

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 16/03/2021 11:31:39 AM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Originating Application - Form 15 - Rule 8.01(1)
File Number:	VID180/2018
File Title:	DAVARIA PTY LIMITED & ANOR v 7-ELEVEN STORES PTY LTD & ANOR
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



Dated: 16/03/2021 2:51:53 PM AEDT

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.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.

Form 19
Rule 9.32



Third ~~Second~~ Further Amended Originating application starting a representative proceeding under Part IVA of the Federal Court of Australia Act 1976

(filed pursuant to leave granted by Middleton J on 22 February 2021)

No: VID180/2018

Federal Court of Australia
District Registry: Victoria
Division: General

Davaria Pty Limited and another named in the Schedule

Applicants

7-Eleven Stores Pty Ltd and another named in the Schedule

Respondents

To the active Respondents

The Applicants apply for the relief set out in this application which has been amended pursuant to the decision of Middleton J on 22 February 2021.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place: Federal Court of Australia
Law Courts Building
305 William St, Melbourne

Date:

.....
Signed by an officer acting with the authority
of the District Registrar

.....
Filed on behalf of: Applicants
Prepared by: Levitt Robinson and counsel
Tel: 02 9286 3133
Email: 711@levittrobinson.com
Address for service: PO Box 850, Darlinghurst NSW 1300



Details of claim

Terms defined in the ~~Third~~ ~~Second~~ Further Amended Statement of Claim (**Statement of Claim**) carry the same meaning when used in this ~~Third~~ ~~Second~~ Further Amended Originating Application.

On the grounds stated in the Statement of Claim, the Applicants claim:

1. Damages against the First Respondent (**7-Eleven**):
 - (a) for breach of contract;
 - (b) pursuant to section 236 and/or sections [237 and 243](#) of the *Australian Consumer Law* (Cth) set out in Schedule 2 of the *Competition and Consumer Act 2010* (**CCA**), as applicable pursuant to section 131 of the CCA, and/or its cognates as applicable, pursuant to legislation in the States and Territories of Australia (collectively, **ACL**), or alternatively section 82 and/or 87 of the *Trade Practices Act 1974* (Cth) (**TPA**) for misleading or deceptive conduct within the meaning of section 18 of the ACL or section 52 of the TPA respectively;
 - (c) pursuant to sections 82 and/or 87(1) and (2) of the CCA for contravention of an applicable industry code within the meaning of section 51ACB of the CCA;
 - (d) pursuant to section 236 and/or sections [237 and 243](#) of the ACL for unconscionable conduct within the meaning of section 21 of the ACL [or section 82 and/or section 87 of the TPA for unconscionable conduct within the meaning of section 51AC of the TPA, or alternatively section 12GF and/or section 12GM of the Australian Securities and Investment Commission Act 2000 \(Cth\) \(ASIC Act\) for unconscionable conduct within the meaning of section 12CB of the ASIC Act.](#)
2. ~~[Deleted]Orders against the Third Respondent (**Bank**), as to the Second Relevant Period, pursuant to section 12GM of the Australian Securities and Investments Commission Act 2001 (**ASIC Act**) that the Bank Loan Contracts of the First Applicant and/or some or all of the Bank Franchisees be varied or set aside.~~
3. ~~[Deleted]Further or alternatively to 2 above, damages against the Bank:~~
 - ~~(a) for breach of contract;~~
 - ~~(b) pursuant to section 12GF and/or section 12GM of the ASIC Act for unconscionable conduct within the meaning of section 12CB of the ASIC Act.~~
4. Declarations as against 7-Eleven and the Second Respondent (**Master Franchisor**), in respect of the First and Second Applicants and, to the extent applicable, following an initial trial of the Applicants' claims and particularisation of any claims by the



Franchisees, for the benefit of the Franchisees, as to the proper construction of the material terms of the Franchise Agreements alleged in paragraphs 9 to 24 of the Statement of Claim.

5. Declarations as against 7-Eleven, in respect of the Applicants and, to the extent applicable, following an initial trial of the Applicants' claims and particularisation of any claims by the Franchisees, for the benefit of the Franchisees:
 - (a) that 7-Eleven breached section 18 of the ACL, or alternatively section 52 of the TPA, by reason of the matters pleaded in paragraphs 40A to 105 of the Statement of Claim;
 - (b) that 7-Eleven contravened section 51ACB of the CCA [and/or section 51AD of the TPA](#) by reason of the matters pleaded in paragraphs 64 to 67 of the Statement of Claim;
 - (c) that 7-Eleven breached section 21 of the ACL [and/or section 51AC of the TPA, or alternatively section 12CB of the ASIC Act](#), by reason of the matters pleaded in paragraphs 106 to 121 of the Statement of Claim.
6. ~~[Deleted]Declarations as against the Bank, in respect of the First Applicant and, to the extent applicable, following an initial trial of the Applicants' claims and particularisation of any claims by the Franchisees, the Franchisees:~~
 - ~~(a) as to the proper construction of the material terms of the Bank Loan Contracts entered into within the Second Relevant Period between the Bank and each of the Franchisees alleged in paragraphs 130 to 135 of the Statement of Claim.~~
7. Interest.
8. Costs.
9. Such further order as this Honourable Court deems fit or the nature of the case requires, [including orders for compensation pursuant to sections 237 and 243 of the ACL and/or section 87 of the TPA, and/or section 12GM of the ASIC Act.](#)

Questions common to claims of group members

10. The question of law or fact common between the claims of the First and Second Applicants and the Franchisees as against 7-Eleven and the Master Franchisor is whether the Franchise Agreements contained the implied terms pleaded in paragraphs 23 to 24 of the Statement of Claim.



11. The questions of law or fact common between the claims of the First and Second Applicants and the Franchisees as against 7-Eleven are:

Contract Claims

- (a) whether at all times during the Relevant Period, 7-Eleven engaged in the C-Store Practices described in paragraph 25 of the Statement of Claim;
- (b) whether at all times during the Relevant Period, 7-Eleven engaged in the Inventory Practices described in paragraph 28 of the Statement of Claim;
- (ba) whether at all times during the Relevant Period, Franchisees were required to contribute monies to a collective fund that was a “marketing or other co-operative fund” within the meaning of those words as found in the Franchising Codes and the Oilcode, as alleged in paragraph 28D of the Statement of Claim;
- (bb) whether at all times during the Relevant Period, 7-Eleven was required to account to Franchisees, as alleged in paragraph 28E of the Statement of Claim;

Misleading Conduct

- (c) whether during the Relevant Period, 7-Eleven provided Franchisees with the “Introductory Pack” of information as alleged in paragraph 41(a) of the Statement of Claim;
- (d) whether during the Relevant Period, 7-Eleven provided Franchisees who purchased Convenience Stores with the Franchising Disclosure Document as alleged in paragraph 41(b) of the Statement of Claim;
- (e) whether during the Relevant Period, 7-Eleven provided Franchisees who purchased Fuel Stores with the Oilcode Disclosure Document as alleged in paragraph 41(c) of the Current Statement of Claim;
- (f) whether during the Relevant Period, the 7-Eleven Brochure contained the statements alleged in paragraph 42 of the Statement of Claim;
- (g) whether during the Relevant Period, 7-Eleven offered assistance by preparing 7-Eleven supplier and merchandise lists together with recommended retail prices referred to in paragraph 42(f) of the Statement of Claim;
- (h) whether during the Relevant Period, the Franchising Code Disclosure Document contained the statements alleged in paragraph 43 of the Statement of Claim;
- (i) whether during the Relevant Period, the Oilcode Disclosure Document contained the statements alleged in paragraph 44 of the Statement of Claim;
- (j) whether 7-Eleven made any, and if so which, of the following representations:



- (i) the Renewal Representation~~Business Opportunity Representation~~;
- (ii) the 7-Eleven Business Opportunity Statements;
- (iia) the Volume Pricing Representation;
- (iib) the Goodwill Value Representation;
- (iii) the Average Store Financials Accuracy Representation (to the extent it constituted an implied representation);
- (iv) the Future Average Payroll Cost Representation (to the extent it constituted an implied representation);
- (v) the Advertising Fund Representation;
- (vi) the 7-Eleven Supplier Representation.

(being the Misleading or Deceptive Conduct Representations);

- (k) whether any, and if so which, of the Misleading or Deceptive Conduct Representations were continuing representations;
- (l) whether any, and if so which, of the Misleading or Deceptive Conduct Representations were representations as to future matters;
- (m) whether the making and subsequent maintenance of any or all the Misleading or Deceptive Conduct Representations constituted conduct in trade or commerce;
- (ma) whether 7-Eleven engaged in the conduct pleaded in paragraphs 92(b), 92(ba), 92(c)(i), 92(c)(ii), 92(c)(iii), 92(d), 92(ea) and 93(b) of the Statement of Claim.

Unconscionability

- (n) whether 7-Eleven knew the matters in sub-paragraphs 106 (a)(i), (a)(ii), (a)(iia), (a)(vi), (d), (g), ~~(h)~~, ~~and~~ (j) and (l) of the Statement of Claim.

- ~~12. The questions of law or fact common between the claims of the First Applicant and the Bank Franchisees as against the Bank are:~~
- ~~13. Whether the Bank Loan Contracts entered into in the Second Relevant Period contained the terms pleaded in paragraphs 130 to 135 of the Statement of Claim;~~
- ~~14. whether the Tripartite Deed contained the terms pleaded in paragraph 125 of the Current VID180 SOC;~~
- ~~15. whether the ANZ knew or ought to have known each of the matters in paragraph 127(a), (b), (g) (i) and (k) of the Statement of Claim.~~



- ~~16. Did the contractual obligations alleged in paragraphs 132 to 134 of the Statement of Claim require the Bank:~~
- ~~17. to take into account the number of labour hours (whatever they may be) required by the prospective Franchisee to operate the store;~~
- ~~18. to take into account the award rates (whatever they may be) payable for labour by the prospective Franchisee to operate the store;~~
- ~~19. to have formed an opinion about the accuracy of the historical or forecasted payroll expense that would be incurred by the prospective Franchisee?"~~

20.12. The questions of law or fact that are common between the claims of the Second Applicant and the Goodwill Value Representation Franchisees as against 7-Eleven are:

- (a) whether until about September 2015, 7-Eleven published Listed Stores Information on the Franchising Opportunities Webpage and elsewhere, as alleged in paragraphs 40A(b), 40A(c) and 40B of the Statement of Claim;
- (b) whether 7-Eleven issued the Goodwill Price Advice during the Goodwill Guidance Period, as alleged in paragraph 40C of the Statement of Claim;
- (ba) whether 7-Eleven issued the Goodwill Purchase Advice during the Goodwill Guidance Period, as alleged in paragraph 40CA of the Statement of Claim;
- (bb) whether 7-Eleven issued the ANZ Goodwill Advice during the Goodwill Guidance Period, as alleged in paragraph 40CB of the Statement of Claim;
- (c) whether 7-Eleven made the Goodwill Value Representation, as alleged in paragraphs 40E and 40EB ~~40F~~ of the Statement of Claim;
- (d) whether the Goodwill Value Representation was made in trade or commerce, as alleged in paragraph 40F of the Statement of Claim;
- (e) whether the Goodwill Value Representation was a continuing representation, as alleged in paragraph 40F of the Statement of Claim;
- (f) whether 7-Eleven made the Renewal Representation, as alleged in paragraph 40EA of the Statement of Claim.



Representative action

The Applicants bring this application as representative parties pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth)

The group members to whom this proceeding relates are Franchisees who:

~~(a)~~ — at any time between 20 February 2012 and 19 February 2018 **(the Relevant Period)**

were or commenced to be franchisee parties (**Franchisees**) to a standard-form franchise agreement (**Franchise Agreement**) with the first respondent, 7-Eleven Stores Pty Ltd (**7-Eleven**); and

~~(b)~~ — ~~have not entered into a release of all of their claims against both 7-Eleven and the Bank arising out of the conduct of 7-Eleven and the Bank described in the Statement of Claim.~~

**Applicants' address**

The Applicants' address for service is

Stewart A Levitt, Levitt Robinson

PO Box 850, Darlinghurst NSW 1300

711@levittrobinson.com

Service on the Respondents

It is intended to serve this application on the First Respondent.

Date: 15/3/2021

A handwritten signature in cursive script, appearing to read "Levitt Robinson".

Stewart A Levitt

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 (A TEXAS CORPORATION)

~~Third Respondent: AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED~~