic imperatives were identified at an early point in time, as were the consequences of an adverse decision. Weighing up those imperatives, and carefully considering the prospects of success, Airservices Australia was advised by me to pursue an appeal to the High Court. The relationship between the client and me, and the trust in my judgment that evolved during the trial and the appeal to the Full Court of the Federal Court, were significant factors in the decision to appeal.

