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Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number: VID180/2018
File Title: DAVARIA PTY LIMITED & ANOR v 7-ELEVEN STORES PTY LTD & ANOR
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 30/04/2021 1:57:58 PM AEST

A handwritten signature in blue ink that reads 'Sia Lagos'.

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Form 17
Rule 8.05(1)(a)

No: VID180/2018

Federal Court of Australia
District Registry: Victoria
Division: General

Davaria Pty Limited (ACN 165 206 404) and another named in the Schedule
Applicants

7-Eleven Stores Pty Ltd (ACN 005 299 427) and another named in the Schedule
Respondents

**Reply to the First Respondent's ~~Amended Defence to the Second~~Third Further
Amended Statement of Claim**

(filed pursuant to the Orders made by Middleton J on 5 March 2021)

(Notes:

1. *Terms defined in the standard form Franchise Agreements referred to in the ~~Second~~Third Further Amended Statement of Claim (**SOC**) are adopted in this Reply and appear in capitals and italics in the pleading, and in plain type and capitals in the particulars. Terms defined in this pleading are capitalised and appear in bold at the place of definition.*
2. *In ~~the~~is SOC and ~~this~~ Reply, references to "Articles" and "Exhibits" are to Articles and Exhibits (respectively) in Franchise Agreements as numbered in the 2009 version of the Franchise Agreement identified as SA/04/09. Unless otherwise indicated, the material express terms of the Franchise Agreements referred to in the SOC appear in each version of the standard form Franchise Agreement in force during the Relevant Period, although the numbering of the Articles containing those terms may not correspond with the numbering used in SA/04/09).*

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A. INTRODUCTION

1. As to paragraph 1 of the First Respondent's Defence to the Second Further Amended Statement of Claim (**Defence**), the Applicants:

- (a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 1 of the SOC;
- (b) adopt the allegation of fact that from October 1998 onwards Franchisees became franchisee parties under standard-form Franchise Agreements entered into with 7-Eleven; and
- (c) otherwise join issue therewith.

1AA. As to paragraph 1AA of the Defence, the Applicants:

- (a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 1AA of the SOC; and
- (b) otherwise join issue therewith.

1A. As to paragraph 1A of the Defence, the Applicants:

- (a) adopt any implied admissions made therein, in respect of the allegations made in paragraph 1A of the SOC; and
- (b) otherwise join issue therewith.

2. As to paragraph 2 of the Defence, the Applicants:

- (a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 2 of the SOC; and
- (b) otherwise join issue therewith.

2A. As to paragraph 2A of the Defence, the Applicants:

- (a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 2A of the SOC; and

- (b) otherwise join issue therewith.
3. As to paragraph 3 of the Defence, the Applicants:
- (a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 3 of the SOC; and
- (b) otherwise join issue therewith.
4. As to paragraph 4 of the Defence, the Applicants:
- (a) adopt any implied admissions made therein, in respect of the allegations made in paragraph 4 of the SOC; and
- (b) otherwise join issue therewith.
5. ~~[Not used] As to paragraph 5 of the Defence, the Applicants:~~
- ~~adopt any implied admissions made therein, in respect of the allegations made in paragraph 5 of the SOC; and~~
- ~~otherwise join issue therewith.~~

B. BACKGROUND

B1. The 7-Eleven System

6. As to paragraph 6 of the Defence, the Applicants:
- (a) adopt all express or implied admissions made therein, in respect of the allegations made in paragraph 6 of the SOC;
- (aa) admit that Convenience Stores were also known, or sometimes referred to, as “non-fuel Stores”; and
- (b) otherwise join issue therewith.

B2. Entry into the System

7. As to paragraph 7 of the Defence, the Applicants:

- (a) adopt all express or implied admissions made therein, in respect of the allegations made in paragraph 7 of the SOC; and
- (b) otherwise join issue therewith.

B3. The Franchise Agreements

8. As to paragraph 8 of the Defence, the Applicants:

- (a) adopt all express or implied admissions made therein, in respect of the allegations made in paragraph 8 of the SOC; and
- (b) otherwise join issue therewith.

B4. Material express terms of the Franchise Agreements

Term

9. As to paragraph 9 of the Defence, the Applicants:

- (a) adopt all express or implied admissions made therein, in respect of the allegations made in paragraph 9 of the SOC; and
- (b) otherwise join issue therewith.

10. As to paragraph 10 of the Defence, the Applicants:

- (a) adopt the admission made therein, in respect of the allegations made in paragraph 10 of the SOC; and
- (b) otherwise join issue therewith.

Primary obligations

11. As to paragraph 11 of the Defence, the Applicants:

- (a) adopt all express or implied admissions made therein, in respect of the allegations made in paragraph 11 of the SOC; and

- (b) adopt and admit the matters of fact pleaded in subparagraph 11(d)(ii) therein;
- (c) otherwise join issue therewith.

Open Account and Financial Accounting

12. As to paragraph 12 of the Defence, the Applicants:
- (a) adopt all express or implied admissions made therein, in respect of the allegations made in paragraph 12 of the SOC; and
 - (b) otherwise join issue therewith.
13. As to paragraph 13 of the Defence, the Applicants:
- (a) adopt all express or implied admissions made therein, in respect of the allegations made in paragraph 13 of the SOC; and
 - (b) otherwise join issue therewith.
14. As to paragraph 14 of the Defence, the Applicants:
- (a) adopt the admission made therein, in respect of the allegations made in paragraph 14 of the SOC; and
 - (b) otherwise join issue therewith.
15. As to paragraph 15 of the Defence, the Applicants:
- (a) adopt all express or implied admissions made therein, in respect of the allegations made in paragraph 15 of the SOC; and
 - (b) otherwise join issue therewith.

Inventory and pricing

16. As to paragraph 16 of the Defence, the Applicants:

- (a) adopt all express or implied admissions made therein, in respect of the allegations made in paragraph 16 of the SOC; and
- (b) otherwise join issue therewith.

Acquisition of stock

17. As to paragraph 17 of the Defence, the Applicants:
- (a) adopt all express or implied admissions made therein, in respect of the allegations made in paragraph 17 of the SOC; and
 - (b) otherwise join issue therewith.

Discounts and allowances

18. As to paragraph 18 of the Defence, the Applicants:
- (a) adopt all express or implied admissions made therein, in respect of the allegations made in paragraph 18 of the SOC; and
 - (b) otherwise join issue therewith.

Employees and Wages

19. As to paragraph 19 of the Defence, the Applicants:
- (a) adopt all express or implied admissions made therein, in respect of the allegations made in paragraph 19 of the SOC; and
 - (b) otherwise join issue therewith.
20. As to paragraph 20 of the Defence, the Applicants:
- (a) adopt all express or implied admissions made therein, in respect of the allegations made in paragraph 20 of the SOC; and
 - (b) otherwise join issue therewith.

Advertising expenses

21. As to paragraph 21 of the Defence, the Applicants:
- (a) adopt all express or implied admissions made therein, in respect of the allegations made in paragraph 20 of the SOC; and
 - (b) otherwise join issue therewith.

Termination

22. As to paragraph 22 of the Defence, the Applicants:
- (a) adopt all express or implied admissions made therein, in respect of the allegations made in paragraph 22 of the SOC;
 - (b) adopt the allegation in subparagraph 22(e) therein that the Franchise Agreements were subject to the provisions contained in the Franchising Code 2010, Franchising Code 2014 and the Oilcode; and
 - (c) otherwise join issue therewith.

B5. Implied, or partly express and partly implied, terms of the Franchise Agreement

23. As to paragraph 23 of the Defence, the Applicants:
- (a) adopt all express or implied admissions made therein, in respect of the allegations made in paragraph 23 of the SOC; and
 - (b) otherwise join issue therewith.

24. The Applicants join issue with paragraph 24 of the Defence.

B6. 7-Eleven's inventory practices**C-Store Practices**

25. As to paragraph 25 of the Defence, the Applicants:

(a) adopt all express or implied admissions made therein, in respect of the allegations made in paragraph 25 of the SOC;

and

(b) otherwise join issue therewith.

26. The Applicants join issue with paragraph 26 of the Defence.

27. The Applicants join issue with paragraph 27 of the Defence.

Inventory Practices

28. As to paragraph 28 of the Defence, the Applicants:

(a) adopt all express or implied admissions made therein, in respect of the allegations made in paragraph 28 of the SOC;

(b) as to paragraph 28(f):

(i) admit that the Franchise Agreements contained Article 21;

(ii) say further that:

(A) neither Article 21 nor the pleaded excerpts of Exhibit E articulates, or otherwise provides for, any right on the part of 7-Eleven to engage in the conduct pleaded at paragraph 28(f) of the SOC; and, or alternatively,

(B) insofar as 7-Eleven contends that the matters pleaded in paragraph 28(f) of the SOC reflect or are consistent with the content and practical operation of Article 21 and the pleaded excerpts of Exhibit E, then:

(1) Article 21 and the pleaded excerpts of Exhibit E were and are oppressive to Franchisees; and

(2) any reliance by 7-Eleven upon strict legal rights under Article 21 and the pleaded excerpts of Exhibit E in respect of its conduct, or in answer to the matters, pleaded at paragraph 28(f) of the SOC was and is:

(I) unconscionable within the meaning of s.21 of the ACL and, or alternatively, s12CB of the ASIC Act; and, or alternatively,

(II) contrary to the obligation of good faith stipulated by the Franchising Code 2014 and, accordingly, s.51ACB of the CCA;

and should not be permitted to sustain any defence;

and

(c) otherwise join issue therewith.

Fund practices

28A. As to paragraph 28A of the Defence, the Applicants:

- (a) adopt all express or implied admissions made therein, in respect of the allegations made in paragraph 28A of the SOC; and
- (b) otherwise join issue therewith.

28AA. The Applicants join issue with paragraph 28AA of the Defence.

28B. As to paragraph 28B of the Defence, the Applicants:

- (a) adopt all express or implied admissions made therein, in respect of the allegations made in paragraph 28B of the SOC; and
- (b) otherwise join issue therewith.

~~The Applicants adopt the admission made in paragraph 28B of the Defence.~~

28C. As to paragraph 28C of the Defence, the Applicants:

- (a) adopt all express or implied admissions made therein, in respect of the allegations made in paragraph 28C of the SOC;
- (aa) do not admit the various matters of fact and law pleaded subparagraph 28C(a)b. and c. therein, because:

- (i) the payments actually received by 7-Eleven (including as to timing and amount) during the Relevant Period from merchandise vendors;
 - (ii) the identity of any merchandise vendors who made any such payments;
 - (iii) the crediting by 7-Eleven (including timing and amount) of any such payments towards "Costs of Goods Sold";
 - (iv) the deposits made by 7-Eleven (including as to timing and amount) of any such payments into the "Promo Fund";
 - (v) the application of funds by 7-Eleven (including as to timing and amount) from the "Promo Fund" towards the cost of marketing and promotional activities set out in Articles 20(g)(i) to (iii) of the Franchise Agreement; and
 - (vi) the existence and payment of any shortfall, as alleged by 7-Eleven;
- are not known to the Applicants; and
- (b) otherwise join issue therewith.

28CA. As to paragraph 28CA of the Defence, the Applicants:

- (a) adopt all express or implied admissions made therein, in respect of the allegations made in paragraph 28A of the SOC; and
- (b) otherwise join issue therewith.

28D. The Applicants join issue with paragraph 28D of the Defence.

28E. As to paragraph 28E of the Defence, the Applicants:

- (a) adopt all express or implied admissions made therein, in respect of the allegations made in paragraph 28E of the SOC; and
- (b) otherwise join issue therewith.

C. BREACH OF CONTRACT CLAIMS

Breach of Accounting Obligation

28F. As to paragraph 28F of the Defence, the Applicants:

- (a) adopt the admission made therein; and
- (b) otherwise join issue therewith.

Breach of Volume Pricing Agreement Term, 7-Eleven's Proper and Efficient Obligation Term, and Contractual Duties Term

29. The Applicants join issue with paragraph 29 of the Defence.

30. The Applicants join issue with paragraph 30 of the Defence.

B7. Loss and Damage

31. The Applicants join issue with paragraph 31 of the Defence.

31A. The Applicants join issue with paragraph 31A of the Defence.

[NOT USED]

32. [NOT USED]

33. [NOT USED]

34. [NOT USED]

35. [NOT USED]

36. [NOT USED]

37. [NOT USED]

38. [NOT USED]

39. [NOT USED]

40. [NOT USED]

D. FRANCHISOR DISCLOSURES – CODE BREACHES AND MISLEADING OR DECEPTIVE CONDUCT – APPLICANTS AND FRANCHISEES

D1A. Goodwill Value Representation Contravention

40A. As to paragraph 40A of the Defence, the Applicants:

- (a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 40A of the SOC; and
- (b) otherwise join issue therewith.

40B. As to paragraph 40B of the Defence, the Applicants:

- (a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 40B of the SOC; and
- (b) otherwise join issue therewith.

40C. As to paragraph 40C of the Defence, the Applicants:

- (a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 40C of the SOC; and
- (b) otherwise join issue therewith.

40CA. As to paragraph 40CA of the Defence, the Applicants:

- (a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 40CA of the SOC; and
- (b) otherwise join issue therewith.

40CB. As to paragraph 40CB of the Defence, the Applicants:

- (a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 40CB of the SOC; and
- (b) otherwise join issue therewith.

40D. As to paragraph 40D of the Defence, the Applicants:

- (a) adopt the admissions made therein; and
- (b) otherwise join issue therewith.

40E. As to paragraph 40E of the Defence, the Applicants:

- (a) adopt any implied admissions made therein, in respect of the allegations made in paragraph 40E of the SOC; and
- (b) otherwise join issue therewith.

40EA. The Applicants join issue with paragraph 40EA of the Defence.

40EB. As to paragraph 40EB of the Defence, the Applicants:

- (a) adopt any implied admissions made therein, in respect of the allegations made in paragraph 40EB of the SOC; and
- (b) otherwise join issue therewith.

40F. As to paragraph 40F of the Defence, the Applicants:

- (a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 40F of the SOC; and
- (b) otherwise join issue therewith.

40G. The Applicants join issue with paragraph 40G of the Defence.

40H. The Applicants join issue with paragraph 40H of the Defence.

40I. The Applicants join issue with paragraph 40I of the Defence.

40J. ~~[Not used] The Applicants join issue with paragraph 40J of the Defence.~~

40K. The Applicants join issue with paragraph 40K of the Defence.

D1. 7-Eleven's pre-contractual statements and Disclosure

41. As to paragraph 41 of the Defence, the Applicants:

(a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 41 of the SOC;

(b) admits that 7-Eleven provided to the First Applicant, at various times, the documents pleaded in subparagraphs 41(a)(i) and 41(a)(ii) therein;

(ba) as to subparagraph 41(e)(i) therein, does not admit the execution by Mr Davaria of the Disclaimer Letter and Waiver and Release, but says that if (as appears from the Defence) it was presented by 7-Eleven to, and executed by, Mr Davaria on or after 18 September 2013, then:

(i) that occurred after:

(A) Mr Davaria was:

(1) advised by Mr Bennett of 7-Eleven on or about 18 July 2013 of the need to negotiate the purchase of the goodwill of the Campbelltown Store; and

(2) provided, at or about that time, with the Campbelltown Store Financials by Mr Bennett for the purpose of the First Applicant negotiating a purchase price for the goodwill of the Campbelltown Store;

- (B) Mr Bennett had, on or about 18 July 2013, made the Renewal Representation to Mr Davaria; and
 - (C) the First Applicant had (subsequently) in July 2013 entered into a binding Heads of Agreement that committed the First Applicant to purchasing the goodwill of the Campbelltown Store;
- (ii) 7-Eleven did not suggest or recommend to Mr Davaria and/or the First Applicant that they should obtain legal advice in respect of the Disclaimer Letter and Waiver and Release, or were provided with sufficient time to obtain any such advice before signing the Franchise Agreement;
 - (iii) accordingly, the presentation by 7-Eleven of the Disclaimer Letter and Waiver and Release, and any subsequent reliance on it by 7-Eleven:
 - (A) does not relieve 7-Eleven from any liability stemming from contravention of s.18 of the ACL and, or alternatively, s12DA of the ASIC Act, in respect of any anterior conduct by 7-Eleven; and, or alternatively,
 - (B) was and is unconscionable within the meaning of s.21 of the ACL and, or alternatively, s12CB of the ASIC Act; and
 - (C) accordingly, does not, or should not be permitted to, sustain any defence on the part of 7-Eleven; and
- (c) otherwise join issue therewith.

42. As to paragraph 42 of the Defence, the Applicants:

- (a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 42 of the SOC;
- (b) admits that the 7-Eleven Brochure provided to each of the Applicants contained content substantially to the effect of that pleaded in subparagraph 42(c) therein; and
- (c) otherwise join issue therewith.

43. As to paragraph 43 of the Defence, the Applicants:
- (a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 43 of the SOC;
 - (aa) further, to the extent that the matters pleaded in subparagraph 43(c)(i)(B) therein constitute an admission or implicit statement of fact by 7-Eleven of its having failed or omitted to make any similar or equivalent disclosure in previous editions of the Franchising Code Disclosure of entities from which 7-Eleven had received rebates in earlier financial years, adopt that admission or statement of fact;
 - (b) admit that the Campbelltown Franchising Disclosure included content substantially to the effect of that pleaded in subparagraphs 43(a)(vii)(A), (B), (C) and (E) therein; and
 - (c) otherwise join issue therewith.
44. As to paragraph 44 of the Defence, the Applicants:
- (a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 44 of the SOC;
 - (b) admit that the Oilcode Disclosure included content substantially to the effect of that pleaded in subparagraph 44(a)(v) therein and
 - (c) otherwise join issue therewith.
45. As to paragraph 45 of the Defence, the Applicants:
- (a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 45 of the SOC; and
 - (b) otherwise join issue therewith.

D2. [NOT USED]

46. [NOT USED]

47. [NOT USED]

48. [NOT USED]

48A [NOT USED]

49. [NOT USED]

D3 [NOT USED]

50. [NOT USED]

51. [NOT USED]

D4 Average Store Financials Accuracy Representation Contravention

52. The Applicants join issue with paragraph 52 of the Defence.

53. The Applicants join issue with paragraph 53 of the Defence.

54. As to paragraph 54 of the Defence, the Applicants:

- (a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 54 of the SOC; and
- (b) otherwise join issue therewith.

55. The Applicants join issue with paragraph 55 of the Defence.

56. The Applicants join issue with paragraph 56 of the Defence.

D5. Future Average Payroll Cost Representation Contravention

57. The Applicants join issue with paragraph 57 of the Defence.

58. The Applicants join issue with paragraph 58 of the Defence.

59. As to paragraph 59 of the Defence, the Applicants:

- (a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 59 of the SOC; and
- (b) otherwise join issue therewith.

60. The Applicants join issue with paragraph 60 of the Defence.

61. The Applicants join issue with paragraph 61 of the Defence.

62. The Applicants join issue with paragraph 62 of the Defence.

D6. [not used]

63. [not used]

D7. Advertising Fund Representation Contraventions

Breach of the Franchising Codes and the Oilcode

64. As to paragraph 64 of the Defence, the Applicants:

- (a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 64 of the SOC; and
- (b) otherwise join issue therewith.

65. The Applicants adopt the admission made in paragraph 65 of the Defence.

66. As to paragraph 66 of the Defence, the Applicants

- (a) repeat and rely on paragraphs 43 and 44 herein; and
- (b) otherwise join issue therewith paragraph 66 of the Defence.

67. The Applicants join issue with paragraph 67 of the Defence.

Misleading or Deceptive Conduct

68. As to paragraph 68 of the Defence, the Applicants

- (a) repeat and rely on paragraphs 41, 43 and 44 herein; and
- (a)(b) otherwise join issue therewith paragraph 68 of the Defence.

69. The Applicants join issue with paragraph 69 of the Defence.

70. As to paragraph 70 of the Defence, the Applicants:

- (a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 70 of the SOC; and
- (b) otherwise join issue therewith.

71. The Applicants join issue with paragraph 71 of the Defence.

72. The Applicants join issue with paragraph 72 of the Defence.

D8 7-Eleven Supplier Representation Contravention

73. The Applicants join issue with paragraph 73 of the Defence.

74. The Applicants join issue with paragraph 74 of the Defence.

75. As to paragraph 75 of the Defence, the Applicants:

- (a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 75 of the SOC; and
- (b) otherwise join issue therewith.

75A The Applicants join issue with paragraph 75A of the Defence.

76. The Applicants join issue with paragraph 76 of the Defence.

D9. 7- Eleven Volume Pricing Representation Contravention

77. The Applicants join issue with paragraph 77 of the Defence.

77A. As to paragraph 77A of the Defence, the Applicants:

- (a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 77A of the SOC; and
- (b) otherwise join issue therewith.

77B. The Applicants join issue with paragraph 77B of the Defence.

77C. The Applicants join issue with paragraph 77C of the Defence.

77D. The Applicants join issue with paragraph 77D of the Defence.

D10. Campbelltown Store Financials Representation (First Applicant only)

78. The Applicants join issue with paragraph 78 of the Defence.

79. The Applicants join issue with paragraph 79 of the Defence.

80. As to paragraph 80 of the Defence, the Applicants:

- (a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 80 of the SOC; and
- (b) otherwise join issue therewith.

81. The Applicants join issue with paragraph 81 of the Defence.

82. The Applicants join issue with paragraph 82 of the Defence.

D11. Campbelltown Store Future Payroll Cost Representation (First Applicant only)

83. The Applicants join issue with paragraph 83 of the Defence.

84. The Applicants join issue with paragraph 84 of the Defence.

85. As to paragraph 85 of the Defence, the Applicants:

- (a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 85 of the SOC; and
- (b) otherwise join issue therewith.

86. The Applicants join issue with paragraph 86 of the Defence.

87. The Applicants join issue with paragraph 87 of the Defence.

88. The Applicants join issue with paragraph 88 of the Defence.

D12. Campbelltown Store Financials Conduct Contravention (First Applicant only)

89. The Applicants join issue with paragraph 89 of the Defence.

D13. Misleading or deceptive conduct – loss and damage caused to each of the Applicants and Franchisees

Applicants' and Franchisees' Losses caused by the Wage Representation Contraventions and Goodwill Value Representation Contravention

90. As to paragraph 90 of the Defence, the Applicants:

- (a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 90 of the SOC; and
- (b) otherwise join issue therewith.

91. As to paragraph 91 of the Defence, the Applicants:
- (a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 91 of the SOC; and
 - (b) otherwise join issue therewith.
92. As to paragraph 92 of the Defence, the Applicants:
- (a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 92 of the SOC;
 - (aa) do not admit whether there are multiple factors that 7-Eleven takes or took into account when deciding whether to exercise an option to extend, or renew the Lease of existing Stores, and if so, what any of those multiple factors are or were, or how or the extent to which such factors are or were taken into account, because those matters are not known to the Applicants; and
 - (b) otherwise join issue therewith.
93. As to paragraph 93 of the Defence, the Applicants:
- (a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 93 of the SOC; and
 - (b) otherwise join issue therewith. [not used]

93.94. The Applicants join issue with paragraph 94 of the Defence.

Additional breach of contract – First Applicant

- 0A. As to paragraph 94A of the Defence, the Applicants:
- (a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 94A of the SOC;
 - (aa) says that the request by the First Applicant to update the advertised goodwill price of the Campbelltown Store to \$390,000 occurred in consequence of Ms Boogaard of 7-Eleven informing Mr Davaria, in response to a request from him to list the goodwill of Campbelltown Store

for sale at \$595,000, that: “[T]here is not enough lease time on the Campbelltown store for you to sell it. There’s no one who will buy it at that price with only a few years left on the lease. I will not allow you to list it for any more than \$390,000; and

(b) otherwise join issue therewith.

0B. As to paragraph 94B of the Defence, the Applicants:

(a) repeat the matters pleaded at paragraph 94A of the SOC, and at paragraph 94A(aa) of the Reply herein;

(b) admit that the Lease of the Campbelltown Store was subsequently extended to 31 March 2029; and

~~(a)(c)~~ otherwise join issue therewith paragraph 94B of the Defence.

0C. As to paragraph 94C of the Defence, the Applicants:

(a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 94C of the SOC; and

(b) otherwise join issue therewith.

0D. The Applicants join issue with paragraph 94D of the Defence.

0E. The Applicants join issue with paragraph 94E of the Defence.

94.95. The Applicants join issue with paragraph 95 of the Defence.

95.96. The Applicants join issue with paragraph 96 of the Defence.

First Applicant – direct reliance

96.97. The Applicants join issue with paragraph 97 of the Defence.

~~97-98.~~ The Applicants join issue with paragraph 98 of the Defence.

~~98-99.~~ The Applicants join issue with paragraph 99 of the Defence.

~~99-100.~~ The Applicants join issue with paragraph 100 of the Defence.

~~100-101.~~ The Applicants join issue with paragraph 101 of the Defence.

Second Applicant – direct reliance

101A. The Applicants join issue with paragraph 101A of the Defence.

101B. The Applicants join issue with paragraph 101B of the Defence.

Franchisees - direct reliance

~~101-102.~~ The Applicants join issue with paragraph 102 of the Defence.

~~102-103.~~ The Applicants join issue with paragraph 103 of the Defence.

~~103-104.~~ The Applicants join issue with paragraph 104 of the Defence.

~~104-105.~~ The Applicants join issue with paragraph 105 of the Defence.

105A As to paragraph 105A of the Defence, the Applicants:

- (a) join issue therewith;
- (b) say, without reversing any onus of proof, inter alia, that loss and damage suffered by the Applicants and Franchisees, was:
 - (i) as to the ability to recoup borrowing costs and capital losses and, or alternatively, enhance the value of goodwill:

- (A) a chance of a loss that did not eventuate earlier than September 2015; and
- (B) suffered subsequent to, and consequent upon:
 - (1) the matters pleaded in paragraphs 90 to 92(e) of the SOC; and
 - (2) in respect of the Campbelltown Store, the matters pleaded in paragraphs 94A to 94D of the SOC;
- (ii) as to trading losses and, or alternatively, the loss of the ability, or the reduced ability, to earn profits, suffered incrementally and progressively throughout the duration of the operation of Stores by Franchisees, and continues to be suffered by the Applicants and by Franchisees who operate Stores.

E. UNCONSCIONABLE CONDUCT

E.1 Franchisor's actual and constructive knowledge

~~105.106.~~ As to paragraph 106 of the Defence, the Applicants:

- (a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 106 of the SOC;
- (b) admit the matters of fact pleaded in subparagraphs 106(g), 106(l)(vii)(C), 106(l)(vii)(D), 106(l)(viii)(C), 106(m)(ii), 106(m)(iii)(A), 106(m)(iii)(B)(1) and 106(m)(iii)(B)(3) to 106(m)(iii)(B)(6) therein; and
- (c) otherwise join issue therewith.

E.2 Franchisor's unconscionable conduct and its consequences

~~106.107.~~ As to paragraph 107 of the Defence, the Applicants:

- (a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 107 of the SOC; and
- (b) otherwise join issue therewith.

~~407.108.~~ As to paragraph 108 of the Defence, the Applicants:

- (a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 108 of the SOC; and
- (b) otherwise join issue therewith.

~~408.109.~~ As to paragraph 109 of the Defence, the Applicants:

- (a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 109 of the SOC; and
- (b) otherwise join issue therewith.

~~409.110.~~ [Not used]

~~410.111.~~ As to paragraph 111 of the Defence, the Applicants:

- (a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 111 of the SOC; and
- (b) otherwise join issue therewith.

~~411.112.~~ As to paragraph 112 of the Defence, the Applicants:

- (a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 112 of the SOC; and
- (b) otherwise join issue therewith.

~~412.113.~~ As to paragraph 113 of the Defence, the Applicants:

- (a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 113 of the SOC; and
- (b) otherwise join issue therewith.

~~413.114.~~ [NOT USED]

~~114.115.~~ As to paragraph 109 of the Defence, the Applicants:

- (a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 109 of the SOC; and
- (b) otherwise join issue therewith.

E3. Contravention of section 21 of the ACL

~~115.116.~~ The Applicants join issue with paragraph 116 of the Defence.

~~116.117.~~ The Applicants join issue with paragraph 117 of the Defence.

~~117.118.~~ As to paragraph 118 of the Defence, the Applicants:

- (a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 118 of the SOC; and
- (b) otherwise join issue therewith.

~~118.119.~~ As to paragraph 119 of the Defence, the Applicants:

- (a) adopt any express or implied admissions made therein, in respect of the allegations made in paragraph 119 of the SOC; and
- (b) otherwise join issue therewith.

~~119.120.~~ The Applicants join issue with paragraph 120 of the Defence.

~~120.121.~~ The Applicants join issue with paragraph 121 of the Defence.

121A As to paragraph 121A of the Defence, the Applicants:

- (a) join issue therewith;
- (b) say, without reversing any onus of proof, inter alia, that loss and damage suffered by the Applicants and Franchisees, was:

- (i) as to the ability to recoup borrowing costs and capital losses and, or alternatively, enhance the value of goodwill:
 - (A) a chance of a loss that did not eventuate earlier than September 2015; and
 - (B) suffered subsequent to, and consequent upon:
 - (1) the matters pleaded in paragraphs 90 to 92(e) of the SOC; and
 - (2) in respect of the Campbelltown Store, the matters pleaded in paragraphs 94A to 94D of the SOC;
- (ii) as to trading losses and, or alternatively, the loss of the ability, or the reduced ability, to earn profits, suffered incrementally and progressively throughout the duration of the operation of Stores by Franchisees, and continues to be suffered by the Applicants and by Franchisees who operate Stores.

~~421.122.~~ As to paragraph 122 of the Defence, the Applicants:

- (a) adopt any implied admissions made therein, in respect of the allegations made in paragraph 122 of the SOC;
- ~~(aa) adopts the matters of fact pleaded in subparagraphs 122(b) therein; and~~
- (b) otherwise join issue therewith.

~~422.123.~~ The Applicants adopt the admission made in paragraph 123 of the Defence.

~~423.124.~~ The Applicants adopt the admission made in paragraph 124 of the Defence.

~~424.125.~~ The Applicants adopt the admission made in paragraph 125 of the Defence.

~~425.126.~~ As to paragraph 126 of the Defence, the Applicants:

- (a) adopt any express or implied admissions made therein; and
- (b) otherwise join issue therewith.

127. [Not used] The Applicants join issue with paragraph 127 of the Defence.

128. [Not used]

129. [Not used]

130. As to paragraph 130 of the Defence, the Applicants:

- (c)(a) adopt any implied admissions made therein; and
- (d)(b) otherwise join issue therewith.

131. [Not used]

132. [Not used]

133. [Not used]

134. [Not used]

135. [Not used]

136. As to paragraph 136 of the Defence, the Applicants:

- (a) adopt any express or implied admissions made therein; and
- (b) otherwise join issue therewith.

137. As to paragraph 137 of the Defence, the Applicants:

- (a) adopt any implied admissions made therein; and

(b) otherwise join issue therewith.

138. The Applicants adopt the admission in paragraph 138 of the Defence.

139. As to paragraph 139 of the Defence, the Applicants:

~~(e)~~(a) adopt any implied admissions made therein; and

~~(f)~~(b) otherwise join issue therewith.

140. As to paragraph 140 of the Defence, the Applicants:

(a) adopt any express or implied admissions made therein; and

(b) otherwise join issue therewith.

141. As to paragraph 141 of the Defence, the Applicants:

(a) adopt any implied admissions made therein; and

~~(g)~~(b) otherwise join issue therewith.

142. [Not used]

143. [Not used]

144. [Not used]

145. [Not used]

145A. As to paragraph 145A of the Defence, the Applicants:

(a) adopt any express or implied admissions made therein; and

~~(h)~~(b) otherwise join issue therewith.

145B. As to paragraph 145B of the Defence, the Applicants:

- (a) adopt any implied admissions made therein; and
- (a)(b) otherwise join issue therewith.

145C. As to paragraph 145C of the Defence, the Applicants:

- (a) adopt any implied admissions made therein; and
- (b) otherwise join issue therewith.

145D. As to paragraph 145C of the Defence, the Applicants:

- (a) adopt any implied admissions made therein; and
- (b) otherwise join issue therewith

145E. As to paragraph 145E of the Defence, the Applicants:

- (a) adopt any express or implied admissions made therein; and
- (b) otherwise join issue therewith.

145F. As to paragraph 145F of the Defence, the Applicants:

- (a) adopt any implied admissions made therein; and
- (b) otherwise join issue therewith.

146. As to paragraph 146 of the Defence, the Applicants:

- (a) adopt any express or implied admissions made therein; and
- (b) otherwise join issue therewith.

147. As to paragraph 147 of the Defence, the Applicants:

- (a) adopt any implied admissions made therein; and
- (b) otherwise join issue therewith.

148. As to paragraph 148 of the Defence, the Applicants:

- (a) adopt any implied admissions made therein; and
- (b) otherwise join issue therewith.

149. [Not used]

150. [Not used]

151. As to paragraph 151 of the Defence, the Applicants:

- (a) adopt any express or implied admissions made therein; and
- (b) otherwise join issue therewith.

152. As to paragraph 152 of the Defence, the Applicants:

- (a) adopt any express or implied admissions made therein; and
- (b) otherwise join issue therewith.

Date: 30 April 2021



Stewart A Levitt

Levitt Robinson


Solicitor for the Applicants

This amended pleading was prepared by Philip Tucker, counsel and Levitt Robinson.

Certificate of Lawyer

I, Stewart A Levitt, certify to the Court that, in relation to the Reply filed on behalf of the Applicants, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 30 April 2021



Stewart A Levitt

Levitt Robinson

Solicitor for the Applicants

Schedule

No: VID180/2018

Federal Court of Australia
District Registry: Victoria
Division: General

Applicants

Second Applicant: Kaizenworld Pty Ltd (ACN 163 833 565)

Respondents

Second Respondent: 7-ELEVEN INC