

UNITED STATES OF AMERICA,

v.

- 1) CHRISTOPHER J. BENYO,
- 2) CHARLES E. JOHNSON, JR.,
- 3) JOSEPH MICHAEL KENNEDY,
- 4) JOHN P. TULI,
- 5) KENT D. WAKEFORD, and
- 6) SCOTT E. WIEGAND,

Defendants.

Criminal No. 1:05cr12

ORDER

On January 11, 2005, the Court entered an *ex parte* Order (Docket No. 62) restraining all of defendants' assets in anticipation of a forfeiture judgment. Defendants Benyo, Johnson, Tuli, Wakeford and Wiegand have moved to vacate the Order (Docket Nos. 56, 57, 60, 63, 64, 66 & 70) on various grounds, including: (i) that the forfeiture of substitute assets is not available in this criminal action and (ii) that the Court should not exercise its discretion to restrain assets directly traceable to the alleged illegal proceeds received by the PurchasePro.com, Inc. defendants (Benyo, Johnson, Wiegand). The Court heard oral argument on the motions on February 16, 2005.

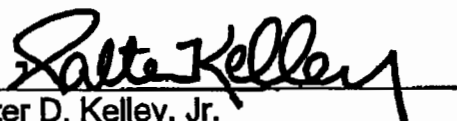
The Court agrees with defendants' contention that 28 U.S.C. §2461(c) does not authorize the forfeiture of substitute assets. While 21 U.S.C. §853(e) grants to United States District Judges the power to restrain prior to trial those assets directly traceable

to alleged illegal proceeds, the Court concludes that the unique facts of this case militate against the exercise of that discretion. Accordingly, the Court's prior Order of January 11, 2005 is hereby **VACATED** as to all defendants except Joseph Michael Kennedy. Defendant Kennedy initially moved to vacate the Court's prior Order (Docket No. 73), but withdrew his motion after reaching an agreement with the United States on the use of his assets. (Docket Nos. 78 and 79; Tr. at pp. 3-4).

The Court will issue in the near future an Opinion which explains in detail the reasoning underlying this Order.

The Clerk is **DIRECTED** to mail a copy of this Order to all counsel of record.

IT IS SO ORDERED.


Walter D. Kelley, Jr.
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
March 4, 2005

Copies faxed & mailed 3/4/05 emb.