



Fortescue insists spying on families wasn't inappropriate

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Body

Lawyers for Andrew Forrest's **Fortescue** are doubling down on their legal fight against the company's would-be "green iron" competitor, telling the Federal Court they were justified securing extraordinary orders to raid their rival's homes and offices after an extensive surveillance operation.

The dispute broke out after Federal Court judge Melissa Perry granted search orders to **Fortescue** in May, allowing the mining giant to take information including mobile phones, laptops and personal Google accounts belonging to former **Fortescue** executives Bart Kolodziejczyk, Bjorn Winther-Jensen and long-term Forrest lieutenant Michael Masterman and their green iron start-up, Element Zero.

Fortescue alleged the three men who founded Element Zero stole the mining giant's confidential intellectual property; that being how to produce so-called green iron - a carbon dioxide-free technology - to launch their own company.

On Tuesday, **Fortescue** barrister Julian Cooke SC said the scope of items taken from Element Zero properties and businesses was necessary and the "extent" of a surveillance operation carried out by private investigator Robert Lancaster before the raids was a "collateral issue".

"(There was) a real risk if information (about the pending court case) was provided in advance, there was a real risk that information might have been destroyed, hidden or squirrelled away," Mr Cooke said.

Later, Mr Cooke said Element Zero's argument that **Fortescue**'s surveillance - which included following the wives of Dr Kolodziejczyk and Dr Winther-Jensen to Kmart, rummaging through their mail and taking pictures of Element Zero offices and plant - was conducted in "bad faith" should be rejected.

"It's true the private investigator reports are detailed, but so what?" he said. "They reflect the standard basis on which reports are commissioned." In their bid to have the search orders thrown out, Element Zero barrister David Studdy SC on Monday argued that **Fortescue** failed to tell Justice Perry that Dr Kolodziejczyk and Dr Winther-Jensen 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

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copies. Mr Cooke said Element Zero's bid to have the search orders discharged was a "cynical attempt" to prevent his client from viewing material seized in raids and to delay filing their defence.

"The discharge application has been a monumental waste of time and is a distraction from the real issues to be decided," he said.

Documents and emails referred to intellectual property concepts about "green" projects, including the green iron concept, the court was told. Mr Cooke said the evidence before Justice Perry supported her conclusion that **Fortescue** had a "strong prima facie case" in favour of granting the search orders.

Significantly, he denied Element Zero's claim that Justice Perry should have been told they were co-operating with **Fortescue** to allay the mining giant's concerns in December last year and January this year by meeting with it to discuss technical differences between the organisations' green technologies - before she approved the search orders.

"Mr Masterman was co-operating because he wanted to persuade **Fortescue** there were no relevant similarities between the Element Zero electrochemical reduction process and the **Fortescue** electrochemical reduction process so that **Fortescue** would not bring a case on any such claim," Mr Cooke said.

"**Fortescue**'s pleaded case is (not) that the Element Zero process is the same or similar to the **Fortescue** particle process.

"Rather, the respondent misused what's defined as the **Fortescue** Confidential information - the ionic liquid research and development which is fundamentally different from the **Fortescue** particle process." Mr Cooke said **Fortescue** also claims Element Zero misused its confidential plant information.

Mr Masterman and Dr Kolodziejczyk were in court for Tuesday's hearing. Federal Court judge Brigitte Markovic has reserved her judgment in the interlocutory matter.

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