

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

McMURDO J

No BS6410 of 2004

BELELA PTY LTD  
(ACN 003 469 074)

Applicant

and

MENZIES EXCAVATION PTY LTD  
(ACN 050 049 664)

First Respondent

and

I D MILLER

Second Respondent

BRISBANE

..DATE 08/12/2004

ORDER

**WARNING:** The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HIS HONOUR: This is an application filed on behalf of Menzies  
Excavation Propriety Limited seeking a number of orders. The  
parties, however, have agreed on all but one matter and that  
is a question of the cost of the provision of copies of  
disclosed documents.

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I shall return to that matter in a moment but I shall first  
record that counsel for Belela Propriety Limited conceded at  
the outset of the hearing that it was appropriate that his  
client be ordered to provide an affidavit in relation to its  
disclosure and accordingly, an order in the terms that he  
indicated will be made.

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The order will be as follows: that by 15 December 2004, Belela  
Propriety Limited will cause an affidavit to be filed and  
served on its behalf which verifies a list of documents as all  
of the documents to be disclosed by it and which duly makes  
any appropriate claim for privilege by listing the documents  
for which privilege is claimed.

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I return then to the matter of the costs of the provision of  
disclosed documents. There is something of an impasse between  
the parties because the documents disclosed by Belela  
Propriety Limited have been the subject of a request for  
copies by Mr Menzies, the director of Menzies Excavation, who  
has been given leave to appear on its behalf, and the  
solicitor for Belela, in accordance with long standing  
practice, has required Menzies Excavation to provide the cost  
of copying the documents at 50 cents a page.

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Mr Menzies submits that his company is entitled to copies without any payment. He submits that there is no rule under which the solicitor for Belela can require such a payment before having to make copies.

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In my conclusion, Mr Menzies' submission is correct. It is necessary to make some brief reference to the relevant rules. Rule 214 provides for disclosure by delivery of a list of documents and of copies. Sub rule 1 provides that a party performs the duty of disclosure by doing two things. The first, described within paragraph (a) is: "The delivery of a list of documents."

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The second, described within paragraph (b) is: "Where requested by the other party, the delivery of copies of the documents mentioned in the list of documents other than documents in relation to which privilege from disclosure is claimed."

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So on the face of rule 214, where there is a request for copies of documents referred to in a list, as has occurred here, it is part of the obligation to make disclosure for the disclosing party to have to deliver copies, and by implication, to produce those copies at its own expense.

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Rule 216 provides for an alternative method of disclosure which is by the production of the documents for inspection and, at the same time, notification to the other party of the place and time at which the documents may be inspected. In

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such a case, rule 217 provides that the documents must be produced for inspection but further, that the party producing the documents must:

"Provide facilities (including mechanical and computerised facilities) for the inspection and copying of the documents."

Again, that seems to clearly suggest that the party producing the documents must, at least, facilitate their copying by the party to whom they are produced, and free of charge.

No doubt, the practice under which the solicitor for Belela is operating is a long standing one which predates the present order and it usually occasions no difficulty in the conduct of litigation.

Nevertheless, strictly speaking, Mr Menzies' point is one which should be upheld and I therefore indicate that the copies which he seeks of disclosed documents must be provided to him without his company paying, at the time, some fee for the expense of copying.

As I have made it clear to him, however, in the course of his submissions, it is a different matter which could arise at the end of this litigation in the event that his company is unsuccessful and is ordered to pay the costs of the proceedings. It is a different consideration then as to how

much of Belela's costs of copying would be recoverable by it  
as part of its costs of the proceedings.

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With that indication in relation to copying, there is no need  
for any order in relation to inspection and, as I have  
indicated, the parties have otherwise agreed on the outcome of  
the application for which the appropriate order is that which  
I have made for the filing of an affidavit within seven days.

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As to today's costs, Mr Menzies has strongly addressed me in  
terms which are to the effect that I should reserve the costs.  
That is the appropriate course, in my view, and the costs of  
each party on this application shall be reserved.

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