

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. MARTIN SHULMAN, J S C  
*Justice*

PART 1

Robert Morgenthau

INDEX NO. 402970/06

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 1

MOTION CAL. NO. \_\_\_\_\_

- v -

Arthur Budovsky  
Et Al.

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

PAPERS NUMBERED	
1, 2	_____
3	_____
4	_____

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, It is ordered that this motion

*Decided in accordance with the attached Decision/Order.*

**FILED**  
SEP 13 2006  
COUNTY CLERK'S OFFICE  
NEW YORK

Dated: SEP - 5 2006

Martin Shulman  
**HON. MARTIN SHULMAN, J S C** *J.S.C.*

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE \_\_\_\_\_ FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 1

-----X  
ROBERT M. MORGENTHAU :  
DISTRICT ATTORNEY OF NEW YOUR COUNTY :

Plaintiff-Claiming Authority, : :

Index No: 402970/06

-against-

**Decision and Order**

ARTHUR BUDOVSKY, VLADIMIR KATS,  
GOLDAGE, INC., GOLDAGE HOLDING INC.,  
ECSN, INC., EXECUTIVE COMMERCIAL  
SERVICES, INC., INTERNETWORK MANAGEMENT,  
INC., GGN, INC., B to B MARKETPLACE, INC.,  
and MGA INTERNATIONAL, INC.,

Defendants.

**FILED**  
SEP 13 2006  
COUNTY CLERK'S OFFICE  
NEW YORK

-----X  
**Hon. Martin Shulman:**

Plaintiff-Claiming Authority District Attorney New York County ("plaintiff" or "DA") commenced this CPLR Article 13-A civil forfeiture action against defendants Arthur Budovsky ("Budovsky"), Vladimir Kats ("Kats"), Goldage, Inc. ("Goldage"), Goldage Holding Inc., ECSN, Inc., Executive Commercial Services, Inc., Internetwork Management, Inc., GGN, Inc., B to B Marketplace, Inc., and MGA International, Inc., ("Goldage related entities" or collectively "defendants") seeking, *inter alia*, the forfeiture of Two Million Ninety One Thousand Eight Hundred Forty Seven Dollars and Eight Cents (\$2,091,847.08) in defendants' assets or, in the alternative, the entry of a money judgment in that amount plus costs and disbursements of this action. Plaintiff alleges that these assets constitute the instrumentality of defendants' felony crimes arising out

of a common scheme or plan to violate Banking law §650(2)(b)(1). On July 25, 2006, Justice William P. McCooe issued a temporary restraining order (the "TRO") *inter alia* barring defendants from transferring or otherwise disposing of any assets valued up to \$2,091,847.08 pending the August 9, 2006 hearing on plaintiff's application for a preliminary injunction, an order of attachment and disclosure (see CPLR §§1312, 1316, and 1335 ).

In support of its application for the TRO, the DA has submitted, in relevant part, the following information: the affidavit of David Rosenzweig<sup>1</sup> ("Rosenzweig"); the affidavit of Assistant District Attorney Suzanne Herbert; the criminal indictment; and the summons and verified complaint in this forfeiture action. The DA bases its forfeiture action on the following attested allegations: 1) defendants are not licensed by the New York State Department of Banking to engage in the business of money transmission and are operating as unlicensed money transmitters (Rosenzweig Supp. Aff. at ¶12); 2) during the period January 2, 2006 to June 30, 2006, Budovsky and Kats utilized the Goldage related entities in a single, systemic business scheme, to illegally receive and transmit \$2,091,847.08 via cash deposits, postal orders, wire transfers and checks "into a store value currency known as "E-Gold", in an attempt to hide the source of the money." (Herbert Aff. in Support of TRO at ¶22, *see also* Rosenzweig Supp. Aff. at ¶25); 3) bank records revealed that the defendants made thousands of systematic

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<sup>1</sup> David Rosenzweig is a financial investigator employed by plaintiff for the past 21/2 years. Prior thereto, Mr. Rosenzweig was professionally engaged in the banking industry for over 30 years, has extensive knowledge of, and experience with, banking practices as well as federal and state regulations applicable to financial institutions and has investigated bank fraud and money laundering schemes. At the DA's office, he has "worked on numerous financial crime investigations, including investigations into unlicensed money remitters." (Rosenzweig Supp. Aff. at ¶1).

deposits of cash, wire transfers, money orders and personal checks received from various individuals and entities (defendants characterize as its retail customers) into Goldage related entities' accounts; 4) utilizing a "layering" technique<sup>2</sup>, defendants transferred these funds out of these accounts into other accounts; 5) plaintiff corroborated this illegal money transmission scheme via an undercover operation conducted between March 2, 2006 and June 29, 2006 (Rosenzweig Supp. Aff. at ¶35); and 6) Defendants' bank records show a pattern of regular deposits and subsequent withdrawals evidencing an illegal money transfer business (Rosenzweig Supp. Aff. at ¶38).

In further support of its application for a preliminary injunction, the DA advises that a 13-count indictment has been presented accusing defendants of committing the crime of operating an unlicensed money transmission business in violation of Banking Law §650(2)(b)(1). See Exhibit C to OSC.

On the August 9<sup>th</sup> return date of the hearing to decide whether to grant a preliminary injunction, order of attachment and disclosure, counsel for Budovsky and the Goldage related entities served and filed an affirmation in opposition to the TRO and the DA's application for a preliminary injunction. Defendants did not submit any affidavit in opposition grounded on personal knowledge of the facts and counsel's affirmation was largely rife with legal arguments. On the record, counsel for Kats orally joined in that opposition. Notably, defendants have not affirmatively made a motion pursuant to CPLR §1336 to vacate the TRO. Nor did defendants alternatively move

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<sup>2</sup> "Layering is a technique commonly used by illegal money transmitters and money launderers to obscure the source and final destination of the funds being transmitted." (Herbert Aff. in Support of TRO at ¶23). See also Rosenzweig Supp. Aff. at ¶7.

pursuant to CPLR §1312 *et seq.* for the release of funds ostensibly belonging to customers purportedly utilizing defendants as exchangers or dealers to purchase e-gold, i.e., “ ‘an electronic currency, issued by e-gold Ltd., a Nevis corporation, 100% backed at all times by gold bullion in allocated storage.’ . . . [and which] is integrated into an account based payment system that empowers people to use gold as money. . . . ” (Niman Opp. Aff. at p. 3, 4<sup>th</sup> paragraph). Defendants assert that the TRO must be vacated because the DA has failed to demonstrate a substantial likelihood it will prevail in this forfeiture action. Defendants further argue the hardship caused to its retail customers by the TRO and the preliminary injunction and defendants’ resultant exposure to civil liability to such customers by granting such provisional remedies outweighs the risk that the assets, if freed from restraint, will be unavailable for forfeiture.

CPLR § 1311 allows that

1. A civil action may be commenced by the appropriate claiming authority against a criminal defendant to recover the property which constitutes the proceeds of a crime, the substituted proceeds of a crime, an instrumentality of a crime or the real property instrumentality of a crime or to recover a money judgment in an amount equivalent in value to the property which constitutes the proceeds of a crime . . . .

(a) . . . An action relating to a post-conviction forfeiture crime must be grounded upon a conviction of a felony defined in subdivision five of section one thousand three hundred ten of this article, or upon criminal activity arising from a common scheme or plan of which such a conviction is a part, or upon a count of an indictment or information alleging a felony which was dismissed at the time of a plea of guilty to a felony in satisfaction of such count. A court may not grant forfeiture until such conviction has occurred.

Although CPLR Article 13-A provides that final forfeiture related to a post-

conviction forfeiture crime cannot occur until after the defendant has been convicted of the underlying crime(s), “an action may be commenced, and a court may grant a provisional remedy . . . prior to such conviction having occurred.” CPLR §1311(1)(a). As the Court of Appeals noted in *Morgenthau v. Citisource, Inc.*, 68 N.Y.2d 211, 219, 508 N.Y.S.2d 152 (1986), “[t]he fact that defendants have not been convicted of the crimes for which they have been indicted does not bar the claiming authority from commencing a forfeiture action against them as putative ‘criminal defendants’. The statute explicitly provides that an action relating to a post-conviction forfeiture crime ‘may be commenced, and a court may grant a provisional remedy provided under this article, *prior* to such conviction.’ ”

“A court may grant an application for a provisional remedy when it determines that: (a) there is a substantial probability that the claiming authority will prevail on the issue of forfeiture and that failure to enter the order may result in the property being destroyed, removed from the jurisdiction of the court, or otherwise be unavailable for forfeiture; [and] (b) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order may operate . . . .” CPLR § 1312 (3); *Morgenthau v. Citisource, supra*.

To satisfy its burden for provisional relief, plaintiff must support its contentions “by affidavit and such other written evidence as may be submitted. . .” CPLR §1334. *Morgenthau v. A.S. Goldmen & Co., Inc.*, N.Y.L.J., October 4, 1999, p. 28, col. 4, *affd* 283 A.D.2d 212, 724 N.Y.S.2d 306 (1<sup>st</sup> Dept., 2001). The court may also consider the issuance of a grand jury indictment based upon probable cause when evaluating the likelihood that plaintiff will prevail in a forfeiture action. *Id.* The fact that an indictment is

filed against a defendant is influential and often determinative of the issues of substantial probability of success, if combined with other facts indicative of defendant's guilt and strength of claiming authority's case. *Pirro v. Schaible*, N.Y.L.J. September 17, 1998, p.17, col. 6 (Sup. Ct., Westchester Co.).

At this juncture, defendants have clearly failed to seriously controvert the DA's preliminary factual showing in support of the TRO which demonstrates a substantial likelihood that the trier of fact may reasonably find that plaintiff has shown its entitlement to forfeit the attached assets pursuant to CPLR Article 13-A.

Where failure to grant an order of attachment may result in the dissipation of assets needed to satisfy a potential judgment, such an order is appropriate (CPLR §1312 (3) [a]). "A high degree of proof is not necessary to demonstrate that the failure to enter the order may result in the property being destroyed or otherwise unavailable for forfeiture." *Kuriansky v. Natural Mold Shoe Corp.*, 133 Misc.2d 489, 506 N.Y.S.2d 940 (Sup. Ct., Westchester Co., 1986). "An actual assignment or dissipation of the property is not necessary." *Holtzman v. Samuel*, 130 Misc.2d 976, 495 N.Y.S.2d 583 (Sup. Ct., Kings Co., 1985).

That the absence of an order of attachment may well lead to the transfer of or secreting the assets that could help satisfy a potential judgment is supported by the following: 1) the deceptive and conspiratorial nature inherent in the operation of an unlicensed money transmission business; 2) the use of money laundering techniques to disguise the source of these proceeds; and 3) defendants' obvious reluctance to forfeit their assets.

The totality of the circumstances presented here sufficiently demonstrates the

likelihood that plaintiff will succeed in this forfeiture action and absent an order restraining the transfer of the seized assets, said funds will be unavailable to satisfy a judgment of forfeiture. Accordingly, this Court grants plaintiff's application for a preliminary injunction (CPLR §1333) and an order of attachment (CPLR §1316). With its supporting papers, plaintiff has submitted an appropriate proposed order which this Court is signing simultaneously herewith.

The foregoing constitutes the Decision and Order of this Court. Courtesy copies have been provided to counsel.

DATED: New York, New York  
September 5, 2006



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HON. MARTIN SHULMAN, J.S.C.



At the IAS Part 1 of the  
Supreme Court of the State of New  
York, held in and for the County of  
New York at the Courthouse, 111  
Centre Street, New York, New York  
on the 5<sup>th</sup> day of ~~August~~, 2006

*September,*

Present:

Honorable Martin Shulman  
Justice of the Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

ROBERT M. MORGENTHAU,  
District Attorney of New York County,  
Plaintiff-Claiming Authority

-against-

ARTHUR BUDOVSKY,  
VLADIMIR KATS,  
GOLDAGE INC.,  
GOLDAGE HOLDING INC.,  
ECSN INC.,  
EXECUTIVE COMMERCIAL SERVICES INC.,  
INTERNETWORK MANAGEMENT INC.,  
GGN INC.,  
B TO B MARKETPLACE INC.,  
MGA INTERNATIONAL INC.,

Defendants

**Index No. 402970/06**

ORDER of ATTACHMENT and  
PRELIMINARY INJUNCTION

An **application**, by Order to Show Cause having been made by Plaintiff, the claiming authority, for an (1) Order of Attachment pursuant to CPLR Article 13-A, Sections 1312 and 1316 against the assets of defendants Arthur Budovsky, Vladimir Kats, Goldage Inc., Goldage Holding Inc., ECSN Inc., Executive Commercial Services Inc., Internetwork Management Inc., GGN Inc., B to B Marketplace Inc., and MGA International Inc. to the extent of Two Million Ninety One Thousand Eight Hundred Forty Seven Dollars and Eight Cents (\$2,091,847.08); and for a (2) preliminary injunction,

pursuant to sections 1312, 1333 and 1335 of CPLR Article 13-A enjoining the defendants Arthur Budovsky, Vladimir Kats, Goldage Inc., Goldage Holding Inc., ECSN Inc., Executive Commercial Services Inc., Internetwork Management Inc., GGN Inc., B to B Marketplace Inc., and MGA International Inc. and all other persons who possess the defendants' property from disposing of said property to the extent of Two Million Ninety One Thousand Eight Hundred Forty Seven Dollars and Eight Cents (\$2,091,847.08); and a **hearing** having been held before this Court on August <sup>14</sup>~~9~~, 2006, at IAS Part 1, Supreme Court, New York County, at which attorneys representing the plaintiff and all the defendants were present ; it is


**ORDERED**, that a claiming agent, i.e., any police officer of the State of New York, as defined in CPLR Section 1310 (12) and Criminal Procedure Law § 1.20 (34), levy within his or her jurisdiction, at any time before the final judgment, upon the property of the **defendants Arthur Budovsky, Vladimir Kats, Goldage Inc., Goldage Holding Inc., ECSN Inc., Executive Commercial Services Inc., Internetwork Management Inc., GGN Inc., B to B Marketplace Inc., and MGA International Inc.**, in which they have any custodial, beneficial, equitable or legal interest whether held jointly or individually, and upon such debts owing to the defendants as will satisfy the amount specified in this order, to wit, the sum of Two Million Ninety One Thousand Eight Hundred Forty Seven Dollars and Eight Cents (\$2,091,847.08), and it is further

**ORDERED**, that all persons or entities or anyone else in possession of any property of said **defendants Arthur Budovsky, Vladimir Kats, Goldage Inc., Goldage**

**Holding Inc., ECSN Inc., Executive Commercial Services Inc., Internetwork Management Inc., GGN Inc., B to B Marketplace Inc., and MGA International Inc.** disclose to the Claiming Authority (upon levy of this Order) within ten days after service upon them of a copy of this order the present balance or value of the accounts or property levied upon, and it is further

**ORDERED**, that the defendants **Arthur Budovsky, Vladimir Kats, Goldage Inc., Goldage Holding Inc., ECSN Inc., Executive Commercial Services Inc., Internetwork Management Inc., GGN Inc., B to B Marketplace Inc., and MGA International Inc.** and all persons or entities having property of said defendants and having knowledge of this order are restrained and prohibited from transferring, and assigning, disposing of, encumbering, or secreting such property in which defendants have any legal, beneficial, custodial or equitable interest, or any debts owed to the defendants to the extent of Two Million Ninety One Thousand Eight Hundred Forty Seven Dollars and Eight Cents (\$2,091,847.08).

ENTER:

  
Honorable Martin Shulman  
Justice of the Supreme Court

SEP - 5 2006

Dated: August \_\_\_\_, 2006  
New York, New York

**FILED**  
SEP 13 2006  
COUNTY CLERK'S OFFICE  
NEW YORK