

Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc., 917 F.2d 278 (7th Cir. 1990)

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CASE SUMMARIES

Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc.,

917 F.2d 278 (7th Cir. 1990)

Introduction

In *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc.*, the Seventh Circuit affirmed an Indiana federal district court's holding that an art dealer was to relinquish possession of stolen cultural property to its original owners, the Greek-Orthodox church. The Autocephalous Greek-Orthodox Church of Cyprus ("Church of Cyprus"), along with the Republic of Cyprus, brought a right of replevin action against Peg Goldberg ("Goldberg") and Goldberg & Feldman Fine Arts, Inc. Plaintiff-Appellee, the Church of Cyprus, claimed the removal of the mosaics was unauthorized and that the church maintained the right to possession. Defendant-Appellant Goldberg claimed the mosaics were purchased in good faith and without any knowledge that they were stolen. The court, finding the Church of Cyprus used due diligence in trying to locate the mosaics, held that its cause of action did not accrue until the possessor of the mosaics was identified. The Court of Appeals upheld the lower court's ruling that the mosaics were to be returned to the Church of Cyprus, the rightful owner.

Facts

The four Byzantine mosaics were first discovered missing by the Church of Cyprus in November of 1979. The actual theft is presumed to have taken place between August 1974 and October 1979, following the Turkish military occupation of northern Cyprus. Upon learning of the theft, the Republic of Cyprus immediately took measures to inform concerned organizations of its significant loss of cultural property and to seek assistance in recovering the missing pieces.

While in Amsterdam on July 1, 1988, defendant Goldberg was informed of the four Christian mosaics by an Indianapolis art dealer, a Dutch art dealer, and their attorney, who informed Goldberg that such works were available for purchase. Goldberg was told that the seller of the mosaics was a Turkish antiquities dealer who "found" the mosaics in the rubble of an 'extinct' church in northern Cyprus."¹

On July 3, 1988, Goldberg negotiated an agreement with the two art dealers and their attorney to purchase the mosaics for \$1,080,000 and to split any future resale profits with the other three parties. Goldberg testified that she made several inquiries into whether the mosaics were reported stolen or missing and sought assurance that no existing treaty prevented the importation of the mosaics into the United States. On July 7, 1988, upon securing financing from an Indianapolis Bank, Goldberg purchased the mosaics in Switzerland for \$1.08 million. Within months, Goldberg began her attempts to market and sell the mosaics.

It was then, late 1988, that the Church of Cyprus discovered Goldberg had possession of the mosaics in Indiana. The Church of Cyprus requested, in writing, that Goldberg return the mosaics, which she refused to do. In March of 1989, the Church of Cyprus filed suit in the Southern District of Indiana to recover the mosaics from Goldberg.² The district court held that the cause of action was timely; it did not accrue until appellees, by using due diligence, knew or had reasonable knowledge of who possessed the mosaics. Further, the district court held that under the applicable substantive law of Indiana, the Church of Cyprus was entitled to possession of the mosaics. Defendant Goldberg appealed the decision claiming that the court below committed several reversible errors. The Seventh Circuit disagreed with Goldberg and affirmed the lower court's decision.

Legal Analysis

First, Goldberg contended that the Church of Cyprus failed to file a timely complaint because Indiana's statute of limitations for replevin actions runs for six years from the time the cause of action accrues. The Seventh Circuit gave great deference to the court below concerning the issue of when the Church of Cyprus' cause of action accrued under this Indiana statute. The court upheld the district court's application of a discovery rule which limits the accrual of a cause of action to when a plaintiff knew, or should have known through due diligence, that a cause of action existed.³ Here, the Church of Cyprus was not aware it had a cause of action against Goldberg until it learned of her identity and whereabouts in late 1988. The court found the complaint filed in March 1989 to be within the six year statute of limitations and, therefore, timely.

The district court also held, in the alternative, that the doctrine of fraudulent concealment would apply to toll the statute of limitations. Under this doctrine, the use of deceit or fraud to prevent a plaintiff from learning of a cause of action prohibits a defendant from raising the statute of limitations as a bar.⁴ Again, the plaintiff is required to have used due diligence in trying to locate its property.⁵ The Seventh Circuit did not pass on the appropriate application of fraudulent concealment, and, instead, accepted the lower court's use of the discovery rule.

Goldberg also attempted to suggest that the Church of Cyprus did not use due diligence in its efforts to locate the missing mosaics. The Court of Appeals agreed with the district court that this determination was to be made on a case-by-case basis and that great deference was to be given to the court below in its review. The court agreed with the conclusion that the Church of Cyprus was, in fact, duly diligent in its attempts to locate the stolen cultural property and the cause of action could not reasonably have been discovered prior to late 1988.

Finally, the Seventh Circuit reviewed the merits of the replevin claim to determine whether the Church of Cyprus established its entitlement to the mosaics. The court upheld the district court's use of Indiana substantive law to find that the Church of Cyprus had indeed met this burden.⁶ The Church of Cyprus demonstrated that it did have title to possession, the mosaics were removed without authorization, and that Goldberg wrongfully held possession of the mosaics. Goldberg never had a valid claim of title to the mosaics because she purchased them from a thief who neither had a valid right of possession nor could transfer any such right.⁷

The Seventh Circuit declined to review the district court's alternative use of Swiss substantive law which found that Goldberg was not a "good faith purchaser" because she made only a perfunctory inquiry into the suspicious nature of the sale of the mosaics. The Court of Appeals instead maintained that, under Indiana law, Goldberg was to return the mosaics to the rightful owner, the Church of Cyprus.

In a concurring opinion, Circuit Judge Cudahy found it unnecessary to rely solely on the discovery rule for assessing when a cause of action in replevin will accrue. Cudahy instead suggested that the statute of limitations should not begin to run until the original owner has actual knowledge of the location of the property and who is in possession of the property. Cudahy pointed out that under this analysis, it was not until the Church of Cyprus

identified Goldberg as the current possessor of the mosaics that the cause of action accrued.⁸

The concurrence also considered the use of both international law and United States law for protecting the cultural property of foreign nations. In particular, Cudahy mentioned the 1954 Hague Convention and the UNESCO Convention as the most significant multinational treaties, as well as the United States' Cultural Property Implementation Act.⁹ Under these regulations, Cudahy predicted the Cypriot mosaics would not only be returned to the rightful owners, but doing so would send a message that the cultural heritage of foreign lands is to be respected.

Conclusion

A similar suit was filed in Federal District Court in Dallas in June 1990 by the Lutheran Church of Quedlinburg, Germany to recover medieval treasures from the heirs of an American army officer who stole the artworks at the conclusion of World War II.¹⁰ The parties agreed in January of 1991 to settle this dispute out of court; the heirs received \$1 million for the return of the treasures and relinquished all claims of ownership.¹¹ In addition, the heirs received \$1.85 million in the spring of 1990 for two other Quedlinburg manuscripts.¹²

Attorney Thomas R. Kline of Andrews & Kurth in Washington, D.C. who represented the Church of Cyprus and the Lutheran Church of Quedlinburg says it is difficult to compare the very different results of the two cases because Texas law was not applied in the latter cause of action.¹³ Kline further points out that it is actually irrelevant in the *Church of Cyprus v. Goldberg* case how diligently Goldberg inquired about the mosaics because in the United States, a seller who does not possess good title (e.g., a thief) has no authority to pass claim of title to a buyer. Kline predicts that in future cases, and, in the Quedlinburg treasure case had it gone to trial, the courts will emphasize application of the discovery rule and the definition of fraudulent concealment. In terms of the art world itself, Kline expects museums to become increasingly concerned with the fact that there are two generations of works improperly gained during World War II seizures that have yet to be recovered. Ω

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1. *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc.*, 917 F.2d 278, 282 (7th Cir. 1990).

2. Subject matter jurisdiction was based on diversity of citizenship under 28 U.S.C. § 1332(a)(2). The Seventh Circuit recognized the Church of Cyprus as a distinct juridical entity