



Supreme Court of the State of New York
County of NEW YORK

Index No. 04/01698
Date purchased 6/1/04

State of New York

Plaintiff(s) designate(s) New York
County as the place of trial.

The basis of the venue is
CPLR§§503, 509

Plaintiff(s)
against

Summons

Robert A. Baranovich,
Steven R. Baranovich, and
BS@G Sports Cards and Memorabilia
EBAY Store

Defendant(s)

Plaintiff(s) reside(s) at
120 Broadway
New York, NY 10271-0332
County of
New York

To the above named Defendant(s)

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated, NEW YORK, New YORK
MAY 27, 2004

Defendant's address:

Robert A. Baranovich
65 Amsterdam Avenue
West Babylon, NY 11704

Steven R. Baranovich
159 Belmont Avenue
West Babylon, NY 11704

Attorney(s) for Plaintiff
Office and Post Office Address
Howard Wettan
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**SUPREME COURT OF THE STATE NEW YORK
NEW YORK COUNTY**

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STATE OF NEW YORK, :
 :
 : **Plaintiff,** : **Index No. 04401698** :
 : **v.** : **COMPLAINT** :
 : **ROBERT A. BARANOVICH,** : :
 : **STEVEN R. BARANOVICH, and** : :
 : **BS@G SPORTS CARDS AND MEMORABILIA** : :
 : **EBAY STORE** : :
 : **Defendants.** : :
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Plaintiff State of New York, by its Attorney General, Eliot Spitzer, for its complaint alleges as follows:

1. This action arises from Defendants' unlawful activity in violation of New York General Business Law §§ 340 *et seq.* (the "Donnelly Act") and New York Executive Law § 63(12). By this action, the State of New York seeks: (a) monetary sanctions against Defendants for their unlawful activity; (b) restitution for those consumers harmed by Defendants' unlawful activity; and (c) injunctive relief to prevent Defendants from continuing or reinstating their anticompetitive conduct, namely, fraudulent and illegal "shill bidding" on collectible goods they offered for auction on the E-Bay website.

2. Plaintiff, the State of New York, brings this action in its sovereign and statutorily-granted capacity under the Donnelly Act and Executive Law Section 63(12). The State of New York has an interest in the economic health and well-being of those who reside or transact business within its boundaries. The State of New York also has an interest in ensuring the presence of an honest

marketplace in which economic activity is conducted in a competitive manner for the benefit of consumers and other marketplace participants.

3. Defendant Robert A. Baranovich resides at 65 Amsterdam Avenue in West Babylon, New York 11704.

4. Defendant Steven R. Baranovich resides at 159 Belmont Avenue in West Babylon, New York 11704.

5. Defendants Robert A. Baranovich and Steven R. Baranovich are in the business of selling sports memorabilia through Defendant BS@G Sports Cards and Memorabilia E-Bay Store, which is located on the E-Bay auction website. E-Bay is an online marketplace through which millions of people buy and sell goods each day through an auction format. Sellers offer items for auction on E-Bay for a specified amount of time. Potential buyers then bid on each item, specifying the maximum amount that they are willing to pay. At the end of the specified period of time, the item is sold to the individual who has placed the highest bid.

6. Beginning in or about April 2002 and continuing until in or about September 2002 (the "Relevant Period"), Defendants organized and participated in an unlawful restraint of trade affecting the price paid by buyers of Defendants' items. During the Relevant Period, Defendants deceived consumers into paying artificially high prices to secure merchandise by illegally bidding on their own items, a process known as "shill bidding." Using a series of user identifications including: "rbarano34@aol.com," "scoobzilla@aol.com," "mygb69@aol.com," "mommamushka@aol.com," "sandib6412@aol.com," and "fmichaelmasso@aol.com" Defendants, as well as Defendants' associates acting at Defendants' request, deliberately placed bids to artificially raise the price of items that Defendants had offered for auction. In at least 38 instances, this shill

bidding led purchasers to pay an artificially inflated price for the item because Defendants bid immediately before the ultimate winning bidder, causing injury, in the aggregate, of at least \$1260.

JURISDICTION AND VENUE

7. This Court has jurisdiction as to both Defendants pursuant to CPLR § 301 and § 302(a)1).

8. Venue is proper in the New York County, New York, pursuant to CPLR § 503 and/or § 509.

FIRST CLAIM: RESTRAINT OF TRADE IN VIOLATION OF THE DONNELLY ACT

9. Plaintiff State of New York realleges paragraphs 1-8.

10. From April 2002 through September 2002, Defendants engaged in a contract, agreement, arrangement, and combination in unreasonable restraint of trade and commerce in violation of the Donnelly Act, §§ 340 *et seq.* of New York General Business Law.

11. This contract, combination, agreement, and arrangement consisted of, among other things, knowingly placing bids and causing others to place bids on items offered for sale by Defendants on the E-Bay website.

12. As a result of this conspiracy, Defendants caused purchasers to pay a higher price for items sold on E-Bay by Defendants than they would have paid in a competitive market, and thus deprived purchasers of money that they would have retained had they bought the item under conditions, of free and open competition.

13. Defendants' activities are a *per se* violation of the Donnelly Act.

14. The State of New York represents, as *parens patriae*, New York resident purchasers

of sports memorabilia, and seeks damages suffered by them as a result of Defendants' anti-competitive conduct, civil penalties, and an injunction barring Defendants from engaging in similar anti-competitive acts.

**SECOND CLAIM:
N.Y. EXEC. LAW § 63(12)**

15. Plaintiff State of New York realleges paragraphs 1- 14.

16. The Defendants engaged in repeated and persistent fraudulent and illegal acts in the conduct of their business for a period of approximately 6 months, by, among other things: (a) deliberately placing bids, or causing their associates to place bids, on items Defendants offered for auction, with the purpose of artificially increasing prices paid by purchasers; and (b) failing to disclose and/or deliberately concealing this conduct from E-Bay and from bidders on E-Bay. These actions were carried out, in whole in part, in the State of New York.

17. Under New York Executive Law § 63(12), the State of New York is entitled to recover damages and/or restitution for the injuries to purchasers, E-Bay, and others caused by Defendants' repeated or persistent illegal and/or fraudulent acts and to obtain appropriate injunctive relief.

RELIEF REQUESTED

Accordingly, Plaintiff State of New York respectfully requests judgment as follows:

1. Adjudging and decreeing that Defendants have violated the Donnelly Act and Executive Law § 63(12).
2. Awarding the State of New York (a) such damages, or other restitution, which it may at trial prove to have been sustained, and trebled to the extent authorized by law, (b) civil penalties against Defendants, pursuant to N.Y. General Business Law § 342-a, (c)


attorneys' fees and costs;

3. Enjoining and restraining Defendants, their affiliates, assignees, subsidiaries, successors and transferees, and all other persons acting or claiming to act on either of their behalf or in concert with them, from engaging in any conduct, contract, combination or conspiracy, and from adopting or following any practice, plan, program or device having a purpose or effect similar to the anti-competitive actions set forth above;
4. Granting such other and further relief as may be just and proper.

Dated: New York, New York
May 27, 2004

STATE OF NEW YORK
ELIOT SPITZER
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