



## HIGH COURT OF AUSTRALIA

Public Information Officer

14 November 2007

### DIRECTOR OF PUBLIC PROSECUTIONS v PHAN THI LE

Only the wife's interest in an apartment owned by her and her husband, rather than the whole apartment, should have been quarantined from confiscation after being used for criminal purposes by the husband, the High Court of Australia held today.

In 2003, Ms Le's husband, Roy Le, was charged with a number of offences including trafficking in a commercial quantity of heroin. He pleaded guilty in 2005 and was sentenced to four years' jail with a two-year non-parole period. The Les married in Vietnam in 1997. In 1998 Mr Le bought an apartment in Sunshine in Melbourne and Ms Le has lived there since she came to Australia in 1999. Two months after being charged, Mr Le transferred the apartment into their joint names, with the consideration for the transfer expressed as "natural love and affection". Ms Le was concerned that if anything happened to Mr Le his children from a former marriage would get the apartment and she would have nowhere to live. After Mr Le was charged, the DPP obtained from the Victorian County Court a restraining order under Victoria's *Confiscation Act* over the property. The apartment was "tainted property" because Mr Le had used it to store and prepare heroin for sale. It was automatically forfeited to the State 60 days after his conviction.

Ms Le later sought an order under section 52 of the Act excluding the property from forfeiture. Judge Stuart Campbell said that the transfer appeared to be no more than a recognition of Ms Le's matrimonial rights. He and the majority of the Court of Appeal held that an order under section 52 excluded all of the property in which Ms Le claimed an interest, and not merely her interest in the property. The Court of Appeal unanimously agreed with Judge Campbell that "natural love and affection" in the circumstances of the case constituted "sufficient consideration" under section 52 for acquiring an interest in property and that Ms Le lacked a reasonable suspicion that the apartment was "tainted property". The DPP had sought to have the exclusion order apply only to Ms Le's interest as a joint tenant. The DPP appealed to the High Court.

Three judges of the Court allowed the appeal in part. Two judges would have allowed it entirely. The majority allowed the appeal on the ground that the exclusion order should have applied only to Ms Le's interest rather than to the whole property. It upheld the Court of Appeal's findings that "sufficient consideration" encompassed "natural love and affection" and that Ms Le had not held a reasonable suspicion that the apartment had become "tainted property" through criminal activity there. The minority held that the original restraining order had applied to the whole property, but held that "natural love and affection" did not amount to "sufficient consideration" under section 52. The DPP had undertaken to pay Ms Le's costs whatever the outcome.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*