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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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: UNITED STATES OF AMERICA :
: :
: -v.- :
: :
: ONE TYRANNOSAURUS BATAAR SKULL, :
a/k/a ITEM 032507.314 IN THE I.M. CHAIT : VERIFIED COMPLAINT
GALLERY MARCH 25, 2007 NATURAL :
HISTORY AUCTION, : 15 Civ.
: :
: Defendant-in-rem. :
: :
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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* ("Bataar") skull, a/k/a Item 032507.314 in the I.M. Chait Gallery's March 25, 2007 auction (the "Defendant Property").

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 the Department of Homeland Security, Homeland Security Investigations (“HSI”).

II. PROBABLE CAUSE FOR FORFEITURE

5. The Gobi Desert, namely the Nemegt Basin within the Gobi Desert, which is located in Mongolia, is a fertile fossil field of dinosaur relics.

6. There are three major geological formations in the area of the Nemegt Basin, i.e. the Nemegt Formation, the Barun Goyot Formation and the Djadochta Formation. All three formations contain different fossils from different geological time periods.

7. All fossilized dinosaur bones found with the Nemegt Formation have a distinctive color to them as a result of the soil composition of Nemegt Formation.

A. The Bataar

8. The Bataar, a native of Mongolia, is a dinosaur from the late Cretaceous period, which ended approximately 65 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.

9. Bataar fossils have only been recovered from the Nemegt Basin.

i. The Chait Gallery Bataar

10. On or about March 25, 2007, California based auction house I. M. Chait Gallery/Auctioneers (the “Chait Gallery”) offered the Defendant Property for sale as auction number A70325N, lot number 314 in the Chait Gallery March 25, 2007 Natural History Auction on the Chait Gallery auction website, www.chait.com.

11. The Defendant Property was described on www.chait.com, as:

AN EXTREMELY RARE TYRANNOSAURID SKULL

Tyrannosaurus Bataar

Late Cretaceous (67 million years)

Nemegt Formation, Central Asia

Tyrannosaurus bataar is the closest dinosaur relative to the North American King of Dinosaurs, Tyrannosaurus rex – though it thrived on the Eurasian Continent approximately 2 million years earlier. Many similarities exist between the two Tyrannosaurus’ species though Tyrannosaurus bataar was slightly smaller with shorter arms and a few minor differences in the skull. The present specimen is quite large for the species measuring 32 inches in length and has been professionally prepared in three-dimension with all of its natural matrix removed. It is approximately 65% complete with most of the restoration being on the back of the skull and the right mandible (lower jaw). The battery of huge, knife-like, serrated teeth are quite impressive and are in excellent condition, though some on the lower right jaw have been replaced. Overall, this remarkable specimen is scientifically accurate and important to our understanding of how tyrannosaurids lived.

12. The Defendant Property had been shipped into the United States from Chichibu City, Saitama Prefecture, Japan to Gainesville, Florida in or around June 2006. United States Customs documents filed in connection with the Defendant Property’s transport into the country listed the cargo simply as “fossil stone pieces,” with no mention of dinosaur fossils.

13. On or about March 25, 2007, the Defendant Property was sold through Chait Auctions in New York, New York. The auction took place at 267 Fifth Avenue, New York,

New York. The Defendant Property was physically located in New York, New York at the time of the auction.

14. The Defendant Property was sold for \$230,000, plus a buyer's premium that brought the total cost to \$276,000, to an anonymous California-based buyer (the "Buyer") who attended the auction by telephone.

B. Mongolian Law

15. Since as early as 1924, when Mongolia became an independent nation, the Government of Mongolia has prohibited the personal or non-state ownership of items of cultural significance, including dinosaur remains, such as the Defendant Property.

16. Mongolia became a signatory to the United Nations Educational, Scientific and Cultural Organization ("UNESCO") Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property on May 23, 1991.

i. Mongolian Constitution

17. Article Three, Section One of the People's Republic of Mongolia Constitution of 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.

18. In 1940, the Mongolia government enacted the 1940 People's Republic of Mongolia Constitution. Article 5 of the 1940 People's Republic of Mongolia Constitution restated the same principle contained within Article 3, Section 1 of the 1924 People's Republic of

Mongolia Constitution, that being “all lands and resources within them and their subsoil . . . and the resources within them . . . are the property of the state, in other words, the asset of the people.”

19. Article 10 of the 1960 People’s Republic of Mongolia Constitution reaffirmed the same principles contained within Article 3, Section 1 of the 1924 Constitution and Article 5 of the 1940 Constitution, that “all lands and resources within [the lands] and their subsoil . . . and the resources within them . . . are the property of the state, in other words, the asset of the people.”

20. More recently, in 1992, the Mongolian Government enacted the current Constitution of Mongolia which again provides that dinosaur fossils are property of the Government of Mongolia. Specifically, Article 7 of the current Constitution of Mongolia provides: “Historical, cultural, scientific and intellectual heritages of the Mongolian People shall be under State protection.”

ii. Mongolian Rules to Protect the Antiquities

21. Since at least 1924, Mongolian Law has characterized dinosaur fossils as property of the Government of Mongolia.

22. 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.”

23. Article 9 of the 1924 Mongolian Rules to Protect the Antiquities further provides “one-of-the-kind rare items are prohibited to be transported abroad.” A violation of Article 9 is punishable by a criminal penalty pursuant to Article 11 of 1924 Mongolian Rules to Protect the Antiquities.

iii. Mongolian Law on Cultural Heritage

24. Pursuant to Article 3.1.8 of the Mongolian Law on Cultural Heritage fossils and animal imprints are defined as “historical and cultural valuable objects.”

25. Article 13.1 of the 2001 Mongolian Law on Cultural Heritage specifically 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.”

26. Furthermore, Article 13.2 of the Law on Cultural Heritage provides that any discoveries of culturally and scientifically significant objects must be registered with the local and national governments of Mongolia within one year of their discovery.

27. In addition, Article 16.3 of the Law on Cultural Heritage provides that “[i]t is prohibited to transfer the ownership rights of the exclusively valuable historical and cultural valuable object to foreign citizen or stateless person through selling, presenting and inheriting.”

28. Lastly, Article 20.4 of the Law on Cultural Heritage mandates that in situations where “historical and cultural[ly] valuable objects are illegally sent abroad [outside of Mongolia] or the object allowed to . . . cross[] the national [Mongolian] border” the Government of Mongolia must take all steps necessary to ensure the return of the object to Mongolia.

iv. Criminal Law of Mongolia

29. 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.

30. In 1926, Chapter 15, Article 114 of the Criminal Law of the People's Republic of Mongolia was enacted. That Article provides that "[v]iolators of rules to guard and protect antiquities and relics preserved since ancient times and/or representing them, shall be sentenced up to one year in jail."

31. Furthermore, in 1929, the Mongolian Government enacted two laws which provided specific penalties for violations of restrictions on state owned property. More specifically, Chapter 2, Article 63 of the Criminal Law of the People's Republic of Mongolia provides "[t]hieving, embezzling, and misappropriating in any other forms of state and public property shall be sentenced up to seven years in prison." Additionally, Chapter 14, Article 118 of the Criminal Law of the People's Republic of Mongolia provides that "[v]iolators of rules to guard and protect antiquities preserved since ancient times . . . shall be sentenced to pay up to 600 tugrugs." Tugrugs are the official currency of Mongolia.

32. In 1986, the Government of Mongolia again enacted criminal laws that established penalties for the illegal export of dinosaur fossils. Specifically, Article 172.2 of the Criminal Code of Mongolia provided that "illegal transportation of . . . rare ancient animals, plants, valuable items of the museum, historically and archeologically significant items, through the Mongolian border shall be penalized by confiscation of the items, and imprisonment of up to five years in prison or be fined the amount between 100,000 tugrugs and 500,000 tugrugs."

33. Recently, in 2008, the Mongolia Government amended Article 175 of the Criminal Code of Mongolia to read that

illegal transportation through the state border restricted goods, rare animals, . . . minerals and natural elements shall be punishable by either confiscation of property or a fine equal to 51 to 150 times the amount of minimum salary or 251 to 500 hours of forced labor or incarceration for a term of 3 to 6 months.

34. 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, 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.

v. Mongolian Court Decision

35. The Mongolian Supreme Court issued an interpretation decree, number 24, 2003, stating that the smuggling of any properties listed in the Law on Cultural Heritage shall be a crime regardless of the number, size and monetary value of the item.

C. Inspection and Transfer of Defendant Property

37. On or around September 21, 2015, HSI conducted a physical examination of the skull and confirmed it rightfully belongs to the Government of Mongolia and had been illegally imported into the United States. Upon being informed of the origins and circumstances regarding the Defendant Property, the Buyer agreed to turn over the Defendant Property to HSI and consented to the forfeiture of the defendant property.

III. CLAIMS FOR FORFEITURE

37. Incorporated herein are the allegations contained in paragraphs one through sixty of this Complaint.

38. 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 .

...

39. 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

40. 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.”

41. 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)).”

42. 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.”

43. 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.

44. 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

45. 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

46. 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.”

47. 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 they were stolen or converted.

48. 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 (2) imported into the United States knowing it was stolen or converted.

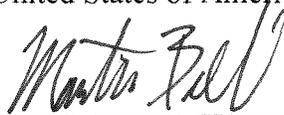
49. The Defendant Property is subject to forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(C) because there is probable cause to believe that the Defendant Property is property, real or personal, which constitutes or are derived from a violation of Title 18, United States Code Section 2314 and 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 Properties 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
~~November 11, 2015~~
December 16, 2015

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