

THE HIGH COURT

JUDICIAL REVIEW

2016 313 JR

Thursday the 14th day of February 2019

BEFORE MR. JUSTICE SIMONS

BETWEEN

GERARD ALPHONSUS HUMPHREYS

ROBERT PAUL DAVIS AND

PACNET HOLDINGS LIMITED

APPLICANTS

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

ANONA INTERNATIONAL TRADERS LIMITED

NOTICE PARTY

Upon Motion of Counsel for the Applicants made unto the Court on the 15th and 16th days of January 2019 pursuant to Notice of Motion dated the 17th day of May 2016 in the presence of Counsel for the Respondent and Counsel for the Notice Party for the following reliefs:-

- (i) "An Order of Certiorari quashing the decision of the Circuit Court (His Honour Judge Gerard Keys) made on Friday 11th March, 2016, to state a case to the Supreme Court in proceedings under Record No. CE RV02/2012 entitled "*An Chuirt Chuarda, The Circuit Court, South Western Circuit, County of Clare, In the matter of an application pursuant to section 39 of the Criminal Justice Act, 1994 as amended by section 21 of the Proceeds of Crime (Amendment) Act, 2005, Between The Director of Public Prosecutions, Plaintiff –and- Gerard Alphonsus Humphreys, Robert Paul Davis, PacNet Services Limited (previously known as PacNet (Services) Europe Limited) and Anona International Traders Limited,*

Respondents/Notice Parties” (hereinafter “the proceedings/application for forfeiture”) which were first listed before the Circuit Court at Ennis on Tuesday 1st May 2012;

- (ii) An Order of Prohibition or in the alternative an injunction by way of an application for judicial review prohibiting or restraining the pursuit of the proceedings/application for forfeiture;
- (iii) A Declaration that the Circuit Court Judge does not have jurisdiction to hear or entertain the proceedings/application for forfeiture in circumstances where the High Court has allowed the appeal taken by the Applicants herein against the ruling of the Circuit Court which refused their Notice of Motion seeking for the proceedings/application for forfeiture to be dismissed on the basis that it was not made while the cash was detained under section 38 of the Criminal Justice Act, 1994 as amended;
- (iv) A stay pursuant to Order 84 rule 20(8)(b) of the Rules of the Superior Courts, 1986 as amended, restraining or staying the proceedings/application for forfeiture pending the determination of the within proceedings.
- (v) Such further or other relief as to this Honourable Court seems just and equitable.
- (vi) The costs of these Proceedings.”

Whereupon and on reading the said Notice of Motion the Order herein dated the 9th day of May 2016 (Mr. Justice Binchy) giving leave to the Applicant to apply for an Order of Certiorari by way of application for judicial review the Statement dated the said 9th day of May 2016 signed by the Solicitor for the Applicant the Affidavit of Caitriona Carmody filed on the said 9th day of May 2016 the exhibits therein referred to the Affidavits of Grainne Synnott Gerard Humphreys and Robert Paul Davis filed on the 17th day of May 2016 the Statement

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of Opposition filed on the 23rd day of March 2017 on behalf of the Respondent the Affidavit of Patricia Smullen filed on the said 23rd day of March 2017 and the outline written submissions filed herein and on hearing what is offered by Counsel for the Applicants Counsel for the Respondent and Counsel for the Notice Party

The Court was pleased to reserve judgment herein

And the matter being listed for mention on the 24th day of January 2019 and an Order having been made amending the title of the Third Named Applicant to Pacnet Holdings Limited

And on reading the Supplemental written submissions filed on behalf of the Applicants on the 23rd day of January 2019

And the same coming on accordingly for judgment on the 25th day of January 2019 in the presence of said respective Counsel and judgment having been delivered

The Court Doth Declare that the effect of the judgement and order of the High Court of 11th day of November 2014 (O'Malley J.) in the proceedings entitled "*Director of Public Prosecutions -v- Humphreys & Ors*" and bearing High Court Record Number 2013 No 69 CA was to dismiss the forfeiture application pursuant to Section 39 of the Criminal Justice Act 1994 (as amended) in its entirety. There are accordingly no proceedings pending before the Circuit Court and the Circuit Court does not have jurisdiction to state a case to the Court of Appeal pursuant to Section 16 of the Courts of Justice Act 1947

And **IT IS ORDERED** that the Director of Public Prosecution be restrained from taking any further steps to progress the purported case stated from the Circuit Court in the forfeiture application referred to in the aforementioned Declaration

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And the matter standing adjourned and coming before the Court on this day in the presence of Counsel for the Applicant Counsel for the Respondent and Counsel for the Notice Party

IT IS ORDERED that the Respondent do pay to the Applicants and to the Notice Party (Anona International Traders Limited) the costs of the application to include the cost of written legal submissions to be taxed in default of agreement

Liberty to apply

Aisling de Búrca
REGISTRAR
Perfected: 20th February 2019

Carmody & Company
Solicitors for the Applicant

A COPY WHICH I ATTEST

FOR REGISTRAR