



Win for Fortescue in private eye battle

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Byline: NICK EVANS

Body

Fortescue has successfully fended off a move by former executives to win access to the instructions given to private investigators who followed the men around for weeks ahead of raids on their homes and offices, amid allegations of intellectual property theft.

Fortescue is suing the directors of would-be green steel rival Element Zero over allegations the three - former **Fortescue** chief scientist Bart Kolodziejczyk, former **Fortescue** staff member Bjorn Winther-Jensen and long-term Andrew Forrest lieutenant Michael Masterman - launched their own business using technology they helped develop at **Fortescue**.

The three men deny the allegations, saying Element Zero's technology was developed separately from their former work at **Fortescue**.

In May the Federal Court issued orders allowing raids on the offices of Element Zero, and the homes of Dr Kolodziejczyk and Dr Winther-Jensen, to seize the contents of computers and other electronic devices to help provide evidence of the accusations.

Ahead of the raids **Fortescue** hired private investigation firm Lancasters Investigations to watch their houses and help find an appropriate time for the raids - a step required by courts ahead of the authorisation of such raids.

But the three men argue the surveillance went far beyond the requirements for the so-called Anton Pillar orders and their legal team sought orders for **Fortescue** to produce the instructions given to Lancasters in court on Thursday, arguing the mining major may have had an "ancillary" purpose for hiring the -investigators.

In addition to following the three men and their families around for weeks - including following Dr Kolodziejczyk to a childcare centre when he was dropping off his young child - the private investigators recorded details of business meetings held by the three men, court records show, as well as using hidden cameras to record the inside of an Element Zero research facility unit in Perth.

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"We were able to get a close internal view of the facility using a minute covert camera during the surveillance period," says one report sent to **Fortescue** executives by Lancasters investigators.

"Covert video of Element Zero industrial internal space and machinery was obtained." The documents released by the court also show **Fortescue** and its lawyers instructed Lancasters to search through a Pilbara industrial estate looking for information on whether Element Zero was building a pilot plant in the area to test its green steel technology.

Despite not being a target of the secret search orders, Mr Masterman was also watched at his Sydney home and was followed on business trips, while investigators rifled through his rubbish and mail.

Fortescue executive chairman Andrew Forrest has said neither he or any other member of the **Fortescue** board had any knowledge of the lengths taken by **Fortescue**'s investigators to spy on its former employees, and threatened to review the contract of one of the law firms overseeing the case - Davies Collison Cave Law.

Federal Court documents show senior internal **Fortescue** lawyers Phil McKeiver and Adrian Huber were directly involved in issuing instructions to Lancasters. And the documents also show that a second law firm, Seyfarth Shaw, was also involved in overseeing the investigator's work.

Seyfarth Shaw was first hired by **Fortescue** in early 2023 to investigate an anonymous complaint to the company's board that Dr Forrest had had an inappropriate relationship with a **Fortescue** staff member.

On Thursday Justice Brigitte Markovic rejected the orders sought by Element Zero for the instructions issued to Lancasters, saying they were likely the subject of legal professional privilege and the concerns aired by the three men about the conduct of **Fortescue**'s investigators could be dealt with at a hearing later this month, when Element Zero will seek to set aside the original search orders and argue for the return of their data.

Lawyers for Element Zero also lost an application to cross-examine Davies Collison Cave lawyer Paul Dewar over allegations the law firm's initial evidence to the court to win the secret search orders made material omissions that might have damaged its application.

While arguing that the cross-examination should not be allowed, **Fortescue** lawyer Julian Cooke SC also flagged a desire to cross-examine Mr Masterman and Element Zero lawyer Michael Williams, if the Element Zero application was successful. "I'd seek to cross-examine Mr Masterman and Mr Williams, about their so called privacy concerns," he said.

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