



New evidence in court case as Fortescue takes aim at smaller rival

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Highlight: Court documents reveal a development in the intellectual property case in which **Fortescue** hired private investigators.

Body

Billionaire Andrew Forrest was "generally updated" on a rival's mineral processing technology that converted iron ore into green iron, and discussions to test that technology on **Fortescue**'s iron ore, according to court documents.

Forrest's **Fortescue** Metals Group is suing Element Zero, a start-up that developed that mineral processing technology.

Fortescue has claimed in the Federal Court that the three men behind Element Zero, who are ex-**Fortescue** employees, have infringed its intellectual property. It is claimed Element Zero was launched using technology that two of the men, who are scientists, had helped develop at **Fortescue**.

The three men have denied the allegations and stated the technology was developed separately from their former work at **Fortescue**.

In correspondence submitted to the Federal Court, it was revealed that Michael Masterman, a former long-time lieutenant to Forrest, was seeking a meeting with Andrew Hamilton, a technical director at **Fortescue**, and also its chief executive, Dino Otranto, in January this year. The meeting was to discuss the technology. Also included in the correspondence was Phil McKeiver, **Fortescue**'s chief general counsel and then company secretary.

In that correspondence, Masterman said: "I have kept Andrew Forrest generally updated and let him know that I would follow up with you guys." Forrest is **Fortescue**'s executive chairman, the founder of the mining group, and its largest shareholder.

The intellectual property court case has made headlines after it was revealed that **Fortescue** had engaged a private investigations group to spy on and follow Masterman, Bart Kolodziejczyk and Bjorn Winther-Jensen, the three men behind Element Zero. The spying also involved following the men's family members, including children, and other Element Zero staff for a three-week period.

The spying was done by Lancasters Investigations, a company founded by former British SAS soldier turned private investigator Robert Lancaster, which produced a 600-page report for **Fortescue**. Lancaster has posted photos of himself holding weapons on Instagram, and photos from his days as a soldier. It was revealed in court that **Fortescue**'s in-house legal counsel, Adrian Huber, gave direct instructions to the private investigations group.

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Reports and emails from Lancasters Investigations were also sent to Seyfarth Shaw Australia, a law firm that was also used by **Fortescue**'s board last year to investigate an anonymous claim that Forrest had a relationship with an employee. The investigation by Seyfarth cleared Forrest of any wrongdoing, and found that none of the matters raised in the anonymous letter were substantiated.

Forrest last month said he had no knowledge of the extensive spying conducted on ex-staff and their families, including children, and was "surprised to learn of the investigations".

The billionaire, who is the world's 87th wealthiest person according to Bloomberg's Billionaire Index, said he was advised by **Fortescue**'s legal team that the spying was "necessary in order to be granted search orders from the Federal Court" in its case. Forrest's wealth is estimated at \$US22.3 billion (\$33.8 billion) by [Bloomberg](#).

[Link to Image](#)

Trevor Collens

Fortescue's lawyers required the private investigator's report before a search warrant from the Federal Court could be obtained. After the search orders were granted, raids were conducted on the homes of Kolodziejczyk and Winther-Jensen, and Element Zero's offices, in which 3 terabytes of data was obtained, including from Kolodziejczyk and Winther-Jensen's personal emails, cloud accounts, mobile phones and personal computers.

Masterman and other Element Zero staff were the subject of surveillance but not the search orders. Masterman's personal mail was rummaged through and photographed by Lancasters Investigations.

Fortescue's McKeiver had last month offered his resignation over the surveillance tactics that were used, but has been retained by the mining group, albeit without his previous responsibility as company secretary. He stepped down from that role in July.

In court earlier this month, it was revealed that **Fortescue** had conducted an internal investigation into Kolodziejczyk, claiming he had overstated his professional record. This claim was made in an affidavit by **Fortescue**'s in-house lawyer Adrian Huber.

Kolodziejczyk is the co-founder of Element Zero, and its chief technology officer. Element Zero was formed at the end of 2022.

Kolodziejczyk was once **Fortescue** Future Industries' chief scientist and led a push to develop green hydrogen to decarbonise the company's mining operations and shipping fleet. **Fortescue** has since wound down its hydrogen ambitions. Winther-Jensen was a former FFI scientist before he joined Element Zero. He left Element Zero in January this year.

In court earlier this month, **Fortescue** was successful in preventing Element Zero's lawyers' attempt to access instructions given to Lancasters Investigations. Element Zero's lawyers also lost an application to cross-examine Davies Collison Cave lawyer Paul Dewar over claims the law firm's initial evidence to the court to obtain the search orders made material omissions, which might have damaged its application.

During those hearings, Julian Cooke, senior counsel representing **Fortescue**, said his client's case had nothing to do with the meetings between **Fortescue** and Element Zero in January this year, when it was said: "Your process is different to our process."

"That's not part of our case," Cook said. "Our case is they worked on our dime on a confidential process, the ionic process which they then, without our permission, utilised in the Element Zero process. That's the third part of the case. The second part of the case is then they took documents to develop - to construct and design their pilot plant. It has got nothing to do with any alleged similarities between our process and their process which we accept, not dispute ..."

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Element Zero said it wanted to reduce the carbon footprint of iron ore, Australia's most lucrative export industry. It has patented a technology that aims to convert metal ores to metals, not only iron ore, with zero carbon emissions. **Fortescue** said it would "vigorously" defend its intellectual property in the development of cutting-edge solutions to decarbonise its Australian iron ore operations by the end of the decade.

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Graphic

Fortescue Metals Group executive chairman Andrew Forrest.

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