Federal Court of Australia

Casaceli v Natuzzi S.p.A. [2012] FCA 691 (29 June 2012)

Last Updated: 2 July 2012

FEDERAL COURT OF AUSTRALIA

Casaceli v Natuzzi S.p.A. [2012] FCA 691

Citation:	Casaceli v Natuzzi S.p.A. [2012] FCA 691
Parties:	**PETER ANGELO CASACELI, JANET CHRISTINE CASACELI, NATACELI PTY LIMITED (ACN 095 685 297) and CASACELI NOMINEES PTY LIMITED (ACN 125 141 157) AS TRUSTEE FOR THE CHATSWOOD PROPERTY TRUST v NATUZZI S.P.A. (ABN 86 544 745 364) (FORMERLY KNOWN AS INDUSTRIE NATUZZI S.P.A.), NATCD PTY LIMITED (ACN 055 640 983) and ILAN SKORNICKI**
File number:	NSD 396 of 2012
Judge:	**JAGOT J**
Date of judgment:	29 June 2012
Catchwords:	**ARBITRATION** – application for stay of proceeding pursuant to s 7(2) *International Arbitration Act 1974* (Cth) – whether dispute involves a matter under the arbitration agreement 'capable of settlement by arbitration'
Legislation:	*Australian Consumer Law* *Competition and Consumer Act 2010* (Cth) *Federal Court Rules 2011* *International Arbitration Act 1974* (Cth) *Trade Practices Act 1974* (Cth) *Trade Practices (Industry Codes – Franchising) Regulations 1998* (Cth) *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*. 330 UNTS 3. (entered into

	force 10 June 1958)
Cases cited:	*Comandate Marine Corporation v Pan Australia Shipping Pty Ltd* (2006) 157 FCR 45; [2006] FCAFC 192 *Francis Travel Marketing Pty Ltd v Virgin Atlantic Airways Ltd* (1996) 39 NSWLR 160 *Lake Cumbeline Pty Ltd & Ors v EFFEM Foods Pty Ltd (t/as Uncle Ben's of Australia)* [1997] FCA 292 *Lightsource Technologies Australia Pty Ltd v Pointsec Mitsubishi Motors Corp v Soler-Chrysler Plymouth Inc* [1985] USSC 203; 473 US 614 (1985) *Mobile Technologies AB* (2011) 250 FLR 63; [2011] ACTSC 59 *Recyclers of Australia Pty Ltd v Hettinga Equipment Inc* (2000) 100 FCR 420; [2000] FCA 547 *Tanning Research Laboratories Inc v O'Brien* [1990] HCA 8; (1990) 169 CLR 332 *Terra Amata Ltd v Tensacciai Co* (No 1897, 15 July 2006, Milan Court of Appeal)
Date of hearing:	21 and 22 June 2012
Date of last submissions:	28 June 2012
Place:	Sydney
Division:	GENERAL DIVISION
Category:	Catchwords
Number of paragraphs:	54
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Counsel for the Second and Third Respondents:	Mr C G Roth of Charles G Roth & Co

IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY
GENERAL DIVISION **NSD 396 of 2012**

BETWEEN: **PETER ANGELO CASACELI**
First Applicant

JANET CHRISTINE CASACELI
Second Applicant

NATACELI PTY LIMITED (ACN 095 685 297)
Third Applicant

CASACELI NOMINEES PTY LIMITED (ACN 125 141 157) AS TRUSTEE FOR THE CHATSWOOD PROPERTY TRUST
Fourth Applicant

AND: **NATUZZI S.P.A. (ABN 86 544 745 364) (FORMERLY KNOWN AS INDUSTRIE NATUZZI S.P.A.)**
First Respondent

NATCD PTY LIMITED (ACN 055 640 983)
Second Respondent

ILAN SKORNICKI
Third Respondent

JUDGE: **JAGOT J**
DATE OF ORDER: **29 JUNE 2012**
WHERE MADE: **SYDNEY**

THE COURT ORDERS THAT:

1. Proceeding NSD 396 of 2012, to the extent that the proceeding involves any claim as between the third applicant and first respondent (the matter), be stayed and the matter be referred to arbitration in accordance with Article 27 of the agreement between the third applicant and first respondent entered into on 22 January 2002 and styled the Dealership Agreement.
2. Proceeding NSD 396 of 2012 otherwise be stayed pending the outcome of the arbitration of the matter.
3. The third applicant pay the first respondent's costs of the interlocutory application filed on 30 March 2012 as agreed or taxed.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY
GENERAL DIVISION **NSD 396 of 2012**

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First Applicant

JANET CHRISTINE CASACELI
Second Applicant

NATACELI PTY LIMITED (ACN 095 685 297)
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CASACELI NOMINEES PTY LIMITED (ACN 125 141 157) AS

TRUSTEE FOR THE CHATSWOOD PROPERTY TRUST
Fourth Applicant

AND: **NATUZZI S.P.A. (ABN 86 544 745 364) (FORMERLY KNOWN AS INDUSTRIE NATUZZI S.P.A.)**
First Respondent

NATCD PTY LIMITED (ACN 055 640 983)
Second Respondent

ILAN SKORNICKI
Third Respondent

JUDGE: **JAGOT J**
DATE: **29 JUNE 2012**
PLACE: **SYDNEY**

REASONS FOR JUDGMENT

ISSUE FOR DETERMINATION

1. The issue in this case is whether the proceeding must be stayed in whole or part and the parties referred to arbitration in accordance with s 7(2) of the *International Arbitration Act 1974* (Cth) (the **International Arbitration Act**).
2. Section 7(2) provides as follows:

> (2) Subject to this Part, where:
>
> (a) proceedings instituted by a party to an arbitration agreement to which this section applies against another party to the agreement are pending in a court; and
>
> (b) the proceedings involve the determination of a matter that, in pursuance of the agreement, is capable of settlement by arbitration;
>
> on the application of a party to the agreement, the court shall, by order, upon such conditions (if any) as it thinks fit, stay the proceedings or so much of the proceedings as involves the determination of that matter, as the case may be, and refer the parties to arbitration in respect of that matter.

3. By s 3(1) of the International Arbitration Act "arbitration agreement" means an agreement in writing of the kind referred to in sub-article 1 of Article II of the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* adopted in 1958 by the United Nations Conference on International Commercial Arbitration at its twenty-fourth meeting (the **Convention**). Sub-article 1 of Article II of the Convention provides that:

> Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by

arbitration.

4. The respondents contend that the proceeding does not involve the determination of a matter that, in pursuance of the arbitration agreement, is capable of settlement by arbitration.
5. To understand the dispute between the parties it is necessary to explain the circumstances which have led to the proceeding.

RELEVANT CIRCUMSTANCES

Dealership agreement

6. On 22 January 2002 two companies, Industrie Natuzzi S.p.A. (a company incorporated under Italian law) (**Natuzzi SpA**) and Nataceli Pty Ltd (a company incorporated under Australian law) (**Nataceli**) entered into an agreement styled the "Dealership Agreement". Under the Dealership Agreement Natuzzi SpA agreed that Nataceli should have exclusive rights to sell certain products in New South Wales and the Australian Capital Territory.

Originating application

7. By early 2012 the commercial relationship between Natuzzi SpA and Nataceli appears to have broken down. Natuzzi SpA gave Nataceli notice terminating the Dealership Agreement on 2 March 2012. On 12 March 2012 Nataceli, its directors Mr and Mrs Casaceli and a trustee company controlled by Mr and Mrs Casaceli known as Casaceli Nominees Pty Ltd as Trustee for the Chatswood Property Trust (**Casaceli Nominees**) filed an originating application in this court against Natuzzi SpA and another company Natcd Pty Ltd (**Natcd**) as well as the managing director of that other company, Mr Skornicki.
8. By the originating application Nataceli, Mr and Mrs Casaceli, and Casaceli Nominees (together the **applicants**) claimed from Natuzzi SpA, Natcd Pty Ltd and Mr Skornicki (together the **respondents**) damages under ss 82 or 87 of the *Trade Practices Act 1974* (Cth) and the *Competition and Consumer Act 2010* (Cth) and ss 236 or 237 of the *Australian Consumer Law* and damages for tortious interference with contractual relations, interest and costs. The Trade Practices Act was amended and renamed the Competition and Consumer Act from 1 January 2011. Schedule 2 of the Competition and Consumer Act contains the Australian Consumer Law.

Amended statement of claim

9. The applicants' claims are identified in the amended statement of claim filed on 16 May 2012. The amended statement of claim contains the following allegations:

Price discounting representations

(1) Before entry into the Dealership Agreement Natuzzi SpA and Natcd made certain representations to Mr Casaceli about Natuzzi SpA not permitting price discounting of "Natuzzi products" by David Jones stores.

(2) Consistently with these representations, Natuzzi SpA instructed David Jones not to discount the price of "Natuzzi products" which conduct contravened ss 48 of the Trade Practices Act or the Competition and Consumer Act (s 48 proscribes the activity of resale price maintenance).

(3) Alternatively, if Natuzzi SpA did not instruct David Jones not to discount the price of "Natuzzi products" the representations to Mr Casaceli referred to in (1) above were false, misleading or deceptive.

(4) In reliance on the representations to Mr Casaceli referred to in (1) above Mr Casaceli caused Nataceli to be incorporated and lease certain premises, to enter into the Dealership Agreement, to acquire and sell products from Natuzzi SpA and to extend the Dealership Agreement in February 2008 until 1 June 2016.

(5) By reason of these matters Natuzzi SpA and Natcd engaged in misleading or deceptive conduct in breach of s 52 of the Trade Practices Act or s 18 of the Australian Consumer Law, and Natcd and Mr

Skornicki have been knowingly involved in these breaches.

(6) By reason of the breaches referred to in (5) above Nataceli has suffered loss and damage.

Dealership Agreement

(7) The Dealership Agreement is a franchise agreement within the meaning of the *Trade Practices (Industry Codes – Franchising) Regulations 1998* (Cth) (the **Franchising Code**).

(8) Natuzzi SpA and Natcd engaged in various forms of unconscionable conduct in breach of ss 20 or 21 of the Australian Consumer Law or ss 51AA or 51AC of the Trade Practices Act, and Natcd and Mr Skornicki have been knowingly involved in these breaches.

(9) By reason of the breaches referred to in (8) above Nataceli has suffered loss and damage.

Application of funds representations

(10) Natuzzi SpA and Natcd made certain representations about the application of funds paid by Nataceli under the Dealership Agreement, which were false, misleading or deceptive and failed to disclose other matters about the funds when under a duty to do so.

(11) By reason of these matters Natuzzi SpA and Natcd engaged in misleading or deceptive conduct in breach of s 52 of the Trade Practices Act or s 18 of the Australian Consumer Law, and Natcd and Mr Skornicki have been knowingly involved in these breaches.

(12) By reason of the breaches referred to in (11) above Nataceli has suffered loss and damage.

Franchising Code

(13) The funds paid by Nataceli under the Dealership Agreement constituted a payment to a marketing or co-operative fund for the purpose of the Franchising Code.

(14) Natuzzi SpA and Natcd failed to satisfy certain obligations imposed by the Franchising Code in respect of the marketing or co-operative fund.

(15) By reason of these matters Natuzzi SpA and Natcd breached s 51AD of the Trade Practices Act or s 51AD of the Competition and Consumer Act (s 51AD proscribes contravention of applicable industry codes), and Natcd and Mr Skornicki have been knowingly involved in these breaches.

(16) By reason of the breaches referred to in (15) above Nataceli has suffered loss and damage.

Interference with contractual relations

(17) From 2007 Natcd and Mr Skornicki intentionally interfered with the Dealership Agreement, without legal justification, and so as to cause Nataceli to suffer loss and damage.

Chatswood site representations

(18) In 2007 and on a number of occasions in 2008 Natuzzi SpA made certain representations to Mr Casaceli about the suitability of a site at Chatswood for the operation of a Natuzzi store (the **Chatswood site**).

(19) Mr Casaceli took certain steps in reliance on the representations including causing Casaceli Nominees to acquire the Chatswood site.

(20) The representations in (18) above were false, misleading or deceptive in that Natuzzi SpA subsequently told Mr Casaceli that the Chatswood site would not be a suitable site for the operation of a Natuzzi store.

(21) By reason of these matters Natuzzi SpA engaged in misleading or deceptive conduct in breach of s 52 of the Trade Practices Act or s 18 of the Australian Consumer Law, and Natcd and Mr Skornicki have been knowingly involved in these breaches.

(22) By reason of the breaches referred to in (21) above each of the applicants has suffered loss and damage.

David Jones

(23) Natuzzi SpA has made available certain products to David Jones on an exclusive basis and refused to make those products available to Nataceli.

(24) By the exclusive supply arrangement David Jones engaged in conduct in breach of s 47 of the Trade Practices Act or s 47 of the Competition and Consumer Act (s 47 proscribes the practice of exclusive dealing).

(25) Natuzzi SpA, Natcd and Mr Skornicki have been knowingly involved in the breaches referred to in (24) above.

(26) By reason of the breaches referred to in (25) above Nataceli has suffered loss and damage.

Termination of Dealership Agreement

(27) In March 2012 Natuzzi SpA purported to terminate the Dealership Agreement.

(28) The purported termination breached certain requirements of the Franchising Code and thus s 51AD of the Competition and Consumer Act.

(29) The purported termination constituted unconscionable conduct by Natuzzi SpA and Natcd in breach of ss 20 or 21 of the Australian Consumer Law.

(30) Natcd and Mr Skornicki have been knowingly involved in the breaches referred to in (29) above.

(31) By reason of the breaches referred to in (30) above Nataceli has suffered loss and damage.

10. It will be apparent from the above that the claims in the proceeding against all respondents fall into four categories: – (i) misleading and deceptive conduct, (ii) unconscionable conduct, (iii) exclusive dealing, and (iv) breach of the Franchising Code. Natuzzi SpA is a respondent to all these claims and, moreover, is identified as the principal person responsible for the contravention other than in respect of the exclusive dealing claim in which a non-party, David Jones, is alleged to the be the principal.
11. There is also a claim against Natcd and Mr Skornicki for interference with contractual relations. Insofar as there is a claim of resale price maintenance the applicants' further submissions in reply are difficult to follow. The applicants contend that their primary claim is for loss caused by the resale price maintenance instruction to David Jones, which is not reflected in the current pleading and is not easy to reconcile with the claim that Nataceli relied on the instructions in various ways. Be that as it may I am prepared to accept the applicants' description of its case at face value and accept that Nataceli claims to have suffered loss and damage by reason of the alleged instructions to David Jones not to discount its prices.
12. It will also be apparent from the above that Mr and Mrs Casaceli and Nataceli Nominees are claimants only in respect of the claims for damages relating to the Chatswood site. All other claims are claims for damages by Nataceli alone.

Interlocutory application

13. By an interlocutory application filed on 30 March 2012 the respondents (in the subsequent event, only the first respondent, Natuzzi SpA) sought orders permitting it to seek a stay of the proceeding pursuant to s 7 of the International Arbitration Act notwithstanding rule 28.43 of the *Federal Court Rules 2011* (the **Rules**) and (insofar as relevant) without first filing a notice of address for service pursuant to rule 11.06 of the Rules, and sought a stay of the proceeding and referral of the issues in the proceeding to arbitration.
14. Rule 28.43 provides that:

(1) A party to an arbitration agreement who wants an order under section 7 of the International Arbitration Act to stay the whole or part of a proceeding must file an originating application, in accordance with Form 51.
(2) The originating application must be accompanied by:
(a) a copy of the arbitration agreement; and
(b) an affidavit stating the material facts on which the claim for relief is based.

15. The first respondent required dispensation from this rule because it sought the stay by an interlocutory application rather than an originating application. Rule 1.34 provides that the "Court may dispense with compliance with any of these Rules, either before or after the occasion for compliance arises".
16. Despite the interlocutory application having been fixed for hearing on all issues with the consent of all parties, the day before the hearing, in its written submissions, the applicants foreshadowed for the first time that their position was that the application for dispensation from rule 28.43 should be heard separately from and in advance of the application for a stay because: – (i) the interlocutory application referred to all respondents whereas it now appeared that only the first respondent would be seeking the orders, the other respondents being separately represented, (ii) no notice of appearance had been filed by the first respondent, and (iii) rule 28.43 reflected the policy of the court as set out in Practice Note ARB 1 - *Proceedings under the International Arbitration Act 1974* (**Practice Note ARB 1**) issued by the Chief Justice on 24 May 2012 for such applications to be dealt with by an Arbitration Coordinating Judge.
17. Practice Note ARB 1 includes the following provisions:
    3. Each registry has an Arbitration Coordinating Judge who has general responsibility for the management of matters under the Act. A current list of Arbitration Coordinating Judges is available from the Court's registries and its website at www.fedcourt.gov.au.
    4. A proceeding under the Act will, when commenced, be listed before the Arbitration Coordinating Judge.
18. It is apparent that one purpose of the Practice Note is to ensure consistency in the way in which the court deals with matters involving the International Arbitration Act. It may be accepted that rule 28.43 contributes to this purpose by ensuring that applications for a stay based on the International Arbitration Act are made by originating application rather than an interlocutory application in existing proceedings which (as in the present case) had already been docketed to a docket judge. If the applicants had made their position known in a timely manner steps could have been taken for the listing of the interlocutory application before the Arbitration Coordinating Judge. However, the applicants did not make their position known until the day before the hearing of the interlocutory application in circumstances where both the applicants and first respondent had made arrangements for evidence to be given by experts in Italian law by video-link from Italy. In the circumstances I refused the applicants' application to adjourn hearing and determination of the application for the stay and referral of the matter to arbitration. I thus dispensed with compliance with rule 28.43 of the Rules and permitted the first respondent to apply for the stay and referral without first filing a notice of address for service pursuant to rule 11.06, as sought in para 1 of the interlocutory application. I then proceeded to hear the application for the stay and referral to arbitration, as sought in paras 2 and 3 of the interlocutory application.

Stay and referral to arbitration

19. The first respondent seeks the stay and referral to arbitration on the basis of Article 27 of the Dealership Agreement. To understand the applicants' position it is necessary to identify other provisions of the Dealership Agreement in addition to Article 27.
20. The dealership agreement identifies itself as an agreement between:

> INDUSTRIE NATUZZI S.p.A, a company operating under Italian law with registered and administrative office at ... (hereinafter referred to as the "Manufacturer").
>
> And

NATACELI PTY Ltd., a company operating under Australian law with registered office at ... (hereinafter referred to as the “Dealer” or the “Dealer company”).

21. Despite some initial doubt it was agreed that INDUSTRIE NATUZZI S.p.A is Natuzzi SpA, the first respondent to the proceeding.
22. Article 1.1 of the Dealership Agreement contains the following definitions:

Party each of Industrie Natuzzi S.p.A. and Nataceli Pty Ltd.;

Trademark the Natuzzi trademark owned by the Manufacturer (national registration no. 524354 dated 4th February 1992);

Shops shops which are distinguished by the Trademark and sell exclusively the Products;

Products sofas, armchairs, furniture and furnishing accessories (lamps, rugs, tables, decorative items etc.) indicated with a code and/or a name in the list attached as Attachment A, selected from the range of furnishing products made by the Manufacturer or by enterprises selected by the Manufacturer, such products being sold to the Dealer by Natuzzi Asia or any company of the Natuzzi Group. Such list will be updated every time the Manufacturer, in order to take account of market requirements and evolution, adds and/or replaces one or more articles;

Distinctive Marks the distinctive Natuzzi marks (as the sign, the logotype, the labels etc.), also including the Trademark;

Natuzzi Asia Natuzzi Asia Limited, a company operating under the laws of the Hong Kong Special Administrative Region of People’s Republic of China, with legal address at ...;

Natuzzi Group the Manufacturer and the companies, which are directly or indirectly controlled by the Manufacturer;

Territory New South Wales and Australian Capital Territory.

23. The essence of the commercial deal is in Article 4 in these terms:

ARTICLE 4
SOLE RIGHTS
4.1 For the duration of this agreement, the Manufacturer, also acting through

Natuzzi Asia or any other company of the Natuzzi Group, undertakes to sell the Products in the Territory solely to the Dealer. The Manufacturer, acting also in the name of the Natuzzi Group, undertakes not to grant to others the right to resell the Products in the Territory.

4.2 The Dealer expressly acknowledges the right of the Manufacturer and of the enterprises selected by it (including, but not limited to, Natuzzi Asia) to promote and sell, in the Territory, also through other distribution channels, not excluding other sales chains, furnishings products (in particular sofas and armchairs), marked with trademarks different from the Trademark.

...

24. Article 10 is as follows:

ARTICLE 10
LEGAL RELATIONS BETWEEN THE MANUFACTURER AND THE DEALER

The Dealer is an independent businessperson and shall act in an independent manner, purchasing the Products from Natuzzi Asia or any other suppliers, also external to Natuzzi Group, as indicated by the Manufacturer, and reselling them in its own name and on its own behalf within the Territory.

...

25. Article 11 is important to the applicants' contentions and is in these terms:

ARTICLE 11
PURCHASING CONIDITIONS – PRICES

11.1 The sale of the Products to the Dealer is governed, except where this agreement stipulates otherwise, by the general conditions of supply of Products by Natuzzi Asia attached to this agreement under Attachment C.

26. Attachment C is described later in these reasons.
27. Article 26 deals with the applicable law of the Dealership Agreement and provides as follows:

ARTICLE 26
APPLICABLE LAW

26.1 This agreement is subject to Italian law.

...

28. Article 27 is the provision on which the first respondent relies as the arbitration agreement. It is in

these terms:

ARTICLE 27
DISPUTES

27.1 All disputes arising out of the present contract, including those concerning its validity, interpretation, performance and termination, shall be referred to an arbitral tribunal consisting of three arbitrators, one being the President, according to the International Arbitration Rules of the Chamber of National and International Arbitration of Milan, which the Parties declare to know and accept in their entirety.
27.2 The arbitrators shall decide according to the Italian law. The language of the arbitration shall be the Italian.
27.3 In respect of matters which, according to the applicable law, are not able to be resolved by arbitration, and in respect also of measures which, again according to the applicable law, may not be granted by the arbitrators, the Law Court in Bari shall be the sole competent venue. This shall however be without prejudice to the right of the Manufacturer to take action at his discretion at the Law Court of the Dealer.

...

29. Attachment A to the Dealership Agreement is the list referred to in the definition of "Products" in Article 1. It contains a list of numbers which it may be inferred identifies "sofas, armchairs, furniture and furnishing accessories (lamps, rugs, tables, decorative items etc.)...selected from the range of furnishing products made by the Manufacturer or by enterprises selected by the Manufacturer, such products being sold to the Dealer by Natuzzi Asia or any company of the Natuzzi Group".
30. Attachment C to the Dealership Agreement is the general conditions of supply of Products by Natuzzi Asia referred to in Article 11.1. Attachment C includes the following:

ATTACHMENT C

GENERAL TERMS AND CONDITIONS OF SALE

Whereas

➢ There are commercial dealings between Natuzzi Asia Limited (hereafter called the "Seller") and the Buyer who sign this document so that the Seller can sell sofas, armchairs, interior design solutions and furnishings (the "Products") to the Buyer (hereafter called with the Seller the "Parties") under the terms referred to in the following clauses;
➢ The Parties, according to their organizing requirements, want to send also by email the purchase orders of the Products, their order confirmation and invoices; and
➢ The Parties intend to govern the sales made between them, thus submitting them to these general terms and conditions of sale (together with the order confirmation from the Seller called the "Agreement").

The Parties expressly agree that the sales of Products, made between them

through emails or otherwise, shall be governed by these general terms and conditions of sale.

1) REGULATORY FRAMEWORK OF THE AGREEMENT

1.1) The whole of the commercial relationship between Buyer and Seller shall be governed by these general terms and conditions which shall automatically apply to every Product sale made between Buyer and Seller.

...

2) ORDERS

The placing of an order by the Buyer shall to all intents and purposes constitute an irrevocable contract offer. However, the said offer is not binding on the Seller in any way. The Buyer may revoke its contract offer if it does not receive confirmation of the order from the Seller within 5 weeks of receipt by the Seller of the contract offer.

3) ORDER CONFIRMATION

3.1) The Seller shall be bound only upon the Buyer’s receipt of the order confirmation from the Seller. ...

...

4. DELIVERY

4.1) The place of delivery of the goods covered by the sale shall be the site agreed by the Parties from time to time.

...

5. RETURNS OF MERCHANDISE

Under no circumstances will returns of merchandise be accepted, except where specifically authorized in advance by the Seller in writing.

6. VARIATIONS IN THE AGREED PRICE AND CONSTRUCTION MODIFICATIONS

...

7. TERMS AND METHODS OF PAYMENT

7.1 The invoices issued by the Seller must be settled in accordance with the terms and methods as agreed from time to time. The terms of payment shall be of the essence in the interests of the Seller.

...

8. CLAIMS OR COMPLAINTS

Any form of notice, complaint or claim must be sent in writing to the Seller's Agent or to the Seller's head office by email, telex or registered letter with receipt requested, so that procedures may be initiated by the Seller for the inspection and verification of the complaint. No product may be returned by the Buyer without the prior written consent of the Seller.

9. RIGHT OF OWNERSHIP

9.1) The goods covered by the sale shall remain the Seller's property until the price agreed has been paid in full. In the event of resale of the goods by the Buyer, the price received shall be handed over to the Seller within five (5) days of receipt of the price by the Buyer.

...

10. CHOICE OF FORUM

In respect of all disputes arising out of the Agreement, including disputes concerning its validity, interpretation, performance and termination.

i. the Buyer agrees to submit to the jurisdiction of the courts of Hong Kong or any court of each country or state where the Buyer carries on business or of its country of incorporation;
ii. the Seller agrees to submit to the jurisdiction of the courts of Hong Kong;
iii. the Buyer agrees not to commence and continue proceedings against the Seller in any court other than a court of Hong Kong; and
iv. the Buyer and the Seller agree to submit to the jurisdiction of the courts specified in this Clause 10 only.

11. APPLICABLE LAW

11.1) Any and all matters, subjects and events not covered by these general terms and conditions of sale shall be regulated by the 1980 United Nations Convention on Contracts for the International Sale of Goods (the "Convention"). With respect to any matters, subjects and events not covered either wholly or in part by the Convention, the Agreement shall be regulated and/or supplemented solely by the laws of Hong Kong.

> 11.2) Should the Buyer not belong to a Contracting State under the Convention, or if the Convention is not applicable, or if there exist provisions of national or regional law in the State of the Buyer which invalidate or modify one or more of the clauses of the Agreement, the Agreement shall be governed entirely by the laws of Hong Kong.

DISCUSSION

31. The first respondent's contentions are simple. Article 27 of the Dealership Agreement is an arbitration agreement within the meaning of s 7(2) of the International Arbitration Act between Natuzzi SpA and Nataceli. The matter within the meaning of that section may be described as claims for damages mainly by Nataceli against Natuzzi SpA. Insofar as Natcd and Mr Skornicki are concerned (not being parties to the arbitration agreement), their potential liability depends in any event on the principal liability of Natuzzi SpA. Insofar as Mr and Mrs Casaceli and Casaceli Nominees are concerned (also not being parties to the arbitration agreement), their claim is confined to a single claim based on alleged misleading or deceptive conduct in respect of the Chatswood site (the Chatswood site representations). Natuzzi SpA undertakes to agree to the resolution of these claims also by arbitration but, in any event, there is no reason why those claims could not be separately stayed to await the outcome of the arbitration. The claims, being claims for damages under the Trade Practices Act (and equivalent provisions in the Competition and Consumer Act), are all capable of settlement by arbitration in pursuance of the arbitration agreement in Article 27, a conclusion supported by the evidence of Professor Radicati to the effect that, under Italian law: – (i) Article 27 would be broadly interpreted to cover all disputes deriving from the contract or from the relationship to which the agreement refers, (ii) arbitrators have the power to determine their own jurisdiction, and (iii) an arbitral Tribunal sitting in Italy and deciding under the Rules of the Milan Arbitration Chamber a dispute involving the market of a third country would consider the applicability of the mandatory rules of that country, even if the law governing the merits of the dispute chosen by the parties were a different law.
32. According to Professor Radicati arbitrators consider the applicability of the mandatory rules of the third country for two basic reasons. First, as a matter of policy it is recognised that arbitration should not be perceived as a means to avoid or circumvent the application of such mandatory rules. Secondly, arbitrators must consider the enforceability of their awards in countries where the parties may wish to do so. For example, Article 41 of the Rules of Arbitration of the International Chamber of Commerce requires arbitrators to "make every effort to make sure that the Award is enforceable at law". Professor Radicati considered the present case not dissimilar to the seminal decision of the Supreme Court of the United States in *Mitsubishi Motors Corp v Soler-Chrysler Plymouth Inc* [1985] USSC 203; 473 US 614 (1985) in which it was held that anti-trust claims under a US statute were capable of being settled by arbitration under an agreement providing for arbitration by the Japanese Commercial Arbitration Association in circumstances where the proper law of the contract was Swiss law. Gleeson CJ in *Francis Travel Marketing Pty Ltd v Virgin Atlantic Airways Ltd* (1996) 39 NSWLR 160 at 167 applied the reasoning of the US Supreme Court (at 636-637) that:

> There is no reason to assume at the outset of the dispute that international arbitration will not provide an adequate mechanism. To be sure, the international arbitral tribunal owes no particular allegiance to the legal norms of particular states; hence, it has no direct obligation to vindicate their statutory dictates. The tribunal, however, is bound to effectuate the intentions of the parties. Where the parties have agreed that the arbitral body is to decide a defined set of claims which includes, as in these cases, those arising from the application of American antitrust law, the tribunal therefore should be bound to decide that dispute in accord with the national law giving rise to the claim.

33. Although the applicants described the issues in dispute as confined to "two narrow issues" arising from the proper approach to the meaning of the words "capable of settlement by arbitration", their arguments were rather more complex. The applicants disavowed any need to resolve the expert

dispute between Professor Radicati and the expert they called, Dr Giarrusso, contenting themselves with the submission that Professor Radicati's evidence was overstated. It is sufficient to say in this regard that I accept Professor Radicati's evidence as summarised above. He had substantial expertise being a practising lawyer in Milan, a Full Professor of Law at the Universita Cattolica di Milano, an arbitrator, member of the International Court of Arbitration of the International Chamber of Commerce, and author of books and articles in respect of legal issues particularly arbitration and competition law. Dr Giarrusso is a lawyer and arbitrator and has advised clients involved in arbitrations but, unlike Professor Radicati, has not appeared in arbitrations for clients or conducted arbitrations as an arbitrator. Dr Giarrusso's evidence that to her knowledge Italian arbitrators would not apply the mandatory rules of third party countries was difficult to follow, not supported by authority (unlike the evidence of Professor Radicati who referred to the decision of the Court of Appeal of Milan in *Terra Amata Ltd v Tensacciai Co* (No 1897, 15 July 2006) to support his views) and not based on the same high level of specialist expertise in respect of arbitrations as that of Professor Radicati. I thus prefer Professor Radicati's evidence on all disputed issues of Italian law.

34. Otherwise the applicants acknowledged that there was no dispute about the first three pre-conditions for the grant of a stay and referral to arbitration, namely: – (i) there is an arbitration agreement as defined in the International Arbitration Act, (ii) the agreement falls within the scope of one or more of the provisions of s 7(1)(a)-(d) of that Act and thus s 7(2) applies, and (iii) the proceeding has been instituted in a court by a party to the arbitration agreement to which s 7 applies against another party to that agreement as referred to in s 7(2)(a) of that Act. Accordingly, the remaining issue, which is in dispute, is whether the proceeding involves a matter that, under the arbitration agreement, is capable of settlement by arbitration as required by s 7(2)(b) of that Act.

35. The applicants' first proposition is that the "matter" in s 7(2)(b) is not limited to the issues arising on the present form of the pleading. At one level, this may be accepted. "Matter" has been said to be a word of "wide import" by Deane and Gaudron JJ in *Tanning Research Laboratories Inc v O'Brien* [1990] HCA 8; (1990) 169 CLR 332 at 351 (***Tanning Research***). Their Honours continued:

> In the context of s7(2), the expression "matter ... capable of settlement by arbitration" may, but does not necessarily, mean the whole matter in controversy in the court proceedings. So too, it may, but does not necessarily encompass all the claims within the scope of the controversy in the court proceedings. Even so, the expression "matter ... capable of settlement by arbitration" indicates something more than a mere issue which might fall for decision in the court proceedings or might fall for decision in arbitral proceedings if they were instituted. See *Flakt* [*Flakt Australia Ltd v Wilkins & Davies Construction Co Ltd* [1979] 2 NSWLR 243 at 250]. It requires that there be some subject matter, some right or liability in controversy which, if not coextensive with the subject matter in controversy in the court proceedings, is at least susceptible of settlement as a discrete controversy. The words "capable of settlement by arbitration" indicate that the controversy must be one falling within the scope of the arbitration agreement and, perhaps, one relating to rights which are not required to be determined exclusively by the exercise of judicial power. See Mustill and Boyd, *The Law and Practice of Commercial Arbitration in England*, 2nd ed (1989), pp. 149-150, where it is noted that "English law has never arrived at a general theory for distinguishing those disputes which may be settled by arbitration from those which may not" but that the powers of an arbitrator "are limited by considerations of public policy and by the fact that he is appointed by the parties and not by the state".

36. In *Recyclers of Australia Pty Ltd v Hettinga Equipment Inc* (2000) 100 FCR 420; [2000] FCA 547 at [18]- [20] (***Recyclers of Australia***) Merkel J noted that:

> [18] While Deane and Gaudron JJ may have differed in some respects from the majority on the question of the scope of a "matter", *Tanning Research* is authority for the view that, for the purposes of s 7(2), the "matter" to be determined in a

proceeding is to be ascertained by reference to the subject matter of the dispute in the proceeding and the substantive, although not necessarily the ultimate, questions for determination in the proceeding. The scope of the matter is to be ascertained from the pleadings and from the underlying subject matter upon which the pleadings, including the defence, are based: *Tanning Research* at 343-344 and 351-354 cf *Fencott v Muller* (1983) 152 CLR 570 at 608, *Hooper v Kirella* [1999] FCA 1584; (1999) 167 ALR 358 at 368-371.

[19] The manner in which a claim or a defence is pleaded is of importance to, but is not determinative of, the characterisation of the "matter" for the purpose of s 7(2). Once the "matter" is properly characterised the question to be determined is whether that matter is capable of settlement under the arbitration clause.

[20] The proceeding in *Tanning Research*, being the appeal to the Court, was stayed because the outcome of the proceeding was dependent, at least in part, on the determination of the matter to be referred to arbitration. Given the requirement in s 7(2) that only so much of the proceeding as involves the matter need be stayed, it is clear that a proceeding that includes matters severable from or independent of the matter required to be referred to arbitration need not be stayed in respect of those matters.

37. None of the considerations above are capable of changing the “matter” in the present case. Irrespective of the permutations as between the parties, the matter essentially comprises claims for statutory damages for alleged breaches of various provisions of the trade practices legislation as in force from time to time together with another claim for common law damages for alleged unlawful interference with contractual relations.
38. The applicants’ second proposition is that the question posed by s 7(2)(b) must be answered by reference to Australian law despite the fact that the proper law of the Dealership Agreement is Italian law. The applicants said this proposition was supported by the decision of Allsop J (as he then was) in *Comandate Marine Corporation v Pan Australia Shipping Pty Ltd* (2006) 157 FCR 45; [2006] FCAFC 192 (***Comandate Marine Corp***) at [162] and *Tanning Research* at 352. I do not accept the proposition and do not consider it supported by the cases cited. At [162]-[163] in *Comandate Marine Corp* Allsop J refrained from determining the issue. At 352 in *Tanning Research* nothing is said to support the proposition. There is authority to the contrary which I am not satisfied is plainly wrong (*Recyclers of Australia* at [22]). Whether the proposition be right or wrong, however, it seems to me to make no difference to the result. It may be that based on the evidence of Professor Radicati I should be satisfied that Italian law takes a more liberal approach to arbitration clauses than Australian law (although this itself is not clear from the evidence). Whether that is so or not, even if it be assumed in favour of the applicants that insofar as the question whether the matter is capable of settlement by arbitration calls up the proper construction of the contract under Australian law, the applicants’ position is not assisted.
39. The applicants’ third proposition, which I will deal with as put consistently with the conclusions above, is that the arbitration agreement in this case, being Article 27 of the Dealership Agreement, does not apply at all to the dispute between Nataceli and Natuzzi SpA. The applicants contend that the sale of all categories of products to Nataceli within the definition of Products, whether sold by Natuzzi SpA, Natuzzi Asia, any other member of the Natuzzi Group or otherwise, are regulated by the general terms and conditions of sale in Attachment C to the Dealership Agreement. This is the result of Article 11.1, which provides that the sale of the Products to Nataceli as the Dealer is governed, except where the agreement stipulates otherwise, by the general conditions of supply of Products by Natuzzi Asia attached as Attachment C. Attachment C deals with all aspects of the sale of Products to Nataceli and provides in cl 10 a choice of forum (being the courts of Hong Kong) and of law in cl 11 (the 1980 *United Nations Convention on Contracts for the International Sale of Goods* or, if not covered thereby, the law of Hong Kong). As the Dealership Agreement does not stipulate otherwise cll 10 and 11 of Attachment C apply. It follows that Article 27 does not

extend to anything covered by Attachment C. In the present case the applicants' claims include disputes relating to the sale of Products which thus fall outside the scope of the arbitration agreement in Article 27.

40. Consistent with the first respondent in its written submissions in reply I do not find this a convincing construction of the contract in accordance with the principles of construction of Australian (or, insofar as the evidence permits me to say so, Italian) law. In this regard it is sufficient for me to record that I consider that paragraphs 69 to 73 of the first respondent's written submissions in reply identify the proper construction of the Dealership Agreement in accordance with Australian law. Those paragraphs, which I adopt, are as follows:

    69. What the Dealership Agreement contemplated was, that when Nataceli placed an individual order for Products, with, for instance, Natuzzi Asia, there would arise a separate contract for the sale of goods. That separate contract, between Natuzzi Asia (or some other supplier, being a company in the Natuzzi Group, or an external supplier) and Nataceli, would be on the terms in the General Terms & Conditions. That separate sale of goods contract (defined as "the Agreement" in the third recital), is the contract referred to in clauses 10 and 11 of the General Terms & Conditions. A dispute arising between the supplier, say Natuzzi Asia, and Nataceli, being the parties to that sale of goods contract, about that sale of goods contract would be subject to clauses 10 and 11. A dispute between Natuzzi and Nataceli, about that same sale of goods contract, would still be a dispute arising out of the Dealership Agreement, and would still be subject to Article 27. The parties to, and the nature of each type of dispute, are separate and distinct. Umbrella style dealership arrangements of this type were referred to in *Prints for Pleasure Ltd v Oswald-Sealy (Overseas) Ltd* [1968] 3 NSWR 761 at 765-766.

    70. Article 11.2 of the Dealership Agreement is an example of the Dealership Agreement stipulating otherwise within the meaning of Article 11.2, and the terms there set out on pricing and payment etc would override any inconsistent terms in the General Terms & Conditions.

    71. Article 17(c) contains an example of how the Dealership Agreement and the General Terms & Conditions both interact, yet operate within their own respective spheres. Article 17(c) is in the following terms:

> *"Without prejudice to every other right or remedy ... and without prejudice also to the provisions of Clause [sic] 27.3, the Manufacturer shall have the right to terminate this agreement by means of registered post to the Dealer effective as of receipt, if:*
>
> *...*
>
> c. *the Dealer fails to make payment for the supply of Products 60 (sixty) days after the notice of default served on the Dealer by Natuzzi Asia;"*

    72. That provision recognises that Natuzzi Asia, being the putative seller of products to Nataceli, has primary responsibility to pursue payment under the General Terms & Conditions (subject to Article 11.2), but that if such payment is not made, then that gives Natuzzi a right under the Dealership Agreement to terminate that Dealership Agreement. A dispute between Natuzzi and Nataceli about whether the Dealership Agreement had been validly terminated pursuant to Article 17(c) would plainly be subject to arbitration under Article 27.1. The prefatory words in Article 17 make it plain that Article 27 applies. Any determination of such a dispute in arbitration could give rise to issues between Natuzzi and Nataceli about whether or not supply had been made, or payment made, or the like, in accordance with the General Terms & Conditions, as between Natuzzi Asia and Nataceli, but the primary dispute about termination between Natuzzi and Nataceli would still arise out of the Dealership Agreement and be subject to arbitration under Article 27.1.

    73. The flaw in the applicants' submissions is that they contend that the present proceedings, being proceedings that are relevantly between Natuzzi and Nataceli, do not fall within Article 27.1 because the relevant relations are somehow governed by the General Terms & Conditions and therefore, clauses 10 and 11 of those General Terms & Conditions apply. The overarching or

umbrella arrangements for the dealership between Natuzzi, as head of the Natuzzi Group, and Nataceli, as dealer, are governed by the Dealership Agreement. Any dispute between Natuzzi and Nataceli relating to the Dealership, including to use the words of Article 27.1, "those concerning its ... performance", are disputes arising out of the Dealership Agreement, and fall within Article 27.1. That is so notwithstanding that fact that, under the broad umbrella arrangements established by the Dealership Agreement, Nataceli may have contracted with Natuzzi Asia to purchase a shipping container load of furniture, on the terms of the General Terms & Conditions, and the fact that in a dispute between Natuzzi Asia and Nataceli those terms would govern.

41 I do not accept the applicants' submissions to the contrary. The decision on which they relied, *Lake Cumbeline Pty Ltd & Ors v EFFEM Foods Pty Ltd (t/as Uncle Ben's of Australia)* [1997] FCA 292, is not authority to the contrary of the first respondent's essential proposition that the overall legal relationship between Natuzzi SpA and Nataceli is regulated by the Dealership Agreement. I do not accept that Nataceli's claims relate to the sale of products. Even the claim of unconscionable conduct in respect of the so-called marketing or co-operative fund relate to the overall relationship between Natuzzi SpA and Nataceli. The alleged 10% of the wholesale price is said to have been required to be paid as a fee to Natcd acting as the agent of Natuzzi SpA on every product sale irrespective of the source of the product. This has no real connection with the terms and conditions of sale in Attachment C but a substantial connection with the overall relationship between Natuzzi SpA and Nataceli. For this reason also the applicants' references to the dispute relating to the sale of products by Natuzzi SpA itself to Nataceli take the matter no further. The substantive controversy between Natuzzi SpA and Nataceli is not one concerning the sale of any particular consignment of furniture or even all consignments of furniture. The substantive controversy relates to the Dealership Agreement, the entry into it, its extension, the performance of it, and the requirements Natuzzi SpA is said to have imposed on the continued performance of obligations under it. In other words, this matter is not about the sale of products. The sale of products is the background to the real controversy between Natuzzi SpA and Nataceli.

42. Accordingly, insofar as a dispute between Nataceli and Natuzzi SpA is concerned I do not accept the applicants' submission that the parties intended that different disputes between them would be litigated in different jurisdictions. In respect of any dispute between Nataceli and Natuzzi SpA the parties intended the dispute to be referred to arbitration in Milan.
43. To the extent that the applicants submitted that it could not be assumed that the relevant respondent was Natuzzi SpA as opposed to any other member of the Natuzzi Group, there are two answers. First, although I accept that the matter within the meaning of s 7(2) of the International Arbitration Act is not defined only by the pleading, the fact is that the applicants have chosen to sue Natuzzi SpA and not any other member of the Natuzzi Group. Second, examination of the claims indicates that the underlying dispute, or the subject matter of the dispute in the proceeding, has nothing to do with the terms and conditions of individual sales in accordance with Attachment C to the Dealership Agreement.
44. It follows that the whole of the dispute between Nataceli and Natuzzi SpA falls within Article 27 of the Dealership Agreement.
45. The applicants' fourth proposition is that in any event a substantial part of the dispute falls outside the arbitration agreement for three reasons.
46. First, the applicants say that it is not clear that the pleaded representations have been made by Natuzzi SpA as opposed to some other member of the Natuzzi Group such as Natuzzi Asia. This might be so but the "matter" cannot extend to mere speculation. The applicants have brought the proceeding, chosen to sue Natuzzi SpA and have formulated claims against Natuzzi SpA only. The mere possibility of involvement of some other entity, not a party to the Dealership Agreement, is not a proper basis to conclude that any part of the dispute falls outside the arbitration agreement.
47. Second, the applicants say that the disputes in the proceeding are not disputes "arising out of the" Dealership Agreement within the meaning of Article 27.1. This submission is not persuasive. All of the claims against Natuzzi SpA relate one way or another to the Dealership Agreement – the entry into it, the extension of it, or its operation. It is true that there is no allegation of breach of contract. But the reasoning in *Comandate Marine Corp* at [175] is applicable. In this case there is a "a sufficiently close connection with the making, the terms, and the performance of the contract as permit the words "arise out of" aptly or appropriately to describe the connection with the contract".
48. Third, the applicants say that there are necessary and proper parties to the proceeding who are not parties to the Dealership Agreement. This is so. But the relevant point is that the relevant

matter under s 7(2) of the International Arbitration Act is the dispute between Nataceli and Natuzzi SpA each of which is bound by the Dealership Agreement. In *Tanning Research* it was accepted that the issues in the proceeding extended beyond the matter (as they do here) yet the matter was referred to arbitration and the balance of the proceeding stayed to await the outcome of the arbitration (see, for example, at 345 and 351). In *Recyclers of Australia* at [65]-[66] Merkel J said:

> [65] In the event that a proceeding includes matters that are not capable of being referred to arbitration, but the determination of which is dependent upon the determination of the matters required to be submitted to arbitration, a court may, in the exercise of its discretion, stay the whole proceeding: see *Tanning Research* at 216 per Brennan and Dawson JJ. A court may also exercise a discretion to impose terms that the arbitration of the arbitrable claims not proceed prior to the determination of the non-arbitrable claims where the arbitrable claims are seen to be subsidiary to or significantly less substantial than, but overlapping with, the non-arbitrable claims: see *Hi-Fert* [*Hi-Fert Pty Ltd v Kiukiang Maritime Carriers Inc* (1998) 159 ALR 142] at 167-168 cf *Dodwell & Co (Aust) Pty Ltd v Moss Security Ltd* Federal Court, Wilcox J (unreported, 11 April 1990) at [5] and [7]. The discretion may also be exercised to stay the proceeding where the non-arbitrable claims are the ancillary claims.
>
> [66] The broad discretion arises as part of the exercise of a court's general power to control its own proceedings. The basis for the discretion is that the spectre of two separate proceedings - one curial, one arbitral-proceeding in different places with the risk of inconsistent findings on largely overlapping facts, is undesirable: see *Dodwell & Co* per Wilcox J at [5] and [7], Hi-Fert at 167-168 and *McDonnell Dowell Smith East Asia Pty Ltd v State Electricity Commission of Victoria* (Supreme Court of Victoria) Beach J, 24 November 1998 (unreported) at [22] to [24].

49. In the present case the arbitrable claims as between Nataceli and Natuzzi SpA are the principal claims. There is no reason to require those claims to await the determination of the other claims in the proceeding. To the contrary it makes sense, as a matter of discretion, to stay the other claims pending the completion of the arbitration.
50. The applicants' fifth proposition is that by reason of the nature of the claims I should be satisfied that the matter is not capable of settlement by arbitration. The applicants cited *Comandate Marine Corp* at [200]. I do not consider that passage supports the applicants' contentions. Nor do I consider the other cases cited by the applicants as supporting their position that the type of claims they have in fact made (that is, as against Natuzzi SpA, for damages for breach of trade practices legislation) are other than capable of settlement by arbitration. It seems to me that the applicants sought to surround their claims with an aura of important public policy issues when, in substance, the dispute is a commercial cause between two companies involved in the international furniture trade by which one company seeks damages from another. The idea that a dispute of this character is only capable of resolution by an exercise of judicial power is far-fetched. Although the source of the claims is Australian legislation which serves important public policy objectives it is difficult to accept that the matter in this case is not precisely the type of matter where effect should be given to the intention of the parties to submit disputes between them arising out of contract regulating their overall commercial dealings, the Dealership Agreement, to arbitration. It is well settled that such claims are capable of settlement by arbitration (for example, *Recyclers of Australia* at [22], *Lightsource Technologies Australia Pty Ltd v Pointsec Mobile Technologies AB* (2011) 250 FLR 63; [2011] ACTSC 59 at [137]- [141], *Francis Travel Marketing Pty Ltd v Virgin Atlantic Airways Ltd* at 166 and *Comandate Marine Corp* at [175]-[176]).
51. No different approach to the Franchising Code allegations is warranted. The fact remains that the claims for breach of the Franchising Code involves a claim for damages the essence of which concerns how Natuzzi SpA used money paid to it for marketing purposes. I do not accept that the effect of a stay in this proceeding would be to invite any franchisor to avoid the effect of the

Franchising Code by inserting an arbitration clause into the franchising agreement. The submission is based on a false assumption about arbitration. As the Supreme Court said in *Mitsubishi Motors Corp v Soler-Chrysler Plymouth Inc* there is no reason to assume that the arbitral body in Milan will fail to recognise the mandatory laws of Australia including those giving effect to the Franchising Code. The evidence of Italian law in this case is to the same effect.

52. The applicants' sixth proposition is that the evidence leaves open sufficient uncertainty that I should not be satisfied that the national laws of Australia will be applied in an arbitration in accordance with Article 27 of the Dealership Agreement or that the arbitrators will be capable of so doing. The first concern has already been answered. The second is a variant of the first and involves mere speculation and an apparent distrust of arbitration at odds not only with the express intention of the parties when they entered into and extended the Dealership Agreement but also the policy embodied in the International Arbitration Act. The submission that Italian courts would be unfamiliar with the causes of action advanced is unpersuasive for the same reasons.
53. The applicants' seventh proposition is that the rights of third parties may be affected in that if it is held that Natuzzi SpA engaged in exclusive dealing then the public at large might have claims against, for example, David Jones. The problem with this submission is that it extends far beyond the matter in this case which is between Nataceli and Natuzzi SpA and involves claims for damages.
54. In conclusion, the requirements of s 7(2) of the International Arbitration Act are satisfied. The matter, being the whole of the dispute between Nataceli and Natuzzi SpA reflected in the claims in the proceeding, must be stayed and the matter referred to arbitration. The balance of the proceeding should also be stayed as a matter of discretion to await the outcome of the arbitration. I make orders accordingly, including orders for costs of the interlocutory application.

I certify that the preceding fifty-four (54) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Jagot.

Associate:

Dated: 29 June 2012
