

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK, CRIMINAL TERM

-----X
THE PEOPLE OF THE STATE OF NEW YORK

-against-

L. DENNIS KOZLOWSKI,

Defendant.

Ind. No. 3418/02

-----X
THE GRAND JURY OF THE COUNTY OF NEW YORK, by this indictment, accuse the defendant L. DENNIS KOZLOWSKI of the crime of CONSPIRACY IN THE FIFTH DEGREE, in violation of Penal Law §105.05 (1), committed as follows:

The defendant, in the County of New York and elsewhere, during the period from on or about August 11, 2001 through on or about June 3, 2002, with intent that conduct constituting the felonies of Failure to Collect Sales Tax in violation of §1817 (c)(2)(a) of the New York State Tax Law, Tampering with Physical Evidence, and Falsifying Business Records in the First Degree be performed, agreed with other persons known and unknown to the Grand Jury to engage in and cause the performance of such conduct.

Background to the Conspiracy

Prior to and throughout the period of the conspiracy the State of New York imposed a sales tax on the sale of tangible personal property in the State and, in the alternative, a compensating use tax. Within the City of New York, obligations were imposed by law on vendors to collect, and in the alternative on purchasers to pay taxes at the rate of 8.25%. Sales made from the State of New York to other states, however, were not subject to sales tax in New York. To enforce the collection of revenue the State of New York's Department of Taxation and Finance maintained a team of sales tax auditors.

Prior to and throughout the period of the conspiracy there existed a market in fine arts with art galleries, brokers, and managers. Sales made of fine arts in New York were subject to the tax, which raised the cost to a prospective purchaser of art by the amount of the tax without increasing the income of the art galleries, the brokers, or the managers.

The purpose of the conspiracy was to avoid having either the customer pay or the vendor collect the sales tax, and to generate documentary evidence to avoid and defeat tax audits in connection with the sale of expensive works of art. To achieve their purpose the conspirators agreed to evade the statutory vendors' obligation to collect the sales tax by generating false business documents and engaging in sham transactions to establish that the sales were not in New York, and to make, devise and prepare documents falsely reflecting that certain sales of art work, mostly paintings, were not subject to New York taxes because they were out-of-state sales.

Members of the Conspiracy.

Members of the conspiracy known to the Grand Jury include L. Dennis Kozlowski. Throughout the period of the conspiracy defendant Kozlowski was the Chairman of the Board, President, and Chief Executive Officer of Tyco International Ltd., ("Tyco") a publicly traded multinational corporation with reported sales of more than \$36 billion in the fiscal year ending September 30, 2001. Other members of the conspiracy known to the Grand Jury include a manager of art collections, referred to herein as Jane Doe #1; a high managerial agent of an art gallery headquartered in London and doing business in New York, referred to herein as Jane Doe #2; a high managerial agent of an art business in New York referred to herein as John Doe #1; the high managerial agent of an art trucking firm in New York known as John Doe #2; and an art gallery in New York referred to herein as John Doe #3; acting with the conspirators there were agents of the conspirators, including agents of defendant Kozlowski.

Overt Acts

In the course of and in furtherance of the conspiracy, the conspirators and their agents committed and caused to be committed, in the County of New York and elsewhere, the following overt acts.

1. In or about August 2001, after meeting with Jane Doe #1 and Jane Doe #2 in London, defendant Kozlowski directed that three paintings he had purchased for \$1,975,000 by the artists Munnings, Bougureau and Grimshaw be transmitted from London to his home at 950 Fifth Avenue, New York, New York by way of Tyco headquarters in Exeter, New Hampshire.

2. On or about September 4, 2001, in the County of New York, Jane Doe #1 instructed Richard Roe, a trucker whose identity is known to the Grand Jury, to pick up three paintings from Newark Airport, to transport the three paintings to Tyco International (U.S.) Inc., in Exeter, New Hampshire, to leave the paintings in the truck for Kozlowski's assistant to "come out to the truck and sign," and then to deliver the paintings to Mr. & Mrs. Dennis Kozlowski at 950 Fifth Avenue, New York, New York.
3. On or about September 6, 2001 agents of the conspirators obtained a signature on a shipping document for three paintings in Exeter, New Hampshire.
4. On or about September 7, 2001 agents of the conspiracy delivered three paintings to the apartment of L. Dennis Kozlowski at 950 Fifth Avenue, New York, New York.
5. On or about November 16, 2001 defendant Kozlowski's wife and Jane Doe #1 purchased two paintings by the artists Herter and LaFarge for \$575,000 at John Doe #3 art gallery on the east side of Manhattan.
6. On or about November 16, 2001 conspirators caused an invoice to be prepared by John Doe #3 art gallery for the sale of two paintings at a price of \$575,000 falsely asserting "No tax-shipped."
7. On or about November 19, 2001 defendant Kozlowski's wife and Jane Doe #1 purchased a statue by the artist Bonheur from an art gallery known to the Grand Jury for \$60,000, and caused the preparation of an invoice falsely reflecting "No sales tax due. Out of state sale."
8. On or about December 11, 2001 Jane Doe #1 and John Doe #1 delivered a painting by Claude Monet to defendant Kozlowski's apartment at 950 Fifth Avenue, New York, New York from John Doe #1's business two blocks away.
9. On or about December 14, 2001 John Doe #1 sent an invoice to defendant Kozlowski for \$3,950,000, falsely asserting that no sales tax was due on a sale of a painting by Claude Monet to defendant Kozlowski.

10. Between December 14, 2001 and January 3, 2002 defendant Kozlowski falsely confirmed in writing that a painting he received from an art dealer two blocks away from defendant Koslowski's residence at 950 Fifth Ave., New York, New York had no sales tax due as it was being shipped to New Hampshire.
11. Following defendant Kozlowski's authorization, Jane Doe #1 sent a written document to John Doe #1 to establish that a painting by Claude Monet, with a sales price of \$3,950,000, would be shipped to New Hampshire.
12. On or about December 11, 2001 Jane Doe #1 instructed John Doe #2 to "de-install" from the Kozlowski apartment at 950 Fifth Avenue a painting by the artist LaFarge that defendant Kozlowski's wife and Jane Doe #1 had purchased in Manhattan, on which no sales tax was paid, to transport it to New Hampshire, to obtain a signature from a Tyco employee subordinate to Kozlowski, to return it to New York and to reinstall it in the Kozlowski apartment at 950 Fifth Avenue, New York, New York.
13. During the period December 11, 2001 through December 18, 2001 defendant Kozlowski and his wife agreed to buy three paintings by the artists Beert, Caillebotte and Renoir from Jane Doe #2 for \$8,000,000.
14. On or about December 18, 2001 in the County of New York defendant Kozlowski agreed to buy a painting from Jane Doe #2 for \$800,000.
15. On or about December 18, 2001 Jane Doe #2 submitted four invoices to Jane Doe #1 as an agent for defendant Kozlowski, falsely asserting that the sales of four paintings were export sales.
16. Following December 18, 2001 Jane Doe #2 failed to collect sales tax due on four paintings she sold in New York County for a total of \$8,800,000.
17. Between December 18, 2001 and December 21, 2001 defendant Kozlowski asked Jane Doe #1 not to ship to New Hampshire five paintings he had purchased for a total of \$12,750,000, but to ship empty boxes instead.
18. On or about December 21, 2001 Jane Doe #1 instructed John Doe # 2 to transport "cardboard boxes or crates to match the piece count" without the paintings, to New Hampshire. Jane Doe #1 provided copies of invoices, and

asked John Doe #2 to generate a bill of lading, to falsely document the transportation to New Hampshire of five paintings by the artists Monet, Munnings, Beert, Caillebotte and Renoir.

19. On or about January 2, 2002 Jane Doe #1 signed a false bill of lading in New York County.
20. On or about January 2, 2002 an agent of John Doe #2 signed a bill of lading falsely acknowledging that he had picked up five paintings.
21. On or about January 2, 2002 a Tyco employee, subordinate to defendant Kozlowski, signed a false bill of lading acknowledging receipt of five paintings.

SECOND COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of Failure to Collect Sales Tax in violation of the New York State Tax Law § 1817 (c) (2) (a) committed as follows:

The defendant, in the County of New York and elsewhere, during the period from December 11, 2001 to June 3, 2002, with intent to defraud the State of New York and the City of New York, and with intent that sales tax not be collected from himself on the purchase of expensive paintings, solicited, requested, importuned and intentionally aided a vendor, an art gallery headquartered in London doing business in New York, known to the Grand Jury, to fail to collect a sales tax that was required which said vendor failed to collect, and thereby deprived the State of New York and the City of New York of in excess of \$10,000.

THIRD COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of Failure to Collect Sales Tax in violation of the New York State Tax Law § 1817 (c) (2) (a) committed as follows:

The defendant, in the County of New York and elsewhere, during the period from December 2001 to June 3, 2002, with intent to defraud the State of

New York and the City of New York, with intent that sales tax not be collected from himself on the purchase of expensive paintings, solicited, requested, importuned and intentionally aided a vendor, an art business in New York, known to the Grand Jury, to fail to collect a sales tax that was required which said vendor failed to collect, and thereby deprived the State of New York and the City of New York of in excess of \$10,000.

FOURTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of Failure to Collect Sales Tax in violation of the New York State Tax Law § 1817 (c) (2) (a) committed as follows:

The defendant, in the County of New York and elsewhere, during the period from November 1, 2001 to June 3, 2002, with intent to defraud the State of New York and the City of New York, with intent that sales tax not be collected from himself on the purchase of expensive paintings, solicited, requested, importuned and intentionally aided a vendor, an art gallery in New York, called Joe Doe #3 and known to the Grand Jury, to fail to collect a sales tax that was required which said vendor failed to collect, and thereby deprived the State of New York and the City of New York of in excess of \$10,000.

FIFTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **TAMPERING WITH PHYSICAL EVIDENCE**, in violation of Penal Law § 215.40 (1) (a), as follows:

The defendant, in the County of New York, in or about December 2001, knowingly made, devised and prepared false physical evidence, to wit, an invoice dated December 14, 2001 regarding the sale of a painting by the artist Claude Monet, with intent that it be used and introduced in an official proceeding and a prospective official proceeding.

SIXTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendant, in the County of New York, in or about December 2001, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, an art business in New York, to wit, an invoice dated December 14, 2001 regarding the sale of a painting by the artist Claude Monet.

SEVENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of committed the crime of **TAMPERING WITH PHYSICAL EVIDENCE**, in violation of Penal Law § 215.40 (1) (a), as follows:

The defendant, in the County of New York, in or about November 2001, knowingly made, devised and prepared false physical evidence, to wit, an invoice dated November 16, 2001 regarding the sale of two paintings by the artists Herter and LaFarge, with intent that it be used and introduced in an official proceeding and a prospective official proceeding.

EIGHTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendant, in the County of New York, in or about November 2001, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, an art management firm in New York, to wit, an art collections manager regarding the sale of paintings by the artists Herter and LaFarge.

NINTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **TAMPERING WITH PHYSICAL EVIDENCE**, in violation of Penal Law § 215.40 (1) (a), as follows:

The defendant, in the County of New York, in or about November 2001, knowingly made, devised and prepared false physical evidence, to wit, an invoice dated November 16, 2001 regarding the sale of paintings by the artists Herter and LaFarge, with intent that it be used and introduced in an official proceeding and a prospective official proceeding.

TENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendant, in the County of New York, in or about November 2001, and thereafter with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry to wit an invoice dated November 16, 2001 regarding the sale of paintings by the artists Herter and LaFarge in the business records of an enterprise, to wit an art gallery in New York.

ELEVENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **TAMPERING WITH PHYSICAL EVIDENCE**, in violation of Penal Law § 215.40 (1) (a), as follows:

The defendant, in the County of New York, in or about December 14, 2001 through January 2002, knowingly made, devised and prepared false physical evidence, to wit, a bill of lading dated January 2, 2002 reflecting the transmittal to and receipts in New Hampshire of five paintings by the artists Monet, Munnings,

Beert, Caillebotte, and Renoir, with intent that it be used and introduced in an official proceeding and a prospective official proceeding.

TWELFTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law § 175.10, as follows:

The defendant, in the County of New York, during the period from December 14, 2001 through January 2002, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records of an enterprise, an art trucking firm in New York, to wit, a bill of lading dated January 2, 2002 regarding five paintings by the artists Monet, Munnings, Beert, Caillebotte, and Renoir.

ROBERT M. MORGENTHAU
District Attorney