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International Art and Cultural Heritage

Jacqueline Farinella, Alexandra Perloff-Giles, Kevin Ray, Musetta C. Durkee, Michael McCullough, Amanda A. Rottermund, and Kathleen A. Nandan*


On June 6, 2014, the U.S. Court of Appeals for the Ninth Circuit delivered the latest chapter in Marei von Saher's battle to reclaim a 16th-century diptych by Lucas Cranach the Elder.¹ The two wooden panels depicting Adam and Eve were confiscated by Nazis in World War II from Von Saher's relatives and are now in the collection of the Norton Simon Museum in Pasadena, California. In 2010, the Ninth Circuit had previously affirmed the lower court's dismissal of the action, holding that the California Code of Civil Procedure section 354.3, on which Von Saher had relied, was unconstitutional on the basis of field preemption.² In its second appearance in the Ninth Circuit, Von Saher’s action to recover the artwork has had more success, and this summer the Ninth Circuit reversed the district court’s decision, which had dismissed Von Saher’s claims for replevin and conversion as conflicting with the United States’s express federal policy on recovery of Nazi-lootd art and, thus, were barred by conflict preemption.³ The Ninth Circuit ruled that Von Saher’s claim that she was the rightful owner of the work was not preempted as conflicting with federal foreign policy and remanded to the district court to address,

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among other issues, the issue of whether the case implicated the act of state doctrine. Among other issues, the issue of whether the case implicated the act of state doctrine. The museum submitted a petition for rehearing en banc, which was denied, and has since filed a petition for writ of certiorari to the Supreme Court of the United States. Painted in 1530, the Cranach diptych at issue in this case hung in the Church of the Holy Trinity in Kiev, Ukraine until its removal by Soviet authorities in 1927. In 1931, Dutch-Jewish art dealer Jacques Goudstikker purchased the diptych at a Soviet-sponsored auction of works previously owned by the Stroganoff family. Goudstikker, along with his wife, Desi, and son, Edo, fled the Nazis in 1940, leaving behind over 1,200 artworks. Goudstikker died in transit, and his heirs inherited the collection. Back in the Netherlands, however, the artworks were transferred to Nazi officials Herman Göring and Alois Miedl in a forced sale and under illegal contracts executed by unauthorized gallery employees. At the end of the war, the United States returned the recovered Goudstikker collection to the Dutch government to be held in trust for Goudstikker’s heirs. When Desi Goudstikker returned to the Netherlands in 1946, however, she was informed that the Dutch government had characterized the war-time sale of the works as “voluntary,” barring her recovery under the government’s post-war Restitution of Legal Rights Decree and requiring her to pay for the return of the recovered property. Desi ultimately settled with the Dutch government to recover certain property sold to Miedl but did not make an official claim for the paintings sold to Göring, viewing the proceedings as unfair and stacked against her. In 1966, the Dutch government transferred the paintings to George Stroganoff-Scherbatoff, who claimed that the Soviet Union had wrongly seized the works from his family during the Bolshevik seizure in the 1920s and had unlawfully sold the works to Goudstikker in 1931. Norton Simon, founder of the Norton Simon Museum of Art, purchased the Cranach paintings from Stroganoff-Scherbatoff in 1971. Marei von Saher, who married Goudstikker’s son Edo, is Goudstikker’s sole living heir. The litigation began in May 2007 when Von Saher sued the museum for return of the artwork under California Code of Civil Procedure section 354.3, which provided a right
of action for recovery of artwork from museums or galleries if such artwork was confiscated during the Holocaust and set a deadline for claims of December 31, 2010.\textsuperscript{17} In that initial case, the district court dismissed Von Saher’s claim on the basis of field preemption, holding that section 354.3 of the California Code unconstitutionally violated the federal government’s exclusive authority in the area of foreign affairs.\textsuperscript{18} On appeal, the Ninth Circuit affirmed this decision also on the basis of field preemption.\textsuperscript{19} Von Saher appealed the dismissal to the U.S. Supreme Court, but was denied \textit{certiorari}. In February 2010, the California legislature amended section 338(c) of the California Code of Civil Procedure, regarding the statute of limitations for civil actions, extending the statute of limitations from three to six years after actual discovery by the claimant for claims concerning the recovery of fine art from “a museum, gallery, auctioneer, or dealer,” and made this amendment specifically retroactive.\textsuperscript{20} The amended statute notably removed reference to the Holocaust.\textsuperscript{21} On this basis, Von Saher filed an amended complaint in November 2011 in the district court. The museum answered by arguing exclusively that the claims are barred on the basis of conflict preemption, \textit{i.e.} that the state law was in conflict with federal foreign policy. The district court again agreed with the museum and dismissed the action in March 2012.\textsuperscript{22} Von Saher appealed this decision to the Ninth Circuit.

This time the Ninth Circuit reversed the district court’s decision, in a 2–1 opinion authored by Judge Dorothy Nelson, holding that the matter was a dispute between private parties and not barred by the foreign affairs doctrine on the basis of conflict preemption.\textsuperscript{23} The museum had asserted that “Von Saher’s claims for replevin and conversion” were in conflict with federal policy on the restitution of Nazi-looted art.\textsuperscript{24} Under this theory, the museum argued state power must yield to federal government policy to ensure uniformity in the area of foreign affairs, particularly where there is clear conflict between the state and the federal policy.\textsuperscript{25}

In evaluating the museum’s claim of conflict preemption, the Ninth Circuit looked to the 1998 Washington Conference Principles on Nazi Confiscated Art and the 2009 Terzian Declaration on Holocaust Era Assets and Related Issues, both of which the United States and the Netherlands signed, indicating the U.S. foreign policy “commitment to respect the finality of ‘appropriate actions’ taken by foreign nations to facilitate” restitution of Nazi-looted art.\textsuperscript{26} The Ninth Circuit held that such foreign policy was inapplicable in this instance because the artwork at issue was never subject “to postwar internal restitution proceedings in the Netherlands.”\textsuperscript{27} Because Desi Goudstikker never initiated

\begin{footnotes}
17. Civ. Proc. § 354.3. \\
19. Von Saher \textit{I}, 592 F.3d at 957. \\
22. Von Saher, 862 F. Supp. 2d at 1053. \\
23. Von Saher \textit{II}, 754 F.3d at 725. \\
24. \textit{Id.} at 720. \\
26. \textit{Id.} at 721. The Ninth Circuit’s ruling in this case is the first to consider that the Washington Principles constitute U.S. foreign policy and that private restitution claims “are consistent with that policy[,]” Von Saher \textit{v.} Norton Simon Museum of Art, 82 U.S.L.W. 1944, 1 (U.S. June 17, 2014). \\
27. Von Saher \textit{II}, 754 F.3d at 721.
\end{footnotes}
recovery claims for “Adam” and “Eve,” the paintings were never subject to Dutch restitution proceedings and therefore Von Saher’s legal claims do not interfere with the finality of any foreign proceedings. Nor, according to the Ninth Circuit, did Von Saher’s claims conflict with the internal restitution proceedings conducted by the Netherlands in 1998–99 and 2004–06, because the Netherlands had already divested itself of the diptych by then when it transferred the paintings to Stroganoff-Scherbatoff in 1971.28

The significance of this case, which follows the Ninth Circuit’s similar December 2013 decision in Cassirer v. Thyssen-Bornemisza Collection Foundation, is that, where it had previously found that the statute of limitations under section 354.3 of the California Code of Civil Procedure—providing a right of action for recovery of art confiscated during the Holocaust—was preempted by federal foreign policy, it did not find the revised statute of limitations for claims for recovery of art—which excluded reference to the Holocaust—as preempted, although both statutes arguably have a similar effect.29 The decision in Von Saher II also indicates the Ninth Circuit’s reluctance to consider claims for restitution of artwork allegedly seized by the Nazis as preempted by American foreign policy interests, and could have significant implications for future, similar restitution claims.

The battle, however, is not yet over for Von Saher. The Ninth Circuit remanded the case to the district court to decide whether the case implicates the act of state doctrine, under which the activities of one nation within its own borders cannot be challenged in another nation’s courts.30 If the Dutch government’s 1966 “restitution” of the works to the Stroganoff heir “constituted an official act of a sovereign” state, the district court may find that Von Saher’s claims are barred by the act of state doctrine.31 While the U.S. Supreme Court has held that an exception to the act of state doctrine may exist in the context of “purely commercial acts . . . where foreign governments . . . exercise only those powers that can be exercised by private citizens,”32 the Ninth Circuit has never reached the question of whether a commercial exception applies in cases of restitution claims and declined to do so here.33

In its decision, the Ninth Circuit also referenced the Hickenlooper Amendment, which “provides that the act of state doctrine does not apply to” confiscations “after January 1, 1959, by an act of state in violation of international law.”34 Therefore, if the district court finds that the Dutch government’s 1966 transfer of the diptych constituted a confiscation of Desi Goudstikker’s property, the act of state doctrine may not be appropriate, under application of the Hinkenlooper Amendment. The act of state doctrine and the applicability of any possible exceptions will be developed on remand to the district court.35

28. Id.
29. See Cassirer v. Thyssen-Bornemisza Collection Found., 737 F.3d 613 (9th Cir. 2013).
30. Von Saher II, 754 F.3d at 725 (quoting Undershill v. Hernandez, 168 U.S. 250, 252 (1897); Ricaud v. Ana. Metal Co., 246 U.S. 304, 310 (1918)).
31. Id. at 726.
32. Id. at 726–27 (quoting Alfred Dunhill of London, Inc. v. Rep. of Cuba, 425 U.S. 682, 695 (1976)).
33. Id. at 727.
34. Id. (citing 22 U.S.C. § 2370(e)(2)).
35. For an argument that Dutch property law gave Stroganoff-Scherbatoff good title to the diptych, see Bert Demarsin, The Third Time is Not Always A Charm: The Troublesome Legacy of a Dutch Art Dealer: The Limitation and Act of State Defenses in Looted Art Cases, 28 CARDOZO ARTS & ENT. L.J. 255, 310-12 (2010).
II. Preserving a Faltering Arts Institution: The Corcoran Gallery of Art

In August 2014, a D.C. Superior Court judge approved a controversial plan by the Corcoran Gallery of Art (Corcoran) to merge with the National Gallery of Art (National Gallery) and George Washington University (GWU), to save it and its art school from closure due to on-going financial struggles.

Founded in 1869, the Corcoran was the oldest art museum in the District of Columbia, and one of the oldest art museums in the United States. Financier and industrialist William Corcoran formed the Corcoran as a charitable trust. A few years after the gallery was established, the trustees created the Corcoran College of Art (later renamed the Corcoran College of Art + Design). Although the Corcoran’s deed of trust did not mention an art school, Mr. Corcoran approved of the change, and provided additional funding in support of the art school’s creation. The Corcoran’s endowment and fundraising had never been robust. As its financial condition worsened, its trustees discussed a possible move of the institution to Alexandria, Virginia, which added to community concerns regarding the institution’s finances. In 2013, the trustees “announce[d] a plan to explore a partnership with University of Maryland.” The University of Maryland proposal failed when it became clear that the university would not assume the Corcoran’s debts, but preferred to establish a partnership with the Corcoran and planned instead to extend a loan to it.

The Corcoran first proposed a plan to partition the art gallery from the art school in February 2014. Under the proposal, the Corcoran would contribute the greater part of its collection to the National Gallery, and contribute the art school (along with the Flagg Building, where it is located, and certain artworks in its collection) to George Washington University (GWU). On June 17, 2014, the Corcoran trustees filed a Petition for Cy Pres Determination, seeking authorization to enter into agreements with the National Gallery and GWU to carry out this plan. On July 2, certain faculty, current and former students, and donors of the Corcoran College of Art + Design filed a Complaint and Petition to Intervene in Cy Pres Proceedings.

The intervenors objected to the proposed agreements with the National Gallery and GWU, and instead proposed two alternatives—the former University of Maryland proposal, and a proposal providing for an aggressive

37. Id.
38. Id. at 3–4.
40. Parker, supra note 37, at 4.
42. Parker, supra note 37, at 4.
43. Cy Pres Petition, supra note 35, at 11; Parker, supra note 37, at 4.
fundraising campaign. The intervenors argued that either alternative would be closer to the Corcoran’s charitable purpose in forming the institution, because it would preserve the independence of the Corcoran.

The terms of a charitable trust may be modified via either of two equitable doctrines, cy pres and equitable deviation. “Cy pres” is an abbreviation of “cy pres comme possible” (as near as possible), and alters the substantive purposes of a charitable trust.46 “Equitable deviation,” by contrast, allows a court only to modify the administrative provisions of a trust under changed circumstances.47 In the District of Columbia, petitions to modify or terminate a charitable trust under the doctrine of cy pres are governed by Uniform Trust Code section 19-1304.13, which provides, in pertinent part, “[t]he court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor’s charitable purposes.”48

In this case, the court required the Corcoran trustees to show both that the trust’s charitable purpose has become impracticable or impossible to achieve, and that the proposed modification is “as near as possible to the settlor’s original charitable purpose.”49 Although “impracticable” is not defined, the court required the trustees to demonstrate that “it would be unreasonably difficult, and that it is not viable or feasible, to carry out the current terms and conditions of the trust.”50 In the court’s view, the trustees met this burden “because the Corcoran (i) had been operating at a deficit for a majority of the prior thirteen years, (ii) had incurred deficits even while deferring spending on maintenance of the Flagg Building, . . . (iii) cannot not alleviate its financial state by deaccessioning artworks from the collection (without risking Association of Art Museum Directors (AAMD) sanctions and loss of American Alliance of Museums (AAM) accreditation), and (iv) cannot within a reasonable time period, succeed with alternative fundraising.”51

The court concluded that the GWU/National Gallery proposal was “consistent with Mr. Corcoran’s intent and effectuates that intent as nearly as possible in light of the Corcoran’s current financial condition.”52 The court explained:

[j]under the GW[U]/NGA proposal, the Flagg Building will be renovated, the school will continue and be strengthened by its partnership with a financially sound university, both the school and a significant portion of the collection will remain in the Flagg Building, and a gallery, although smaller, will remain open to the public in the Flagg Building, all results that are consistent with Mr. Corcoran’s intent.53

Although the dissolution of “the Corcoran as an independent institution is far from Mr. Corcoran’s original charitable purpose, the court emphasized that the result was nevertheless nearer to that purpose than what other available options would have afforded.”54

47. Id.
50. Id. at 38–39.
52. Trustees of the Corcoran Gallery of Art, No. 14-CA-3745 B at 84.
53. Id. at 71–72.
54. Ray, supra note 51.
III. Museum Due Diligence and Repatriation Efforts: Museum of Fine Arts, Boston Returns Cultural Objects to Nigeria

In June 2014, the Museum of Fine Arts, Boston (MFA) reached an agreement with Nigeria’s National Commission of Museums and Monuments Nigeria (NCMM) to voluntarily repatriate eight objects from its collection. The agreement, as well as the initiative taken by the MFA to uncover the provenance of the objects, put the museum at the forefront of institutions as part of a growing trend to exercise due diligence around acquisitions.

Based on proactive research conducted by MFA’s provenance curator, Victoria Reed, of more than 300 objects bequeathed to the MFA by museum benefactors William and Bertha Teel, the MFA concluded that at least eight objects were illegally removed from Nigeria before entering the United States. The objects include terracotta figures that are generally known to be at high risk for theft and looting, as well as other figures that were likely stolen and illegally exported.

The Teels’ gift to the MFA included access to the Teels’ papers regarding the objects’ ownership histories, and the museum consistently emphasized that there was no reason to doubt that the Teels acquired all of these objects in good faith, and were not implicating the Teels in any wrongdoing.

In her research, Reed focused on documents authorizing sales and transfers of the objects, and determined, with the help of Nigerian authorities, that “several documents which purportedly authorized their sale and export were forged.” Reed also relied on the International Council of Museums “Red List,” which highlights works at high risk for looting and illegal sales, to identify two specific works in the collection acquired from the Teels. Once it was determined that the eight works had been acquired under dubious title and authority, the MFA contacted the NCMM to ask for permission to acquire the works, despite their unclear history. After the NCMM refused, the NCMM and MFA entered into negotiations to repatriate the objects to Nigeria. Unique to the MFA’s approach in this case is that the museum’s efforts to uncover the provenance of the objects resulted in the voluntary repatriation of cultural objects from its collection.

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57. RUTGERS, supra note 55.

58. See id.

59. Mashberg, supra note 56.


61. Edgers, supra note 56.


63. Id.
the provenance of the objects did not follow a legal claim by the Nigerian government to repatriate the objects, but was instead undertaken voluntarily.

Laws governing the repatriation of looted or impermissibly exported art objects, artifacts, and antiquities can be found under both international treaties and domestic acts implementing those treaties. While Nigeria is a party to the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, UNESCO's National Program Officer of Culture has recently warned that Nigeria, in particular, must protect its cultural property from looting by taking steps to ensure implementation and enforceability of international convention protections within Nigeria's legal framework. Notably, Nigeria has not applied for import restrictions for cultural property under the United States's Convention on Cultural Property Implementation Act.

While there has been a shift in recent decades at art museums and institutions toward repatriating objects to their countries of origin when the provenance of those objects are dubious, the MFA's actions in voluntarily examining the provenance of objects, especially prior to any legal claim, are a rare example of the provenance research being undertaken by acquiring museums. Museums that take these proactive steps safeguard the integrity of their collections, and voluntarily take responsibility for protecting and respecting heritage from cultures across the globe.

IV. Regulating Trafficking in Ivory Objects Through Director's Order 210
Under the Endangered Species Act of 1973

On February 25, 2014, in an effort to limit trade in African elephant ivory in the United States and combat the ongoing poaching crisis in Africa, Director Daniel M. Ashe of the United States Fish and Wildlife Service (Service) issued Director's Order No. 210 (Order 210). Order 210 prohibits the commercial importation of objects containing African elephant ivory, and allows for the continued importation of non-commercial shipments of

65. See id.; Nigeria: UNESCO Warns Nigeria Against Cultural Extinction, DAILY INDEPENDENT (LAGOS) (July 8, 2014), http://allafrica.com/stories/201407090081.html (noting that UNESCO’s National Program Officer of Culture told Nigerian news outlet that Nigeria needed to take efforts to domesticate conventions that would help Nigeria in protecting cultural artifacts and heritage, stating that “[a]lthough, it is a collective responsibility, but government must do what it takes by domesticking the convention that will preserve the country’s works”).
67. In addition to forged export documents and looting, there is also a robust forgery market for African antiquities. See Michael Brent, Faking African Art, 54 ARCHEOLOGY 1 (Jan./Feb. 2001), http://www.coupdefoudre.com/CurrentArticle/TerracottaForgeries.html.
68. There are counter-voices to repatriation, arguing that some nations cannot safeguard the artifacts (due to war and/or lack of preservation equipment and expertise) and/or use these artifacts to bolster nationalist fervor. See James Cuno, Culture War: The Case Against Repatriating Museum Artifacts, FOREIGN AFFAIRS (Nov./Dec. 2014), http://www.foreignaffairs.com/articles/142185/james-cuno/culture-war.
objects that fit within certain designated exceptions (i.e., musical instruments legally acquired prior to February 26, 1976). In doing so, Order 210 reversed a thirty-two-year interpretation of the exception for antique articles (Antiques Exception) in the Endangered Species Act of 1973 (ESA) by re-interpreting the designated port requirement in ESA Section 10(h), a provision that prohibits the importation of objects other than through certain designated ports, and banned the interstate sale and transport of objects containing ESA-listed species that were either (a) made in the United States, or (b) imported prior to the establishment of the designated port system in 1982.

The Endangered Species Preservation Act (ESPA), the predecessor to the ESA, was passed in 1966 to provide a means for listing native animal species as endangered and giving them limited protection. The ESPA allowed the Departments of Interior, Agriculture, and Defense to protect listed species and preserve the species' habitats. In 1969, Congress amended the ESPA through the Endangered Species Conservation Act of 1969 (ESCA). The ESCA's purpose was to provide additional protection for species in danger of worldwide extinction by prohibiting their importation and subsequent sale in the United States. The designated port requirement was first enacted into legislation in Section 4(d) of the ESCA, which provides that, "importation of such fish or wildlife into any port in the United States, except those . . . designated, shall be prohibited after the effective date of such designations . . . ." Section 4(d) applied prospectively to imports into a designated port and not to materials imported prior to the effective date of designation or to domestically made materials.

During a 1973 conference in Washington, D.C., eighty nations signed the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES's purpose is to monitor, and in some cases restrict, international commerce in species of plants and animals believed to be harmed by trade. In response to this international effort, Congress passed the ESA in 1973 to strengthen the regulatory regime started in the ESCA. However, the ESA as passed in 1973 did not contain an exception for the trade in antiques. On September 19, 1978, the House Subcommittee on Fisheries and Wildlife Conservation and the Environment considered a bill in an open markup session to amend the ESA. According to the transcript of the Open Session, the Antique Exception was introduced with the intent to exempt articles manufactured before 1830, such as jewelry, that contained materials from endangered species. When adopted, Section

70. Id.
72. Id. at 257.
74. Id.
76. Id. § 4(d).
77. See id.

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7(h)(1) of the Endangered Species Act Amendments of 1978 (ESAA-78) created what is now known as the Antiques Exception, which excluded from the ESA in Section 10(h) any article which: (a) was made before 1830; (b) is composed in whole or in part of any listed endangered or threatened species; (b) has not been repaired or modified with any part of any such species after the date of the Act; and (d) is entered at a designated port. Later, the Endangered Species Act Amendments of 1982 replaced the 1830 test date with a rolling 100-year test and defines antique materials as those “not less than 100 years of age,” in order to harmonize the Antiques Exception with the U.S. Tariff Schedule’s definition of “antique.”

Order 210 was issued to curtail the Service’s practice of exempting antiques containing African elephant ivory from the moratorium on imports imposed by the African Elephant Conservation Act of 1989 (AECA). In issuing Order 210, the Service took the view that allowing the continued importation of antique African elephant ivory contributed to the continued threat against African elephants because forged paperwork and other abuses created a “loophole” for unscrupulous traders. Order 210 also shifted the burden to sellers of objects in interstate commerce to prove that objects containing African elephant ivory were purchased before the AECA import moratorium was instituted 1990 or that the object containing Asian elephant ivory and other endangered species fall within the Antiques Exception under the ESA. Given that these documentation requirements are a new practice, Order 210 caused significant public outcry, particularly among musicians, antique dealers, gun collectors, and others.

Following discussions with art market stakeholders, the Service amended Order No. 210 on May 15, 2014 (Amended Order). The Amended Order provides that the Service, in its enforcement discretion, will not enforce the designated port requirement against bona fide antiques imported prior to 1982 and articles that were created in the United States and never imported. The FAQs and other materials accompanying the Amended Order state that the Service’s revised position on the Antiques Exception is based on the view that, among other things, the limited exception for the trade in certified antiques does not contribute to the demand for freshly poached elephant ivory.

V. International Art Smuggling: Update on Subhash Kapoor

Events following Subhash Kapoor’s 2011 arrest in Germany and 2012 extradition to India continued to unfold in 2014. Kapoor is alleged to have illegally trafficked in stolen

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84. See generally id.
85. See id.
86. Kapoor’s arrest and extradition as well as the United States authorities’ 2012 seizures of cultural property valued in excess of $100 million USD has generated substantial press, largely outside of the United States, which provides a useful background and introduction to the allegations against Kapoor and his associ-
antiquities looted from temples throughout India, through both his Manhattan gallery and import business, Art of the Past and Nimbus Import/Export.\footnote{See id.}


Kapoor’s trial in India, which was scheduled to begin in March 2014, has been repeatedly adjourned.\footnote{See India Asks Australian Gallery to Return Stolen Nataraja Idol, THE HINDU (Mar. 26, 2014), http://www.thehindu.com/news/international/world/india-asks-australian-gallery-to-return-stolen-nataraja-idol/article5834817.ece.} Although Kapoor continues to maintain his innocence, to date, three of the museums that purchased antiquities from Kapoor—the Australia National Gallery, the Art Gallery of New South Wales, and the Toledo Museum of Art—have returned those antiquities to the Indian government, conceding that the objects in question appear to have been stolen.


Prime Minister Abbott also re-
turned to India a stone Ardhanarishvara, purchased by the Art Gallery of New South Wales from Kapoor in 2004. The statue, which depicts Shiva in half female form, dates to the 10th century and, like the Shiva Nataraja, is alleged to have been stolen from a temple in Tamil Nadu.

In October 2014, the Toledo Museum of Art announced that it would return to the Indian government a bronze statue of Ganesha, a Hindu deity, purchased from Kapoor in 2006. The museum stated that it began an inquiry into the Ganesha’s provenance upon its July 2013 receipt of an Indian police report with photographs of idols stolen from Sripurathan Village in Tamil Nadu, including an image of a Ganesha figure that closely resembled the Ganesha purchased by the museum from the Art of the Past. The museum noted that the Ganesha’s provenance, as well as the provenance of other items acquired from Kapoor, appeared to have been falsified. The investigation into Kapoor and his activities continues both in the United States and abroad.

N.Y.C.). The complaint, which includes claims of fraud, unjust enrichment, and breach of contract in connection with the Museum’s purchase of the Shiva Nataraja statue, remains pending. Id. According to the electronic docket, none of the defendants have answered the complaint: the plaintiff was granted additional time to serve Kapoor, who remains incarcerated in an Indian prison pending trial, and Freedman’s time to answer has been extended several times by stipulation. Id.


95. See Australian PM Tony Abbott Returns 11th Century Stolen Idols to Modi, supra note 94.
