

SLR:LDM/BDM/BGK:KKO
F. # 2013V01124

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CV 13

6286

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UNITED STATES OF AMERICA,

Plaintiff,

-against-

ONE TRIANGULAR FRESCO FRAGMENT,

Defendant in rem.

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VERIFIED COMPLAINT IN REM

Civil Docket No. _____

AMON, CH.J.

BLOOM, M.J.

Plaintiff, United States of America, by its attorney, LORETTA E. LYNCH,
United States Attorney for the Eastern District of New York, Karin Orenstein, Assistant
United States Attorney, of counsel, for its verified complaint in rem, hereby alleges upon
information and belief as follows:

PRELIMINARY STATEMENT

1. Plaintiff brings this action in rem to condemn and forfeit to the use and
benefit of the United States the above-captioned property pursuant to 19 U.S.C.
§ 1595a(c)(1)(A), as merchandise that was introduced or attempted to be introduced into the
United States contrary to law.

DEFENDANT IN REM

2. The Defendant in rem is an ancient triangular painted stone fragment
depicting two figures facing each other. The taller figure appears to be holding a musical

instrument to his or her lips. The shorter figure is bearded and appears to be holding a spear. The lower corners of the triangle are decorated with pomegranate motifs. A photograph of the Defendant in rem is attached as Exhibit A.

3. The Defendant in rem was attempted to be introduced into the United States on or about April 20, 2011. On or about that date, the Defendant in rem arrived in a Federal Express (“FedEx”) shipment at Liberty International Airport, located in Newark, New Jersey. Prior to the arrival of the Defendant in rem, FedEx filed a Customs form seeking entry of the Defendant in rem. Upon arrival, the Defendant in rem was detained, and, upon further review, seized by officers of the United States Department of Homeland Security (“DHS”), U.S. Customs and Border Protection (“CBP” or “Customs”).

JURISDICTION AND VENUE

4. This court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1345 and 1355.

5. Venue in the Eastern District of New York is proper, pursuant to 28 U.S.C. §§ 1355 and 1395, in that the Defendant in rem is presently under the custody and control of DHS and is being stored in a facility in Long Island City, New York, which lies within the Eastern District of New York.

STATUTORY FRAMEWORK

Forfeiture Pursuant to Customs Laws

6. Title 19, United States Code, Section 1595a(c)(1)(A) provides that “[m]erchandise which is introduced or attempted to be introduced into the United States

contrary to law . . . shall be seized and forfeited if it . . . is stolen, smuggled, or clandestinely imported or introduced.” Id. (emphases added)

– “Contrary to Law”: Entry of goods by means of false statements (18 U.S.C. § 542)

7. Merchandise is introduced or attempted to be introduced “contrary to law” if the importation violates Title 18, United States Code, Section 542. This section provides in pertinent part:

Whoever enters or introduces, or attempts to enter or introduce, into the commerce of the United States any imported merchandise by means of any fraudulent or false invoice, declaration, affidavit, letter, paper or by means of any false statement, written or verbal, or by means of any false or fraudulent practice or appliance, or makes any false statement in any declaration without reasonable cause to believe the truth of such statement, or procures the making of any such false statement as to any matter material thereto without reasonable cause to believe the truth of such statement, whether or not the United States shall or may be deprived of any lawful duties

violates the law.

– “Contrary to Law”: National Stolen Property Act (18 U.S.C. § 2314)

8. Merchandise is introduced or attempted to be introduced “contrary to law” if the importation violates Title 18, United States Code, Section 2314. This Section provides in pertinent part:

Whoever transports, transmits, or transfers in interstate or foreign commerce any goods, wares, merchandise . . . of the value of \$5,000 or more, knowing the same to have been stolen, converted or taken by fraud;

violates the law.

– “Stolen”: Transported in Violation of Foreign Cultural Patrimony Laws

9. Merchandise is considered “stolen” under Title 19, United States Code, Section 1595a(c)(1)(A) and Title 18, United States Code, Section 2314, if it was exported from a foreign country in violation of that country’s laws establishing state ownership of cultural patrimony.

– Italy’s Cultural Patrimony Laws

10. Italian Law number 364 of June 20, 1909 governs the possession, ownership and exportation of any “unmovable or movable items that have a historic, archaeological, paleontological or artistic interest.” *Id.*, Art. 1. Under this law, any such materials discovered pursuant to official government excavations belong to the state. *Id.*, Art. 15.

11. Italian Law number 1089 of June 1, 1939 (“Protection of Items of Artistic and Historical Interest”) applies to “moveable and immoveable property with artistic, historic, archeological or ethnographic value.” *Id.*, Art. 1. This law also states that any such items discovered during state archeological work belong to the state. *Id.*, Arts. 43-44. This law further requires persons seeking to remove frescoes, such as the Defendant *in rem*, to seek authorization from the Minister of Public Education. *Id.*, Art. 13.

The Customs Importation Process

12. Shipments of goods arriving at the ports of the United States must be granted “entry,” or clearance, by Customs, prior to the goods being allowed to enter the commerce of the United States. The importer of a shipment of goods may obtain such clearance through the use of a “Customs Broker.” A Customs Broker is an individual or company licensed by Customs to file entry documents for commercial shipments. The

importer (or agent of the importer) typically presents a Customs Broker with certain documents describing the shipment; the Customs Broker then generates an entry package from these documents and provides them to Customs in order to obtain clearance for the goods to enter the United States. Entry information can be submitted electronically.

13. Based on the information provided in a Customs Broker's entry package, Customs may clear a particular shipment without inspecting it. Indeed, the large volume of cargo arriving at the ports each day prohibits Customs from examining every container or shipment prior to Customs's release. Customs will review information provided on shipping labels and Customs entry documentation and target certain containers and air shipments for review and, on some occasions, will randomly examine air shipments. If and when Customs clears a shipment based on documents provided by a Customs Broker, Customs informs the Customs Broker who, in turn, informs the importer that the shipment has been cleared. After a shipment is cleared, it may be removed from the port and delivered to the importer or consignee.

14. Importation of cultural property into the United States in violation of a foreign country's patrimony law violates the National Stolen Property Act, codified at Title 18, United States Code, Section 2314, *et seq.* When Customs intercepts cultural property that could be subject to the cultural patrimony law of its country of origin, and the importer is unable to supply a valid provenance showing the property's history of ownership pre-dating the applicable cultural patrimony law, the property may be detained and seized. The seized cultural property may then be the subject of administrative or judicial forfeiture proceedings.

15. Persons who import cultural property into the United States, knowing that the property is stolen, or believing that it may be stolen because they do not have a facially

valid provenance, generally seek to avoid detection and targeting by Customs. Even importers who have a facially valid provenance for a cultural property shipment may seek to avoid the delays and potential legal expenses that accompany detention by Customs. Importers who seek to avoid detection and targeting by Customs for any of the foregoing reasons often do so by means of false statements regarding the contents, value and countries of origin of their shipments. Notably, with respect to countries of origin, such importers avoid listing countries of origin, such as Italy, whose patrimony laws restrict the ownership and exportation of cultural property. In place of the true country of origin, such importers typically use the country of export or another country whose cultural property is at a lesser risk of being stolen, does not have or enforce cultural patrimony laws, and/or does not have an agreement with the United States protecting its cultural property. Such false country of origin declarations can result in Customs not targeting a cultural property shipment for inspection. Further, where Customs officials do encounter a cultural property shipment, such false statements can obstruct Customs's investigation into the legality of the shipment by misleading Customs as to the applicable legal framework.

16. Falsely identifying the country of origin on Customs entry documents constitutes a material false statement under Title 18, United States Code, Section 542.

FACTUAL BACKGROUND

Importation of the Defendant in Rem and Declarations Made in Support of its Entry

17. On or about April 19, 2011, the Defendant in rem was shipped via FedEx by Ramon Schwarz of Via Mat Artcare AG in Kloten, Switzerland, on behalf of Andrew Baker of Vaduz, Lichtenstein. The recipient listed on the FedEx airwaybill was Michael Steinhardt of New York, New York. The FedEx airwaybill and pro forma invoice shipped with the Defendant in rem declared that the item's country of origin was Macedonia. The "Antique Declaration" accompanying the shipment stated that the item was being imported for "personal use" (as opposed to "for sale").

18. On or about the same date, FedEx Trade Networks, acting as the Customs Broker, electronically filed a Customs entry form. On the electronic entry form, FedEx Trade Networks declared that the Defendant in rem's country of origin was Morocco and that Steinhardt was the ultimate consignee.

19. On or about April 20, 2011, the Defendant in rem arrived at Newark Liberty Airport in Newark, New Jersey. The Defendant in rem was detained by Customs upon arrival. Customs requested a provenance from Schwarz.

20. On or about November 3, 2011, Schwarz supplied an Affidavit of Provenance executed by Baker on October 31, 2011. In the Affidavit of Provenance, Baker stated that his company, Etablissement Finagran, engaged Via Mat Artcare to ship the Defendant in rem to the United States. The Affidavit of Provenance further stated that the Defendant in rem was shipped in order to be shown to a potential purchaser and that the expected sales price was \$12,000 U.S. currency. This statement is inconsistent with the declaration in the Antique Declaration that the item was for personal use, not for sale. In

addition, the Affidavit of Provenance stated that the Defendant in rem originated in Macedonia in the fourth century B.C. and had been acquired by Lens Tschanned from a Swiss art gallery in 1959. The Affidavit of Provenance also stated that the Defendant in rem was located at Tschanned's private residence in Switzerland from 1959 until April 2011. No export licenses for the Defendant in rem were provided to Customs.

21. On or about March 14, 2012, Customs seized the Defendant in rem.

Origin of the Defendant *in rem*

22. Following the seizure of the Defendant in rem, photographs of the Defendant in rem were presented to an expert in ancient paintings. The expert opined that the Defendant in rem did not originate in Macedonia, but in Paestum, Italy.

23. Photographs of the Defendant in rem were presented to the Italian Carabinieri, Italy's national police force. The Carabinieri is mandated by Italian law to oversee the protection of cultural heritage through the Comando Carabinieri Tutela Patrimonio Culturale (Carabinieri Protection of Cultural Heritage Command, hereinafter, "TPC"). The TPC identified the Defendant in rem as the cusp or pediment of an ancient painted tomb whose origin is an archeological site north of the ancient city of Paestum, in modern-day Salerno, Italy. The specific site where painted tombs such as the Defendant in rem have been excavated is known as the necropolis of Andriuolo. The Carabinieri further provided the following historical information:

a. The archeological area of Paestum covers approximately 392 acres of land. While legal excavations in the vicinity of Paestum date as far back as 1805, excavations north of Paestum started in 1930 and continued through 1970. In 1998, the Paestum archeological site was designated as a UNESCO World Heritage site.

b. Starting in 1969, numerous painted tombs in the style of the Defendant in rem were excavated in the necropolis of Andriuolo by Italian archeologist Mario Napoli. The painted tombs typically had four sides and pitched roofs.

c. Among the tombs excavated by Mr. Napoli's team in 1969 is a piece of a tomb identified as "Tomb number 53." Tomb number 53 consists of a single side-wall with a triangular pediment. It is on display at the National Archeological Museum of Paestum. A photograph of Tomb number 53 is attached as Exhibit B. The figures and decoration drawn on the pediment of Tomb number 53 are almost identical to those on the Defendant in rem. Notably, the two figures on the Defendant in rem are painted in a mirror image of those on the Museum's piece, suggesting they stood at opposite sides of the same tomb. The dimensions of Tomb number 53 are identical to the Defendant in rem.

d. Thefts and illegal excavations of artifacts at the Paestum archeological site have been reported to the Carabinieri.

24. The Carabinieri reported that a search of export records maintained by the Italian Ministry of Culture indicate that no authorization for export was ever issued for an item matching the description of the Defendant in rem.

25. Based on the information provided by the Carabinieri, the country of origin of the Defendant in rem is Italy, not Macedonia. The declaration to Customs that the Defendant in rem originated Macedonia is therefore false. Further, the Affidavit of Provenance supplied to Customs, which stated that the Defendant in rem was part of a Swiss collection in 1959, is false in light of the fact that the painted tombs of Paestum in general, and Tomb number 53 in particular, were not excavated until 10 years later.

CLAIM FOR RELIEF

26. Plaintiff repeats the allegations of paragraphs 1 through 25 as if fully set forth herein.

27. The Defendant in rem is stolen property that was introduced or attempted to be introduced into the United States in violation of Title 18, United States Code, Sections 542 and/or 2314.

28. As a result of the foregoing, the Defendant in rem is liable to condemnation and to forfeiture to the United States, in accordance with Title 19, United States Code, Section 1595a(c)(1)(A).

WHEREFORE, plaintiff, United States of America, requests that a warrant of this Court be issued for the arrest of the Defendant in rem; that due notice of these proceedings be given to all interested persons; that the Defendant in rem be forfeited and condemned to the use of the United States of America; that the plaintiff be awarded its costs and disbursements in this action; and for such other relief and further relief as this Court deems just and proper.

Dated: Brooklyn, New York
November 13, 2013

LORETTA E. LYNCH
United States Attorney
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201

By: 
Karin Orenstein
Assistant U.S. Attorney
(718) 254-6188

Exhibit A
The Defendant in Rem



Exhibit B

Tomb No. 53, National Archeological Museum of Paestum




VERIFICATION

BRENTON EASTER, hereby declares as follows:

1. I am a Special Agent with the United States Department of Homeland Security, Homeland Security Investigations.
2. I have read the within verified complaint in rem and know the contents thereof.
3. I believe the matters contained in the within verified complaint in rem are true and accurate to the best of my knowledge, information and belief.
4. The source of my information and the grounds for my belief are personal knowledge and information provided by other law enforcement officers and the official files and records of the United States of America.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: Brooklyn, New York
November 7, 2013



Brent Easter
Special Agent
Homeland Security Investigations
U.S. Department of Homeland Security