

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. _____
)	
ONE OIL PAINTING ENTITLED OTHELLO)	
AND DESDEMONA BY MARC CHAGALL,)	
)	
Defendant.)	
_____)	

VERIFIED COMPLAINT FOR FORFEITURE *IN REM*

COMES NOW, Plaintiff the United States of America, by and through the United States Attorney for the District of Columbia, and brings this Verified Complaint for Forfeiture *in Rem* against the defendant property, namely: one oil painting entitled Othello and Desdemona by Marc Chagall (the “Defendant Property”), which is depicted in Attachment A. The United States alleges as follows in accordance with Rule G(2) of the Federal Rules of Civil Procedure, Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions:

THE DEFENDANT PROPERTY

1. The Defendant Property is a Marc Chagall oil painting entitled “Othello and Desdemona.” The Defendant Property was taken into possession by the Federal Bureau of Investigation (“FBI”) from an individual in Maryland and is currently held at an FBI facility in Washington, D.C.

NATURE OF ACTION AND THE DEFENDANT *IN REM*

2. This *in rem* forfeiture action arises out of an investigation by the FBI into the theft of the Defendant Property from the home of Ernest and Rose Heller in New York, New York in 1988. The Defendant Property was subsequently transported in interstate commerce in violation

of 18 U.S.C. § 2314 (Interstate Transportation of Stolen Property) and 18 U.S.C. § 2315 (Possession of Stolen Goods).

3. The Defendant Property is subject to forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C) as property constituting or derived from the proceeds of the interstate transportation of stolen property and possession of stolen goods.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1345 and 1355. These statutes confer original to district courts of all civil actions, suits, or proceedings commenced by the United States and any action for the forfeiture of property incurred under any act of Congress.

5. Venue is proper pursuant to 28 U.S.C. § 1355(b)(1)(A) because acts or omissions giving rise to the forfeiture occurred within the District of Columbia and the Defendant Property has been brought to the District of Columbia. Specifically, the Defendant Property was stolen in New York, New York, was transported in interstate commerce to the District of Columbia, and was the subject of an attempted sale in the District of Columbia.

6. Venue is also proper pursuant to 28 U.S.C. § 1395(c) because the Defendant Property is currently held in the District of Columbia.

STATUTORY BASIS FOR FORFEITURE

7. Based on the facts set forth in this Complaint, the Defendant Property is subject to forfeiture, pursuant to 18 U.S.C. § 981(a)(1)(C), as any property, real or personal, which constitutes or is derived from proceeds traceable to an offense constituting a “specified unlawful activity.” 18 U.S.C. § 1956(c)(7)(A) defines “specified unlawful activity” to include any act or activity constituting an offense listed in 18 U.S.C. § 1961(1). Interstate transportation of stolen

property and possession of stolen goods, in violation of 18 U.S.C. §§ 2314 and 2315, are offenses listed in 18 U.S.C. § 1961(1).

8. A violation of interstate transportation of stolen property requires proof that: 1) the target transported or caused to be transported in interstate commerce some property; 2) the property was stolen, converted, or fraudulently obtained; 3) the target, at the time of the transportation, knew the property had been stolen, converted, or taken by fraud; and 4) the property was valued at more than \$5,000.00. 18 U.S.C. § 2314.

9. A violation of possession of stolen goods requires proof that: 1) the target received, possessed, concealed, stored, bartered, sold, or disposed of some property; 2) the property had been stolen, unlawfully converted, or unlawfully taken; 3) the target knew the property had been stolen, unlawfully converted, or unlawfully taken; 4) after the property was stolen, unlawfully converted, or unlawfully taken, the property was moved across a boundary of a state line; and 5) the property was valued at more than \$5,000.00. 18 U.S.C. § 2315.

FACTS GIVING RISE TO FORFEITURE

I. Theft of the Defendant Property

10. Ernest and Rose Heller, who are now deceased, were arts collectors who lived in New York, New York. During their lives, the couple amassed a collection of art work from their travels in Europe and other parts of the world.

11. Their collection included paintings by renowned artists, such as Marc Chagall, August Renoir, Othon Friesz, Georges Rouault, Pablo Picasso, and Edward Hopper. By 1988, the Hellers had collected over 21 paintings and 12 sculptures, which they kept in their apartment in New York, New York.

12. One of the items owned by the Hellers was the Defendant Property, which depicted a male, Othello, in the left foreground holding a sword in his hand and looking at a female figure,

Desdemona, lying on a bed in the right background. *See* Attachment A. The Defendant Property was an oil painting on canvas and in the bottom right corner bore the date “1911” and the signature “ChAgAll.” The back of the painting displayed a label which indicated the “Besitzer,” the German word for owner, was “Mr. + Mrs. E.S. Heller, New York.” *See* Attachment B.

13. The Defendant Property was featured in a Chagall exhibition in Switzerland between May 6, 1967, and July 30, 1967. The Defendant Property was appraised by an auction house on June 6, 1974, for between \$50,000 and \$65,000.

14. In August 1988, the Hellers arrived home to find that the Defendant Property was stolen from their New York home, along with other of their artwork and sculptures. The Hellers were featured in an August 26, 1988, article about this burglary. The article specifically mentioned the theft of the Defendant Property. Following the burglary, the Defendant Property was also listed by Interpol as stolen artwork.

15. The Defendant Property was insured by an insurance company (“Insurance Company”), which paid the Hellers a lump sum following the theft.

16. An FBI investigation recently revealed that the Defendant Property had been stolen from the Hellers’ apartment by an individual who worked in their apartment building (“Person 1”). Person 1 was convicted by a federal district court for interstate transportation of stolen property and mail fraud related to the theft and sale of other works of art stolen from other apartment buildings.

II. Exchange of the Defendant Property

17. In the late 1980s to early 1990s, Person 1 met with an individual in Virginia (“Person 2”) to assist in the illicit sale of the Defendant Property. Person 2 knew the Defendant

Property was stolen because Person 1 was seeking to use Person 2's connections with Bulgarian organized crime to sell the Defendant Property.

18. Person 2 identified a potential buyer for the Defendant Property, but then learned that Person 1 was attempting to cut Person 2 out and sell directly to this potential buyer. Person 1 was doing this so Person 2 would be removed from the transaction and would no longer be entitled to a fee.

19. An argument occurred between Person 2 and Person 1. Following the argument, Person 2 kept the Defendant Property.

20. Person 1 reported the Defendant Property stolen in the early 2000s.

III. Prior Attempted Sales of the Defendant Property

21. In 2011, a person traveled to Washington, D.C. to meet with the owner of an art gallery located in Washington, D.C. This person brought the Defendant Property to show the gallery owner. This person attempted to consign the Defendant Property to the gallery. The gallery owner advised that without paperwork evincing ownership and provenance, or a certificate from the Chagall Committee attesting to the painting's authenticity, the gallery would not agree to display the Defendant Property for sale. Given that the Defendant Property was stolen, this person did not have the required proof.

22. The gallery owner recognized the Defendant Property as the same painting brought to him by an unidentified male in 1989. The unidentified male was seeking to consign the Defendant Property to the gallery. The gallery owner told the unidentified male that proof of ownership was required, which the unidentified male did not have. As a result, the gallery declined to display the Defendant Property at the request of the unidentified male.

IV. Most Recent Attempted Sales of the Defendant Property

23. For a number of years, Person 2 stored the Defendant Property in the attic of his Maryland home in a wooden box of his own design and construction.

24. In January 2017, the gallery owner was approached by Person 2 who was attempting to consign the Defendant Property to the Washington, D.C. gallery. Person 2 did not have proof of ownership. The gallery owner refused to accept the Defendant Property for consignment. On this occasion, the gallery owner suggested to Person 2 that he reach out to law enforcement concerning the Defendant Property.

25. Person 2 subsequently contacted the FBI. On January 20, 2017, the FBI took possession of the Defendant Property from Person 2.

26. The FBI has contacted the estate of Ernest and Rose Heller. An attorney for the estate confirmed the Defendant Property was the same painting stolen from the home of the Hellers in 1988.

27. The attorney for the Heller estate has stated that it is the rightful owner of the painting. Upon return of the Defendant Property to the Heller estate, and in consultation with the Insurance Company, the Heller estate intends to auction the Defendant Property, repay the Insurance Company for their disbursement, pay any related legal expenses, and donate the remainder of the funds to the residuary beneficiaries identified in the Hellers' will: the McDowell Colony (80%), Columbia University (10%), and NYU Medical Center (10%), all 501(c)(3) tax-exempt nonprofit corporations.

FIRST CLAIM FOR RELIEF

(18 U.S.C. § 981(A)(1)(C))

(Proceeds of the Interstate Transportation of Stolen Property, 18 U.S.C. § 2314)

28. The United States incorporates by reference the allegations set forth in Paragraphs 1 to 27 above as if fully set forth herein.

29. Person 2 transported the Defendant Property, which was valued at more than \$5,000, in interstate commerce after it had been stolen, knowing it had been stolen, in violation of 18 U.S.C. § 2314.

30. As such, the Defendant Property is subject to forfeiture, pursuant to 18 U.S.C. § 981(a)(1)(C), as property constituting or derived from proceeds of the interstate transportation of stolen property.

SECOND CLAIM FOR RELIEF

(18 U.S.C. § 981(A)(1)(C))

(Proceeds of Possession of Stolen Goods, 18 U.S.C. § 2315)

31. The United States incorporates by reference the allegations set forth in Paragraphs 1 to 27 above as if fully set forth herein.

32. Person 2 possessed the Defendant Property, which was valued at more than \$5,000, after it had been stolen and after it had been moved across state boundaries, knowing it had been stolen, in violation of 18 U.S.C. § 2315.

33. As such, the Defendant Property is subject to forfeiture, pursuant to 18 U.S.C. § 981(a)(1)(C), as property constituting or derived from proceeds of the possession of stolen goods.

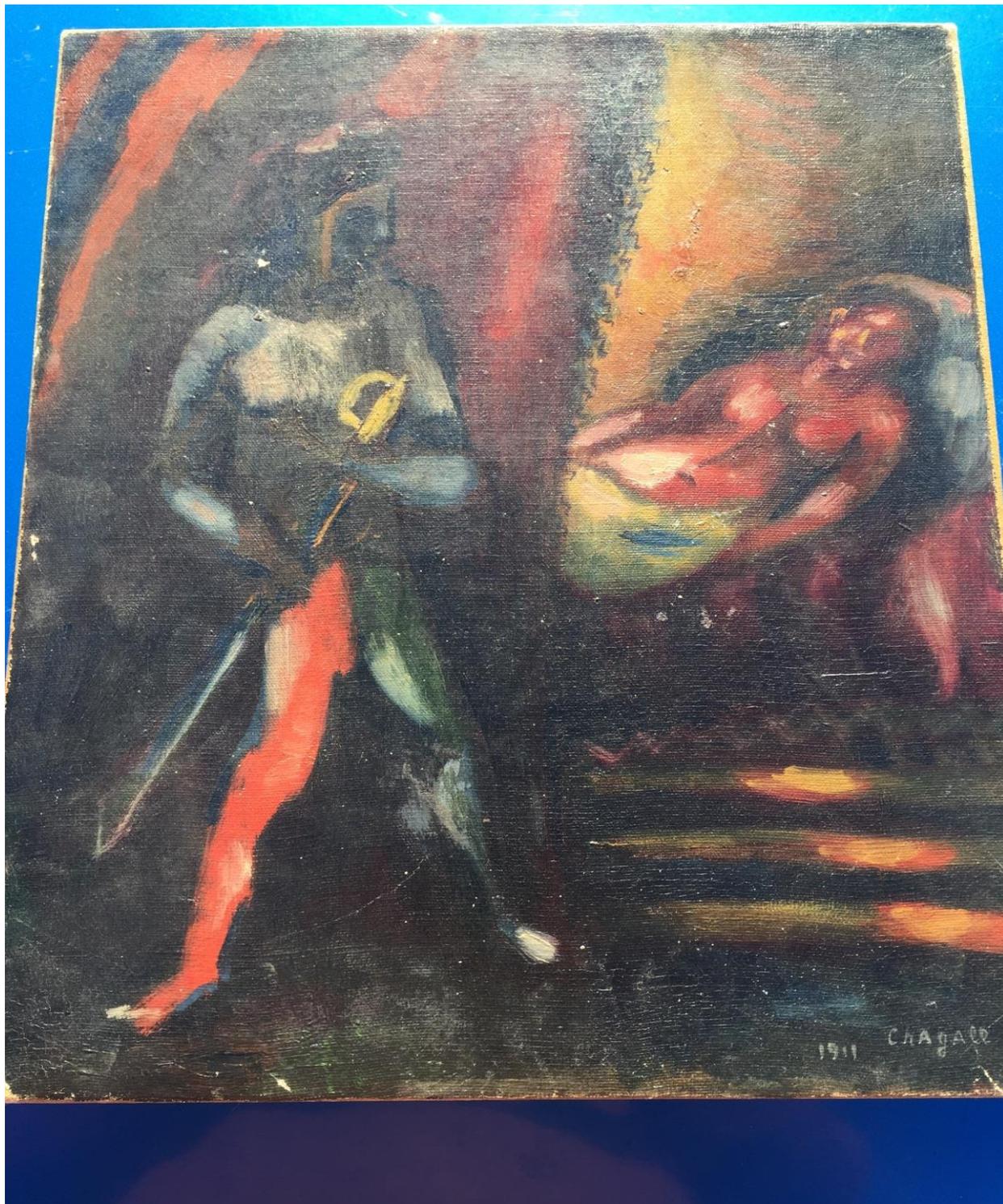
VERIFICATION

I, Marc Hess, a Special Agent with the Federal Bureau of Investigation, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing Verified Complaint for Forfeiture *In Rem* is based upon reports and information known to me and/or furnished to me by other law enforcement representatives and that everything represented herein is true and correct.

Executed on this 12th day of April, 2018.

_____/s/_____
Marc Hess
Special Agent
Federal Bureau of Investigation

Attachment A



Attachment B

