



FED:Execs raided in Fortescue's 'industrial-scale debacle'

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Body

Allegations about the theft of trade secrets by "nefarious" former **Fortescue** staff was a debacle that misled a judge before she ordered their homes be raided and a swathe of material seized, a judge has heard.

The mining giant has sued the directors of Perth startup Element Zero - Bartlomiej Kolodziejczyk, Bjorn Winther-Jensen and Michael Masterman - claiming they used confidential information gained while working at **Fortescue**.

These secrets were allegedly used to develop their own green-iron technology to process the valuable ore without carbon emissions.

In May, Element Zero's offices and Dr Kolodziejczyk and Dr Winther-Jensen's homes were searched under order of Federal Court judge Melissa Perry.

Computers, devices and documents were seized as part of the process.

The court order was granted in secret, giving the startup's directors no notice their premises were about to be raided.

It has been challenged by lawyers for Element Zero, Dr Kolodziejczyk and Mr Masterman, who argue the judge was not presented with all relevant information and was misled to think **Fortescue** had a strong case.

As a two-day hearing began on Monday, barrister David Studdy SC called search orders "a nuclear weapon in the court's armoury".

It was the duty of anyone seeking those orders to do so in the utmost good faith, providing all evidence to a judge, even that which could be used to contest the application, he said.

Fortescue did not do this, hyping up its weak case as strong by failing to bring the court's attention to key information, Mr Studdy told Justice Brigitte Markovic.

"There has been an industrial-scale forensic debacle and that would not be mandated by allowing the orders to stand," the barrister said.

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The mining giant - which is controlled by billionaire Andrew "Twiggy" Forrest - falsely portrayed Dr Kolodziejczyk, Dr Winther-Jensen and Mr Masterman as dishonest by claiming they had engaged in "industrial-scale misuse", the barrister added.

There was no evidence any technology used by Element Zero was developed while at **Fortescue**, he told the court.

The mining giant claimed in court documents this material was missing because it had been taken.

Instead, Mr Studdy suggested the material never existed.

"This missing documents theory ... it is just absolutely preposterous," he said.

In applying for the search order, **Fortescue** also falsely painted actions taken by the former employees such as deleting files or using USB sticks in a "nefarious" light, he added.

Dr Kolodziejczyk deleted files from his personal laptop after being told to do so ahead of his resignation, while Dr Winther-Jensen sent **Fortescue** files to his personal email account as he was afraid he would lose access to his work account before he left and still had tasks to finish, the court was told.

The highly intrusive search orders were also too broad, allowing **Fortescue** to go on a "fishing" expedition when the company should have only been allowed to obtain specific documents related to the court case, Mr Studdy said.

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.

Fortescue is planning to produce green iron from its Christmas Creek site in the Pilbara region of Western Australia by the end of 2025.

The hearing continues on Tuesday.

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