



FED:Fortescue criticised for 'bad faith' spying on ex-staff

AAP Newsfeed

August 8, 2024 Thursday 2:58 PM AEST

Copyright 2024 Australian Associated Press Pty. Ltd.



Length: 537 words

Dateline: SYDNEY Aug 8

Body

Fortescue has been accused of having "unclean hands" for the unnecessary and invasive spying of two former staff sued over the alleged theft of green iron technology.

The mining giant searched the Perth offices of Element Zero and the homes of the startup's directors Bartlomiej Kolodziejczyk and Bjorn Winther-Jensen, seizing a swathe of computers, devices and documents.

Fortescue's extensive surveillance of Dr Kolodziejczyk and Dr Winther-Jensen has been revealed in a Federal Court lawsuit launched over the alleged theft of trade secrets.

Before filing the case, the company engaged a private investigator to track the directors from their homes to a variety of places including shopping centres, cafes, restaurants, the beach and the airport.

Fortescue alleges that Dr Kolodziejczyk, Dr Winther-Jensen and Element Zero chief executive Michael Masterman used secrets picked up during their time at the mining giant to develop their own green-iron technology.

Mr Masterman, on behalf of Element Zero, has called the allegations "spurious".

During a hearing on Thursday, Element Zero, Dr Kolodziejczyk and Mr Masterman's barrister Chris McMeniman slammed **Fortescue** for the spying.

"The level of surveillance conducted on the respondents was highly invasive and not necessary," he told Justice Brigitte Markovic.

Not only did it extend beyond what was needed for the search orders, **Fortescue** did not divulge crucial information to the Federal Court judge who signed off on the proposed order, Mr McMeniman said.

This related to the question of whether **Fortescue** had gone to the court with "clean hands" and made the request for the search order in good or bad faith, he said.

But Justice Markovic criticised the allegations, saying they did not appear in an affidavit that simply mentioned an invasion of privacy.

FED:Fortescue criticised for 'bad faith' spying on ex-staff

Element Zero, Dr Kolodziejczyk and Mr Masterman will seek to overturn the May search orders during a two-day hearing that begins on August 19.

On Thursday, the judge set aside a request by the startup and two executives seeking documents from **Fortescue** ahead of that hearing.

This material related to reports by the investigator and a computer expert who examined Dr Kolodziejczyk's work laptop.

Representing **Fortescue**, barrister Julian Cooke SC argued the material was irrelevant or could be legal advice protected from being publicly divulged.

He called the bid a "massive distraction", criticising his opponents as using an extraordinarily broad "scattergun" approach to try and build up their case.

"It's quite absurd ... they're completely fishing," he said.

Element Zero, Dr Kolodziejczyk and Mr Masterman are also seeking permission to cross-examine **Fortescue**'s lawyer Paul Dewar on why he did not divulge the commercial relationship between the mining goliath and startup when asking for the search orders.

In the lawsuit, Element Zero and the executives have been accused of breach of contract, copyright infringement, breach of corporations and consumer law, and breach of their fiduciary duties.

Fortescue is seeking damages or compensation, which could include any profits gained by Element Zero from the allegedly stolen invention.

The hearing continues.

Load-Date: August 8, 2024

End of Document