

of providing for fair housing throughout the United States. See 42 U.S.C. § 3601 ("It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States."). This concern is much broader than those of the state court defendants, notwithstanding the content of the motion to dismiss recently filed in state court. The Fair Housing Act provides that, upon determining that

any person or group of persons is engaged in a pattern or practice of resistance to the full rights granted by this subchapter, or that any group of persons has been denied any of the rights granted by this subchapter and such denial raises an issue of general public importance, the Attorney General may commence a civil suit in any appropriate United States district court.

42 U.S.C. § 3614(a). In such an action, the federal district court, in addition to awarding preventative relief and damages, "may, to vindicate the public interest, assess a civil penalty against the respondent (i) in an amount not exceeding \$50,000 for a first violation; and (ii) in an amount not exceeding \$100,000, for any subsequent violation." 42 U.S.C. § 3614(d). These remedies are not available in the posture of the present state court proceeding. Accordingly, as abstention would leave the United States without an adequate remedy to vindicate the public interest, *Younger* abstention cannot apply. See, e.g., *Empie*, 778 F.2d at 1452 (abstention inappropriate where the United States' concerns transcend that of the private litigants in the state proceeding); *Levi Strauss & Co.*, 515 F.Supp. at 643 (same).

In sum, the principles of comity and federalism underlying both the Anti-Injunction Act and the *Younger* abstention doctrine are insufficient to defeat the United States' present assertion of public interest. Accordingly, defendants' motion to dismiss is denied.

IV. Conclusion

For the reasons set forth above, defendants' motion to dismiss is denied. It is so ordered.

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UNITED STATES of America, Plaintiff,

v.

PRE-COLUMBIAN ARTIFACTS and the Republic of Guatemala, Defendants.

No. 93 C 2654.

United States District Court,
N.D. Illinois, E.D.

Oct. 14, 1993.

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█ The parties do not address the question of the appropriate legal standard. Under certain circumstances, conflicting claims with respect to an interpleader res can be resolved on the pleadings. See C.A. Wright, A. Miller, & M.K. Kane, *Federal Practice & Procedure* § 1715 at 588-89 (2d ed. 1986). "The usual rules of good pleading are applicable in an interpleader action." *Id.* at 587. It will be assumed, as the parties apparently do, that the Republic must state a claim for entitlement to the artifacts that would withstand a motion to dismiss under Rule 12(b)(6). One of the disputes, however, depends upon the construction of Guatemalan law. While any determination as to foreign law is a legal question, any relevant material or source, including testimony, may be considered in establishing foreign law. See Fed.R.Civ.P. 44.1; *Republic of Turkey v. OKS Partners*, 146 F.R.D. 24, 27 (D.Mass. 1993). Commonly, oral or written expert testimony accompanied by foreign legal materials is provided. See *id.*; C.A. Wright & A. Miller, *Federal Practice & Procedure* § 2444 at 406 (1971). There is no requirement that foreign law and its supporting material be pleaded; "other reasonable written notice" will also suffice. Fed.R.Civ.P. 44.1; Wright & Miller, § 2443 at 402. Therefore, alleging in a pleading that property is stolen under a foreign law is a sufficient pleading without providing the specifics of the foreign law. See *Republic of Turkey v. OKS Partners*, 797 F.Supp. 64, 66 (D.Mass. 1992) (allegations that ancient coins belonged to Turkey under Turkish law and therefore were held by defendants in violation of the National Stolen Property Act could not be dismissed on the pleadings).

█ The Republic of Guatemala does not argue that the legal issue raised by the Grunes defendants cannot be considered on the pleadings. On the Grunes defendants' motion, however, the Republic's contentions as to provisions of Guatemalan law will be taken as true; no attempt will presently be made to parse the specific language of the Guatemalan legislation. For purposes of resolving the present motion, it is also assumed

that the artifacts were illegally exported from Guatemala.

As stated by the Republic in its brief:

For the purposes of this motion, it is accepted that the law of Guatemala provides that upon export without authorization, the artifacts are confiscated in favor of the Republic of Guatemala, and become the property of Guatemala. Article 21 of Guatemala's "Congressional Law for the Protection and Maintenance of the Monuments, Archeological, Historical, Artistic Objects and Handicrafts" provides for "confiscation in favor of the State" upon illicit export.

The Republic contends that this law therefore makes the Grunes defendants' possession of the allegedly illegally exported property the possession of stolen property in violation of the National Stolen Property Act ("NSPA"), 18 U.S.C. §§ 2314-15. It is undisputed that stolen property possessed in violation of the NSPA is subject to being seized. The Grunes defendants, however, argue that, even assuming unlawful exportation, the artifacts must have belonged to the Republic prior to exportation in order for the artifacts to be considered stolen property under the NSPA. Since the Republic only contends that Guatemalan law makes the artifacts its property upon illegal exportation, the legal issue raised by the Grunes defendants can be resolved on the pleadings.

█ The NSPA is designed to discourage both the receiving and the taking of stolen property. *United States v. O'Connor*, 874 F.2d 483, 488 (7th Cir.1989); *United States v. Gardner*, 516 F.2d 334, 349 (7th Cir.), *cert. denied*, 423 U.S. 861, 96 S.Ct. 118, 46 L.Ed.2d 89 (1975); *United States v. McClain*, 545 F.2d 988, 994 ("*McClain I*"), *rehearing denied*, 551 F.2d 52 (5th Cir.1977). "Stolen," as used in the NSPA, is not a term of art and instead is broad in scope with a "wide-ranging meaning." *McClain I*, 545 F.2d at 995. *Accord United States v. Darrell*, 828 F.2d 644, 649-50 (10th Cir.1987). The NSPA applies to stolen goods transported in either interstate or foreign commerce. The Grunes defendants do not dispute that foreign ownership laws and thefts in foreign countries can be the basis for finding goods

to be stolen. See *United States v. Rabin*, 316 F.2d 564, 566 (7th Cir.), cert. denied, 375 U.S. 815, 84 S.Ct. 48, 11 L.Ed.2d 50 (1963); *McClain I*, 545 F.2d at 994; *United States v. McClain*, 593 F.2d 658, 664 (5th Cir.), cert. denied, 444 U.S. 918, 100 S.Ct. 234, 62 L.Ed.2d 173 (1979) ("*McClain III*"); *United States v. Hollinshead*, 495 F.2d 1154 (9th Cir.1974).

■ Mere violation of export restrictions does not make possession of the illegally exported property a violation of the NSPA. *McClain I*, 545 F.2d at 996, 1002; *Government of Peru v. Johnson*, 720 F.Supp. 810, 814 (C.D.Cal.1989), aff'd by unpublished order, 933 F.2d 1013 (9th Cir.1991). For the property to be stolen, it must belong to someone else. See *McClain I*, 545 F.2d at 995, 1002; *Peru*, 720 F.Supp. at 814. Here, there is no allegation that the artifacts were stolen from any Guatemalan individual. The only allegation is that the artifacts belong to the Republic. The NSPA "protects ownership derived from foreign legislative pronouncements, even though the owned objects have never been reduced to possession by the foreign government." *McClain III*, 593 F.2d at 664. Guatemalan law (as assumed for purposes of the present motion) provides that, upon illegal export, the artifacts became the property of the Republic. Therefore, the moment the artifacts left Guatemala they became the property of the Republic. Thus, while traveling in foreign commerce, the artifacts were stolen in that they belonged to the Republic, not the person who unlawfully possessed the artifacts. The Republic has alleged facts under which the artifacts would be subject to being seized as being stolen property possessed in violation of the NSPA. The Grunes defendants' motion will be denied.

IT IS THEREFORE ORDERED that defendants Barbara Grunes's, Jerome Grunes's, and Louis Krauss's motion to strike the Republic of Guatemala's claim of possession or, in the alternative, for judgment on the pleadings [35] is denied. October 22, 1993 ruling date is vacated. All discovery is to be com-

pleted by December 22, 1993. Status hearing set for November 22, 1993 at 9:15 a.m.

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MARC DEVELOPMENT, INC., an Illinois corporation, Keith-Marc Properties, Ltd., an Illinois limited partnership, and Brown Leasing, Inc., f/k/a Capitol Leasing Company, Plaintiffs,

v.

Philip A. WOLIN, Brian McLaughlin, Gerald J. DeNicholas and Alex M. Vercillo, Defendants.

No. 93 C 2037.

United States District Court,
N.D. Illinois, E.D.

Dec. 1, 1993.

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