

Bulletin No. 5

20 February 2018

More details on Class Action against 7-Eleven and the ANZ Bank

Copy of filed Statement of Claim.
Application (**herewith**)

Proceedings were filed in the Federal Court in Melbourne today by Levitt Robinson Solicitors of Sydney against 7-Eleven Stores Pty Ltd, 7-Eleven Inc. a Texas Corporation and the ANZ Banking Group Limited.

The Applicant, Davaria Pty Limited (and Managing Director, Paresh Davaria) is seeking declarations that many of the terms in 7-Eleven's standard Franchise Agreement, applied both to fuel stores (service stations) and to convenience stores, contain unfair contractual terms and are unconscionable under the Australian Consumer Law. The Applicant is also seeking damages for the Class.

Against the ANZ Bank, it is alleged that in lending to buy into the 7-Eleven franchise system, sometimes up to 100% of the price of a 7-Eleven Franchise License, the ANZ Bank has breached its prudential obligations, including under the Code of Banking Practice.

Curiously, in its Letter of Offer to the Lead Applicant, Paresh Davaria and other borrowers from ANZ to invest in 7-Eleven, ANZ had stipulated that a material change in control of 7-Eleven Stores Pty Ltd, the Australian Master Franchisor, would be treated as an event of default by the franchisee – a matter beyond the franchisee's control.

According to Stewart Levitt, Solicitor for the Lead Applicants, this shows that ANZ and 7-Eleven were "*joined at the hip*".

Many of the franchisees had no relevant business experience, were new immigrants to Australia from the Indian sub-continent and had little familiarity with Australian commerce or law. Many also had limited English. They could not have borrowed as much to invest in any other business, without offering real estate security. What tipped the balance for the lender, ANZ, with 7-Eleven, was that 7-Eleven was prepared to enter into Tri-Partite Agreements with the ANZ Bank and the Franchisee, whereby it effectively stood behind the franchisee. This did not limit the exposure of the franchisee, usually a family-owned corporation – and in the case of the Lead Applicants in the Class Action, its directors and shareholders, are a young married couple

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from India, with a two-year old daughter who had their home brought into the mix as security by the Bank.

They currently have ANZ loans totalling more than \$940,000.00 and live with their two-year-old daughter in a property worth only \$850,000.00. Their interest and principal repayments are \$14,000.00 per month which make it impossible, according to Mr Paresch Davaria, for him both to feed his family and pay his debts without sinking further into the quicksand of debt which he is doing.

Mr Levitt said:

“7-Eleven franchisees pay a fortune to buy themselves a poorly paying job, with little prospect nowadays of a significant return on their investment. They are basically buying their way into their own bondage and when they come to the end of the franchise term or of the term of their sub-lease – whichever is sooner – they have nothing to sell”.

In the Class Action it is alleged that the 7-Eleven System operates to make it extremely difficult and, in many cases, where the franchisee has borrowed heavily to invest in a 7-Eleven Franchise – impossible – to make a survival wage for themselves, while also meeting all their liabilities.

It is additionally claimed, that 7-Eleven, in breach of the Franchising Code, has failed to account for the full extent of the rebates, discounts, incentives and other perquisites which it has been receiving from suppliers. 7-Eleven franchisees cannot buy wholesale at a price level which enables them to share in the benefits which they expected to reap, from being part of a franchise where the franchisor’s superior purchasing power, would provide economies of scale based on a network comprising more than six-hundred (600) stores nationally. Franchisees were led to believe that this would have a positive flow-on effect for them. In fact, it has not had.

In California, late last year, another Class Action was commenced against 7-Eleven Inc. (Texas) involving more than seven-thousand (7000) American franchisees.

Just in January 2018, US Federal Agents raided almost one-hundred (100) 7-Eleven Stores throughout the US. There were similar raids by the FBI in 2013.

With compliments,

Stewart A Levitt
Senior Partner

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