

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

PRESENT: MARTIN SHULMAN  
J.S.C. Justice

PART 1

Morgenthau  
- v -  
Kozlowski & Swartz

INDEX NO. 403698/02  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 001  
MOTION CAL. NO. \_\_\_\_\_

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

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	_____
Answering Affidavits — Exhibits _____	_____
Replying Affidavits _____	_____

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion is denied as moot, the temporary restraining order is vacated and the action is dismissed as to defendant Kozlowski, in accordance with the parties' attached stipulation.

The Clerk is directed to enter judgment accordingly.

**FILED**  
SEP 22 2008  
COUNTY CLERK'S OFFICE  
NEW YORK

Dated: SEP 17 2008

MARTIN SHULMAN  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

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

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ROBERT M. MORGENTHAU,  
District Attorney of New York County,

Plaintiff-Claiming Authority,

-against-

L. DENNIS KOZLOWSKI and  
MARK H. SWARTZ,

Defendants.

Assigned to:  
Hon. Martin Shulman  
IAS Part 1

REDACTED

SO ORDERED  
STIPULATION

**FILED**

SEP 22 2008

COUNTY CLERK'S OFFICE  
NEW YORK

Index No. 403698/02

-----X

WHEREAS, the Plaintiff-claiming Authority (the "District Attorney") has previously commenced this civil forfeiture action styled Robert M. Morgenthau, District Attorney of New York County, Plaintiff-Claiming Authority v. L. Dennis Kozlowski and Mark H. Swartz, Index Number 403698/02 (the "Forfeiture Action"); and

WHEREAS, on September 10, 2002, the Honorable William J. Davis granted a temporary restraining order restraining defendant L. Dennis Kozlowski ("Kozlowski") and all persons or entities having property of Kozlowski in their possession from removing, transferring, assigning, disposing of, encumbering and/or securing any legal, equitable, custodial or beneficial interests that Kozlowski has on any real or personal property wherever located, or whether jointly or individually held, or in any debts owed to Kozlowski, to the extent of Six Hundred Million Dollars (\$600,000,000.00) (the "TRO"); and

WHEREAS, on September 19, 2005, Kozlowski was sentenced to a prison term totaling 8 ½ to 25 years, and ordered to pay restitution in the amount of \$97,778,296 and a fine in the amount of \$70,000,000 by September 19, 2006; and

WHEREAS, Kozlowski and the District Attorney previously entered into an Agreement, dated December 19, 2005, to address the payment of the fine and the restitution Amount; and

WHEREAS, pursuant to an order of this Court, dated November 17, 2006, Kozlowski entered into an agreement with Tyco and others (the "Restitution Agreement") where Kozlowski agreed to transfer the full amount of restitution to Tyco on January 2, 2007, and \$97,778,296 has been transferred to Tyco; and

WHEREAS, pursuant to the Agreement, Kozlowski has now paid the full amount of the fine into an escrow account established and held by the District Attorney at JPMorgan Chase Bank, N.A., 1 Chase Manhattan Plaza, 21<sup>st</sup> Floor, New York, New York 10081, Account No. [REDACTED], titled DANY-LDK, Bank Routing Number [REDACTED] (the "Escrow Account"); and

WHEREAS, in light of these facts, Kozlowski's counsel advised the District Attorney that Kozlowski would be seeking an order vacating the TRO and dismissing the Forfeiture Action; and

WHEREAS, the District Attorney has no objection to that relief; and

**IT IS HEREBY STIPULATED AND AGREED THAT:**

1. The Forfeiture Action is hereby dismissed as to Kozlowski, without prejudice.
2. The TRO is hereby vacated as to Kozlowski.

3. The amount of the Fine shall remain in the Escrow Account, pursuant to the terms of the December 19, 2005 Agreement between the District Attorney and Kozlowski.

Dated: New York, New York  
September \_\_, 2008

~~SEP 17 2008~~

SEP 17 2008

BRYAN CAVE LLP

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*Attorneys for defendant Kozlowski*

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

By: Amyjane Rettew  
ADA Amyjane Rettew  
One Hogan Place  
New York, New York 10013  
(212) 335-3679

SO ORDERED:

  
Hon. Martin Shulman

**MARTIN SHULMAN**

J.S.C.

**FILED**  
SEP 22 2008  
COUNTY CLERKS OFFICE  
NEW YORK