

PREET BHARARA
United States Attorney for
the Southern District of New York
By: SHARON COHEN LEVIN
Chief, Asset Forfeiture Unit
Assistant United States Attorney
One St. Andrew's Plaza
New York, New York 10007
Tel. (212) 637-1060

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

UNITED STATES OF AMERICA

-v.-

ONE TYRANNOSAURUS BATAAR SKELETON,
a/k/a LOT 49315 LISTED ON PAGE 92
OF THE HERITAGE AUCTIONS MAY 20,
2012 NATURAL HISTORY AUCTION
CATALOG;

Defendant-in-rem.

- - - - - x

JUDGE CASTEL

VERIFIED COMPLAINT

12 Civ.

12 CIV 4760

Plaintiff United States of America, by its attorney,
Preet Bharara, United States Attorney for the Southern District of
New York, for its verified complaint alleges, upon information and
belief, as follows:

I. JURISDICTION AND VENUE

1. This action is brought by the United States of
America pursuant to Title 18, United States Code, Sections 545 and
981(a)(1)(C) and Title 19, United States Code, Section 1595a(c)
seeking the forfeiture of one Tyrannosaurus bataar skeleton, a/k/a
Lot 49315 listed on page 92 of the Heritage Auctions May 20, 2012
Natural History Auction catalog (the "Defendant Property") for its

return to the Government of Mongolia. A photograph of the Defendant Property is attached hereto as Exhibit A.

2. This Court has jurisdiction pursuant to Title 28, United States Code, Sections 1345 and 1355.

3. Venue is proper under Title 28, United States Code, Section 1355(b)(1)(A) because the acts or omissions giving rise to the forfeiture occurred within the Southern District of New York.

4. The Defendant Property is presently in the custody of Cadogan Tate Fine Art in Sunnyside, New York.

II. PROBABLE CAUSE FOR FORFEITURE

A. Background

5. The Gobi Desert, which is located in Mongolia, is a fertile fossil field of dinosaur relics, including those of the Tyrannosaurus (Tarbosaurus) bataar (the "Bataar").

6. The Bataar, a native of Mongolia, is a dinosaur from the late Cretaceous period, approximately 70 million years ago. Bataar fossils were first discovered in 1946, during a joint Soviet-Mongolian expedition to the Gobi Desert in the Mongolian Ömnögovi Province.

7. Since the Soviet-Mongolian Gobi Desert expeditions in the 1940s there have been several additional expeditions, all of which have recovered Bataar fossils from the Gobi Desert.

8. Bataar fossils have only been recovered from a small area in the Gobi Desert known as the Nemegt Basin located in Mongolia.

B. Mongolian Law

9. Since as early as 1924 the Government of Mongolia has prohibited the personal or non-state ownership of items of cultural significance, such as the Defendant Property.

10. Article Three, Section One of the First Mongolian Constitution, which was enacted in 1924, specifically states

[b]ecause/since all lands and resources within their subsoil, forests, water and the natural resources within them, as well as the culture and characteristics of Mongolia which have been in possession of the people since ancient times do meet the customs of the present state and its people, all assets and resources mentioned above shall be under the possession of the people, thus making private property of them prohibited.

11. According to Mongolian law, dinosaur fossils specifically are categorized as property of the Government of Mongolia. Article One of the 1924 Mongolian Rules to Protect the Antiquities states that "all antique items and relics of the past found within the territory of Mongolia shall be owned by Mongolia." "Antiques and relics" are further defined in Article Two, Section Five of the 1924 Mongolian Rules to Protect the Antiquities as "[p]aleontological items such as remnants of ancient plants and animals as well as archeological findings that ought to be preserved in museums."

12. Article 13.1 of the 2001 Mongolian Protection of Cultural Heritage Law further provides that "[t]he territory and land bowels where historically, culturally and scientifically significant objects exist shall be under state protection and any such findings shall be a state property."

13. Mongolian Law has further protected the Mongolian Government's ownership interest in dinosaur fossils since as early as 1924 by criminalizing the illegal smuggling of such objects out of Mongolia.

14. Article Nine of the 1924 Mongolian Rules to Protect the Antiquities specifically states that "one-of-the-kind rare items are prohibited to be transported abroad."

15. Article 175.2 of the 2002 Criminal Code of the Law of Mongolia, which specifies the criminal penalty imposed for violations of the anti-smuggling laws, specifically provides that:

in case historical or cultural valuable objects, museum exhibits, unique, rare and valuable findings of ancient animals and plants, archeological and paleontological findings and artifacts are smuggled through the national border, the assets shall be seized and the [persons] shall be imposed a fine . . . or imprisoned for two to five years.

16. Mongolia became a signatory to the United Nations Educational, Scientific and Cultural Organization, Convention on the Means of Prohibiting and Preventing the Illicit Import,

Export and Transfer of Ownership of Cultural Property on May 23, 1991.

C. The Defendant Property

17. On or about March 27, 2010, the Defendant Property was imported from Great Britain to Gainesville, Florida. Florida Fossils was listed on the United States Department of Homeland Security, Customs and Border Protection Entry/Immediate Delivery form (the "Customs Entry Form") as the ultimate consignee. Florida Fossils, at the time, was owned by Eric Prokopi ("Prokopi"). On Prokopi's current business website, Everything-Earth.com, his occupation is listed as a commercial palaeontologist.

18. The Customs Importation documents for the Defendant Property contain several misstatements. First, the country of origin for the Defendant Property was erroneously listed on the Customs Entry Form as Great Britain rather than Mongolia. Second, the Defendant Property was substantially undervalued in the Customs Importation documents. The importation documents list the value of the Defendant Property as \$15,000 contrary to the \$950,000 - \$1,500,00 value listed in the Heritage Auctions May 20, 2012 Natural History Auction catalog and the actual auction sale price of \$1,052,500. Third, the Defendant Property was incorrectly described in the Customs Importation documents as "2 large rough (unprepared) fossil

reptile heads;" "6 boxes of broken fossil bones;" "3 rough (unprepared) fossil reptiles;" "1 fossil lizard;" "3 rough (unprepared) fossil reptiles;" and "1 fossil reptile skull."

19. After arriving in Florida from Great Britain the Defendant Property was transported to Texas then eventually transported to New York where it is currently located.

20. On May 20, 2012, the Defendant Property was offered for sale in New York City at an auction (the "Heritage Auction") conducted by Texas based Heritage Auctions, Inc. ("Heritage").

21. Prior to the Heritage Auction, Elbegdorj Tsakhia, the President of Mongolia ("President Elbegdorj"), obtained a Temporary Restraining Order (the "Order") from Texas State Civil District Judge Carlos R. Cortez prohibiting Heritage and its agents from auctioning, selling, releasing or transferring the Defendant Property. Notwithstanding the entry of the state court order, Heritage completed the auction and the Defendant Property was sold for \$1,052,500 contingent upon the outcome of any court proceedings on behalf of the Government of Mongolia.

22. The Defendant Property, which was listed as lot number 49315 in the Heritage Auction catalog is described as

SUPERB TYRANNOSAURUS SKELETON
T.bataar . . . ruled the food chain of the
ancient floodplains that are today's Gobi
Desert . . . This is an incredible, complete
skeleton, painstakingly excavated and
prepared . . . The body is 75% complete and

the skull 80% . . . Measuring 24 feet in length and standing 8 feet high, it is a stupendous, museum-quality specimen of one of the most emblematic dinosaurs ever to have stalked this Earth.

23. The Defendant Property was examined on June 5, 2012 at the request of the President Elbegdorj by several palaeontologists specializing in Bataars. Among those examining the Defendant Property was Dr. Bolortsetseg Minjin, PhD, Institute for the Study of Mongolian Dinosaurs, New York Representative of the Mongolian Academy of Sciences ("Dr. Minjin"); Dr. Philip J. Currie, Msc, PhD, FRSC, Professor and Canada Research Chair of Dinosaur Paleobiology at the University of Alberta, and President of the Society of Vertebrate Paleontology ("Dr. Currie"); and Dr. Khishigjav Tsogtbaatar, PhD, Head of Paleontological Laboratory and Museum, Research Center of Paleontology, Mongolian Academy of Sciences, Mongolia ("Dr. Tsogtbaatar"). All examining paleontologists concluded that the Defendant Property is a *Tyrannosaurus bataar* (also known as *Tarbosaurus bataar*). All the Palaeontologists agree that Bataars are native to Mongolia and all concluded that the Defendant Property almost certainly came from the Nemegt Basin in Mongolia. Attached as Exhibit B are reports from several of the examining paleontologists.

24. Specifically, Dr. Minjin concluded that the Defendant Property "was collected from Mongolia, probably in the

Nemegt Basin." Dr. Currie concluded that "Tarbosaurus bataar skeletons have only ever been recovered from the Nemegt basin and adjacent regions in Mongolia, which . . . indicates that . . . [the Defendant Property] was collected in Mongolia." Moreover, Dr. Tsogtbaatar concluded that "[t]he general appearance of the . . . [Defendant Property] and the color of the bones indicate to us that this is the skull and skeleton of a Tarbosaurus bataar (also known as Tyrannosaurus bataar) from the Nemegt Formation of Mongolia."

25. Additionally, Dr. Tsogtbaatar has stated that the Defendant Property "was unearthed [between] the period 1995-2005 from the Western Gobi Desert in Mongolia."

III. CLAIMS FOR FORFEITURE

26. Incorporated herein are the allegations contained in paragraphs one through twenty-five of this Complaint.

27. Title 18, United States Code, Section 542 states, 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

28. Title 18, United States Code, Section 545 states,
in pertinent part

. . . Whoever fraudulently or knowingly
imports or brings into the United States, any
merchandise contrary to law, or receives,
conceals, buys, sells, or in any manner
facilitates the transportation, concealment,
or sale of such merchandise after
importation, knowing the same to have been
imported or brought into the United States
contrary to law - -

Shall be fined under this title or imprisoned
not more than 20 years, or both

29. Title 18, United States Code, Section 545, further
provides that "[m]erchandise introduced into the United States in
violation of this section . . . shall be forfeited to the United
States."

30. Title 18, United States Code, Section 981(a)(1)(C)
subjects to forfeiture "[a]ny property, real or personal which
constitutes or is derived from proceeds traceable to . . . any
offense constituting 'specified unlawful activity' (as defined in
section 1956(c)(7))."

31. Title 18, United States Code, Section
1956(c)(7)(A) defines "specified unlawful activity" as "any act
or activity constituting an offense listed in section 1961(1) of
this title."

32. Included among the list of Specified Unlawful Activities listed in section 1961(1) is Title 18, United States Code, Section 2314, which relates to interstate transportation of stolen property and Section 2315, which relates to sale or receipt of stolen goods.

33. Section 2314 of Title 18 of the United States Code, states in pertinent part

Whoever transport, transmits, or transfers in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of \$5,000 or more, knowing the same to have been stolen, converted or taken by fraud . . . shall be fined under this title or imprisoned not more than ten years, or both

34. Section 2315 of Title 18 of the United States Code, states in pertinent part

Whoever receives, possesses, conceals, stores, barter, sells, or disposes of any goods, wares, or merchandise . . . which have crossed a State or United States boundary after being stolen, unlawfully converted, or taken, knowing the same to have been stolen, unlawfully converted, or taken . . . [s]hall be fined under this title or imprisoned not more than ten years, or both

35. Pursuant to Title 19, United States Code, Section 1595a(c)(1)(A) "[m]erchandise which is introduced or attempted to be introduced into the United States contrary to law shall be . . . seized and forfeited [to the United States] if it - is stolen, smuggled, or clandestinely imported or introduced."

36. The Defendant Property is subject to forfeiture pursuant to Title 19, United States Code, 1595a(c) because there is probable cause to believe that the Defendant Property was stolen from Mongolia and introduced into the United States contrary to law, in that the Defendant Property was (1) introduced into the commerce of the United States by means of false statements and/or (2) transported in foreign commerce knowing it was stolen or converted.

37. The Defendant Property is subject to forfeiture pursuant to Title 18, United States Code, Section 545 because there is probable cause to believe that the Defendant property is merchandise which was introduced into the United States in violation of that section, in that the Defendant Property was (1) introduced into the United States by means of false statements in violation of Title 18, United States Code, Section 542 and/or (2) imported into the United States knowing it was stolen or converted.

38. The Defendant Property is subject to forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(C) because there is probable cause to believe that the Defendant Property is property, real or personal, which constitutes or is derived from a violation of Title 18, United States Code Section 2314 and/or Section 2315.

WHEREFORE, plaintiff United States of America prays that process issue to enforce the forfeiture of the Defendant Property and that all persons having an interest in the Defendant Property be cited to appear and show cause why the forfeiture should not be decreed, and that this Court decree forfeiture of the Defendant Property to the United States of America for disposition according to law, and that this Court grant plaintiff such further relief as this Court may deem just and proper, together with the costs and disbursements of this action.

Dated: New York, New York
June 18, 2012

PREET BHARARA
United States Attorney for
the Southern District of New York
Attorney for the Plaintiff
United States of America

By:



SHARON COHEN LEVIN
Chief, Asset Forfeiture Unit
Assistant United States Attorney
One St. Andrew's Plaza
New York, New York 10007
Telephone: (212) 637-1060

Exhibit A



NATURAL HISTORY MUSEUM

SUPER TYRANNOSAURUS SKELETON
Tyrannosaurus rex
Carnivore

The skeleton is a complete specimen of a Tyrannosaurus rex, one of the largest and most powerful land predators that ever lived. It is a bipedal dinosaur, meaning it walked on its hind legs. The skull is particularly large and powerful, with a massive jawbone and sharp teeth. The skeleton is shown in a standing position, highlighting its bipedal nature.

Tyrannosaurus rex
Carnivore

The skeleton is a complete specimen of a Tyrannosaurus rex, one of the largest and most powerful land predators that ever lived. It is a bipedal dinosaur, meaning it walked on its hind legs. The skull is particularly large and powerful, with a massive jawbone and sharp teeth. The skeleton is shown in a standing position, highlighting its bipedal nature.

HERITAGE

Exhibit B



Institute for the Study of Mongolian Dinosaurs
Монголын Динозаур Судлалын Хүрээлэн

June 6, 2012

To whom it concerns:

I am the New York representative of the Mongolian Academy of Sciences and am the officially designated representative of President Elbegdorj Tsakhia of Mongolia in the matter of the *Tyrannosaurus bataar* skeleton presently in the care of Heritage Auctions.

I received my undergraduate education and Master's degree in Mongolia, my doctorate from the City University of New York, and engaged in postdoctoral research at the Museum of the Rockies. My education and doctoral research was on fossils from Mongolia, and I have conducted extensive paleontological fieldwork in the Gobi Desert of Mongolia. The following report is based on my examination of the specimen, my training in Paleontology, and my knowledge of Mongolian fossils.

On June 5th, 2012, I inspected the skeleton of *Tyrannosaurus bataar* (better known in the scientific community as *Tarbosaurus baatar*) that is temporarily housed in the Cadogan Tate Fine Art Storage after it was auctioned by Heritage Auctions on May 20th, 2012.

The skeleton clearly represents a member of the family Tyrannosauridae. Key advanced, tyrannosaurid features that are present in the skeleton include the small, two-fingered arms and the large robust skull. The specimen can further be identified as *Tarbosaurus baatar* based on the generally narrow width of the skull and the nature of the contact of the nasal and maxilla bones of the skull. In these features it is distinctly different from *Tyrannosaurus rex*, a close relative of *Tarbosaurus baatar*. Whereas *Tyrannosaurus rex* is only known from North America, *Tarbosaurus baatar* is only known from Asia. Although fragmentary remains of large tyrannosaurids have been found in China and Kazakhstan, nearly complete skeletons of *Tarbosaurus baatar*, like the one under the care of Heritage Auctions, are only known from Mongolia. Nearly all of the Mongolian specimens have come from a fairly small area in the Gobi Desert of Mongolia called the Nemegt Basin. Furthermore, the fairly light color of the specimen and iron staining are consistent with skeletons collected from the Nemegt Basin. Most skeletons of *Tyrannosaurus rex* from North America come from the Hell Creek and these skeletons are dark brown to black, quite unlike the Heritage Auctions specimen. Based on the above evidence, I conclude that this specimen was collected from Mongolia, probably in the Nemegt Basin.

Sincerely,

Bolortsetseg Minjin Ph.D.

Institute for the Study of Mongolian Dinosaurs

New York Representative of the Mongolian Academy of Sciences



PALEONTOLOGICAL CENTER
MONGOLIAN ACADEMY OF SCIENCES

Enkhtaivan Avenue-63, Ulaanbaatar-13343, P.O.B 260, Mongolia
Tel: (976-11) 451135, Fax: (976-11) 458935
E-mail: paleomas@yahoo.com

June 06, 2012

STATEMENT OF FOSSIL BONES

On June 5, 2012, the specimen auctioned on May 20th by Heritage Auctions was examined by three paleontologists, including myself, in the warehouse of Cadogan Tate Fine Art Storage in New York City.

The general appearance of the animal and the color of the bones indicate to us that this is the skull and skeleton of a *Tarbosaurus bataar* (also known as *Tyrannosaurus bataar*) from the Nemegt Formation of Mongolia. The bones are light colored (whitish to beige, rarely brownish because of an iron content of 2.2-8 percent), thus differing from most fossils of their North American relatives, which are dark, even black, due to secondary permineralization. The size and body proportions are consistent with this identification.

The following specific characters are identical as *Tarbosaurus bataar*:

- ✓ the number of maxillary and dentary alveoli,
- ✓ the ridge and socket arrangement of the maxillary-nasal articulation,
- ✓ the relatively smooth dorsal surface of the nasal,
- ✓ the non-inflated nature of bones like the lacrimal and ectopterygoid,
- ✓ the size and shape of the lacrimal pneumatopore,
- ✓ the lack of a pronounced lacrimal cornua,
- ✓ the presence of a low cornua on the postorbital,
- ✓ the forward extension of the sagittal crest onto the frontal,
- ✓ the nature of the contact between the lacrimal/prefrontal and the postorbital,
- ✓ the low but broad nuchal crest,
- ✓ the relatively large size of the first maxillary tooth (which has a J-shaped arrangement of the carinae at the base of the crown),
- ✓ the relatively small front limb (in comparison with the length of the femur)

Those characters are diagnostic of *Tarbosaurus bataar* and clearly shows that this is not any other tyrannosaurid species. *Tarbosaurus bataar* skeletons have only ever been recovered from the Nemegt basin and adjacent regions in Mongolia, which in my opinion indicates that this is a specimen that was poached from Mongolia. It was clear that lack of professional knowledge for excavation of the specimen some part of the skull and postcranium were destroyed by poachers. I suppose that the specimen was unearthed the period 1995-2005 from the Western Gobi Desert in Mongolia. Because it was not registered illegal diggers factum before mid of 1990s. But climax of poachers activities in Nemegtian dinosaur localities of Western Gobi desert was in 2000.

Khishigjav Tsogtbaatar, PhD
Head of Paleontological Laboratory and Museum,
Research Center of Paleontology,
Mongolian Academy of Sciences, Mongolia

June 5 2012
New York, New York

To His Excellency Elbegdorj Tsakhia, President of Mongolia

On June 5, 2012, the specimen auctioned on May 20th by Heritage Auctions was examined by three palaeontologists in the warehouse of Cadogan Tate Fine Art Storage in New York City. The general appearance of the animal and the color of the bones indicate to us that this is the skull and skeleton of a *Tarbosaurus bataar* (also known as *Tyrannosaurus bataar*) from the Nemegt Formation of Mongolia. The size and body proportions are consistent with this identification. Dr. Norell, did not participate in this investigation, however, he did examine the specimen during the auction preview.

A suite of specific characters is diagnostic of *Tarbosaurus bataar* and clearly shows that this is not any other tyrannosaurid species. These include:

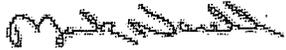
- the number of maxillary and dentary tooth sockets
- the ridge and socket arrangement of the maxillary-nasal articulation
- the relatively smooth dorsal surface of the nasal
- the non-inflated nature of bones like the lacrimal and ectopterygoid
- the size and shape of the lacrimal pneumatopore
- the lack of a pronounced lacrimal cornua
- the presence of a low cornua on the postorbital
- the forward extension of the sagittal crest onto the frontal
- the nature of the contact between the lacrimal/prefrontal and the postorbital
- the low but broad nuchal crest
- the relatively large size of the first maxillary tooth (which has a J-shaped arrangement of the carinae at the base of the crown), and
- the relatively small front limb (in comparison with the length of the femur).

Tarbosaurus bataar skeletons have only ever been recovered from the Nemegt basin and adjacent regions in Mongolia, which in our strong opinion indicates that specimen was collected in Mongolia.

We feel that the specimen was largely restored and mounted outside of Mongolia, but even so the quality, color and fresh breaks on the bone indicate that the specimen was probably collected within the last ten years. The absence of claws, toes and most of the teeth suggest that these were collected by one or more separate groups, before the remaining skeleton was exhumed.



Philip J. Currie, MSc, PhD, FRSC
Professor and Canada Research Chair of Dinosaur Paleobiology at the University of
Alberta, President of the Society of Vertebrate Paleontology



Mark Norell, PhD
Chairman and Curator, Division of Paleontology
American Museum of Natural History
New York, New York

Collectively we have worked for over 40 seasons in the area where *Tarbosaurus*
skeletons have been collected in southern Mongolia. Both of us have also focused much
of our scientific research on this dinosaur and its close relatives.