



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID180/2018

DAVARIA PTY LIMITED (ACN 165 206 404) and another named in the schedule
Applicant

7-ELEVEN INC (A TEXAS CORPORATION) and another named in the schedule
Respondent

ORDER

JUDGE: JUSTICE O'CALLAGHAN

DATE OF ORDER: 08 March 2023

WHERE MADE: Melbourne

THE COURT NOTES THAT:

1. Pursuant to section 33ZB of the *Federal Court of Australia Act 1976* (Cth) (the **FCA Act**), the persons affected and bound by these orders are:
 - a. the Applicants;
 - b. any group member in the proceeding that has not opted out of the proceeding (**Group Members**);
 - c. Stewart Alan Levitt trading as **Levitt Robinson** (solicitors for the Applicants);
 - d. **Galactic Seven Eleven Litigation Holdings LLC** (the litigation funder);
 - e. **7-Eleven Stores Pty Ltd** (ACN 005 299 427, the First Respondent); and
 - f. the Administrator (Steven Nicols of Nicols + Brien).
2. In these orders:
 - a. **Settlement Sum** has the meaning given to it by Order 3 of the orders made on 31 March 2022 (**First Settlement Orders**);
 - b. **Settlement Scheme** means the Settlement Scheme annexed to the First Settlement Orders;



- c. **Settlement** means the settlement of this proceeding as against 7-Eleven, as approved by the Court in the First Settlement Orders.
- d. **Approval Application** means the Interlocutory Application dated 12 August 2021 and amended on 17 December 2021 to approve the settlement of these proceedings.
- e. **CFO Application** means the Interlocutory Application dated 22 October 2021 filed by Galactic.
- f. **Administrator** means Steven Nicols of the accounting firm Nicols & Brien, appointed as the Administrator of the Settlement Scheme pursuant to the First Settlement Orders.

THE COURT ORDERS THAT:

Approval of the settlement

1. Pursuant to sections 33V and 33ZF of the FCA Act, the Court determines that:
 - a. As to [24(a)] of the Settlement Scheme, the VID180 Settlement Sum is to be 60% of the Net Settlement Distribution Fund.
 - b. As to [24(b)] of the Settlement Scheme, the VID182 Settlement Sum is to be 40% of the Net Settlement Distribution Fund.
 - c. As to [26(a)] of the Settlement Scheme, the VID180 Rebates Claims Settlement Sum is to 20% of the VID180 Settlement Sum.
 - d. As to [26(b)] of the Settlement Scheme, the VID180 Loss Claims Settlement Sum is to 80% of the VID180 Settlement Sum.
 - e. As to paragraph [29] of the Settlement Scheme, a relative weighting of 100% will be applied to VID180 Loss Claims for Eligible VID180 Group Members whose Franchise Agreement was entered into on or after 21 February 2012, and the franchise:
 - i. was sold or disposed of after 1 October 2015; or
 - ii. is still retained by the Eligible Group Member.
 - f. As to [30] of the Settlement Scheme, a relative weighting of 33% is to be applied to VID180 Loss Claims for Eligible VID180 Group Members whose Franchise Agreement was entered into before 21 February 2012, and the franchise:



- i. was sold or disposed of after 1 October 2015; or
 - ii. is still retained by the Eligible Group Member.
- g. As to [31] of the Settlement Scheme, a relative weighting of 33% is to be applied to will be applied to VID180 Loss Claims for Eligible VID180 Group Members whose Franchise Agreement was entered into on or after 21 February 2012, and the franchise was sold or disposed of before 1 October 2015.
- h. As to paragraph [32] of the Settlement Scheme, a relative weighting of 0% will be applied to VID180 Loss Claims for Eligible VID180 Group Members whose Franchise Agreement:
 - i. was entered into before 21 February 2012, and the franchise was sold or disposed of before 1 October 2015; or
 - ii. was entered into after 1 October 2015.
- i. As to paragraph [36] of the Settlement Scheme, a relative weighting of 100% will be applied to VID182 Claims for Eligible VID182 Group Members who became Nominated Directors or Guarantors under a Franchise Agreement entered into on or after 21 February 2012 or who became Guarantors under a Bank Loan Contract on or after 21 February 2012, and where either:
 - i. the 7-Eleven Store the subject of that Franchise Agreement was sold or disposed of after 1 October 2015; or
 - ii. the Franchisee still retains that franchise.
- j. As to [37] of the Settlement Scheme, a relative weighting of 33% is to be applied to VID182 Claims made by Eligible VID182 Group Members who became Nominated Directors or Guarantors under a Franchise Agreement entered before 21 February 2012, or who became Guarantors under a Bank Loan Contract before 21 February 2012, and where either:
 - i. the 7-Eleven store franchise the subject of that Franchise Agreement was sold or disposed of after 1 October 2015; or
 - ii. the Franchisee still retains that franchise.
- k. As to [38] of the Settlement Scheme, a relative weighting of 33% is to be applied to VID182 Claims made by Eligible VID182 Group Members who became Nominated Directors or Guarantors under a Franchise Agreement entered on or after 21 February 2012, or who became Guarantors under a Bank Loan Contract



on or after 21 February 2012, and where the 7-Eleven store franchise the subject of that Franchise Agreement was disposed of before 1 October 2015.

1. As to paragraph [39] of the Settlement Scheme, a relative weighting of 0% will be applied to VID182 Claims made by Eligible VID182 Group Members:
 - i. who became Nominated Directors or Guarantors under a Bank Loan Contract before 21 February 2012, and where the 7-Eleven store franchise the subject of that Franchise Agreement was disposed of before 1 October 2015; or
 - ii. who became Nominated Directors or Guarantors under a Franchise Agreement that was entered into after 1 October 2015 or who became Guarantors under a Bank Loan Contract after 1 October 2015.

Payment of the settlement sums

2. Pursuant to section 33V and 33ZF of the FCA Act, for the purposes of the Settlement Scheme the Lead Applicants' Payments be approved in the amount of \$40,000 to each Applicant in VID180/2018.
3. The Administrator be authorised to pay to each of the Applicants in VID180/2018, \$40,000 out of the Settlement Sum, payable to the Levitt Robinson Trust Account.

Approval of referee reports

4. Pursuant to s 54A of the FCA Act, the following reports be adopted:
 - a. The report dated 12 November 2021 annexed as Annexure EMH-3 to the affidavit of Elizabeth Mary Harris sworn 12 November 2021;
 - b. The report dated 31 January 2022 annexed as Annexure EMH-4 to the affidavit of Elizabeth Mary Harris sworn 31 January 2022;
 - c. The report dated 24 March 2022 annexed as Annexure EMH-5 to the affidavit of Elizabeth Mary Harris sworn 24 March 2022;
 - d. The report dated 12 May 2022 annexed as Annexure EMH-6 to the affidavit of Elizabeth Mary Harris sworn 12 May 2022.

Costs of the proceedings

5. Pursuant to section 33V and 33ZF of the FCA Act, the Applicants' legal costs and disbursements for the conduct of this proceeding and proceeding VID182/2018 be approved in the amount of \$16,657,588.44.



6. Pursuant to section 33V and 33ZF of the FCA Act, the Applicants' legal costs and disbursements for the conduct of this proceeding and proceeding VID182/2018 in the amount of \$6,657,588.44 (being the balance of the costs outstanding following the interim payment of \$10,000,000 made pursuant to the orders dated 17 June 2022) paid by Galactic as costs of the proceedings be paid to Galactic, or to its nominated bank account, by the Administrator out of the Settlement Sum.
7. Pursuant to section 33V and 33ZF of the FCA Act, the Applicants' additional disbursements in respect of unresolved subpoena costs incurred in the conduct of this proceeding be approved for payment by the Administrator out of the Settlement Sum up to the amount of \$87,037.85.
8. Pursuant to section 33V and 33ZF of the FCA Act, the Applicants' Costs from and including 4 August 2021 to 27 October 2021 in the amount of \$639,688.40 paid by Galactic, be paid to Galactic, or to its nominated bank account, by the Administrator out of the Settlement Sum.
9. Pursuant to s 54A of the FCA Act, the report dated 17 November 2021 which forms Annexure EMH-7 to the affidavit of Elizabeth Mary Harris sworn 22 November 2021, be adopted.
10. Pursuant to section 33V and 33ZF of the FCA Act, the Applicants' legal costs and disbursements (\$42,846.48), the Administrator's fees (\$7,770.40) and the Costs Referee's fees (\$2,170 plus GST) in relation to the application filed by the Administrator on 29 September 2022 (**Administrator's Application**) be paid out of the Settlement Sum as costs of the Administrator's Application.

Approval Costs and further reports by the Referee

11. Pursuant to Order 9 of the Orders made on 15 September 2021, the Referee is further directed to inquire into and report in writing on the questions set out below, and on any further questions that may later be ordered:
 - a. Are the legal costs and disbursements charged or sought to be charged by the solicitors for the Applicants in relation to the approval of the Settlement from and including 4 August 2021 (including the costs and disbursements incurred in relation to the CFO Application) reasonable (**Applicants' Costs**)?



- b. Are the costs sought by the Administrator, including the costs of any legal work to be undertaken by Levitt Robinson, in relation to the administration of the Settlement reasonable (**Administration Costs**)?
 - c. If not, by what amount should those costs be disallowed?
12. The Referee shall perform the reference referred to in order 11 above having regard to the following guidelines:
 - a. The Referee is to ensure that the reviews of the Applicants' Costs and Administration Costs are conducted in a manner which is proportionate to the amounts in issue. The Referee is directed to contact the chambers of Justice O'Callaghan if any question arises as to whether or not it is necessary for her to undertake particular work;
 - b. The Referee is to consider and implement the Reference without undue formality or delay so as to enable a just, efficient and cost-effective resolution of the Reference. This may include enquiries by telephone and without intervention of lawyers any person the Referee believes may have relevant information;
 - c. The Referee may ask whatever questions of the solicitors for the Applicant and the Administrator as the Referee considers necessary, and, subject to any objection they may raise with the Court, the solicitors for the Applicant and the Administrator are directed to answer those questions in a speedy and cost-effective manner;
 - d. The Referee may make directions of the Applicants and the Administrator as the Referee considers appropriate to facilitate the just, efficient and cost-effective resolution of the Reference including for the attendance of any person, the production of documents and records relevant to legal costs, and/or the provision of submissions.
13. The Referee shall submit her report on the Applicants' Costs (**Approval Costs Report**) to the Court in accordance with FCR 28.66, addressed to the chambers of Justice O'Callaghan on or before 4 pm on 27 March 2023. The Referee have liberty to apply should an extension to that date be required.



14. The Referee shall provide a copy of any reports prepared to the solicitors for the Applicants and Galactic, and to the Administrator and the Contradictor.
15. The Applicants and/or the Administrator have liberty to apply to the Court for the approval of the Applicants' Costs, together with any consequential orders, upon receipt of the Approval Costs Report.
16. The Referee shall submit her report on the Administration Costs to the Court in accordance with FCR 28.66, addressed to the chambers of Justice O'Callaghan on or before 4:00 pm on 27 March 2023. The Referee have liberty to apply should an extension to that date be required.
17. The Applicants and/or the Administrator have liberty to apply to the Court for the approval of the Administration Costs, together with any consequential orders, upon receipt of the Administration Costs Report.
18. As to the Contradictor's costs:
 - a. A Registrar of the Court review and assess the Contradictor's costs and disbursements charged or sought to be charged from 15 September 2021 to 13 May 2022 (**Contradictor's Costs**).
 - b. As soon as reasonably practicable after the making of these orders, the Registrar will advise the Contradictor of the form and content of any information the Registrar requires to review and assess the Contradictor's Costs.
 - c. The Contradictor will provide such information in the form and content requested by the Registrar within 7 days of receipt of that request.
 - d. By no later than 3 April 2023, the Registrar provide to the Court, the Contradictor and to the parties, a report assessing the reasonableness of the Contradictor's Costs.
19. The reasonable costs of and incidental to the appointment of the Referee and the reports prepared by the Referee as referred to in these orders, and any further reasonable costs of the Contradictor, shall be paid by the Administrator out of the Settlement Sum within 30 days of the presentation of an invoice by the Referee or the Contradictor.



Funder's commission - Funding equalisation order

20. Pursuant to sections 33V and (or alternatively) 33ZF of the FCA Act, for the purposes of the Settlement Scheme, the amount payable to Galactic from the Settlement Sum on account of the Funder's commission in respect of both these proceedings and proceedings VID182/2018 is fixed in the amount of \$12.005 Million (**Funder's Commission**).
21. The Administrator be authorised to pay to Galactic, or to its nominated bank account, the Funder's Commission out of the Settlement Sum.

Confidentiality orders

22. Pursuant to ss 37AF(1)(b) and 37AG(1)(a) of the FCA Act, until 14 February 2024 or further order of the Court, in order to prevent prejudice to the proper administration of justice, the documents in the Consolidated Confidentiality Schedule as **Annexure A** to these orders be treated as confidential, not be published or made available and not be disclosed to any person or entity except as permitted by the relevant party identified with respect to the relevant document as set out in the Consolidated Confidentiality Schedule or by order of the Court.

Costs orders

23. Costs of the Approval Application, otherwise than as between the Applicants and the Respondents, be reserved.

Consequential orders

24. Liberty to apply.

Date that entry is stamped: 8 March 2023

Sia Lagos
Registrar

Annexure A
Confidentiality Schedule

	Document	Part of document	Parties permitted disclosure
1.	Exhibit # – Nineteenth affidavit of Jem Punthakey sworn 21 April 2022	Pages 8-9, items 24-31, each instance (a) between “with respect to” and “stores” and (b) between “which amounts to” and “of the estimated” Pages 11, 13-17 of Exhibit JJP-19	Applicants, Galactic, Contradictor
2.	Amended Exhibit C5 – Invoice dated 5 October 2021	Whole	Applicants, Galactic, Contradictor
3.	Exhibit C7 – Galactic documents at CB 12/13.13-13.14/14628-14631	Whole	Applicants, Galactic, Contradictor
4.	MFI 3 – Contradictor’s Amended Aide-Memoire	Whole	Applicants, Galactic, Contradictor
5.	Exhibit C8 – Confidential documents at CB 12/13.20/14721-14789	Whole	Applicants, Galactic, Contradictor
6.			
7.			



Schedule

No: VID180/2018

Federal Court of Australia

District Registry: Victoria

Division: General

Second Applicant KAIZENWORLD PTY LTD (ACN 163 833 565)

Second Respondent GALACTIC SEVEN ELEVEN LITIGATION HOLDINGS LLC