

NOTICE OF FILING

Details of Filing

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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.

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Form 59
Rule 29.02(1)

Affidavit

No. NSD 527 of 2024

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

Fortescue Limited (ACN 002 594 872) and Ors

Applicants

Element Zero Pty Limited (ACN 664 342 081) and Ors

Respondents

Affidavit of: **Rodney McKemmish**
Address: level 8, 280 Pitt St, Sydney, New South Wales 2000
Occupation: Forensic and Technology Specialist
Date: 6 May 2024

I, Rodney McKemmish, of level 8, 280 Pitt St, Sydney, in the state of New South Wales, Forensic and Technology Specialist, do swear:

A. Background

1. I am a Principal at, and the founder of, CYTER, a specialist technology business specialising in digital and cyber forensic services (**CYTER**). I have over 20 years of experience providing digital and cyber forensic services, including experience acting as an independent computer expert for the execution of search orders, including search orders issued by the Federal Court.

Filed on behalf of (name & role of party)	Fortescue Limited and others, the Applicants		
Prepared by (name of person/lawyer)	Paul Alexander Dewar, Principal Lawyer		
Law firm (if applicable)	Davies Collison Cave Law		
Tel	(02) 9293 1000	Fax	(02) 9262 1080
Email	PDewar@dcc.com		
Address for service (include state and postcode)	Level 4, 7 Macquarie Place, Sydney NSW 2000		

[Version 3 form approved 02/05/2019]

2. CYTER has been engaged by Davies Collison Cave Law (**DCCL**) to act as the independent computer experts for the execution of prospective search order (**Search Order**) at the following locations:
 - (a) Unit 2, 30 Oxleigh Drive, Malaga, Western Australia 6090;
 - (b) Unit 1, 19 Oxleigh Drive, Malaga, Western Australia 6090;
 - (c) Unit 4, 213 Gildercliffe Street, Scarborough, Western Australia 6019; and
 - (d) 5a Volga Street, Hadfield, Victoria 3046,

(Search Locations).
 3. A copy of my curriculum vitae and the curriculum vitae for the computer experts proposed for the execution of the Search Order at the Search Locations is annexed to the affidavit of Paul Alexander Dewar affirmed 1 May 2024 as Annexure "PAD-3".
 4. I have been instructed by DCCL that the **Applicants** are the:
 - (a) First Applicant, Fortescue Ltd (ACN 002 594 872);
 - (b) Second Applicant, Fortescue Future Industries (ACN 625 711 373); and
 - (c) Third Applicant, FMG Personnel Services Pty Ltd (ACN 159 057 646).
 5. I have been instructed by DCCL that the **Respondents** are the:
 - (a) First Respondent, Element Zero Pty Limited (ACN 664 342 081) (**Element Zero**);
 - (b) Second Respondent, Dr Bartlomiej Piotr **Kolodziejczyk**;
 - (c) Third Respondent, Dr Bjorn **Winther-Jensen**; and
 - (d) Fourth Respondent, Michael George **Masterman**.
 6. I am instructed that the Search Order is sought by the Applicants in respect of the First to Third Respondents: Element Zero, Dr Kolodziejczyk and Dr Winther-Jensen.
 7. I have proposed to DCCL that two independent computer experts from CYTER and two independent computer experts Evidence Advisory (contracted by CYTER) be deployed to the Search Locations for the execution of the Search Order.
- B. Conflict checks**
8. On about 17 April 2024, I caused a conflict check to be run to ascertain whether CYTER has any conflicts of interest in acting for the Applicants against the Respondents.



9. I confirm that CYTER does not have any conflict acting against the interests of the Respondents or any of them. CYTER has not undertaken any work for any of the Respondents.
10. Prior to this matter CYTER has not acted for the Applicants. In respect of this matter, CYTER has undertaken a forensic analysis of two of the Applicants' laptops. The first of these laptops was a general use laptop available to a number of staff to use, and the second was the laptop issued to, and used by, Dr Kolodziejczyk. The first laptop is the subject of a report prepared by me on 22 April 2024, and which I am informed by DCCL appears at Annexure AH-26 to the affidavit of Adrian Huber sworn 1 May 2024 (**Huber Affidavit**). The second laptop is the subject of a forensic report prepared by me for the Applicants dated 28 April 2024, and which I am informed by DCCL appears at Annexure AH-27 to the Huber Affidavit.
11. I am informed by Mr Darren Michael at Evidence Advisory that on about 28 April 2024, Evidence Advisory ran a conflict check to ascertain whether Evidence Advisory has any conflicts of interest in acting for the Applicants against the Respondents.
12. I am informed by Mr Darren Michael that Evidence Advisory does not have any conflict acting against the interests of the Respondents or any of them. Evidence Advisory has not acted for the Respondents or any of them at any time.
13. I am informed by Mr Darren Michael that Evidence Advisory has not, at any time, acted for any of the Applicants or their subsidiaries.

C. Clarification of matters contained in 28 April 2024 report

14. On 6 May 2024, DCCL asked me to consider rows 16 to 36 of the spreadsheet entitled "Master Chronology" in the attachment to my report dated 28 April 2024. I have extracted some columns of the relevant data in rows 16 to 36 below:

Row	A: Date	B: Time	C: Time Zone	D: Event	H: Known User	J: Detail 1	O: Target File Created Date/Time	P: Target File Last Modified Date/Time	Q: Target File Last Accessed Date/Time	U: Ref Date & Time
16	31/12/2018	11:16:54 AM	Local Time	Folder Created	bkolodziejcz	USV-FR	31/12/2018 11:16:54 AM	31/12/2018 11:16:54 AM	31/12/2018 3:16:54 AM	31/12/2018 11:16:54 AM
17	31/12/2018	11:16:54 AM	Local Time	Folder Created	bkolodziejcz	FMG_Data	31/12/2018 11:16:54 AM	31/12/2018 11:16:54 AM	31/12/2018 3:16:54 AM	31/12/2018 11:16:54 AM
18	31/12/2018	11:16:54 AM	Local Time	Folder Created	bkolodziejcz	USV-FR	31/12/2018 11:16:54 AM	31/12/2018 11:16:54 AM	31/12/2018 3:16:54 AM	31/12/2018 11:16:54 AM
19	31/12/2018	11:16:54 AM	Local Time	Folder Created	bkolodziejcz	USV-FR	31/12/2018 11:16:54 AM	31/12/2018 11:16:54 AM	31/12/2018 3:16:54 AM	31/12/2018 11:16:54 AM

Row	A: Date	B: Time	C: Time Zone	D: Event	H: Known User	J: Detail 1	O: Target File Created Date/Time	P: Target File Last Modified Date/Time	Q: Target File Last Accessed Date/Time	U: Ref Date & Time
20	31/12/2018	11:16:54 AM	Local Time	Folder Created	bkolodziejcz	FMG_Data	31/12/2018 11:16:54 AM	31/12/2018 11:16:54 AM	31/12/2018 3:16:54 AM	31/12/2018 11:16:54 AM
21	31/12/2018	11:16:54 AM	Local Time	Folder Created	bkolodziejcz	USV-FR	31/12/2018 11:16:54 AM	31/12/2018 11:16:54 AM	31/12/2018 3:16:54 AM	31/12/2018 11:16:54 AM
22	31/12/2018	11:16:54 AM	Local Time	Folder Created	bkolodziejcz	USV-FR	31/12/2018 11:16:54 AM	31/12/2018 11:16:54 AM	31/12/2018 3:16:54 AM	31/12/2018 11:16:54 AM
23	31/12/2018	11:16:54 AM	Local Time	Folder Created	bkolodziejcz	FMG_Data	31/12/2018 11:16:54 AM	31/12/2018 11:16:54 AM	31/12/2018 3:16:54 AM	31/12/2018 11:16:54 AM
24	31/12/2018	11:16:54 AM	Local Time	Folder Created	bkolodziejcz	USV-FR	31/12/2018 11:16:54 AM	31/12/2018 11:16:54 AM	31/12/2018 3:16:54 AM	31/12/2018 11:16:54 AM
25	31/12/2018	11:16:54 AM	Local Time	Folder Created	bkolodziejcz	USV-FR	31/12/2018 11:16:54 AM	31/12/2018 11:16:54 AM	31/12/2018 3:16:54 AM	31/12/2018 11:16:54 AM
26	31/12/2018	11:16:54 AM	Local Time	Folder Created	bkolodziejcz	FMG_Data	31/12/2018 11:16:54 AM	31/12/2018 11:16:54 AM	31/12/2018 3:16:54 AM	31/12/2018 11:16:54 AM
27	31/12/2018	11:16:54 AM	Local Time	Folder Created	bkolodziejcz	USV-FR	31/12/2018 11:16:54 AM	31/12/2018 11:16:54 AM	31/12/2018 3:16:54 AM	31/12/2018 11:16:54 AM
28	31/12/2018	11:16:54 AM	Local Time	Folder Created	bkolodziejcz	USV-FR	31/12/2018 11:16:54 AM	31/12/2018 11:16:54 AM	31/12/2018 3:16:54 AM	31/12/2018 11:16:54 AM
e	31/12/2018	11:16:54 AM	Local Time	Folder Created	bkolodziejcz	FMG_Data	31/12/2018 11:16:54 AM	31/12/2018 11:16:54 AM	31/12/2018 3:16:54 AM	31/12/2018 11:16:54 AM
30	31/12/2018	11:16:54 AM	Local Time	Folder Created	bkolodziejcz	USV-FR	31/12/2018 11:16:54 AM	31/12/2018 11:16:54 AM	31/12/2018 3:16:54 AM	31/12/2018 11:16:54 AM
31	31/12/2018	11:16:54 AM	Local Time	Folder Created	bkolodziejcz	USV-FR	31/12/2018 11:16:54 AM	31/12/2018 11:16:54 AM	31/12/2018 3:16:54 AM	31/12/2018 11:16:54 AM
32	31/12/2018	11:16:54 AM	Local Time	Folder Created	bkolodziejcz	FMG_Data	31/12/2018 11:16:54 AM	31/12/2018 11:16:54 AM	31/12/2018 3:16:54 AM	31/12/2018 11:16:54 AM
33	31/12/2018	11:16:54 AM	Local Time	Folder Created	bkolodziejcz	USV-FR	31/12/2018 11:16:54 AM	31/12/2018 11:16:54 AM	31/12/2018 3:16:54 AM	31/12/2018 11:16:54 AM
34	31/12/2018	11:16:54 AM	Local Time	Folder Created	bkolodziejcz	USV-FR	31/12/2018 11:16:54 AM	31/12/2018 11:16:54 AM	31/12/2018 3:16:54 AM	31/12/2018 11:16:54 AM
35	31/12/2018	11:16:54 AM	Local Time	Folder Created	bkolodziejcz	FMG_Data	31/12/2018 11:16:54 AM	31/12/2018 11:16:54 AM	31/12/2018 3:16:54 AM	31/12/2018 11:16:54 AM
36	31/12/2018	11:16:54 AM	Local Time	Folder Created	bkolodziejcz	USV-FR	31/12/2018 11:16:54 AM	31/12/2018 11:16:54 AM	31/12/2018 3:16:54 AM	31/12/2018 11:16:54 AM

15. DCCL informed me that Dr Kolodziejczyk's first day of employment at Fortescue was in March 2019, and has asked me to consider whether the time and date information extracted in rows 16 to 36 above, which shows date entries in 2018 attributed to the user profile 'bkolodziejcz', causes me to reconsider any finding in my 28 April 2024

report, including my finding at page 6 that "The Fortescue laptop maintained the correct date and time settings".

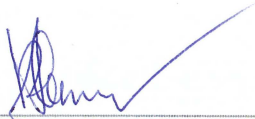
- 16. The information in rows 16 to 36 does not cause me to reconsider any of the findings in my 28 April 2024 report. The entries in the "Master Chronology" spreadsheet that cover the period 2014 (rows 1 to 15) and 2018 (rows 16 to 36) are artefacts from the Windows configuration file for the user "bkolodziejcz". These entries are duplicates of other Windows configuration file entries created at a later date, but which were missing date and time values at the time of recovery. As the entries relate to network locations, they inherited the date and time values from the network location. The full and complete versions of these entries, and the activity they represent, appear in the correct locations, and with the correct last visit date and time properties, later on in the chronology. They do not affect the correctness of the other time and date values as recorded in my report.

Sworn by the deponent
 at Sydney in New South Wales
 on 6 May 2024
 Before me:

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 Signature of deponent



 Signature of witness

ASHLEY R.CAMERON
 An Australian Legal Practitioner
 within the meaning of the Legal
 Profession Uniform Law (New South Wales)
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