

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 16/03/2021 11:34:13 AM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number: VID182/2018
File Title: PARESHKUMAR DAVARIA & ANOR v 7-ELEVEN STORES PTY LIMITED & ANOR
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 16/03/2021 2:53:51 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 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 17
Rule 8.05(1)(a)

No: VID182/2018

Federal Court of Australia
District Registry: Victoria
Division: General

Pareshkumar Davaria and others named in the Schedule

Applicants

7-Eleven Stores Pty Ltd

Respondent

Second Further Amended Statement of Claim

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

*This pleading is intended to be read in conjunction with the most recently filed Statement of Claim in proceeding VID180/2018 (for which leave has been granted) (**Current VID180 SOC**). Defined terms in this pleading have the same meaning as in that Statement of Claim.*

A. INTRODUCTION

1. The First and Second Applicants commence this proceeding as a representative party pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) on their own behalf and on behalf of all persons:
 - (a) (**Nominated Director**) who were or commenced to be the nominated directors identified in a standard-form franchise agreement (**Franchise Agreement**) with the first respondent, 7-Eleven Stores Pty Ltd (**7-Eleven**) at any time between 20 February 2012 and 19 February 2018 (**Relevant Period**);
 - (b) (**Guarantors**) who provided indemnities, guarantees, mortgages or other securities (**Guarantees**) in respect of a Franchisee's obligations under a

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Franchise Agreement or Bank Loan Contract entered into by a Franchisee, during the Relevant Period;

~~and who have suffered loss and damage as a result of the conduct of either or both of 7-Eleven or the second respondent, ANZ Banking Group Limited (Bank), alleged in this SOC.~~

Particulars

As at the date of commencement of this proceeding there were, as against ~~7-Eleven each respondent~~, seven or more persons who make the claims set out in this SOC.

1A. The Third and Fourth Applicants are further representative parties pursuant to Part IVA of the FCAA:

- (a) on their own behalf and on behalf of *Nominated Directors* and Guarantors who entered into a Franchise Agreement during the Relevant Period; but
- (b) do not make claims in respect of the Average Store Financials Representation or the Future Average Payroll Cost Representation, ~~or the matters alleged in Part C below (Bank Claims).~~

Applicants

2. The First Applicant is the sole director of Davaria Pty Limited (**Franchisee**), the First Applicant in the representative proceeding VID180/2018 (**Franchisee Proceeding**).

3. The Second Applicant is a shareholder of the Franchisee.

3A. The Third Applicant is the sole director and a shareholder of Kaizenworld Pty Ltd (**Kaizenworld**), the Second Applicant in the Franchisee Proceeding.

3B. The Fourth Applicant is a shareholder of Kaizenworld.

4. The Franchisee:

- (a) entered into a Franchise Agreement with 7-Eleven on 19 September 2013, (**Campbelltown Store Franchise Agreement**) in relation to the 7-Eleven store identified in 7-Eleven's records as "Store 2073E" at 229 Queen Street Campbelltown (**Campbelltown Store**);
- (b) is and at all times since about 13 September 2013 has been the operator of the Campbelltown Store;

(c) entered into:

- (i) -a Franchise Agreement with 7-Eleven on 27 May 2015 (Northmead Store Franchise Agreement) in relation to the 7-Eleven store identified in 7-Eleven's records as "Store 2319B" at 137 Windsor Road, Northmead (Northmead Store);
- (ii) a heads of agreement on 9 April 2015 to acquire the goodwill associated with the franchise of the Northmead Store (Northmead Heads of Agreement);
- ~~(i)~~(iii) the Campbelltown Store Loan Contract and Northmead Store Loan Contract, and a further loan in 2015 with the vendor of the goodwill of associated with the franchise of the Northmead Store, for the purpose of acquiring the franchise of each of the Campbelltown Store and the Northmead Store;

~~(c)~~(d) is and at all times since about 27 May 2015 has been the operator of the Northmead Store;

4A. The First and Second Applicants:

(a) entered into:

- (i) as to the First Applicant:
 - A. a heads of agreement, on or about 31 July 2013, to acquire the goodwill associated with franchise of the Campbelltown Store (Campbelltown Store Heads of Agreement), liability under which was assumed by the Franchisee;
 - A.B. a loan agreement with ANZ Banking Group Ltd (the Bank) on or about 22 August 2013 (Campbelltown Loan); and
 - B.C. agreements to borrow further monies to enable the Franchisee to acquire the franchise associated with the Campbelltown Store, as described in paragraphs 424(b) to 426 of the First Applicant's affidavit filed in these proceedings on 22 October 2020 (Further Campbelltown Borrowings), liabilities under which were assumed by the Franchisee;
- (ii) a further loan agreement with the Bank on or about 12 June 2015 (**Northmead Loan**); and

- (b) entered into:
- (i) [as to the First Applicant](#), a guarantee and indemnity in favour of the Bank in respect of the Campbelltown Loan (the **Campbelltown Guarantee**);
 - (ii) individual guarantees and indemnities in favour of the Bank in respect of the obligations of the Franchisee limited to \$1,089,000.00 and [or extending to or including, a](#) registered mortgage [of their](#) property situated at 1/32 Alfred Street Granville (together the **Northmead Guarantee** and **Northmead Mortgage**);
- (c) have, since about 22 August 2013, been customers of the Bank.

4B. Kaizenworld:

- (a) entered into a Franchise Agreement with 7-Eleven on 2 October 2013, (**South Melbourne Store Franchise Agreement**) in relation to the 7-Eleven store identified in 7-Eleven's records as "Store 1191C" at 322 – 326 Clarendon Street, South Melbourne (**South Melbourne Store**);
- (b) is and at all times since about 29 October 2013 has been the operator of the South Melbourne Store;
- (c) entered into a loan agreement with the Bank on or about 24 September 2013 (**South Melbourne Loan**);
- (d) has, since about 24 September 2013, been a customer of the Bank.

4C. The Third Applicant, on about 24 September 2013, entered into:

- (a) a guarantee and indemnity in favour of the Bank in respect of Kaizenworld's obligations in respect of the South Melbourne Loan, limited to the amount of \$424,363.00 (the **South Melbourne Guarantee**);
- (b) has, since about 24 September 2013, been a customer of the Bank.

Respondents

5. 7-Eleven:

- (a) is, and was at all material times:
 - (i) a duly incorporated company pursuant to law and capable of being sued in its own name;

- (ii) the franchisor in Australia of a system for the identification, fixturation, layout, merchandising and operation of extended-hour retail stores, identified principally by the trade name and service mark "7-ELEVEN" (*7-Eleven System*) under licence from the Master Franchisor;

Particulars

The 7-Eleven System is described and defined in Recital A of the Franchise Agreement.

The agreements between 7-Eleven and the Master Franchisor are referred to in Recital D of the Franchise Agreement.

- (iii) a trading or financial corporation for the purposes of section 4 of the *Competition and Consumer Act 2010* (Cth) (**CCA**) (which definition unless otherwise indicated includes the cognate provision in the *Trade Practices Act 1974* (**TPA**));
- (iv) a "person" within the meaning of: section 18 of the *Australian Consumer Law* (Cth) set out in Schedule 2 of the 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**), and, or alternatively, section 12DA of the *Australian Securities and Investment Commission Act 2001* (Cth) (**ASIC Act**);-
- (b) at all material times, supplied services or was engaged with the possible supply of services to the Applicants and each of the Franchisees in trade or commerce within the meaning of sections 2 and 21 of the ACL or sections 4 and 51AC of the TPA, and, or alternatively, financial services, to each of the Franchisees, in trade or commerce within the meaning of sections 12BA and 12CB of the ASIC Act.

~~6. The Bank is, and was at all material times throughout the Relevant Period:~~

- ~~(a) a company duly incorporated pursuant to law and capable of being sued in its own name; and~~
- ~~(b) a "person" within the meaning of Part 2, Division 2 of the *Australian Securities and Investment Commission Act 2001* (Cth) (**ASIC Act**).~~

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

7. The Applicants, Nominated Directors and Guarantors repeat paragraphs 40A to [10596 and 122 to 152](#) of the Current VID180 SOC as if the same were set out in full herein.

B1. Reliance and loss – applicants

8. In deciding to enter into [each of the Campbelltown Store Heads of Agreement](#), the Campbelltown Guarantee [and the Campbelltown Franchise Agreement](#), the First ~~and Second~~ Applicants relied on (alone or in combination):

(a) each of:

(i) the Goodwill Value Representation,

~~(ia)~~ [the Renewal Representation](#),

(ii) the Volume Pricing Representations,

(iii) the Average Store Financials Accuracy Representation, the Future Average Payroll Cost Representation,

(iv) the content of the Average Store Financials,

(v) the Advertising Fund Representation,

(vi) the 7-Eleven Supplier Representation,

(individually and in combination, the **Misleading or Deceptive Conduct Representations**) and

(b) the Campbelltown Store Financials Accuracy Representation; and

(c) the Campbelltown Store Future Payroll Cost Representation

(the representations in (b) and (c) being together and severally the **Campbelltown Representations**).

Particulars

Particulars will be provided, [if requested](#), after affidavits or outlines of evidence are served.

9. Further and in the alternative, if the Misleading or Deceptive Conduct Representations and/or the Code Disclosure Contraventions (or any of them)

and/or the Campbelltown Representations (alone or in combination) had not occurred:

- (a) the Franchisee would not have entered into the Campbelltown Store Loan Contract or the Campbelltown Store Franchise Agreement, or acquired the goodwill associated with the franchise of the Campbelltown Store (as pleaded in paragraph 97 of the Current VID180 SOC); and
 - (b) the First and Second Applicants would not have entered into any of the Campbelltown Store Heads of Agreement, the Campbelltown Guarantee or the Campbelltown Store Franchise Agreement; and
 - (c) none of the matters pleaded in paragraphs 10, 11 and 12 herein would have transpired.
10. By reason of the financial and operational obligations of the Franchisee in respect of the Campbelltown Store Franchise Agreement and the Campbelltown Store Loan Contract, the First and Second Applicants from 19 September 2013:
- (a) gave up, or reduced the hours worked in, the employment they enjoyed prior to the Franchisee entering the Campbelltown Store Franchise Agreement;
 - (aa) further or alternatively in respect of the First Applicant, did not, and/or lost the opportunity to:
 - (i) pursue, as he would have, the obtaining of registration as a pharmacist in Australia; and
 - (ii) earn income as a registered pharmacist;
 - (b) worked, instead, in, or in respect of, the Campbelltown sStore over longer hours and for no wages, or lower wages, and lower income (including from profit drawings) than they would have earned from continuing their former employments; and
 - (c) further or alternatively, did not have, utilise and/or enjoy (as they otherwise would have), and lost the benefit and value of, the time that they would have had, utilised and/or enjoyed, by not working for all of the hours that they did in, or in respect of, the Campbelltown store.

Particulars

Particulars will be provided, if requested, after affidavits or outlines of evidence are served.

11. Further:

- (a) the Franchisee entered the [Northmead Heads of Agreement and Northmead Store Franchise Agreement](#) and the First and Second Applicants entered into the Northmead Guarantee and the Northmead Mortgage in an effort to repair the financial prejudice suffered by them as a result of their [Franchisee's and First Applicant's](#) financial commitments in connection with the Campbelltown Store;
- (b) but for their [Franchisee's and First Applicant's](#) financial commitments in connection with the Campbelltown Store, the Franchisee would not have entered the Northmead Store Franchise Agreement and the First and Second Applicants would not have entered into the Northmead Guarantee and the Northmead Mortgage;
- (c) in the premises set out in (a) and (b) hereof, and paragraphs 8 and 9 above, the Misleading or Deceptive Conduct Representations, the Code Disclosure Contraventions and the Campbelltown Representations (alone or in combination) were a material cause of the Franchisee entering the Northmead Store Franchise Agreement and the First and Second Applicants entering into the Northmead Guarantee and the Northmead Mortgage.

12. By reason of the financial obligations of:

- (a) the Franchisee in respect of the [Campbelltown Loan, Further Campbelltown Borrowings and Campbelltown Store Franchise Agreement](#), and the [Northmead Store Heads of Agreement, Northmead Loan and Northmead Store Franchise Agreement](#), and
 - (aa) [the First Applicant in respect of the Campbelltown Store Franchise Agreement, Further Campbelltown Borrowings and the Campbelltown Guarantee; and](#)
- (b) the First and Second Applicants in respect of the Northmead Store Franchise Agreement, [the Northmead Guarantee and the Northmead Mortgage](#);

the First and Second Applicants;

(i) _____ from 19 September 2013 worked in the Campbelltown Store, and from 5 June 2015 also worked in the Northmead Store, for longer hours and no wages, or lower wages, and lower income (from profit drawings) than they would have earned from:

A. _____ continuing their former employment (as they would have);
and

B. _____ further or alternatively as to the First Applicant, from earning income as a registered pharmacist;-

(+)(ii) further or alternatively, did not have, utilise and/or enjoy (as they otherwise would have), and lost the benefit and value of, the time that they each would have had, utilised and/or enjoyed, by not working for all of the hours that they did in, or in respect of, the Campbelltown Store and the Northmead Store.

Particulars

Particulars will be provided, if requested, after affidavits or outlines of evidence are served.

12A_ In deciding:

(a) to execute the South Melbourne Store Franchise Agreement, the Third and Fourth Applicant relied; and

(b) to enter into the South Melbourne Guarantee, the Third Applicant relied,

save for the Average Store Financials Accuracy Representation and the Future Average Payroll Cost Representation, on (alone or in combination) each of the Misleading or Deceptive Conduct Representations.

Particulars

Particulars will be provided, if requested, after affidavits or outlines of evidence are served.

12B_ Further and in the alternative, if the Misleading or Deceptive Conduct Representations referred to in paragraph 12A above, and/or the Code Disclosure Contraventions (or any of them), had not occurred:

(a) _____ Kaizenworld would not have entered any of South Melbourne Heads of Agreement, the South Melbourne Store Loan Contract or the South

Melbourne Store Franchise Agreement (as pleaded in paragraph 101A of the Current VID180 SOC);

(aa) neither of the Third Applicant or Fourth Applicant would have signed the Franchise Agreement as *Nominated Directors* of Kaizenworld;

(e)(b) the Third Applicant would not have entered into the South Melbourne Guarantee;

(d)(c) from no later than July 2013:

(i) the Third Applicant:

A. ~~did not (as he would have pursued and obtained)~~, and/or lost the opportunity to, pursue and obtain, employment in the field of travel tourism and/or aviation and logistics; and

A.B. further or alternatively, would have utilised and/or enjoyed, and/or lost the benefit and value of, the time that he would have had available to him by not working all of the hours that he did in, or in respect of, the South Melbourne Store;

(ii) the Fourth Applicant:

A. ~~did not (as she would have pursued and obtained)~~, and/or lost the opportunity to, pursue and obtain, employment in the field of software development and implementation, or education and employment in field of childcare; and

B. further or alternatively, would have utilised and/or enjoyed, and/or lost the benefit and value of, the time that she would have had available to her by not working for all of the hours that she did in, or in respect of, the South Melbourne Store.

Particulars

Particulars will be provided, if requested, after affidavits or outlines of evidence are served.

12C. By reason of Kaizenworld's and their obligations in respect of the South Melbourne Store Franchise Agreement and South Melbourne Loan, the Third and Fourth Applicants:

(a) -worked in the South Melbourne store for longer hours and lower wages, and lesser income (including from profit drawings), than they would have earned from pursuing the employment described in paragraph 12B(c) above; and

(a)(b) further or alternatively, did not have, utilise and/or enjoy, and lost the benefit and value of, the time that they each would have had available by not working for all of the hours that they did in, or in respect of, the South Melbourne Store.

Particulars

Particulars will be provided, if requested, after affidavits or outlines of evidence are served.

12D. In the premises in paragraphs 12A to 12C above, the Third and Fourth Applicants have suffered loss and damage, and are likely to suffer further loss and damage, caused by the Misleading or Deceptive Conduct Representations referred to in paragraph 12A above and/or the Code Disclosure Contraventions, including continuing liability as Nominated Directors and (as to the Third Applicant) continuing liability under the South Melbourne Guarantee.

Particulars

Further particulars of loss will be provided, if requested, after service of the Applicants' affidavits or outlines of evidence and expert evidence.

13. In the premises in paragraphs 9(c), 11 and 12, the First and Second Applicants have suffered loss and damage, and are likely to suffer further loss and damage, caused by:

(a) the Misleading or Deceptive Conduct Representations, or, further or alternatively,

(aa) the Code Disclosure Contraventions, or, further or alternatively,

(b) the Campbelltown Representations,

including continuing liability under the Campbelltown Guarantee (as to the First Applicant), the Northmead Guarantee and the Northmead Mortgage.

Particulars

Further particulars of loss will be provided, if requested, after service of the Applicants' affidavits or outlines of evidence and expert evidence.

Foregone Income & Guarantee Losses – Group Member

14. In deciding to enter into their respective Franchise Agreements and Guarantees some or all of the other Nominated Directors and Guarantors directly relied on one or more of the Misleading or Deceptive Conduct Representations (alone or in combination).

Particulars

Particulars relating to individual group members may be provided following the trial of the common questions or otherwise as the Court may direct.

15. Further and in the alternative, if the Misleading or Deceptive Conduct Representations (alone or in combination) and/or the Code Disclosure Contraventions (or any of them) had not occurred, some or all of the Nominated Directors and Guarantors would not have entered into their respective Franchise Agreements and Guarantees.

Particulars

Particulars relating to individual group members may be provided following the trial of the common questions or otherwise as the Court may direct.

16. By reason of their financial obligations in respect of or arising from their respective Franchise Agreements or Guarantees, some or all of the Nominated Directors and Guarantors:

(a) gave up, or reduced the hours worked in, the employment they enjoyed, or would otherwise have pursued, prior to making their respective Franchise Agreements or giving their respective Guarantees;

(aa) further or alternatively, did not, and/or lost the opportunity to, pursue, as they otherwise would have:

(i) more lucrative employment; and, or alternatively,

(ii) further education; and, or alternatively,

(iii) investment, through use of available funds;

~~(a)(b)~~ worked in their Franchise store for no wages, or lower wages, and lower income (from profit drawings) than they would have earned from continuing their former, or from pursuing other, employments; further or alternatively

(ba) did not have, utilise and/or enjoy (as they otherwise would have), and lost the benefit and value of, the time that they would have had, utilised and/or enjoyed, by not working for all of the hours that they did in, or in respect of, their Franchise store;

~~(b)(c)~~ suffered losses, or are likely to suffer losses, by reason of their Guarantees being enforced.

Particulars

Particulars relating to individual group members may be provided following the trial of the common questions or otherwise as the Court may direct.

17. In the premises set out in paragraphs 14, ~~and~~ 15 and 16 above, some or all of the Nominated Directors and Guarantors have suffered, and/or are likely to suffer, loss and damage caused by the Misleading or Deceptive Conduct Representations and/or the Code Disclosure Contraventions.

Particulars

Particulars relating to individual group members may be provided following the trial of the common questions or otherwise as the Court may direct.

The loss suffered by Nominated Directors and Guarantors will also be calculated in accordance with the methodology stated in particulars to paragraphs 12D and 13 above as applicable to the respective Stores of the Franchisees.

B3. Unconscionable Conduct

17A. Further or alternatively, the Applicants repeat paragraphs 106 to 121 of the Current VID180 SOC as if the same were set out in full herein.

17B. By reason of the Unconscionable Conduct as described in paragraph 116 of the Current VID180 SOC (as adopted by paragraph 17A herein):

(a) the Franchisee entered into each of the Campbelltown Store Loan Contract, the Campbelltown Store Franchise Agreement, assumed liability for the Further Campbelltown Borrowings and acquisition of the goodwill associated with the franchise of the Campbelltown Store;

(b) the First Applicant;

- (i) entered into each of the Campbelltown Heads of Agreement, Campbelltown Guarantee and the Campbelltown Franchise Agreement (as the Nominated Director); and
- (ii) made the Further Campbelltown Borrowings;
- (c) the Franchisee and the First Applicant entered into the Northmead Store Franchise Agreement (the First Applicant as the Nominated Director);
- (d) the First and Second Applicants entered into the Northmead Guarantee and Northmead Mortgage;
- (e) the First and Second Applicants have suffered loss and damage as pleaded in paragraphs 10 to 12 and 13 herein;
- (f) Kaizenworld entered into each of the South Melbourne Heads of Agreement, the South Melbourne Store Loan Contract and the South Melbourne Store Franchise Agreement;
- (g) the Third Applicant entered into the South Melbourne Store Guarantee;
- (h) the Third and Fourth Applicants entered into the South Melbourne Store Franchise Agreement, as Nominated Directors;
- (i) the Third and Fourth Applicants have suffered loss and damage as pleaded in paragraphs 12C and 12D herein;
- (j) other Franchisees entered into Heads of Agreement for the purchase of the goodwill of their Stores, loan agreements to defray the costs associated with the purchase of the goodwill of their Stores and any acquisition costs related to their Franchise Agreements, and Franchise Agreements;
- (k) other Nominated Directors entered into Franchise Agreements;
- (l) other Guarantors entered into Guarantees;
- (m) those Nominated Directors and Guarantors have suffered loss and damage, as pleaded in paragraphs 16 and 17 herein.

C. DELETED BANK CLAIMS

18. to 45. [deleted]

C1. Deleted Relationship between the Bank and 7-Eleven

48. Deleted The First and Second Applicants repeat paragraphs 122 to 135 of the Current VID180 SOC as if the same were set out in full herein.

49. Deleted By reason of the matters set out in paragraphs 131 to 134 of the Current VID180 SOC:

(a) the Banking Code Application Term and

(b) the Fair and Reasonable Conduct Term;

were terms of the contract of guarantee between each of the First and Second Applicants or Guarantor and the Bank.

20. Deleted Further and in the alternative, in the premises set out in paragraphs 131 to 134 of the Current VID180 SOC the Bank represented to each of the First and Second Applicants or Guarantor that it would observe:

(a) the Banking Code Application Term and

(b) the Fair and Reasonable Conduct Term;

18. in its dealings with them in respect of the Guarantee (**Guarantor Protection Representations**).

21. Deleted The representation referred to in paragraph 20 was:

(a) made in trade or commerce within the meaning of the ACL; further and alternatively

(b) ASIC Act; and

(c) a continuing representation up to at least the time each of the First and Second Applicants or Guarantor executed the Guarantee.

C2. Deleted First and Second Applicants' claim – Campbelltown Store Loan

22. Deleted The First and Second Applicants repeat paragraphs 136 to 142 of the Current VID180 SOC as if the same were set out in full herein.

23. Deleted By reason of the matters pleaded in paragraph 22 above, the Bank:

- ~~(a) by approving the Campbelltown Loan Application:~~
- ~~(i) breached the Prudential Obligations Term of the Bank's contract with the Franchisee, being the Campbelltown Store Loan Contract;~~
- ~~(ii) breached the Prudent Banker Term of the Campbelltown Store Loan Contract; and~~
- ~~(b) by procuring the Campbelltown Guarantee despite the circumstances referred to in (a) hereof:~~
- ~~(i) failed to act fairly and reasonably in respect of the First and Second Applicants, in breach of the Fair and Reasonable Conduct Term referred to in paragraph 20 above; further or alternatively~~
- ~~(ii) by failing to correct or withdraw the Guarantor Protection Representations before the First and Second Applicants executed the Campbelltown Guarantee engaged in conduct that was misleading or deceptive, or likely to mislead or deceive, in contravention of the ACL and ASIC Act;~~
- ~~(together and severally, **Bank's Lending Breaches**).~~

24. ~~[Deleted] But for the Bank's Lending Breaches:~~

- ~~(a) the Bank would not have advanced loan funds to the Franchisee for the purchase of the Campbelltown Store; and~~
- ~~(b) the First and Second Applicants would not have entered into the Campbelltown Guarantee.~~

25. ~~[Deleted] By reason of the matters pleaded in paragraphs 19 to 24 above, the First and Second Applicants suffered loss and damage.~~

~~**Particulars**~~

~~*The First and Second Applicants refer to and repeat the particulars of loss of personal income set out under paragraphs 10 and 12 above. Further particulars may be provided prior to trial and after receipt of experts' reports.*~~

~~Northmead Store Loan Contract and loan approval process~~

26. ~~[Deleted] The First and Second Applicants repeat paragraphs 146 to 153 of the Current VID180 SOC as if the same were set out in full herein.~~

27. ~~[Deleted] By reason of the matters pleaded in paragraph 26, the Bank:~~

- ~~(a) by approving the Northmead Loan Application:~~

- ~~(i) — breached the Prudential Obligations Term of the Bank's contract with the Franchisee, being the Northmead Store Loan Contract;~~
- ~~(ii) — breached the Prudent Banker Term of the Northmead Store Loan Contract; and~~
- ~~(b) — by procuring the Northmead Guarantee and Northmead Mortgage despite the circumstances referred to in (a) hereof:~~
 - ~~(i) — failed to act fairly and reasonably in respect of the First and Second Applicants, in breach of the Fair and Reasonable Conduct Term referred to in paragraph 20 above; further or alternatively~~
 - ~~(ii) — by failing to correct or withdraw the Guarantor Protection Representations before the First and Second Applicants executed the Northmead Guarantee and the Northmead Mortgage — engaged in conduct that was misleading or deceptive, or likely to mislead or deceive, in contravention of the ACL, further or alternatively the ASIC Act;~~

~~(being Bank's Lending Breaches toward the First and Second Applicants in respect of the Northmead Store Loan Contract).~~

~~28. — [Deleted] But for the Bank's Lending Breaches referred to in:~~

- ~~(a) — paragraph 23:~~
 - ~~(i) — the Bank would not have advanced loan funds to the Franchisee for the purchase of the Campbelltown Store or the Northmead Store; and~~
 - ~~(ii) — the First and Second Applicants would not have entered into the Campbelltown Guarantee, the Northmead Guarantee or the Northmead Mortgage; and~~
- ~~(b) — paragraph 27:~~
 - ~~(i) — the Bank would not have advanced loan funds to the Franchisee for the purchase of the Northmead Store; and~~
 - ~~(ii) — the First and Second Applicants would not have entered into the Northmead Guarantee or the Northmead Mortgage.~~

~~29. — [Deleted] By reason of the matters pleaded in the preceding paragraph, the First and Second Applicants suffered loss and damage.~~

~~—— **Particulars**~~

~~*The First and Second Applicants refer to and repeat the particulars of loss of personal income set out under paragraphs 10 and 12 above. Further particulars may be provided prior to trial and after receipt of experts' reports.*~~

C3. ~~[Deleted] Guarantor Group Members' Claims~~

~~30. [Deleted] The First and Second Applicants refer to and repeats paragraph 157 to 159 of the Current VID180 SOC as if the same were set out in full herein.~~

~~31. [Deleted] By reason of the matters pleaded in paragraphs 19, further or alternatively 20, and 30, the Bank:~~

~~(a) by approving some or all of the loan applications from franchisee group members in the Franchisees' Proceeding (**Represented Franchisees**):~~

~~(i) breached the Prudential Obligations Term of the Bank's contract with each Represented Franchisee;~~

~~(ii) breached the Prudent Banker Term of the Bank's contract with each Represented Franchisee; and~~

~~(b) by procuring the Guarantees in respect of the Represented Franchisees referred to in (a) despite the circumstances referred to in (a):~~

~~(i) failed to act fairly and reasonably in respect of the Guarantors, in breach of the Fair and Reasonable Term referred to in paragraph 20 above; further or alternatively~~

~~(ii) by failing to correct or withdraw the Guarantor Protection Representations before the Guarantors executed the Guarantees — engaged in conduct that was misleading or deceptive, or likely to mislead or deceive, in contravention of the ACL and ASIC Act;~~

~~(being Bank's Lending Breaches toward the Guarantors).~~

~~32. [Deleted] But for the Bank's Lending Breaches referred to in paragraph 31:~~

~~(a) the Bank would not have advanced loan funds to the Represented Franchisees for the purchase of their franchise; and~~

~~(b) the Guarantors would not have entered into the Guarantees.~~

~~33. [Deleted] By reason of the matters pleaded in paragraph 31 above, some or all of the Guarantors suffered loss and damage.~~

~~Particulars~~

~~The First and Second Applicants repeat paragraph 23 above.~~

C4. ~~[Deleted] Bank's Unconscionable Conduct~~

~~34.— [Deleted] At the time the Bank offered the Bank Loan Contracts to the Represented Franchisees and procured the Guarantees from the Guarantors the Bank knew or ought reasonably to have known the matters in paragraph 127 of the Current VID 180 SOC and that:~~

- ~~(a)— Guarantors commonly had little or no prior business experience;~~
- ~~(b)— Guarantors commonly had limited or no prior experience in operating retail outlets, and in particular convenience stores;~~
- ~~(c)— Guarantors commonly had limited English skills;~~
- ~~(d)— Guarantors commonly had limited understanding of minimum wage laws in Australia;~~
- ~~(e)— Guarantors commonly were highly vulnerable to 7-Eleven's decisions to renew a lease, and in the event of non-renewal, were likely to be (and on occasion had been) unable to meet their obligations under their Bank Loan Contracts;~~
- ~~(f)— in circumstances including (a)-(e) above in approving the Loan for the Franchisee the Bank was likely to be breach of:~~
 - ~~(i)— the Fair and Reasonable Conduct term;~~
 - ~~(ii)— the Prudential Obligations Term;~~
 - ~~(iii)— the Prudent Banker Term;~~

~~—— Particulars~~

~~—— The First and Second Applicants refer to, and repeat, the allegations made in paragraphs 157 and 158 of the Current VID180 SOC as if the same were set out in full herein.~~

~~(g)— the Bank had not informed the Guarantors about minimum wage laws in Australia or the matters referred to in (e) and (f);~~

~~(h) Guarantors were unlikely to be aware of minimum wage laws in Australia and the matters referred to in (e) and (f).~~

~~—— Campbelltown Loan Application (Campbelltown Store)~~

~~35. [Deleted] Further and in the alternative to paragraph 33, at the time the Bank offered the Campbelltown Store Loan Contract to the Franchisee and procured the Campbelltown Guarantee from the First and Second Applicants, the Bank knew or ought reasonably to have known that:~~

~~(a) the First and Second Applicants (and especially the second Applicant) had limited English skills;~~

~~(b) the First and Second Applicants had emigrated to Australia from India;~~

~~(c) the First and Second Applicants had little or no prior business experience;~~

~~(d) the First and Second Applicants had no prior experience in operating a retail outlet, and in particular a convenience store;~~

~~(e) the "business plan" submitted to the Bank by the First and Second Applicants and Franchisee in support of the Franchisee's application for the loan assumed payroll costs based on wage rates that were below the applicable industrial award rates;~~

~~(f) the lease for the Campbelltown Store premises would terminate on 31 March 2014, unless 7-Eleven, in its discretion, exercised an option to renew for a further five years, and if 7-Eleven did not exercise this option (or the second option to renew for a further five years from 31 March 2019), this was likely to result in the closure of the Campbelltown Store with the First and Second Applicants being unable to meet their obligations under the Campbelltown Store Loan Contract;~~

~~(g) some Guarantors in the 7-Eleven network had experienced the results of 7-Eleven's decision not to renew a lease and those Guarantors were unable to meet their obligations under the Bank Loan Contracts;~~

~~(h) in approving the Campbelltown Store Loan for the Franchisee, the Bank was likely to be in breach of:~~

~~(i) the Fair and Reasonable Conduct term;~~

~~(ii) the Prudential Obligations Term;~~

~~(iii) the Prudent Banker Term;~~

~~toward the Franchisees.~~

~~Particulars~~

~~*The First and Second Applicants refer to, and repeat, the allegations made in paragraphs 143 and 144 of the Current VID180 SOC as if the same were set out in full herein.*~~

~~(i) the Bank had not informed the First and Second Applicants about the matters in (e) to (h).~~

~~(together and severally, the **Campbelltown Circumstances**).~~

~~36. [Deleted] In the premises set out in the two preceding paragraphs, the Bank:~~

~~(a) by approving the Campbelltown Loan Application; and/or~~

~~(b) procuring the Campbelltown Guarantee from the First and Second Applicants,~~

~~engaged in conduct in trade or commerce, in connection with the supply or possible supply of financial services that was unconscionable toward the First and Second Applicants within the meaning of s 21 of the ACL, further or alternatively s 12CB of the ASIC Act.~~

~~Particulars~~

~~The First and Second Applicants repeat paragraph 23 above.~~

~~The First and Second Applicants repeat the particulars to paragraph 160 of the Current VID180 SOG.~~

~~[Deleted]~~

~~37. Had the First and Second Applicants not entered into the Campbelltown Guarantee they would not have entered into the subsequent Northmead Guarantee or Northmead Mortgage.~~

~~Particulars~~

~~The First and Second Applicants refer to and repeat the particulars of loss of personal income set out under paragraphs 10 and 12 above. Further particulars may be provided prior to trial.~~

~~38. [Deleted] In the premises set out in paragraphs 35 to 37, the First and Second Applicants have suffered loss and damage. By reason of the contravention alleged in 35.~~

~~Particulars~~

~~The First and Second Applicants refer to and repeat the particulars of loss of personal income set out under paragraphs 10 and 12 above. Further particulars may be provided prior to trial.~~

~~39. [Deleted] Further and in the alternative to paragraph 38 above, in the premises set out in paragraphs 35 to 37, the Campbelltown Guarantee should be varied or set aside pursuant to section 12GM of the ASIC Act.~~

~~Northmead Loan Application (Northmead Store)~~

~~40. [Deleted] At the time the Bank offered the Northmead Store Loan Contract to the Franchisee and procured the Northmead Guarantee and the Northmead Mortgage from the First and Second Applicants, the Bank knew or ought reasonably to have known:~~

- ~~(a) the matters in paragraph 34;~~
- ~~(b) the First and Second Applicants were or were likely to be in financial difficulty because of the low income derived by the Franchisee and the First and Second Applicants from the Campbelltown Store;~~
- ~~(c) in approving the Northmead Store Loan for the Franchisee the Bank was likely to be breach of:~~
 - ~~(i) the Fair and Reasonable Conduct term;~~
 - ~~(ii) the Prudential Obligations Term;~~
 - ~~(iii) the Prudent Banker Term;~~

~~Particulars~~

~~The First and Second Applicants refer to, and repeat, the allegations made in paragraphs 154 and 155 of the Current VID180 SOC as if the same were set out in full herein.~~

~~(d) the Bank had not informed the First and Second Applicants about the matters in (a) to (c).~~

~~(together and severally, the **Northmead Circumstances**).~~

~~41. [Deleted] Further and in the alternative to the matters pleaded and particularised in paragraphs 22 to 25 above, the Bank~~

- ~~(a) by approving the Northmead Loan Application; and/or~~
- ~~(b) procuring the Northmead Guarantee and the Northmead Mortgage,~~

~~engaged in conduct in connection with the supply or possible supply of financial services to the First and Second Applicants that was unconscionable within the meaning of 12CB of the ASIC Act.~~

~~Particulars~~

~~The First and Second Applicants repeat paragraph 27 above.~~

~~The First and Second Applicants repeat the particulars to paragraph 165 of the Current VID180 SOC.~~

42. ~~[Deleted] Further and in the alternative to paragraph 41 above, by reason of the Bank's unconscionable conduct in approving the Northmead Loan Application and/or procuring the Northmead Guarantee and the Northmead Mortgage, the Northmead Guarantee and the Northmead Mortgage should be varied or set aside pursuant to section 12GM of the ASIC Act.~~

C5. ~~[Deleted] Bank's unconscionable conduct – Guarantors~~

43. ~~[Deleted] The First and Second Applicants repeat paragraphs 167A to 167D of the Current VID180 SOC and say that the Bank,~~

~~(a) by approving some or all of the Represented Franchisees' loan applications; and/or~~

~~(b) procuring some or all of the Guarantees,~~

~~engaged in conduct in trade or commerce in connection with the supply or possible supply of financial services to Guarantors and/or their Nominated Directors that was unconscionable within the meaning of 12CB of the ASIC Act.~~

~~Particulars~~

~~The First and Second Applicants repeat the particulars to paragraph 168 of the Current VID180 SOC.~~

44. ~~[Deleted] By reason of the Bank's unconscionable conduct as pleaded in paragraph 43 above, some or all of Guarantors suffered loss and damage.~~

45. ~~[Deleted] Further and in the alternative to the matters pleaded in paragraph 44 above, by reason of the Bank's unconscionable conduct as pleaded in paragraph 43 above, some or all of the Guarantees should be varied or set aside pursuant to section 12GM of the ASIC Act.~~

Date: 15/3/2021.

Levitt Robinson

Stewart A Levitt

Levitt Robinson

Solicitor for the Applicants

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

Certificate of lawyer

I, Stewart A Levitt, certify to the Court that, in relation to the statement of claim 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: 15/3/2021

Levitt Robinson

Stewart A Levitt

Levitt Robinson

Solicitor for the Applicants

SCHEDULE

No: VID182/2018

Federal Court of Australia
 District Registry: Victoria
 Division: General

Second Applicant: KHUSHBU DAVARIA
 Third Applicant: JATINDER PAL SINGH
 Fourth Applicant: SUMAN MEET KAUR

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

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