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Case Aidonia Treasure – Greece and Ward Gallery

Greece/Grèce – Ward Gallery – Archaeological object/objet archéologique – Post 1970 restitution claims/demandes de restitution post 1970 – Judicial claim/action en justice – Negotiation/négociation – Settlement agreement/accord transactionnel – Illicit excavation/fouille illicite – Illicit exportation/exportation illicite – Ownership/propriété – Due diligence – Donation – Unconditional restitution/Restitution sans condition

A collection of golden Mycenaean jewellery (the Aidonia Treasure) was acquired by the Ward Gallery of New York in early 1993. Before proceeding with the purchase the Gallery made enquiries in various Mediterranean States, including Greece, to find out whether the treasure was stolen. Greece responded in the negative, but it later sued the Gallery seeking restitution. Although in good faith, the Ward Gallery struck a deal with Greece and subsequently relinquished the collection.

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

- **1978:** The Greek Archaeological Service was informed that **looting** was occurring at the Mycenaean cemetery at **Aidonia**, near Nemea, in southern Greece. Greek archaeologists secured the site and discovered that more than ten of the eighteen uncovered tombs had been looted. They recovered the artefacts left behind by the looters and rescued pots, figurines and a collection of jewellery from the unlooted tombs. These were transferred to the Museum of Nemea.¹
- **1992:** The **Ward Gallery** in New York acquired a collection of Mycenaean jewellery (the Aidonia Treasure). Before the purchase, the Gallery made **enquiries** in various Mediterranean States, including Greece, to find out whether the treasure was stolen.
- **April 1993:** The **Ward Gallery** offered the Aidonia Treasure for \$1.5 million at auction. **Ricardo J. Elia**, a professor of archaeology at Boston University, visited the pre-auction exhibition and wrote to the Greek Consul General in New York, stating his belief that the objects offered for sale had been illegally exported from Greece. The Ambassador from the Greek Consul General in New York visited the Ward Gallery, bought several catalogues and sent them to Athens to the Ministry of Culture for study.²
- **14 May 1993:** The **Republic of Greece** notified Mr. Michael Ward, the Gallery's director, that the Mycenaean collection offered for sale was the property of Greece and demanded its **return**. Michael Ward **rebuffed** the request.
- **25 May 1993:** Greece **brought an action** in the Federal District Court of New York against the Gallery **to recover the Aidonia Treasure**. Following Greece's request, the Court issued a temporary restraining order enjoining the defendant from transferring ownership or moving the collection pending the action.³
- **December 1993:** The parties **settled out-of-court**: Greece dropped the lawsuit, while the Ward Gallery **donated** the Aidonia Treasure to the Society for the Preservation of Greek Heritage in Washington, D.C., a non-profit organization.⁴
- **1996:** The Society for the Preservation of Greek Heritage **returned the Aidonia Treasure** to Greece, where it was placed on display in the National Archaeological Museum in Athens. The collection was then transferred to the Museum of Nemea.⁵

¹ Elia J. Ricardo, "Greece v. Ward: The Return of Mycenaean Artifacts," *International Journal of Cultural Property* (1995): 121.

² William H. Honan, "Greece Sues Gallery for Return of Mycenaean Jewelry," *The New York Times*, May 26, 1993, accessed December 6, 2011, <http://www.nytimes.com/1993/05/26/arts/greece-sues-gallery-for-return-of-mycenaean-jewelry.html>.

³ Elia J. Ricardo, "Greece v. Ward," 120-122.

⁴ Rita Reif, "Greece and Gallery Settle," *The New York Times*, December 31, 1993, accessed December 6, 2011, <http://www.nytimes.com/1993/12/31/arts/greece-and-gallery-settle.html>.

⁵ Shareen Brysac, "Mycenaean Jewelry Goes Home," *Archaeology*, May/June 1996, accessed December 6, 2011, <http://www.archaeology.org/9605/newsbriefs/aidonia.html>.

II. Dispute Resolution Process

Judicial claim – Negotiation – Settlement agreement

- As Mr. Michael Ward refused to return the Aidonia treasure, Greece had no other alternative than to file a lawsuit before a court in New York. In its motion, Greece requested a temporary restraining order blocking the sale and the transfer of the collection. Furthermore, Greece sought a judgment declaring that it was the lawful owner of the treasure and directing the Gallery to return it. The Court issued a temporary restraining order enjoining the defendant from transferring ownership or moving the collection pending the action.⁶
- The main reason why Mr. Ward refused to negotiate an unconditional restitution was that he had exercised the required due diligence when acquiring the object. In 1992, he made several enquiries before the acquisition of the collection to find out whether the treasure was stolen. He wrote to various Mediterranean States, including Greece, asking if they had a claim on Mycenaean gold jewellery that he had seen at a Swiss art dealer. No State responded in the positive, including Greece.⁷ Mr. Ward said the ministry had responded that “it had no evidence of the origin of the objects and giving no indication that it had any claim on them”.⁸
- The legal action was grounded on the evidence proving that the artefacts had been excavated at Aidonia. An expert committee appointed by the Greek Ministry of Culture studied the catalogue concerning the Ward’s exhibit and the Mycenaean objects that had been rescued by Greek archaeologists following the discovery of the site in 1978. The committee found that the similarities in materials, workmanship, motifs and forms between the objects on sale at the Gallery and the objects found by Greek archaeologists at the tombs mark them as coming from the same site. It thus concluded that the collection on sale at the Ward Gallery was the product of looting from the tombs of Aidonia.⁹
- Although at the beginning he showed no willingness to compromise with the requesting State, Mr. Ward reached a settlement with Greece before the case reached trial. Arguably, this move was due to the overwhelming evidence demonstrating that the treasure had been removed from Aidonia. In addition, it can be submitted that Mr. Ward wanted to avoid a lengthy and costly dispute. Furthermore, it may be argued that Mr. Ward decided to compromise in order to avoid the reputational harm that could have derived from a court case. Not only was Mr. Ward one of the most prominent dealers in antiquities, but he was also a member of the United States Cultural Property Advisory Committee, the statutory body who is responsible for the domestic implementation of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970.¹⁰

⁶ Elia J. Ricardo, “Greece v. Ward,” 122.

⁷ John H. Merryman, Albert E. Elsen and Stephen K. Urice, *Law, Ethics and the Visual Arts* (Alphen aan den Rijn: Kluwer Law International, 2007), 225.

⁸ Rita Reif, “Greece and Gallery Settle.”

⁹ Elia J. Ricardo, “Greece v. Ward,” 121-122.

¹⁰ William H. Honan, “Greece Sues Gallery for Return of Mycenaean Jewelry.”

III. Legal Issues

Illicit excavation – Illicit exportation – Ownership – Due diligence

- The instant case involved legal questions which typically arise in disputes about objects excavated and exported in contravention of the laws of the country of origin: whether the material has been removed from the country of origin after the relevant protecting legislation was in effect; whether the possessor has acquired the objects in good faith; and whether the courts of the State where the objects have been transferred to are under an obligation to recognize or enforce the laws of the country of origin. However, as the case was not adjudicated, it suffices to consider the following issues: the evidentiary burden and the requirement of due diligence.
- The State that seeks the recovery of antiquities excavated clandestinely from unknown archaeological sites bear the burden of proving that, at the time the objects were discovered and removed from its territory, a national law was in place vesting ownership of such property in the State. The onus of proving title, however, may deter claimants from initiating a court case.
- In the case at hand, Greece claimed that it made it illegal to export antiquities as early as 1832 and that the laws against looting have been tightened ever since. In particular, it asserted that Law No. 5351 of 1932: (i) vested ownership of all antiquities in the State; (ii) prohibited unauthorized excavations; and (iii) regulated the exportation of antiquities. This is why Neal Johnston, a lawyer for the Greek Government, said that “[t]here is no Mycenaean art legitimately in private hands”.¹¹ Furthermore, Greece gathered substantial evidence proving that the Mycenaean collection acquired by Ward had been looted in Aidonia. James Wright, a professor of archaeology at Bryn Mawr College and an expert in Mycenaean archaeology, stated that the objects at the Ward Gallery could not have been discovered outside of mainland Greece.¹²
- Mr. Ward claimed that the Greek Government “had concocted a provenance for the pieces so they could be claimed as cultural patrimony”. According to him, “the fanatical political agenda was more important than the truth”.¹³ In effect, ten years after the settlement, a Greek ministry official admitted that the “whole thing” was “a mistake and should never have happened”.¹⁴
- The issue of due diligence is relevant in this case as in any other case where ownership title to stolen or smuggled art is lost as a result of good faith acquisition. As said, Mr. Ward claimed to have exercised the required due diligence when acquiring the object. The rules on good faith vary between national legal systems. In civil law jurisdictions, which favour the security of commercial transaction, the domestic rules on the protection of *bona fide* purchasers

¹¹ Ibid.

¹² Ibid.

¹³ Peter Marks, “Dealers Speak,” in *Who Owns the Past?*, ed. Kate Fitz Gibbon (New Brunswick: Rutgers University Press, 2005), 194-195.

¹⁴ John H. Merryman, Albert E. Elsen and Stephen K. Urice, *Law, Ethics and the Visual Arts*, 225.

establish that once the possessor has satisfied the good faith requirement (which is presumed – it is for the claimant to prove the bad faith of the possessor) and the statutory time-period has expired, he acquires good title – even from a thief – while the original owner loses the right to recover. Conversely, common law jurisdictions follow the *nemo dat quod non habet* principle (no one can transfer title on stolen property), according to which the mere fact that a person acquires a stolen object in good faith does not extinguish the title of the true owner, and gives the purchaser neither a valid title, nor the right to receive compensation. Thus, common law jurisdictions maintain the title of stolen property in the original owner, whether a third party has purchased it in good or bad faith.

- Despite these differences, it is possible to identify a tendency towards the tightening of the obligation to enquire and research on the part of purchasers. The Convention on Stolen or Illegally Exported of Cultural Objects¹⁵ of the International Institute for the Unification of Private Law (UNIDROIT) limits the rights of good faith buyers of stolen art and codifies an international standard of diligence for a flexible assessment of the circumstances of the acquisition: “In determining whether the possessor exercised due diligence, regard shall be had to all the circumstances of the acquisition, including the character of the parties, the price paid, whether the possessor consulted any reasonably accessible register of stolen cultural objects, and any other relevant information and documentation which it could reasonably have obtained, and whether the possessor consulted accessible agencies or took any other step that a reasonable person would have taken in the circumstances” (Article 4(4)).
- The above discussion emphasises that the issues of evidence and due diligence may clash in the case of claims concerning objects excavated illegally from unknown archaeological sites. Available practice demonstrates that no government can police every archaeological site in its territory in an attempt to keep looters away or monitor every border crossing to enforce export controls. Also, it is a fact that smugglers profit from their wrongdoing by hiding looted objects and selling them in the countries where the tainted title can be laundered through the norms protecting *bona fide* purchasers. This means that the evidence of the illicit provenance of cultural material may emerge many years after the looting, that is, when works of art resurface in the art market.

IV. Adopted Solution

Settlement agreement – Donation – Unconditional restitution

- Pursuant to the settlement achieved by the parties, Greece dropped the lawsuit, while the Ward Gallery donated the Aidonia Treasure to the Society for the Preservation of Greek Heritage in Washington, D.C., a charitable foundation. The Society turned it over to Greece in 1996. In return for the donation, Mr. Ward obtained a substantial tax deduction from the Government of the United States.¹⁶

¹⁵ 24 June 1995, (1995) 34 ILM 1322.

¹⁶ Elia J. Ricardo, “Greece v. Ward,” 128.

- Hence, both parties profited from the agreement: the Gallery obtained a tax deduction and avoided a costly trial and reputational harm; Greece had the collection returned and avoided litigation, which could have demonstrated its lack of effort to locate and retrieve the pieces. Furthermore, the agreement helped to enrich American cultural life as the treasure was exhibited in the United States at the Society for the Preservation of Greek Heritage.

V. Comment

- The friendly settlement of the dispute between Greece and the Ward Gallery was welcome because it led to the repatriation of the Aidonia Treasure. It is also noteworthy that the restitution was possible thanks to professional vigilance and cooperation, as many specialists warned the Greek Ministry about the alleged illicit provenance of the collection after the opening of the Ward Gallery's exhibit. However, the fact that the case was not adjudicated left some questions unanswered.
- On the one hand, it remained unclear how Mr. Ward acquired the treasure. True, it was demonstrated that before proceeding with the purchase he made several enquiries in various States, including Greece, to find out whether it was stolen. However, objects looted from unofficial archaeological sites are unlikely to be registered. Therefore, the fact that Mr. Ward had exercised due diligence at the moment of the acquisition does not mean that it could have been sufficient to avoid an adverse ruling. For instance, a judge could have accepted the Greece arguments that, as an expert dealer, Mr. Ward should have realized that the treasure was stolen because of its unique character and peculiar features or because of the circumstances, or that he should have further verified the vendor's title.
- Moreover, had the case gone to trial, it would have been possible to identify the dealer from which Mr. Ward purchased the treasure, the middlemen that exported the collection from Greece and the tomb riders responsible for the plundering. In addition, it would have permitted to investigate into the fate of the other objects unearthed in the cemetery at Aidonia.
- On the other hand, litigation would have shed light on the actual origin of the objects at stake. True, the expert testimony that the artefacts came from the looted tombs at Aidonia would have been of critical importance. However, some experts pointed out that stylistic similarity does not necessarily permit to establish the provenance of archaeological relics.¹⁷

¹⁷ Ibid.

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