



FED:'Implausible': Fortescue rival slammed in IP-theft case

AAP Newsfeed

August 20, 2024 Tuesday 2:44 PM AEST

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Length: 572 words

Dateline: SYDNEY Aug 20

Body

Fortescue staff who jumped ship to form their own resources startup were too scared to tackle the accusations against them and instead provided implausible explanations for their actions, a judge has been told.

Lawyers for the iron-ore giant on Tuesday said the case brought against Perth startup Element Zero and three of its directors in May was bolstered further by their response to the allegations of stolen trade secrets.

"The strong prima facie case ... has become even stronger when taking into account the respondents' evidence," barrister Julian Cooke SC said.

The mining giant claims Element Zero directors Bartlomiej Kolodziejczyk, Bjorn Winther-Jensen and Michael Masterman used confidential information gained while working at **Fortescue** for their new enterprise.

Those 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 Justice Melissa Perry.

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

Element Zero, Dr Kolodziejczyk and Mr Masterman are trying to discharge this search order before Justice Brigitte Markovic.

On the second day of the hearing, Mr Cooke said the search order should remain and the bid to overturn it was "ill-conceived".

The evidence before Justice Perry revealed a strong case by **Fortescue** and the very real risk that documents would be destroyed, hidden or squirrelled away if search orders were not granted, the barrister said.

Dr Kolodziejczyk and Dr Winther-Jensen had admitted copying confidential material to their personal devices before they resigned.

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But they have provided various reasons as to why this action was legitimate, such as being ordered to do so while working from home or fearing they would lose access to **Fortescue**'s IT systems.

These explanations were "inherently improbable and implausible", Mr Cooke said.

The Element Zero directors did not respond to evidence suggesting they had access to confidential information used to establish the startup, the court was told.

Those secrets included a patent proposal for iron-ore processing technology discussed while they were at **Fortescue** in December 2020.

Dr Kolodziejczyk had been "too scared" to address these issues front-on because he knew that nothing he could say would help him defend the lawsuit, Mr Cooke said.

Other evidence of the alleged use of confidential information included analysis showing Element Zero could not have established a pilot plant for processing green iron - as it did so in 26 months - without significant help from knowledge gained at **Fortescue**.

"The respondents feared to address the matter by direct evidence because this would have exposed facts unfavourable to them," Mr Cooke 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.

Load-Date: August 20, 2024