

NOTICE OF FILING

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Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32
File Number: VID182/2018
File Title: PARESHKUMAR DAVARIA & ORS v 7-ELEVEN STORES PTY LIMITED & ANOR
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 6/04/2021 9:40:33 AM AEST

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.



Defence to Second Further Amended Statement of Claim

(filed pursuant to order 3 of the orders made by Middleton J on 5 March 2021)

Federal Court of Australia

District Registry: Victoria

Division: General

Pareshkumar Davaria and others named in the Schedule

Applicants

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

Respondents

Unless otherwise defined below, in this Defence the First Respondent (**7-Eleven**) adopts the defined terms in the Second Further Amended Statement of Claim dated ~~3 March 2020~~ 16 March 2021 as amended from time to time (**SOC**).

This Defence is to be read with 7-Eleven's Defence in proceeding VID 180/2018 as amended from time to time (**7-Eleven's VID 180 Defence**). Defined terms used in the 7-Eleven's VID 180 Defence have the same meaning in this Defence, except where otherwise indicated.

In response to the SOC, 7-Eleven says as follows:

1 As to paragraph 1, it:

- (a) admits that in the Relevant Period, persons were or commenced to be nominated directors (**Nominated Directors**) or franchisee parties (**Franchisees**) under a standard-form franchise agreement with 7-Eleven substantially in the form of one of the following agreements:

Filed on behalf of (name & role of party)	First Respondent		
Prepared by (name of person/lawyer)	Nigel Jones		
Law firm (if applicable)	Norton Rose Fulbright Australia		
Tel	+61 3 8686 6000	Fax	+61 3 8686 6505
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Address for service (include state and postcode)	Level 38, Olderfleet, 477 Collins Street, Melbourne, VIC 3000 Email: nigel.jones@nortonrosefulbright.com		

- (i) identified by 7-Eleven internally as Store Agreement 10/1998 (**1998 Version**), which was 7-Eleven's standard form of agreement in the period from about October 1998 to about December 2001;
- (ii) identified by 7-Eleven internally as Store Agreement 02/2001 (**2001 Version**), which was 7-Eleven's standard form of agreement in the period from about January 2001 to about January 2004;
- (iii) identified by 7-Eleven internally as Store Agreement SA/01/04 (**2004 Version**), which was 7-Eleven's standard form of agreement in the period from about January 2004 to about April 2009;
- (iv) identified by 7-Eleven internally as Store Agreement SA/04/09 (**2009 Version**), which was 7-Eleven's standard form of agreement in the period from about April 2009 to about November 2015;
- (v) identified by 7-Eleven internally as Store Agreement SA/11/15 (**2015 Version**), which was 7-Eleven's standard form of agreement in the period from about November 2015 to about November 2016;
- (vi) identified by 7-Eleven internally as Store Agreement SA/11/16 (**2016 Version**), which was 7-Eleven's standard form of agreement in the period from about November 2016 to 19 February 2018;

(together, as amended from time to time, the **Franchise Agreements**);

- (b) denies that any loss and damage was caused as a result of its conduct; and
- (c) otherwise does not plead to paragraph 1 as there are no allegations made against it.

1A In response to paragraph 1A:

- (a) refers to and repeats paragraph 1(a) above; and
- (b) does not otherwise plead to paragraph 1A as there are no allegations pleaded against it.

2 It admits the allegations in paragraph 2.

3 It admits the allegations in paragraph 3.

3A- It admits the allegations in paragraph 3A.

3B- It admits the allegations in paragraph 3B.

4 As to paragraph 4, it:

(a) admits that the First Applicant and Davaria Pty Ltd (**Davaria**) entered into the Campbelltown Store Franchise Agreement with 7-Eleven on 19 September 2013 in relation to the Campbelltown Store;

(b) as to sub-paragraph 4(b):

(i) admits that Davaria is, and at all times since 5 November 2013 has been, the operator of the Campbelltown Store; and

(ii) otherwise denies sub-paragraph 4(b);

PARTICULARS

The “Effective Date”, being the date on which the Campbelltown Store first opened for business under the Campbelltown Store Franchise Agreement was 5 November 2013.

(c) as to sub-paragraph 4(c):

(i) admits that the First Applicant and Davaria entered into the Northmead Store Franchise Agreement with 7-Eleven on 27 May 2015 in relation to the Northmead Store;

(ii) admits sub-paragraph (c)(ii); and

(iii) in respect of sub-paragraph (c)(iii):

(A) admits that Davaria applied to the Bank for financial accommodation and that the Bank offered to provide financial accommodation to Davaria:

(a) to enable Davaria to acquire or run the business connected with the Campbelltown Store, in the sum of \$291,360 (the Campbelltown Finance) under a letter of offer dated 22 August 2013; and

(b) to enable Davaria to acquire or run the business connected with the Northmead Store, in the sum of \$828,622 (the Northmead Finance) under a letter of offer dated 12 June 2015;

(B) admits that Davaria as borrower, entered into a Deed of Loan and Guarantee dated 27 May 2015 with Ya Razik Pty Ltd, as lender, for the sum of \$50,000 in connection with the acquisition of the Northmead Store business;

~~(A)~~(C) otherwise does not know and therefore does not admit sub-paragraph (c)(iii); and

~~(e)~~(d) as to sub-paragraph 4(d):

- (i) admits that Davaria is, and at all times since 19 June 2015 has been, the operator of the Northmead Store; and
- (ii) otherwise denies sub-paragraph 4(d).

PARTICULARS

The “Effective Date”, being the date on which the Northmead Store first opened for business under the Northmead Store Franchise Agreement was 19 June 2015.

4A As to paragraph 4A:

(a) as to sub-paragraph 4A(a):

(i) in respect of the First Applicant:

(A) admits that the First Applicant entered into the Campbelltown Store Heads of Agreement on or about 31 July 2013;

(B) refers to and repeats paragraph 4(c)(iii) above; and

(C) otherwise, ~~it says it~~ does not know, and therefore, does not admit the allegations in sub-paragraph 4A(a)(i);

(ii) ~~as to sub-paragraph 4A(a)(ii):~~

(A) refers to and repeats paragraph 4(c)(iii) above; and

(B) otherwise does not know, and therefore, does not admit the allegations in sub-paragraph 4A(a)(ii);

~~(d)~~(b) does not know, and therefore, does not admit the allegations in sub-paragraphs 4A(b) and (c).

4B- As to paragraph 4B, it:

(a) admits that the Third Applicant and Kaizenworld Pty Ltd (**Kaizenworld**) entered into the South Melbourne Store Franchise Agreement with 7-Eleven on 2 October 2013 in relation to the South Melbourne Store;

(b) admits paragraph 4B(b); and

~~(b)~~(c) as to sub-paragraph 4B(c):

(i) admits that Kaizenworld applied to the Bank for financial accommodation and that the Bank offered to provide financial accommodation to Kaizenworld to enable it to acquire or run the business connected with the South Melbourne Store, in the sum of \$424,363 (the **South Melbourne Finance**) under a letter of offer dated 20 September 2013;

(ii) otherwise does not know and therefore does not admit the allegations in paragraph 4B(c); and

~~(c)~~(d) does not know and, therefore, does not admit the allegations in paragraph ~~s~~ 4B(c) and 4B(d).

4C- As to paragraph 4C, it says it does not know, and therefore, does not admit the allegations.

5 As to paragraph 5, it:

(a) in answer to sub-paragraph 5(a):

(i) admits the allegations in sub-paragraphs 5(a)(i) and (ii);

(ii) admits that it is and was at all times during the Relevant Period a 'trading corporation' for the purposes of section 4 of the CCA; and

(iii) admits that it is and was at all times during the Relevant Period a 'person' for the purposes of section 18 of the ACL;

(b) admits that, during the Relevant Period, it supplied services to or was engaged in the possible supply of services to the First Applicant, Davaria, the Third Applicant, Kaizenworld and each of the Franchisees in 'trade or commerce' within the meaning of sections 2 and 21 of the ACL; ~~and~~

(c) denies that 7-Eleven supplied financial services to the Applicants or the Franchisees within the meaning of sections 12BA and 12CB of the ASIC Act; and

~~(e)(d)~~ otherwise denies the allegations in paragraph 5.

6 ~~It does not plead to paragraph 6 as there are no allegations made against it [Deleted].~~

B.

7 As to paragraph 7, it refers to and repeats paragraphs 40A to ~~96-105, and paragraphs-105A, -121A and 127~~ to 152, and 154 and the particulars subjoined thereto of 7-Eleven's VID 180 Defence.

B1.

8 As to paragraph 8, it:

- (a) refers to and repeats paragraph 4A (b) above;
- (b) refers to and repeats sub-paragraphs 11(g) and 16(ba), and paragraphs 40A to 88 and 97 of 7-Eleven's VID 180 Defence and the particulars subjoined thereto; and
- (c) otherwise denies the allegations in paragraph 8.

9 As to paragraph 9, it:

- (a) refers to and repeats sub-paragraph 4(a) and paragraphs 4A and 8 above and 97 and 98 of 7-Eleven's VID 180 Defence; and
- (b) otherwise denies the allegations.

10 As to paragraph 10, it:

- (a) says that without the provision of particulars the allegations made in paragraph 10 are vague and embarrassing and are likely to cause delay and prejudice and it objects to pleading to paragraph 10; and

- (b) says that under cover of the foregoing objection, it:
 - (i) refers to and repeats sub-paragraphs 4(a) and 4(b) and paragraph 4A above;
 - (ii) otherwise ~~does not know and therefore does not admit~~denies the allegations in paragraph 10.

11 As to paragraph 11, it:

- (a) says that without the provision of particulars the allegations made in paragraph 11 are vague and embarrassing and it objects to pleading to paragraph 11; and
- (b) says that under cover of the foregoing objection, it:
 - (i) as to sub-paragraph 11(a):
 - (A) refers to and repeats paragraphs 4 and 4A above; and
 - (B) says that it otherwise denies the allegations in sub-paragraph 11(a);
 - (ii) as to sub-paragraph 11(b):
 - (A) refers to and repeats paragraphs 4 and 4A above; and
 - (B) says that it ~~does not otherwise know and therefore does not admit~~otherwise denies the allegations in sub-paragraph 11(b); and
 - (iii) as to sub-paragraph 11(c):
 - (A) denies the allegations; and
 - (B) refers to and repeats sub-paragraph 11(b)(i) and 11(b)(ii) and paragraph 8 above.

12 As to paragraph 12, it:

- (a) says that without the provision of particulars the allegations made in paragraph 12 are vague and embarrassing and are likely to cause delay and prejudice and it objects to pleading to paragraph 12; and
- (b) says that under cover of the foregoing objection, it:

- (i) refers to and repeats paragraph 4- [and 4A](#) above; and
- (ii) otherwise ~~does not know and therefore does not admit~~ [denies](#) the allegations in paragraph 12.

12A- As to paragraph 12A, it:

- (a) refers to and repeats paragraph [4B](#), 4C above;
- (b) refers to and repeats sub-paragraphs 11(g) and 16(ba) and paragraphs 40A to 88 and 101A of 7-Eleven's VID 180 Defence and the particulars subjoined thereto; and
- (c) otherwise denies the allegations in paragraph 12A.

12B- As to paragraph 12B, it:

- (a) refers to and repeats ~~sub-paragraphs~~ [4B](#), ~~(a) and paragraphs~~ 4C and 12A above; and
- (b) otherwise denies the allegations.

12C- As to paragraph 12C, it:

- (a) says that without the provision of particulars the allegations made in paragraph 12C are vague and embarrassing and are likely to cause delay and prejudice and it objects to pleading to paragraph 12C; and
- (b) says that under cover of the foregoing objection, it:
 - (i) refers to and repeats sub-paragraphs 4B(a) and 4B(b) and paragraph 4C above; and
 - (ii) otherwise ~~does not know and therefore does not admit~~ [denies](#) the allegations in paragraph 12C.

12D. It denies the allegations in paragraph 12D.

13 It denies the allegations in paragraph 13.

B2.

14 As to paragraph 14, it:

(a) refers to and repeats sub-paragraph 11(g) and paragraphs 40A to 76, 105A and ~~127-154~~ 154 of 7-Eleven's VID 180 Defence and the particulars subjoined thereto; and

(b) otherwise denies the allegations.

15 As to paragraph 15, it:

(a) refers to and repeats sub-paragraph 11(g) and paragraphs 40A to 76, 105A and ~~127-154~~ 154 of 7-Eleven's VID 180 Defence and the particulars subjoined thereto; and

(b) otherwise denies the allegations.

16 As to paragraph 16, it:

(a) says that without the provision of particulars the allegations made in paragraph 16 are vague and embarrassing and are likely to cause delay and prejudice and it objects to pleadings to paragraph 16; and

(b) says that under cover of the foregoing objection, it:

(i) says that it does not know and therefore does not admit the allegations in sub-paragraphs 16(a) and 16(b); and

(ii) otherwise denies the allegations in ~~sub~~-paragraph 16~~(e)~~.

17 It denies the allegations in paragraph 17.

B3.

17A As to paragraph 17A, it refers to and repeats paragraphs 106 to 121A and 154 and the particulars subjoined thereto of 7-Eleven's VID 180 Defence.

17B It denies the allegations in paragraph 17B.

C.

C1.

18 ~~It does not plead to paragraphs 18 to 45, as those paragraphs make no allegation against 7-Eleven~~ [Not used].

19 To the whole of the SOC, it says:

- (a) that save, for where a defence is pleaded, further and/or particular defences may be available to it in respect of a Nominated Director's or Guarantor's claims, which cannot be determined until after the Nominated Director or Guarantor has been identified; and
- (b) any Nominated Director who entered into a Franchise Agreement before 20 February 2012 (or, in respect of the Goodwill Value Representation Contravention and the Renewal Representation Contravention, before 2 March 2014) and any Guarantors who entered into Guarantees before 20 February 2012 (or, in respect of the Goodwill Value Representation Contravention and the Renewal Representation Contravention, before 2 March 2014) are statute barred from maintaining a cause of action:
- (i) under section 236 of the ACL pursuant to section 236(2) of the ACL; ~~and~~
- (ii) under section 237 or 243 of the ACL, pursuant to section 237(3) of the ACL;
- ~~(iii)~~ (iii) under section 82 or 87 of the TPA pursuant to section 82(2) or 87(1CA) of the TPA, alternatively section 82(2) or 87(1CA) of the CCA;
- (iv) under section 12GF of the ASIC Act, pursuant to section 12GF(2) of the ASIC Act; and
- (v) under section 12GM of the ASIC Act, pursuant to section 12GM(5) of the ASIC Act.
- ~~(iii)~~ —.

Date: 1 April 2021



Signed by Nigel Jones

Lawyer for 7-Eleven

This amended pleading was prepared by Kathleen Foley, Fleur Shand and Andrew McRobert of counsel and settled by Robert Craig QC.

Certificate of lawyer

I Nigel Jones certify to the Court that, in relation to the defence to the Second Further Amended Statement of Claim filed on behalf of the First Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 1 April 2021



Signed by Nigel Jones

Lawyer for the Respondent

Schedule

No. VID182 of 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
(ABN 11 005 357 522)~~