



THE SUPREME COURT

DETERMINATION

BETWEEN

Persona Digital Telephony Limited

Sigma Wireless Networks Limited

Applicants/Appellants

AND

The Minister for Public Enterprise

Ireland

The Attorney General

AND

Denis O'Brien

Respondents

AND

Michael Lowry

Third Party

Neutral Citation: [2016] IESCDET 106

Supreme Court record no: S:AP:IE:2016:000072

Court of Appeal record no: none

High Court record no: 2001 No 9223 P

Date of Determination: Monday, 25th July, 2016

Composition of Court: Denham C.J., McKechnie J., Dunne J.

Status: Approved

**APPLICATION FOR LEAVE TO APPEAL TO WHICH ARTICLE 34.5.4° OF
THE CONSTITUTION APPLIES**

RESULT: The Court grants leave, pursuant to Article 34.5.4 of the Constitution, to appeal to this Court directly from the High Court.

REASONS GIVEN:

1. This determination relates to an application for leave to appeal to the Supreme Court from the judgment of the High Court delivered on the 20th April, 2016 and the order made on the 12th May, 2016 and perfected on the 24th May, 2016.
2. An application is brought by Persona Digital Telephony Limited and Sigma Wireless Networks Limited, the applicants/appellants, referred to as “the applicants”, who seek leave to appeal to this Court from the judgment of the High Court. Thus, it is an application for a “leapfrog” appeal.
3. The Minister for Public Enterprise, Ireland and the Attorney General, defendants/respondents, are referred to collectively as “the State”. The Minister for Public Enterprise is referred to individually as “the Minister”.
4. Denis O’Brien, a respondent, is referred to as “the respondent”.
5. Michael Lowry, the third party, is referred to as “the third party”. The notice of this application was sent to his solicitors as a courtesy and was not served on the third party. The solicitors for the third party confirmed to the Office of the Supreme Court that the third party would not be participating in the appeal to this Court.

Jurisdiction

6. This determination relates to an application by the applicants seeking leave to appeal to this Court directly from the High Court under Article 34.5.4^o of the Constitution. As a result of the amendments to the Constitution, brought about by the 33rd Amendment, the previous position, under which an applicant unhappy with a decision of the High Court had an entitlement to appeal to this Court, save with

limited statutory exceptions, was replaced by two provisions. Article 34.5.3° now provides for the same right of appeal from the High Court as previously existed in respect of an appeal to this Court, except that the right is now transferred to an entitlement to appeal to the Court of Appeal. However, a further appeal from a decision of the Court of Appeal is available, with leave, to this Court. Alternatively, under Article 34.5.4°, it is possible to seek leave to appeal directly from the High Court to this Court. Such an appeal may be referred to as a “leapfrog” appeal, as it involves by-passing what might otherwise be regarded as the new normal appellate structure involving an appeal to the Court of Appeal with the possibility of a second appeal to this Court.

7. This Court, and the Court of Appeal, continues to address the existing list of undecided appeals which were brought to this Court prior to establishment day. Thus, during this transitional phase, this Court is dealing with appeals of a type which might not necessarily warrant leave to appeal to this Court under the new regime.

8. It will take some time for a body of jurisprudence to develop concerning the basis upon which this Court will grant leave to appeal under the Constitution, whether under Article 34.5.3° or Article 34.5.4°.

9. The starting point is the relevant provisions of the Constitution.

10. Article 34.5.3° provides:-

“The Supreme Court shall, subject to such regulations as may be prescribed by law, have appellate jurisdiction from a decision of the Court of Appeal if the Supreme Court is satisfied that:

(i) the decision involves a matter of general public importance,
or

(ii) in the interests of justice it is necessary that there be an appeal to the Supreme Court.”

Article 34.5.4°, on the other hand, provides:

“Notwithstanding section 4.1° hereof, the Supreme Court shall, subject to such regulations as may be prescribed by law, have appellate jurisdiction from a decision of the High Court, if the Supreme Court is satisfied that there are exceptional circumstances warranting a direct appeal to it, and a precondition for the Supreme Court being so satisfied is the presence of either or both of the following factors:

- (i) the decision involves a matter of general public importance;
- (ii) the interests of justice.”

11. It is not necessary for present purposes to enter into a detailed consideration of the proper interpretation of the criteria specified for an “ordinary” appeal from the Court of Appeal to this Court save to note that the relevant decision of the Court of Appeal must either involve a matter of “general public importance” or there must be some other reason requiring that the “interests of justice” be met by an appeal. The criteria, under Article 34.5.4°, for a leapfrog appeal, is that the relevant decision of the High Court involves a matter of general public importance or that the interests of justice require such an appeal. This much is, therefore, at least clear. In order for this Court to grant leave to bring a leapfrog appeal, it must be the case that the issues raised are such that they would justify granting leave for a second appeal from the Court of Appeal to this Court, had the course of action of an appeal to the Court of Appeal been adopted by the appellant. Therefore, the basic constitutional threshold of public importance or interests of justice, which must be met in respect of an application to bring an ordinary appeal from the Court of Appeal to this Court, must also be met in the context of a leapfrog appeal.

12. The additional requirement which must be present, in order that leapfrog leave be given, is, in accordance with the words of Article 34.5.4. “that there are exceptional circumstances warranting a direct appeal to” this Court.

13. So far as that criteria is concerned, it is possible to identify, at one end of the spectrum, a single issue case involving only a legal issue which undoubtedly meets

the constitutional threshold of importance. Of course, even in such a case, it would be of some assistance for this Court to have the added views of the Court of Appeal.

Nonetheless there may be a countervailing question as to whether the efficient use of court time and resources, and the burden in time and costs for the parties which would be occasioned by having to face two appeals, would be justified. The case at that end of the spectrum might be described as a single issue case with clearly identified arguments where a second appeal to this Court would be likely to involve only a rehash of the arguments which would be made to the Court of Appeal. At the other end of the spectrum there may be cases where the issues which might arise on appeal would have been many and varied, including questions of the sustainability of the facts found by the trial judge or routine questions concerning whether the trial judge had properly applied well settled law to the circumstances of the case. Even if, in the midst of such an appeal, there might be a point, or points, which might ultimately be considered as possibilities for meeting the constitutional threshold for an appeal to this Court, it would be difficult to see how the process of bringing such a case to final determination would not be significantly improved by an appeal to the Court of Appeal.

14. Thus, it is important to note that the further one gets away from the "single important issue of law" case, the more weight has to be attached to the risk that the overall appellate process might be impaired by departing from the default position of an appeal to the Court of Appeal.

15. Returning to issues of broad principle, it is, of course, also necessary to identify what might be said to be the exceptional circumstances justifying a direct appeal to this Court for without such circumstances the Constitution does not permit a direct appeal. It would be both wrong and dangerous to attempt, at this very early stage of

the process, to identify an exhaustive approach to that question. However, in the context of this case, two issues obviously have the potential to arise.

16. First, it may be said that the very issues in the case itself are of such general public importance, or involve such questions involving the interests of justice, that the potential appeal is thus rendered exceptional. The Court is prepared to accept, at the level of principle, that there may be such cases. However, it is important, in that context, to emphasise the comments already made by reference to the determination of this Court in **Fox v Mahon & Others** [2015] IESCDET 2. The new constitutional appellate arrangements regard an appeal to the Court of Appeal as the norm and a direct appeal to this Court as the exception. To the extent that there may be reason to believe that an appeal which might come to this Court would be the same, or largely the same, whether it arrived via the Court of Appeal or directly, then the importance of the case itself may, in some cases, outweigh any advantages which might be perceived to derive from an intermediate appeal to the Court of Appeal. But even in that context it must be acknowledged that the sort of issues raised would have to be of a particular level of importance to warrant describing the circumstances of the appeal as exceptional in the sense in which that term is used in the Constitution. Not every case which meets the basic constitutional threshold for appeal to this Court can, thus, be regarded as exceptional. If it were otherwise then every case which could be appealed to this Court would also qualify for leapfrog leave.

17. The second criteria which may often arise is one of urgency. There clearly will be cases where, in one way or another, a clock in the real world is ticking. In such cases, even if there may be perceived to be some merit in, or advantage to, an intermediate appeal, the balance may favour a direct appeal to this Court, precisely because the

downside of any delay which would be caused by two appeals would be disproportionate in the circumstances of the case.

18. For present purposes it is sufficient to identify that applications for leapfrog leave may turn, at the very broadest level, on an assessment of the balance between the two factors already identified. Of course, the court must first be satisfied that the constitutional threshold for an appeal to this Court has been met. The Constitution itself requires as much. If the court is not so satisfied then the application must be refused. However, where the court is satisfied that that constitutional threshold has been met the court will have to consider whether, either deriving from the nature of the appeal itself or from external circumstances such as urgency, it can be said that there are exceptional circumstances justifying a leapfrog appeal. In attempting to reach an assessment on that question the court may well have to analyse the extent to which, on the one hand, there may be perceived to be a disadvantage in not going through the default route of a first appeal to the Court of Appeal and balance that against any disadvantage, whether in the context of putting the courts and the parties to unnecessary trouble and expense or in relation to a delay in achieving an ultimate resolution of urgent proceedings, which might be involved by running the risk of there being two appeals. In that later context it should be acknowledged that there will only truly be a saving of time and expense for both the courts and the parties, if it is likely that there will be a second appeal irrespective of the decision of the Court of Appeal.

19. Doubtless other considerations will come into play as further applications for leapfrog leave have to be considered by this Court. However, for present purposes the aforementioned provides a sufficient outline of the broad principles to be applied.

20. Before going on to apply those principles to the circumstances of this case, there are a number of additional matters on which the Court would wish to comment. First,

it is important to emphasise that a party will, ordinarily, be entitled to raise any arguable grounds of appeal should that party bring their appeal to the Court of Appeal. The only limitation which might arise exists in those types of cases where there may be provision by law limiting the right of appeal. On the other hand, any appeal to this Court, whether an ordinary appeal or a leapfrog appeal, requires leave and, thus, requires at a minimum that the basic constitutional threshold be met. It follows that there may be grounds of appeal from the High Court which a party would be entitled to pursue in the Court of Appeal but which would not meet that constitutional threshold and which could not, therefore, be pursued before this Court. In making that point the Court is not leaving out of consideration the possibility that there might be cases where the interests of justice would require that a particular point be permitted to be canvassed on appeal to this Court even where that point might not, of itself, meet the constitutional criteria for importance. The precise application of the "interests of justice" criteria has not yet been the subject of any detailed consideration by this Court.

21. It must, therefore, however, be recognised by potential appellants that one of the possible consequences of seeking to pursue only a leapfrog appeal is that the appellant may, thereby, lose their entitlement to raise some of the points which they might have wished to raise on appeal because this Court might not be prepared to grant leave in respect of all of the grounds sought to be raised.

22. In the same context it is important to draw attention to the provisions of s. 9 of the Court of Appeal Act, 2014 which inserts a new s. 7B into the Courts (Supplemental Provisions) Act, 1961. That section permits the Court of Appeal, either of its own motion or on the application of a party, to stay the proceedings before it to enable an applicant to apply to this Court for leave to bring a leapfrog appeal. Thus, there is no

reason in principle why a party cannot file a broad notice of appeal before the Court of Appeal, seek to have that application stayed pending an application to this Court for a leapfrog leave, and, thus, retain its entitlement to run its case before the Court of Appeal should it fail in its application for leave to this Court.

23. Finally, it is important to draw the attention of parties to the provisions of the new rules of the superior courts insofar as they apply to appeals to this Court. Order 58 r.18(1)(d) requires that a respondent who intends, on the hearing of any appeal to this Court, to contend that the judgment or order appealed from should be affirmed on grounds other than those set out in the judgment or order of the court below, to set out "a concise statement of the additional grounds on which it is alleged the judgment or order appealed from should be affirmed". This is in contrast to the provisions of r. 18(3) which requires a respondent who seeks to "vary the decision or order of the court below (i.e. to cross appeal)" to itself seek leave to appeal in the ordinary way. Thus it is important to emphasise that a party who is content with the result of either the High Court (in the case of a leapfrog appeal) or the Court of Appeal (in the case of an ordinary appeal) can raise any further or different grounds justifying the ultimate decision which it wishes to stand over simply by including the relevant statement in the respondent's notice. On the other hand, a party who wishes to urge that the ultimate result of the case should be different must itself seek leave to appeal in the ordinary way. One of the issues which this Court may well have to address in the future is the circumstances in which the interests of justice might require allowing leave to cross appeal on a ground or in relation to a matter in circumstances where the issues sought thereby to be raised would not, on a standalone basis, justify granting leave to appeal to that party were it the appellant.

Background facts

24. The applicants were members of a consortium that came second in the competition for the award of the State's second mobile phone license in 1995. Esat Digifone was granted the license.

25. The applicants claim, *inter alia*, that there was wrongful interference by the Minister in the competition, which resulted in the licence being awarded to Esat Digifone.

26. The Director of each of the applicant companies, Mr James A. Boyle, swore an affidavit to ground the applicants motion before the High Court and stated that the applicants did not have the ability to continue the prosecution of the proceedings and that the continuation of the proceedings had only been possible because of funds provided by shareholders of the applicant companies.

27. Mr Boyle outlined how he identified Harbour Litigation Funding Ltd (HLF) as a leading litigation funder and that a funding agreement was entered into on the 24th March, 2015, between the applicants, and Harbour III Limited Partnership ("HF III").

Procedural background

28. Before the High Court, the applicant sought an order by way of declaration or otherwise, that in entering into a litigation funding arrangement with HF III, they were not engaged in an abuse of process and were not contravening rules of maintenance and champerty.

29. The High Court first dealt with a preliminary objection raised by the State in which it was argued that the applicants were seeking an advisory opinion and that the court did not have jurisdiction to consider the application. Donnelly J. held that the court did have jurisdiction to consider the application.

30. In the main High Court proceedings, the applicants submitted that the doctrines of maintenance and champerty operate to prevent any undermining of the administration

of justice and that the doctrines should be applied in light of modern conceptions of proprietary.

31. It was submitted by the applicants that, despite judicial statements that maintenance is the support of litigation by a stranger without just cause and that champerty is an aggravated form of maintenance, where the litigation is supported in return for a share of the proceeds; that these features do not set the limits of what the doctrines mean.

32. It was further contended by the applicants that the third party funding scheme must be considered in context, and that the question should be asked as to whether on the whole, the transaction amounts to unlawful maintenance/champerty, or whether it would enable a claim of public importance to proceed and to ensure the constitutional guarantee of access to justice.

33. The State submitted that maintenance and champerty are criminal offences as well as torts in Ireland, and that they are generally described as common law offences which have had statutory recognition for hundreds of years. It relied upon the Maintenance and Embracery Act 1634 (The Act of 1634), which was specifically retained by the Statute Law Revision Act 2007. It submitted that the torts of maintenance and champerty are still extant, and that the courts have defined maintenance and champerty in terms that clearly encompass the funding agreement at issue in those proceedings.

34. The State submitted, therefore, that the funding agreement was void for illegality. They argued that the applicants were asking the court to vary the scope of the offences and torts of maintenance and champerty; an action beyond the jurisdiction of the court.

35. The High Court (Donnelly J.) delivered judgment on the 20th April, 2016 and held, in refusing the relief sought by the applicants, that maintenance and champerty continue to be torts and offences in this jurisdiction; that there is a prohibition on an equity funding litigation in which it has no independent or *bona fides* interest for a share of the profits. That HF III, as a professional third party litigation funder, had no independent interest in the litigation under consideration. It was further held that it is clear that third party funding arrangements cannot be viewed as being consistent with public policy in this jurisdiction, or that modern ideas of propriety in litigation have expanded to such an extent to afford the court the opportunity to characterise this funding as acceptable.

Application for Leave

36. The applicants seeks leave to appeal from the judgment and order of the High Court.

37. The applicants seek leave to appeal from the entire decision of the High Court, other than the decision rejecting the preliminary objection of the State that the court did not have jurisdiction to consider the applicants' application.

38. The applicants seek to have the original order of the High Court set aside.

39. The applicants are not seeking a declaration of unconstitutionality of an Act of the Oireachtas, nor a declaration of incompatibility with the European Convention on Human Rights, nor are the applicants asking the Supreme Court to depart from or distinguish one of its own decisions, nor are the applicants seeking to make a reference to the Court of Justice of the European Union.

The reasons of the applicants as to why the Supreme Court should grant leave to appeal

40. The reasons submitted by the applicants are set out in detail in their respective applications, as to why the Supreme Court should grant leave to appeal, which are available with this determination on the Courts Service website.

In essence, the applicants submitted: -

- i. The appeal concerns a matter of general public importance; that it is necessary in the interest of justice for there to be an appeal to the Supreme Court; and that there are exceptional circumstances warranting a direct appeal to the Supreme Court.
- ii. The question as to whether a litigant is entitled to access third party funding, in order to facilitate access to the court, is a matter of significant general public importance. The question as to how the rules on maintenance and champerty are to be applied to the funding agreement potentially has a wider significance. The appellants need third party funding to advance a case which is of immense importance.
- iii. The appeal raises the question of the meaning to be applied to the doctrines of maintenance and champerty in this jurisdiction and the application of those principles in a manner which complies with the Constitution and the constitutional rights of access to justice and freedom of contract.
- iv. The interests of justice would be served by allowing a direct appeal to the Supreme Court, as it is inevitable that were the appeal to be heard before the Court of Appeal, there would be a further appeal to the Supreme Court. It is difficult to see how an interim appeal would assist in refining what is essentially a net question of law. Further, a direct

appeal would enable the underlying proceedings to be advanced more quickly.

- v. The timeframe of the underlying proceedings warrant a direct appeal to the Supreme Court.
- vi. The appellants disagree with the view taken by the High Court that the question of the parameters of the rules on maintenance and champerty are easily ascertained and simply “outlaw third party funding”. The fact that the question of permissibility of third party funding, in a particular context, is not in fact well settled as can be illustrated by making observations in relation to two legal arguments:
 - vii. First, the applicants raised the case of **Greenclean Waste Management v Leahy** [2014] IEHC 314.
 - viii. Secondly, the applicants referred to the “no win, no fee” agreements which are entered into.
 - ix. It was also submitted that the High Court made no reference as to whether other methods of funding of the litigation were permissible.

Reasons of the State for opposing granting leave

41. The reasons submitted by the State for opposing the granting of leave to appeal are set out in detail in their notice, which is available with this determination on the Courts Service website.

42. The State submitted that the decision of the High Court does not involve a matter of general public importance and/or that it is not in the interests of justice for there to

be an appeal to the Supreme Court, and that there are no exceptional circumstances warranting a direct appeal to the Supreme Court for the following reasons:-

- i. The appeal does not concern a matter of general public importance. Irrespective of whether the substantive proceedings concern a matter of exceptional public importance, the specific application under appeal concerns a particular funding agreement which the applicants have entered into with a third party professional funder. The outcome of the appeal will therefore only directly affect the parties to that funding agreement, namely the applicants and the professional funder. Even if the decision has the potential to affect certain other parties, such parties are likely to be limited in number, so the matter is not one of general application to the public.
- ii. The laws and/or rules on maintenance and champerty, although relevant to the adjudication of the applicants' application, are not subject in this application to any constitutional challenge.
- iii. The law is not uncertain in relation to the issues subject to the within appeal, or beset by inconsistency or prior decisions.
- iv. It is not accepted that an appeal from the Court of Appeal is inevitable. In the event of such an appeal, the judgment of the Court of Appeal is likely to refine the appeal and the issues arising thereon. Further, the views of the Court of Appeal are likely to be of some assistance to the Supreme Court.
- v. It is not accepted that that the fact (if true) that the substantive proceedings involve matters of public importance, that that of itself lends them any such urgency.

- vi. It is not accepted that the nature of the substantive proceedings is or creates exceptional circumstances so as to justify a direct appeal to the Supreme Court. The applicants conflate the alleged public importance of the issues raised in the substantive proceedings with the specific application in respect of which this appeal is brought.
- vii. It is also relevant that the applicants have not moved the substantive proceedings on with any significant expedition.
- viii. The advantages of observing the normal rule, that appeals from High Court decisions be brought before the Court of Appeal, outweigh the disadvantages of departing from it.
- ix. The applicants essentially assert that the High Court Judge erred in arriving at her decision. The appropriate forum in which to ventilate such an assertion, at least in the first instance, is the Court of Appeal.

Reasons of respondent opposing the granting of leave

43. The respondent submitted that the decision of the High Court does not involve a matter of general public importance and/or is not in the interests of justice for there to be an appeal to the Supreme Court, and that there are no exceptional circumstances warranting a direct appeal to the Supreme Court for the following reasons:-

- i. The applicants advance three grounds in support of its submission that the appeal involves a point of law of general public importance. First, whether a litigant in the position of the applicants is entitled to third party funding to facilitate access to court. Second, that the application was novel. Third, while the application was fact specific, it involved issues of law of potentially wider significance.

- ii. In response to the first ground, the application before the learned trial judge was not a constitutional challenge. The court was not asked to examine the constitutionality of the offences and torts of maintenance and champerty and no declarations of unconstitutionality were sought by the applicants. In addition, the application was fact specific and involved the application of well-established principles.
- iii. In response to the second ground, the learned High Court judge accepted at paras two and seventy two that the application was novel. However the novelty of the application did not alter the fact that the determination of the application involved the application of well-established principles to the facts of the case.
- iv. In response to the third ground, the issues of law are not of potentially wider significance. The law applied by the judge is well settled. Maintenance and champerty are statutorily recognised offences and established torts. The Superior Courts have made it clear that there is a prohibition on an entity funding litigation
- v. It is not accepted that the interests of justice considerations identified by the applicants exist, or in the alternative, constitute an additional factor or factors warranting a direct appeal to the Supreme Court.
- vi. The applicants submit that the underlying proceedings are of immense public importance. It is submitted that the public importance of the underlying proceedings do not have a bearing on the public importance of this appeal. To conclude otherwise would be to endow every appeal from an interlocutory application, no matter what the subject matter,

with a public importance wholly unrelated to the nature of the actual points of law.

- vii. The applicants submit that given the issues involved, it is inevitable that the appeal would come before the Supreme Court. It is submitted by the respondent that it is not inevitable that the issue would come before the Supreme Court, even if the appeal proceeds to the Court of Appeal in the normal manner. The applicants have not pointed in the application for leave and notice of appeal, to any reasons why the appeal is likely to “look the same” if and when it gets to the Supreme Court per **Barlow & Ors v. Minister for Agriculture Food and Marine & Ors** [2015] IESCDET 8, other than to submit that it involves a “net question”. If this were correct, then every appeal involving a single issue of law would merit a ‘leap frog’ appeal.
- viii. The applicants submit that there is urgency around the proceedings. It is submitted that there is no urgency about these proceedings such as to warrant a direct appeal to the Supreme Court. The applicants have failed to identify any specific merit in having the issues involved in this appeal, determined as quickly as possible.
- ix. It is submitted that there are no exceptional circumstances warranting a direct appeal to the Supreme Court for the reasons already set out.
- x. The applicants draw attention in their application to a number of “significant aspects of legal issues illustrating the importance of the points raised”. It is submitted that it is clear that these are submissions that the learned High Court judge erred. It is submitted that **Crayden Fishing Company Ltd v. Sea Fisheries Protection Authority & Ors**

[2016] IESCDET 77, makes clear that the Supreme Court is no longer an appeal court designed to correct alleged errors of the trial court.

Decision

44. As this is an application for a leapfrog appeal, the Court has to be satisfied that the issues raised involve a matter of public importance or that it is necessary in the interest of justice that there be an appeal to this Court and that there are exceptional circumstances warranting a direct appeal to this Court.

45. At issue is the application of the doctrines of maintenance and champerty.

46. In light of constitutional principles of access to the courts, and thus access to justice, the Court considers that the applicants have raised issues which are of general public importance. Consequently, the case meets the criteria for an appeal from the Court of Appeal.

47. As it is a leapfrog appeal, the Court is required to be satisfied in addition that there are exceptional circumstances warranting a direct appeal from the High Court to this Court.

48. This application is one where there is in essence a single legal issue of general public importance which transcends the interests of the parties before the Court in these proceedings, namely the application of the doctrines of maintenance and champerty.

49. As the application may involve the issue of access to justice, and access to the courts, it is a matter of significant importance. The Court is satisfied that it is a case where leave to appeal may be granted from the Court of Appeal, should an appeal proceed in the Court of Appeal.

50. The Court is of the view that the efficient use of court time and resources do not justify two appeals, as a second appeal to this Court would likely involve a repeat of the legal arguments in the Court of Appeal.

51. Consequently, the Court grants the application for leave to appeal to this Court directly from the High Court. The Court grants leave to appeal on the following issue (subject to what may transpire during case management):-

“Whether third party funding, provided during the course of proceedings (rather than at their outset) to support a plaintiff who is unable to progress a case of immense public importance, is unlawful by reason of the rules on maintenance and champerty.”

And it is hereby so ordered accordingly.