



Forrest 'kept in the dark' about spying

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Body

Fortescue executive chairman Andrew Forrest is considering sacking the company's external lawyers who presided over the surveillance of former employees - behaviour that has come to light amid a legal dispute over green iron technology.

Dr Forrest said yesterday he was unaware that private investigators had spied on three former employees and photographed their families, including children, at their homes, until it was revealed in the Federal Court proceedings between **Fortescue** and the start-up Element Zero.

Fortescue has accused key figures once involved in its work on green energy of copying and stealing the company's intellectual property when they left to start their rival green iron business.

Fortescue's outside counsel - Davies Collison Cave - hired private investigators to trail Michael Masterman, Bart Kolodziejczyk and Bjorn Winther-Jensen before the raids on their homes and Element Zero premises.

Dr Forrest said the firm was on notice.

"I was surprised to learn of the investigations and have been advised by **Fortescue's** legal team that they were necessary in order to be granted search orders from the Federal Court," he said yesterday.

"**Fortescue's** external legal team have been reminded that they also have an obligation to comply with the company's values and their engagement is now under review."

The statement from Dr Forrest came after a hearing in the Federal Court, which focused on **Fortescue's** attempts to suppress most of a 600-page document that details surveillance of Mr Masterman, Dr Kolodziejczyk and Mr Winther-Jensen.

As for the case brought against Element Zero, Dr Forrest said: "**Fortescue** is a first mover which invests significant time and resources into its intellectual property. Protecting our intellectual property is critical to our ongoing success."

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It is the first time the **Fortescue** founder and major shareholder (alongside Nicola Forrest) has responded to the spying revelation.

Element Zero and the three men reject the allegations of intellectual property theft and counter that the Element Zero technology was developed independently and is very different from anything **Fortescue** has done.

Mr Masterman worked for **Fortescue** in senior roles for many years and, along with Dr Kolodziejczyk, was part of a group that travelled the world with Dr Forrest in 2020 on a hunt for green energy projects.

The surveillance was carried out as **Fortescue** mounted its case for search and seizure orders covering family homes and Element Zero business premises. Vulnerable people, including partners and children, must be identified before any raids.

Justice Brigitte Markovic described **Fortescue**'s request for comprehensive suppression orders as an "ambit claim" and a suppression application from Element Zero as more nuanced.

"Ultimately, I'll have to resolve how much of the material truly is confidential. There's real issue about how much of this material is confidential," she said. Justice Markovic said that, for instance, she could not understand a **Fortescue** application to suppress signatures.

"Thousands of affidavits are filed in this court every day signed by individuals," she said. "Hundreds of judgments are released every week signed by our associates. People's signatures are publicly available, so I do not understand that application."

Chris McMeniman, acting for Element Zero and founders Mr Masterman and Dr Kolodziejczyk, said his clients were seeking the redaction of residential addresses and pictures of children in the private investigator reports, but were not opposed to the release of other details.

Mr McMeniman said the **Fortescue** side wanted to redact "the entirety of the investigation reports that run to some 600 pages concerning 19 days of surveillance that was undertaken of all the respondents and their employees and some family members and wives, following people to Kmart, sifting through mail and the like".

The legal teams were instructed to see if they could find common ground on the suppression order and redactions and report back to Justice Markovic.

Davies Collison Cave was contacted for comment.

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