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### **Body**

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Andrew Forrest's **Fortescue** "painted" his former executives as shady actors who were planning to snatch the mining giant's green iron secrets in order to convince a judge she should allow the company to execute raids on their homes and offices, the Federal Court has heard.

Directors of **Fortescue**'s would-be green steel rival Element Zero, including former **Fortescue** chief scientist Bart Kolodziejczyk, staff member Bjorn Winther-Jensen and long-term Andrew Forrest lieutenant Michael Masterman, made the claims on Monday as they tried to convince Federal Court judge Brigitte Markovic why extraordinary search orders granted to **Fortescue** should be thrown out, arguing they should not have been granted. The search orders, obtained by **Fortescue** in May, were granted by judge Melissa Perry based on allegations the men stole **Fortescue**'s intellectual property, including claims that Dr Kolodziejczyk and Dr Winther-Jensen deleted emails and documents relating to the green steel concept from their personal laptops just before they resigned.

But the Federal Court heard on Monday that Justice Perry was not told the men were instructed to work from home in the weeks before they left **Fortescue**, and since their IT access was cut off they were forced to work on their own devices and asked to delete some documents because there were copies.

"Her Honour is reading that material and no doubt thinking this is a classic former employee case that people on the way out the door â€" having resigned, have made off with highly confidential information," Element Zero barrister David Studdy SC said.

Earlier, Mr Studdy said Justice Perry was repeatedly told the ex-**Fortescue** executives engaged in "industrial scale misuse" of the mining giant's confidential information.

"That phrase â€" cannot be excused as a throwaway line or a barrister flourish. Her Honour was being informed from the outset â€" that in effect the respondents were dishonest," the court heard.

As well, Mr Studdy said there was "no evidence they actually took documents, stole or made off with (the documents) unlawfully", but that was precisely the "picture that has been painted to Her Honour (Justice Perry)".

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Instead, the men were required to "finalise outstanding intellectual property work" in the weeks after they resigned, the court heard. Mr Studdy said that during raids on the homes and offices of Dr Kolodziejczyk, Dr Winther-Jensen and Element Zero, private material not relevant to the legal dispute was taken, including the entire contents of Element Zero's server, personal Google accounts used for emails, contents of personal mobile phones, a laptop and hardware required to run "particular experiments" conducted by Element Zero. Mr Studdy said his clients were "very concerned" a large amount of private and "highly confidential" material, including some belonging to third parties, was taken.

It was also alleged that Mr Masterman, who is a party to the proceedings, was discussing Element Zero technology with **Fortescue** up until February this year to explain how it worked, but Justice Perry was not told about this.

Justice Markovic said that even if the search orders were discharged, "the fact is you can't undo what's been done".

Mr Studdy responded that if his clients were successful, then the material collected from their homes and offices could at least be returned to them and taken out of the hands of independent solicitors.

"The material non-disclosure and inaccurate and misleading information put before the court caused Her Honour to find a strong primary case contrary to the true position," he said.

The extraordinary legal fight between **Fortescue** and Element Zero was revealed in July, weeks after the raids were carried out. **Fortescue** hired a private eye, Robert Lancaster, to spy on Element Zero staff and their families, including rummaging through their mail, following wives of the directors to Kmart and taking pictures of their children. **Fortescue**'s barrister Julian Cooke will defend his client's position on Tuesday when the matter returns to court.

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