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Case Cuneiform Tablets and Ancient Clay Bullae – United States v. Hobby Lobby

United States – Hobby Lobby – Steve Green – Antiquity/antiquités – Post 1970 restitution claims/demandes de restitution post 1970 – Settlement agreement/accord transactionnel – Illicit exportation/exportation illicite – Illicit importation/importation illicite – Unconditional restitution/restitution sans condition

Approximately 4,000 ancient Iraq artifacts were bought by Hobby Lobby's president and smuggled into the United States, in violation of federal law. In the settlement, Hobby Lobby agreed to pay \$3 million in fines and surrender the artifacts, which have now been returned to Iraq and will most likely be displayed in Iraq's National Museum.

I. Chronology; II. Dispute Resolution Process; III. Legal Issues; IV. Adopted Solution; V. Comment; VI. Sources.

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I. Chronology

Post 1970 Restitution Claims

- **Between 2009 and 2010:** Steve Green, president of Hobby Lobby, visited the United Arab Emirates (hereafter “UAE”) and began inspecting ancient artifacts in order to add to his collection. During the inspection, the artifacts were displayed informally, loosely, with little to no protective material. Following this inspection, several Israeli dealers proposed a bundle sale of 5,548 pieces of artifacts, including cuneiform tablets, clay bullae, and cylinder seals (hereafter the “Artifacts”).¹
- **23 November 2010:** The first package containing some of the Artifacts was shipped to Hobby Lobby. The label on the package stated that it contained “ceramic tiles”. No formal entry was made for the shipment, despite the package contents exceeding \$2,000.²
- **8 December 2010:** Green and one of the original Israeli dealers signed a purchase agreement for the sale of the Artifacts Hobby Lobby for \$1.6 million. While the purchase was for Green’s personal collection, his company was listed as the buyer. The contract also falsely stated that the Artifacts originated in Israel. Green authorized a payment of \$1.6 million to be wired to seven personalized bank accounts which were associated with five different individuals. Six packages were sent to Green, were falsely labeled as “times (sample)”, and used multiple Hobby Lobby addresses, an action which was approved by Green. No formal entries for the packages were made, despite the contents exceeding \$2,000.³
- **Between 4 January and 19 January 2011:** Customs and Border Patrol (hereafter “CBP”) detained five packages addressed to Hobby Lobby.
- **17 March 2011:** CBP sent notice of the seized packages to Green. In response, Hobby Lobby filed for an administrative return of the packages, and attached a provenance statement from the Israeli dealers and a provenance statement from the UAE dealer for the Artifacts, but no explanation for why there were two provenance statements for the same items.⁴
- **8 July 2015:** CBP sent amended notices of the seized Artifacts, providing additional legal authority to support the seizure.
- **3 September 2015:** Hobby Lobby responded to the notices of seizure by requesting a referral to the U.S. Attorney’s Office.⁵
- **5 July 2017:** The United States filed civil action to forfeit the Artifacts imported by Hobby Lobby. The United States also filed a stipulation of settlement with Hobby Lobby, in which Hobby Lobby agreed to the forfeiture of the Artifacts and payment of an additional sum of \$3 million in fines, which resolved the civil action.⁶

¹ Felch, Jason. “Hobby Lobby’s Legal Expert Speaks: ‘I Can’t Rule Out...they Used My Advice to Evade the Law’”. Chasing Aphrodite. July 10, 2017.

² *In rem* Complaint: Approximately Four Hundred and Fifty (450) Ancient Cuneiform Tablets; and Approximately Three Thousand (3,000) Ancient Clay Bullae (United States District Court, Eastern District of New York, July 5, 2017) at 11.

³ *Ibid.* at 12.

⁴ *Ibid.* at 15.

⁵ *Ibid.* at 19.

⁶ *Ibid.* at 20.

- **23 June 2018:** The Artifacts were returned to the Iraqi government, to be displayed at the Iraq National Museum.⁷

II. Dispute Resolution Process

Judicial Claim

- The United States government filed a civil action against Hobby Lobby to forfeit the imported Artifacts, alleging illicit importation and false statements on entry forms.⁸
- The same day, Hobby Lobby issued a statement agreeing to forfeit the Artifacts and comply with settlement stipulations. In the statement, Green stated that Hobby Lobby “should have exercised more oversight and carefully questioned how the acquisitions were handled”.⁹

III. Legal Issues

Illicit exportation - Illicit importation

- Hobby Lobby was accused of violating 18 U.S.C. § 542: Entry of Goods by means of false statements, due to evidence of fraudulent invoices.¹⁰ While Hobby Lobby argued that it was a mistake on the exporters’ part, there was overwhelming evidence that Hobby Lobby knew that it was fraudulently importing artifacts, and chose to ignore the illegal activity.¹¹ Evidence included shipments to multiple shipping addresses while addressed to the same recipient, which is common in cultural property smugglings.¹² In U.S. law, “willful ignorance” is not a defense.¹³
- While not addressed in the seizure and settlement, this case also deals with the issues of illicit exportation. The situation entreats the questions of how the Artifacts were originally acquired by the UAE dealers and how they were documented. Evidence of illicit exportation included multiple dealers, and multiple statements of provenance.¹⁴ U.S. has had a strict policy against importation of Iraqi cultural property since 1990.¹⁵ At the time of the court decision was an additional¹⁶ international pressure to uphold policies against the illicit importation of artifacts

⁷ Ingber, Sasha. “Hobby Lobby’s Smuggled Artifacts Will Be Returned To Iraq”. NPR. May 01, 2018.

⁸ Ibid.

⁹ Hobby Lobby Newsroom, “Artifact Import Settlement”, News release, July 5, 2017.

¹⁰ 18 U.S.C., § 27-542.

¹¹ *In rem* Complaint (cit. supra n. 2), at 2.

¹² Ibid. at 13.

¹³ Amineddoleh, Leila. “The Feds Were Smart Not to Throw the Book at Hobby Lobby for Buying Iraqi Loot.” Artnet News. July 12, 2017.

¹⁴ *In rem* Complaint (cit. supra n. 2), at 13.

¹⁵ 18 U.S.C., § 27-542.

¹⁶ Gerstenblith, Patty. “Introductory Note to the United Nations Security Council Resolution 2347.” *The American Society of International Law*, 57, 1, (March 2017): 155-156.

from Iraq in light of UN Security Council Resolutions 1483 and 2199. According to US domestic law, the trade of objects that are reasonably suspicious of being stolen goods is prohibited.¹⁷

IV. Adopted Solution

Settlement Agreement

- On 5 July, 2017, the United States filed a stipulation of settlement with Hobby Lobby, in which Hobby Lobby agreed to the forfeiture of the artifacts, payment of an additional sum of \$3 million, adoption of internal policies and procedures governing the importation and purchase of cultural property, updated training to personnel regarding these issues, hiring qualified outside customs counsel and customs brokers, and submitting quarterly reports to the government on any cultural property acquisitions in the next 18 months.¹⁸
- Hobby Lobby consented to the stipulation of settlement, effective immediately.

V. Comment

- The U.S. government brought a civil suit, but not a criminal charge, despite there being convincing evidence of criminal activity. In order for a criminal charge to be brought, the U.S. would have had to prove that Hobby Lobby had criminal knowledge beyond a reasonable doubt, and the finder of fact would have had to find that Hobby Lobby knew what the law was and were also liable under 18 U.S.C. 542 and 545.¹⁹
- In the long term, the lack of criminal charges brought against a high-profile importer like Green reflects poorly on the ultimate goal of decreasing smuggling cultural property. This is reflected in both the settlement, as well as Hobby Lobby's own press statement. Though they have agreed to implement acquisition policies and procedures established by the Association of Art Museum Directors, it begs the question of why these procedures weren't implemented during the counsel of a cultural property expert hired to present and inform Green of any potential acquisition issues.
- The stipulations of settlement agreed upon also seem insufficient to truly prevent further recurrences. The stipulations require Hobby Lobby to disclose any and all quarterly statements in regard to any cultural property purchases for only 18 months, starting on the date the complaint is filed, 5 July 2017.²⁰ Considering Green had been planning the acquisition

¹⁷ 18 U.S.C., § 27-545.

¹⁸ Stipulation of Settlement: Approximately Four Hundred and Fifty (450) Ancient Cuneiform Tablets; and Approximately Three Thousand (3,000) Ancient Clay Bullae (United States District Court, Eastern District of New York, July 5, 2017).

¹⁹ Amineddoleh (cit. supra n. 13).

²⁰ Stipulation of Settlement (cit. supra n. 18).

of artifacts since 2009, this seems like an easy way for Hobby Lobby to potentially delay further smuggling.

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c. Legislation

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- 18 U.S.C., § 27-545: Smuggling Goods into the United States

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