

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 7/12/2018 4:18:40 PM 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: 7/12/2018 5:24:00 PM AEDT

Registrar

A handwritten signature in blue ink, appearing to read 'Warwick Soden'.

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 another named in the Schedule

Applicants

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

Respondents

Amended Statement of Claim

(filed pursuant to leave granted by Middleton J on 20 November 2018)

This pleading is intended to be read in conjunction with the most recently filed Amended 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 Amended Statement of Claim.

A. INTRODUCTION

1. The Applicants commence this proceeding as a representative party pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) (**FCAA**) 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**);

Filed on behalf of:	The Applicants
Prepared by:	Stewart A Levitt, Levitt Robinson Solicitors
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(b) (**Guarantors**) who provided indemnities, guarantees, mortgages or other securities (**Guarantees**) in respect of a Franchisee's obligations under a 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 ~~third~~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 each respondent, seven or more persons who make the claims set out in this SOC.

Applicants

2. The First Applicant is the sole director of Davaria Pty Limited (**Franchisee**), the Applicant in the representative proceeding VID180/2018 (**Franchisee Proceeding**).
3. The Second Applicant is a shareholder of the Franchisee.
4. The First Applicants:
 - (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) ~~are~~is and at all times since about 13 September 2013 has~~ve~~ve been the operator of the Campbelltown Store;
 - (c) entered into 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**);
 - (d) ~~is~~are and at all times since about 27 May 2015 has~~ve~~ve been the operator of the Northmead Store;

4A The Applicants:

~~(e)~~(a) entered into:

- (i) a loan agreement with the Bank on or about 22 August 2013 (~~First~~ Campbelltown Loan); and
- (ii) a further loan agreement with the Bank on or about 12 June 2015 (~~Second~~ Northmead Loan); and

~~(f)~~(b) entered into:

- (i) a guarantee and indemnity in favour of the Bank in respect of the ~~Campbelltown~~First 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 registered mortgage the property situated at 1/32 Alfred Street Granville (together the **Northmead Guarantees and Northmead Mortgage**);

~~(g)~~(c) have, since about 22 August 2013, been customers of the Bank.

Respondents

5. ~~7-Eleven (referred to in the Franchise Agreement as the Second Respondent in the VID180 Proceeding's Area Licensee, for the territory of Australia):~~

- (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 ~~Second Respondent~~ (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**).
 - (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.
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 41 to 96 of the [Amended Statement of Claim in the Franchisee Proceeding \(ASOC\) Current VID180 SOC](#) as if the same were set out in full herein.

B1. Reliance and loss – applicants

8. In deciding to enter into the Campbelltown ~~Store~~ Guarantee, the Applicants relied on (alone or in combination):
- (a) each of:
 - (i) the Business Opportunity Representation,
 - (ii) the 7-Eleven Business Opportunity Statements,
 - (iii) the Average Store Financials Accuracy Representation,
 - (iv) the Future Average Payroll Cost Representation,
 - (v) the content of the Average Store Financials,
 - (vi) the Advertising Fund Representation,
 - (vii) 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 and

~~(d) — the Campbelltown Store Financials Conduct Representation~~

(the representations in 8(b) and ~~(c)~~ ~~(d)~~ being together and severally the **Campbelltown Representations**).

Particulars

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

9. Further and in the alternative, if the Misleading or Deceptive Conduct Representations and the Campbelltown Representations (alone or in combination) had not occurred:

(a) the Franchisee would not have entered the Campbelltown Store Franchise Agreement; and

(b) the Applicants would not have entered into the Campbelltown Store Guarantee.

10. By reason of the financial obligations of the Franchisee in respect of the Campbelltown Store Franchise Agreement, the 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;

(b) worked in the Campbelltown store for no wages, or lower wages, and lower income (from profit drawings) than they would have earned from continuing their former employments.

Particulars

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

11. Further:

- (a) the Franchisee entered the Northmead Store Franchise Agreement and the Applicants entered into the Northmead ~~Store~~ Guarantee and the Northmead Mortgage in an effort to repair the financial prejudice suffered by them as a result of their financial commitments in connection with the Campbelltown Store ~~Franchise~~;
- (b) but for their financial commitments in connection with the Campbelltown Store ~~Franchise~~, the Franchisee would not have entered the Northmead Store Franchise Agreement and the Applicants would not have entered into the Northmead ~~Store~~ 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 and the Campbelltown Representations (alone or in combination) were a material cause of the Franchisee entering the Northmead Store Franchise Agreement and the Applicants entering into the Northmead ~~Store~~ Guarantee and the Northmead Mortgage.

12. By reason of the financial obligations of:

- (a) the Franchisee in respect of the Campbelltown Store Franchise Agreement and the Northmead Store Franchise Agreement, and
 - (b) the Applicants in respect of the Northmead Store Franchise Agreement;
- the Applicants from 19 September 2013 worked in the Campbelltown ~~S~~store, and from 5 June 2015 also worked in the Northmead ~~S~~store, for no wages, or lower wages, and lower income (from profit drawings) than they would have earned from continuing their former employments.

Particulars

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

13. In the premises in paragraphs 10 and 12, the Applicants have suffered loss and damage caused by:
- (a) the Misleading or Deceptive Conduct Representations, further or alternatively
 - (b) the Campbelltown Representations.

Particulars

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

B2. 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) 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 prior to making their respective Franchise Agreements or giving their respective Guarantees;
 - (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 employments; further or alternatively
 - (c) suffered 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 above, some or all of the Nominated Directors and Guarantors have suffered 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 paragraph 13 above as applicable to the respective Stores of the Franchisees.

C. BANK CLAIMS

C1. Relationship between the Bank and 7-Eleven

18. The Applicants repeat paragraphs 122 to 135 of the [ACurrent VID180](#) SOC as if the same were set out in full herein.
19. By reason of the matters set out in paragraphs 131 to 134 of the [ACurrent 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 Applicant or Guarantor and the Bank.
20. Further and in the alternative, in the premises set out in paragraphs 131 to 134 of the [ACurrent VID180](#) SOC the Bank represented to each Applicant or Guarantor that it would observe:
- (a) the Banking Code Application Term and
 - (b) the Fair and Reasonable Conduct Term;

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

21. The representation referred to in ~~the preceding~~ paragraph 20 was:
- (a) made in trade or commerce within the meaning of the ~~ACL~~Australian Consumer Law; further and alternatively
 - (b) ASIC Act; and
 - (c) ~~was~~ a continuing representation up to at least the time each Applicant or Guarantor executed the Guarantee.

C2. Applicants' claim – Campbelltown Store Loan

22. The Applicants repeat paragraphs 136 to 142 of the ~~AC~~Current VID180 SOC as if the same were set out in full herein.

23. By reason of the matters pleaded in paragraph 22 above, the Bank:
- (a) by approving the ~~Campbelltown~~First Loan Application:
 - (i) breached the Prudential Obligations~~s~~ 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 Applicants, in breach of the Fair and Reasonable ~~Conduct~~Conduct Term referred to in paragraph 20 above; further or alternatively
 - (ii) by failing to correct or withdraw the Guarantor Protection Representations before the Applicants executed the ~~Campbelltown~~Campbelltown Guarantee – engaged in conduct that was misleading or deceptive, or likely to mislead or deceive, in contravention of the ~~ACL~~Australian Consumer Law and ASIC Act;

(together and severally, **Bank's Lending Breaches**).

24. 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 Applicants would not have entered into the Campbelltown Guarantee.
25. By reason of the matters pleaded in paragraphs 19 to 24 above, the Applicants suffered loss and damage.

Particulars

The 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. The Applicants repeat paragraphs 146 to 153 of the [ACurrent VID180](#) SOC as if the same were set out in full herein.
27. By reason of the matters pleaded in paragraph 26, the Bank:
- (a) by approving the [Second-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 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 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 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 [ACLustralian Consumer Law](#), further or alternatively the [ASIC Act](#);
- (being Bank's Lending Breaches toward the Applicants in respect of the Northmead Store Loan Contract).
28. 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 Applicants would not have entered into the Campbelltown [Campbelltown Guarantee](#) ~~or~~, 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 Applicants would not have entered into the Northmead Guarantee [or the Northmead Mortgage](#).
29. By reason of the matters pleaded in the preceding paragraph, the Applicants suffered loss and damage.

Particulars

The 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. Guarantor Group Members' Claims

30. The Applicant refers to and repeats paragraph 157 to 159 of the [ACurrent VID180 SOC](#) as if the same were set out in full herein.
31. 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 [ACLustralian Consumer Law](#) and ASIC Act;

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

32. 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. By reason of the matters pleaded in paragraph 31 above, some or all of the Guarantors suffered loss and damage.

Particulars

The Applicants repeat paragraph 23 above.

C4. Bank's Unconscionable Conduct – Applicants

34. 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 ~~of 7-Eleven franchise agreements in Australia~~ 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 ~~whether~~ 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)(f)~~ 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 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) ~~(d)~~ and ~~(f)~~;
- (h) Guarantors were unlikely to be aware of [minimum wage laws in Australia and the matters referred to in](#) (e) and ~~(e)-(f)(f)~~.

Campbelltown First Loan Application (Campbelltown Store)

35. 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 ~~Store~~ Guarantee from the Applicants, the Bank knew or ought reasonably to have known that:

- (a) the Applicants (and especially the second Applicant) had limited English skills;
- (b) the Applicants had emigrated to Australia from India;
- (c) the Applicants had little or no prior business experience;
- (d) the 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 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 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 ~~as described in (f)~~ 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;
 - (j) toward the Franchisees.

Particulars

The 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.

(j)(i) the Bank had not informed the Applicants about the matters in (e) to (h).

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

36. In the premises set out in the two preceding paragraphs, the Bank:

- (a) by approving the CampbelltownFirst Loan Application; and/or
 - (b) procuring the Campbelltown Guarantee from the Applicants,
- engaged in conduct in trade or commerce, in connection with the supply or possible supply of financial services that was unconscionable toward the

Applicants within the meaning of s 21 of the ACL, further or alternatively s 12CB of the ASIC Act.

Particulars

The Applicants repeat paragraph 23 above.

The Applicants repeat the particulars to paragraph 160 of the [ACurrent VID180](#) SOC.

(e)

37. Had the Applicants not entered into the Campbelltown Guarantee they would not have entered into the subsequent Northmead Guarantee [or Northmead Mortgage](#).

Particulars

The 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~~.

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

Particulars

The 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~~.

39. 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.

[Second-Northmead Loan Application \(Northmead Store\)](#)

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

- (a) the matters in [paragraph 34](#);
- (b) the Applicants were or were likely to be in financial difficulty because of the low income derived by the Franchisee and the 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 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 Applicants about the matters in (a)(e) to (c)(h).

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

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

- (a) by approving the Second Northmead Bank 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 Applicants that was unconscionable within the meaning of 12CB of the ASIC Act.

Particulars

The Applicants repeat paragraph 27 above.

The Applicants repeat the particulars to paragraph 165 of the ACurrent VID180 SOC and 27.

42. Further and in the alternative to paragraph ~~38~~ 41 above, by reason of the Bank's unconscionable conduct in approving the Second 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. Bank's unconscionable conduct – Guarantors

43. The Applicants repeat paragraphs 167A to 167D of the ACurrent VID180 SOC and say that the Bank,

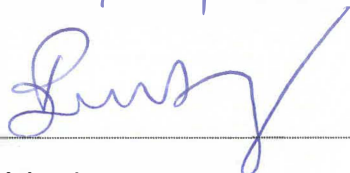
- (a) by approving some or all of the Represented Franchisees' loan applications; and/or
- (b) procuring some or all of the Guarantees,
- engaged in conduct in trade or commerce in connection with the supply or possible supply of financial services to Guarantors and/or their Nominated Directors that was unconscionable within the meaning of 12CB of the ASIC Act.

Particulars

The Applicants repeat the particulars to paragraph 168 of the [ACurrent VID180](#) SOC.

44. By reason of the Bank's unconscionable conduct as pleaded in paragraph 40-43 above, some or all of Guarantors suffered loss and damage.
45. Further and in the alternative to the matters pleaded in paragraph 4441 above, by reason of the Bank's unconscionable conduct as pleaded in paragraph 4340 above, some or all of the Guarantees should be varied or set aside pursuant to section 12GM of the ASIC Act.

Date: 7/12/2018



Stewart A Levitt

Levitt Robinson

Solicitor for the Applicants

Signed by his Special Counsel Brett R Imlay

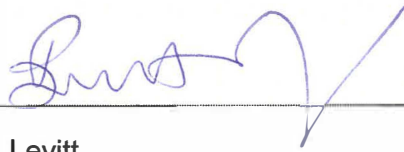
This amended pleading was prepared by Levitt Robinson, Thomas Bagley and Gerald Ng and was settled by Kristine Hanscombe QC.

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:

7/12/2018



Stewart A Levitt

Levitt Robinson

Solicitor for the Applicants

Signed by his Special Counsel Brett R Imlay

SCHEDULE

No: VID182/2018

Federal Court of Australia

District Registry: Victoria

Division: General

Second Applicant: KHUSHBU DAVARIA

Second Respondent: AUSTRALIA AND NEW ZEALAND BANKING
GROUP LIMITED

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