

## NOTICE OF FILING AND HEARING

### Filing and Hearing Details

Document Lodged: Originating Application - Form 15 - Rule 8.01(1)  
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File Number: NSD527/2024  
File Title: FORTESCUE LIMITED ACN 002 594 872 & ORS v ELEMENT ZERO PTY LIMITED ACN 664 342 081 & ORS  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA  
Reason for Listing: To Be Advised  
Time and date for hearing: To Be Advised  
Place: To Be Advised



*Sia Lagos*

Registrar

### Important Information

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 of the filing of the document is determined pursuant to the Court's Rules.



## Originating application

No. NSD of 2024

Federal Court of Australia  
District Registry: New South Wales  
Division: General

### **Fortescue Limited ACN 002 594 872 and others named in the schedule**

Applicants

### **Element Zero Pty Limited ACN 664 342 081 and others named in the schedule**

Respondents

To the Respondents:

The Applicants apply for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

**Time and date for hearing:**

**Place:**

The Court ordered that the time for serving this application be abridged to

Date:

Signed by an officer acting with the authority  
of the District Registrar

Filed on behalf of  
Prepared by  
Law firm  
Tel  
Email  
**Address for service**

Fortescue Ltd & ors, Applicants  
Paul Dewar  
Davies Collison Cave Law  
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PDewar@dcc.com  
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## Details of claim

On the grounds stated in the accompanying Statement of Claim (**SOC**), the Applicants claim:

### Breach of confidence

1. A declaration that each of the Respondents has breached a duty of confidence owed to one or more of the Applicants in respect of the **Fortescue CI** (defined in the SOC).
2. An order that each of the Respondents be permanently restrained from use or disclosure of the Fortescue CI.
3. Damages, an account of profits or equitable compensation.

### Breach of fiduciary duties

4. Declarations that:
  - (a) each of the Second and Third Respondents has breached the fiduciary duties owed to one or more of the Applicants by making unauthorised use of the Fortescue CI and, further, deriving profit from the unauthorised use of the Fortescue CI;
  - (b) the Fourth Respondent has breached the fiduciary duties he owed to one or more of the Applicants by making unauthorised use of the Fortescue CI;
  - (c) in the alternative to 4(b), the Fourth Respondent is a knowing recipient of the Fortescue CI disclosed in breach of the fiduciary duties in 4(a) above; and
  - (d) the First Respondent is a knowing recipient of the Fortescue CI disclosed in breach of the fiduciary duties in 4(a) and 4(b) above.
5. A declaration that each of the Respondents holds (to the extent that he or it has any interest in) the inventions described or claimed in each of the **Patent Applications** (as defined in the SOC), and any extant or inchoate patent rights relating to the inventions the subject of those applications, on constructive trust for one or more of the Applicants.
6. An order that each of the Respondents:
  - (a) assign his or its interest in paragraph 5 above to one or more of the Applicants (or as the Applicants direct); and
  - (b) take all steps and execute all documents necessary and practicable to reflect the ownership of all rights, title and interests of the Applicants in accordance with the declaration set out in paragraph 5 above; and



- (c) do everything necessary and practicable to allow the assignee in paragraph 6(a) above to record its assigned interest in any register of patents in or outside of Australia.

7. Damages, an account of profits or equitable compensation.

Contravention of the Corporations Act

8. A compensation order under s 1317H of the *Corporations Act 2001* (Cth) (**Corporations Act**) for the Respondents' contraventions of s 183.
9. An injunction under s 1324 of the *Corporations Act* restraining the Respondents from using Fortescue CI.

Contract

10. Declarations that:

- (a) the Second Respondent has breached:
- (i) the Confidentiality Term, the No Collateral Use Term, the 1st IP Ownership Term, the IP Assignment Term and the Delivery Up Term of the Kolodziejczyk Employment Contract (as defined in the SOC); and
  - (ii) the 2nd IP Ownership Term of the Kolodziejczyk Separation Deed (as defined in the SOC).
- (b) the Third Respondent has breached the Confidentiality Term, the No Collateral Use Term, the 1st IP Ownership Term, the IP Assignment Term and the Delivery Up Term of the Winther-Jensen Employment Contract (as defined in the SOC).
- (c) the Fourth Respondent has breached the Confidentiality Term and the Delivery Up Term of the Masterman Employment Contract (as defined in the SOC).

11. Orders that:

- (a) the Second Respondent be permanently restrained from breaching the Confidentiality Term and the No Collateral Use Term of the Kolodziejczyk Employment Contract;



- (b) the Third Respondent be permanently restrained from breaching the Confidentiality Term and the No Collateral Use Term of Winther-Jensen Employment Contract; and
  - (c) the Fourth Respondent be permanently restrained from breaching the Confidentiality Term of the Masterman Employment Contract.
12. Specific performance of the:
- (a) IP Assignment Term and Delivery Up Term of the Kolodziejczyk Employment Contract;
  - (b) IP Assignment Term and Delivery Up Term of the Winther-Jensen Employment Contract;
  - (c) 2nd IP Ownership Term of the Kolodziejczyk Settlement Deed; and
  - (d) Delivery Up Term of the Masterman Employment Contract.
13. Damages.

Copyright

14. A declaration that each of the Second and Third Respondents has infringed the Applicants' copyright in each Work described in the SOC.
15. An order that each of the Second and Third Respondents be permanently restrained from infringing each of the Works.
16. Damages (including additional damages) or an account of profits.

Australian Consumer Law

17. An injunction under s 232 of the **Australian Consumer Law** (Cth) to restrain each of the First, Second and Fourth Respondents from making any of the **Representations** (as defined in the SOC) or any representation to the same or substantially the same effect.
18. Damages or compensation under ss 236 and 237 of the *Australian Consumer Law* against the First, Second and Fourth Respondents for loss arising from the Representations.

Other

19. Costs.



20. Interest pursuant to section 51A of the *Federal Court of Australia Act 1976* (Cth).
21. Such further or other orders or relief as the Court sees fit.

**Claim for interlocutory relief**

The Applicants claim the interlocutory relief set out in their ex parte application for search orders and interim suppression orders to be filed in this proceeding.

**Applicants' address**

The Applicants' address for service is:

Place: Davies Collison Cave Law,  
Level 4, 7 Macquarie Place,  
Sydney NSW 2000

Email: [PDewar@dcc.com](mailto:PDewar@dcc.com)

The Applicants' address is Level 2, 87 Adelaide Terrace, East Perth WA 6004

**Service on the Respondents**

It is intended to serve this application on all Respondents at the time the search orders sought are served.

Date: 30 April 2024

A handwritten signature in blue ink, appearing to be "Paul Dewar", written over a horizontal line.

Signed by Paul Dewar  
Lawyer for the Applicants

**Schedule**

No. NSD of 2024

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Applicants**

Second Applicant: **Fortescue Future Industries Pty Ltd ACN 625 711 373**  
Third Applicant: **FMG Personnel Services Pty Ltd ACN 159 057 646**

**Respondents**

Second Respondent: **Bartlomiej Piotr Kolodziejczyk**  
Third Respondent: **Bjorn Winther-Jensen**  
Fourth Respondent: **Michael George Masterman**

Date: 30 April 2024