IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Safani Gallery, Inc.,

Plaintiff,

v. Civil Action No. 19-10507

The Italian Republic,

Defendant.

COMPLAINT

INTRODUCTION

This is an action seeking redress for the unlawful taking and continuing appropriation by the Defendant, The Italian Republic, a/k/a Repubblica Italiana, (hereinafter "Italy"), of a valuable artifact, referred to herein as the "Head of Alexander," which the Plaintiff, Safani Gallery, Inc. (hereinafter "Safani") lawfully acquired as a bona fide good faith purchaser for value and lawfully owns.

In this action, Safani seeks:

(1) a declaratory judgment declaring that Safani Gallery, Inc. is the exclusive owner of the Head of Alexander and that Italy has no rights in or claims to the Head of Alexander;

(2) the immediate return of the Head of Alexander to Safani;

(3) damages for the losses incurred by Safani as a proximate result of the Defendant's wrongful conduct as described more fully herein.

JURISDICTION AND VENUE

1. This action arises under the Declaratory Judgment Act, 28 U.S.C. §§2201(a) and 2202.

2. This Court has jurisdiction under 28 U.S.C. §§1330; 1605(a)

3. This Court is an appropriate venue for this action pursuant to 28 U.S.C. §§ 1391(b) and (f)(1). The property that is the subject matter of this action is located in this judicial district and a substantial part of the events giving rise to the claims herein occurred in this judicial district.

PARTIES

4. Plaintiff, Safani Gallery, Inc. is a corporation incorporated in the State of New York, with its principal place of business within the Southern District of New York. It engages in the purchase and sale of valuable artifacts internationally. It is wholly owned by Alan Safani.

5. Defendant, Italian Republic, a/k/a/ Repubblica Italiana is a foreign state, more commonly known as Italy.

6. The acts by Italy complained of in this action were taken outside of the United States, were taken in connection with a commercial activity engaged in by

Italy, and had a direct effect in the United States.

FACTS COMMON TO ALL COUNTS

A. Safani's Acquisition of the Head of Alexander and Provenance Summary

7. On or about June 20, 2017, Safani purchased the Head of Alexander from Classical Galleries Ltd. for approximately $152,625.00 and is a bona fide good faith purchaser for value of the Head of Alexander.

8. In connection with the purchase of the Head of Alexander, Safani was given express representations and warranties of the authenticity, ownership, export licensing, and other attributes of the provenance from the Foundation that sold Safani the piece through Classical Galleries. Ltd. and Safani relied on the same. Additionally, each sale of the Head of Alexander by and through Sotheby's included similar representations and warranties and each buyer relied on them.

9. On or about August 7, 2017, Safani caused the Head of Alexander to be transported from England, where Safani viewed and purchased the piece, to New York, with all legally required import documents.

10. In an exercise of its due diligence, Safani investigated the Head of Alexander's provenance and retained an experienced researcher to assist in researching the piece's provenance.

11. Among other steps Safani took in the process of researching the provenance

of the Head of Alexander, Safani had a search of the Art Loss Registry conducted.

12. On or about June 6, 2017, the Art Loss Registry confirmed that it knew of no claims that the Head of Alexander was missing or stolen.

13. The Art Loss Registry further confirmed that the Head of Alexander had been been acquired by the world renowned and respected antiquity collector, Hagop Kevorkian, likely prior to World War II.

14. The researcher retained by Safani took all reasonable steps to ascertain the details surrounding the acquisition of the Head of Alexander by Mr. Kevorkian.

15. The Art Loss Registry also confirmed that the Kevorkian Fund offered the Head of Alexander for sale at auction through the reputable auction firm, Sotheby Parke Bernet on November 22, 1974 and advertised the piece with a picture in its catalogue.

16. The Head of Alexander was offered for sale again at auction by Sotheby's in 2011 and the auction, consistent with Sotheby's practice, was widely advertised around the world, with a picture of the piece included in its catalogue and put on display openly.

17. The Head of Alexander was purchased at the 2011 Sotheby's auction by the private collector from whom Safani purchased it. That collector held it from 2012 to 2017 when Safani purchased it. The private collector received

representations and warranties concerning the provenance of the Head of Alexander in connection with its purchase from Sotheby's.

18. Upon information and belief, at no time ever, prior to February of 2018, has any agent of Italy or any custodian of the Head of Alexander, notified any law enforcement official or made any claim in any forum in any way contending or even suggesting that the Head of Alexander ever was stolen or constituted stolen property.

19. There is no competent evidence at all that the Head of Alexander ever was stolen, nor, therefore, is there any competent evidence as to when any alleged theft of the Head of Alexander ever took place, nor is there any competent evidence as to who stole or even might have stolen the Head of Alexander.

20. The Head of Alexander never was stolen.

B. Italy's Baseless Claim in 2018 That the Head of Alexander Was Stolen

21. On or about February 19, 2018, a member of the staff of the Archaeological Site of the Roman Forum and Palantine Hill, acting as an agent of the Defendant Italian Republic, filed a claim with Italian law enforcement authorities to the effect that, after viewing an advertisement for the sale of the Head of Alexander in a catalogue Safani had prepared and publicly distributed, that the staff member "recognized" the piece as one that purportedly had been noted as missing or lost

from the Antiquarium Forensic archives approximately 58 years earlier.

22. On or about February 22, 2018, a member of the law enforcement authorities with whom such claim was made, again, acting as an agent of the Defendant Italian Republic, contacted the Manhattan District Attorney's Office, claiming that the Head of Alexander publicly advertised for sale by Safani at an upcoming art fair in Holland, purportedly was a stolen object, rightfully owned by the Defendant Italian Republic.

23. On that same date, the Manhattan District Attorney's Office obtained a warrant for the seizure of the Head of Alexander from Safani, and with the assistance of local and federal law enforcement officers, entered Safani's Gallery in Manhattan, New York, and seized the Head of Alexander.

24. The Manhattan District Attorney's Office took custody of the Head of Alexander at the request of the Defendant, Italian Republic and as its agent, and continues to maintain custody and control of the Head of Alexander within this judicial district, as an agent of the Defendant, Italian Republic, for the stated purpose of delivering the Head of Alexander to the Defendant, Italian Republic.

25. Safani is a bona fide good faith purchaser for value of the Head of Alexander and is its rightful owner to the exclusion of all others.

26. The taking of the Head of Alexander from Safani and continuing to deprive

Safani of the possession and control of the Head of Alexander is unlawful.

27. There is no competent evidence to establish a meritorious claim that the Head of Alexander ever was stolen from the Italian Republic at anytime by anyone ever or that the Italian Republic is the rightful owner of the Head of Alexander.

28. Moreover, under Italian law any charge alleging the theft of the Head of Alexander would be barred by the applicable statute of limitations.

29. Additionally, Safani's status as a bona fide good faith purchaser for value, under the circumstances present here, extinguishes and overrides any claim by the Italian Republic that it is the rightful owner of the Head of Alexander.

30. The Defendant Italian Republic bases its claim that the Head of Alexander is stolen property on two propositions:

A. Defendant claims that the Head of Alexander was stolen and that it is the rightful owner because it purportedly was excavated in Italy after 1909 and therefore under Italy's patrimony law, it was and remains exclusively the Italian Republic's property and it is "stolen" property as to any other party seeking to claim ownership.

B. Defendant claims the Head of Alexander is "stolen" property because it does not find any evidence of any export license authorizing the piece's export from Italy.

31. There is no competent evidence, let alone sufficient evidence to establish that the Head of Alexander comes within the ambit of Italy's patrimony laws.

32. By the Defendant's own admission, it is quite possible that the Head of Alexander was excavated as early as 1899. Indeed, upon information and belief, when the Defendant, through its agent, contacted the Manhattan District Attorney's office on or about February 22, 2018, the Defendant represented to the Manhattan District Attorney's office that the Head of Alexander likely was excavated sometime around 1899.

33. Moreover, at the time the Defendant enacted its patrimony laws, the Head of Alexander was not the type of artifact that fell within the ambit of the intended or stated coverage of the patrimony laws.

34. The Defendant cannot establish based on competent evidence when the Head of Alexander was exported, that at the time of such exportation the Defendant required or issued export licenses for the exportation of such pieces, or that export licenses from the time of its export were and have been maintained or that any record of any export license from the time period of its export would still exist.

35. The exportation of the Head of Alexander without an export license does not transmute the Head of Alexander into stolen property or otherwise lead to the

legal conclusion that it has the status of stolen property.

C. The Italian Republic Has No Legitimate Claim of Ownership

36. The Defendant claims that after the excavation of the Head of Alexander, likely around 1899, the Head of Alexander was placed in a museum owned and run by the Defendant and its agents; but it has no competent proof to support that claim.

37. The Defendant claims that in the course of an inventory that Defendant's agents conducted with respect to objects at that museum, it noticed that the Head of Alexander was missing from its inventory and Defendant's agents made a notation on a card as to the piece that it was lost or missing ("perdute"). There was no indication made at any time that the piece was stolen; nor is there any competent evidence that the piece ever was actually in the museum's inventory.

38. Defendant has at all times relevant to this action been aware of law enforcement agencies and other agencies in Italy, run and controlled by Defendant, and around the world to which the theft of artifacts like the Head of Alexander are to be reported if there is a belief that such a piece has been stolen.

39. On multiple occasions since 1958, the Head of Alexander has been widely and publicly offered for sale and displayed in catalogues fully accessible to Defendant, including some catalogues actually monitored and examined by

Defendant, and has been on public display at public auctions and other exhibitions; yet not once has Defendant ever claimed that the Head of Alexander was stolen or was its property until February 19, 2018.

40. At no time between 1958 and 2018, or any other time up until February 19, 2018 did Defendant or any of its agents ever make a claim, file a notice, provide any information, or otherwise in any way, shape, or form indicate to any agency or anyone else that the Head of Alexander was stolen.

41. Defendant was aware at all times relevant to this action that its law enforcement agencies, and particularly those divisions of its law enforcement agencies charged with monitoring the theft and illicit trade in artifacts and antiquities belonging to Italy around the world regularly monitor auctions held by Sotheby's and other auction firms to determine whether any stolen items belonging to Italy are being offered for sale. Indeed, Defendant's law enforcement agencies specifically examined the Sotheby's catalogue that displayed the Head of Alexander; yet Defendant took no steps ever to claim the Head of Alexander was stolen or to indicate to any monitoring or reporting agency that it ever had been stolen.

42. Any claim by Defendant to ownership of the Head of Alexander is barred by the applicable statute of limitations.

43. Any claim by Defendant to ownership of the Head of Alexander is barred by laches.

44. Any claim by Defendant to ownership of the Head of Alexander is barred by waiver.

45. Based on international conventions to which Defendant is a signatory and based on principles of customary international law any claim by Defendant for recovery of the Head of Alexander must be accompanied by just compensation to Safani as a bona fide good faith purchaser for value of the Head of Alexander.

CAUSES OF ACTION

COUNT I
(Declaratory Judgment - Declaration of Ownership)

46. Plaintiff repeats and re-alleges each of the foregoing paragraphs, incorporating them here by reference.

47. Plaintiff purchased the Head of Alexander as a bona fide good faith purchaser for value and has acted in good faith at all times.

48. Defendant has no competent evidence to support any claim that the Head of Alexander was stolen or that Italy is the rightful owner of the Head of Alexander.

49. Any claim Italy might have had that it was the rightful original owner of the Head of Alexander and maintains a right of ownership has been extinguished and

is otherwise barred by principles of law and equity.

50. There is no basis for the forfeiture or repatriation of the Head of Alexander under U.S. or international law.

51. Safani is the true and rightful owner of the Head of Alexander to the exclusion of all others and may lawfully sell or keep the Head of Alexander.

COUNT II
(Conversion)

52. Plaintiff repeats and re-alleges each of the foregoing paragraphs, incorporating them here by reference.

53. Plaintiff was a bona fide good faith purchaser for value of the Head of Alexander and is the true, lawful, and exclusive owner of the Head of Alexander.

54. Defendant has no legitimate claim to ownership of the Head of Alexander.

55. The Manhattan District Attorney's office, acting as Defendant's agent for these purposes, wrongfully took and maintains custody of the Head of Alexander, based on Defendant's claims and request for the same and has refused Plaintiff's requests for the return of the Head of Alexander.

56. As agents for the Defendant and at the Defendant's request, the Manhattan District Attorney's office seeks to permanently deprive Plaintiff of the Head of Alexander and to cause the Head of Alexander to be transferred to the direct

possession of the Defendant and ultimately to its ownership.

57. Plaintiff has a lawful possessory right and interest in the Head of Alexander.

58. Defendant, through the Manhattan District Attorney's office as its agent, has intentionally and without authority, assumed or exercised control and dominion over the Head of Alexander, personal property belonging to Safani, thereby interfering with Safani's right of possession, in derogation of Safani's rights with respect to the Head of Alexander.

Count III
(Replevin)

59. Plaintiff repeats and re-alleges each of the foregoing paragraphs, incorporating them here by reference.

60. The Head of Alexander currently is in the possession, custody, and control of the Manhattan District Attorney's office, acting as an agent for the Defendant Italy, for the purpose of permanently depriving Safani of the right to possess and own the Head of Alexander in favor of Italy.

61. Plaintiff has a possessory right to the Head of Alexander that is superior to the possessory right of the Defendant or of anyone else.

COUNT IV
(Unjust Enrichment)

62. Plaintiff repeats and re-alleges each of the foregoing paragraphs,

incorporating them here by reference.

63. By seizing the Head of Alexander, through its agent, the Manhattan District Attorney's office, Defendant has received and seeks to receive a benefit, including the expropriation of Safani's property for its own use and gain.

64. By doing so and by continuing to possess the Head of Alexander, to which it has no claim, interest, or right, Defendant has been and will continue to be unjustly enriched.

65. Defendant's actions constitute a *de facto* forfeiture without due process or just compensation in violation of international law and United States law, including principles encompassed in international conventions to which Italy is a signatory.

66. Equity, good conscience, and principles of United States and international law demand that the Defendant pay damages to the Plaintiff based on its unlawful seizing and prospective repatriation of the Head of Alexander, Safani's lawfully acquired property, and it is unjust to permit the Defendant to retain the benefit of its actions without just compensation to the Plaintiff.

67. Safani is entitled to damages representing the full fair-market value of the Head of Alexander and the value of its expenses incurred in connection with Defendant's actions as described herein, plus interest on the same.

CLAIMS FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following relief:

1. On Count I of the Complaint, a declaratory judgment consistent with the language set out in Count I, and declaring that Safani is the true, lawful, and exclusive owner of the Head of Alexander and that Defendant and its agent, the Manhattan District Attorney's office, must immediately relinquish possession of the Head of Alexander and return it to Safani, for its sale or whatever unrestricted use Safani wishes to make of the Head of Alexander.

2. On Counts II through IV of the Complaint, award Safani just, fair, and appropriate damages in an amount to be proven at trial.

3. Interest, costs, disbursements, and reasonable attorney's fees incurred in this action, including the same incurred by Defendant's actions to which this lawsuit is directed.

4. Such other and further relief as this Court deems just and equitable.

JURY DEMAND

Plaintiff hereby demands a jury trial on all claims.

Dated: November 12, 2019.

/s/ David I. Schoen
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