

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civ. No. 16-832 MV/KBM

ACOMA CEREMONIAL SHIELD,
MORE PARTICULARLY DESCRIBED AS:
LOT #68 "BOUCLIER DE GUERRE
PUEBLO PROBABLEMENET ACOMA OU JEMEZ XIX
SIECLE OU PLUS ANCIEN CUIR."

Defendant-in-rem, and

JEROLD COLLINGS

Claimant.

JEROLD COLLINGS' VERIFIED ANSWER TO PLAINTIFF'S COMPLAINT

COMES NOW, Claimant Jerold Collings, by and through counsel, Rhodes & Salmon, PC (Mark M. Rhodes) and pursuant to applicable federal law submits his Answer to the United States of America's Verified Complaint for Forfeiture In REM ("In Rem Complaint") and states as follows:

NATURE OF THE ACTION

1. Paragraph 1 of Complaint: Jerold Collings admits this is a civil action but denies that the subject property was involved in violations of law or that it is subject to forfeiture.

DEFENDANT IN REM

2. Paragraph 2 of Complaint: Jerold Collings is without specific knowledge that Defendant Property is, in fact, an Acoma Pueblo Shield and therefore denies paragraph two, except that he admits that the catalogue stated what it stated, free of paraphrase or interpretation.

3. Paragraph 3 of Complaint: Jerold Collings denies that the Defendant property is now and during the pendency of this action in this Court's jurisdiction.

4. Paragraph 4 of Complaint: At the present time, Jerold Collings does not contest the Court's subject matter jurisdiction herein; if matters arise that bring that jurisdiction into doubt, the matter will be brought before the Court at that time.

5. Paragraph 5 of Complaint: Jerold Collings denies that any acts or omissions giving rise to forfeiture occurred in this or any other venue.

6. Paragraph 6 of Complaint: While Jerold Collings admits that the EVE Auction House described and numbered the Defendant Property as "Bouclier de Guerre Pueblo probablement Acoma ou Jemez XIX Siecle ou plus ancient Cuir," he is without sufficient knowledge to admit or deny the other allegations contained in paragraph six (6) of the Complaint In Rem and therefore denies the same.

7. Paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 of Complaint: Jerold Collings is without sufficient knowledge to admit or deny the allegations set forth in paragraphs seven (7), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty one (21), twenty two (22), twenty three (23), twenty four (24), twenty five (25), or twenty six (26) of the Complaint and therefore denies them.

8. Paragraphs 27 and 28 of Complaint: Paragraphs twenty seven (27) and twenty eight (28) of the Complaint In Rem contain statements of law to which no factual answer is required. If, however, the court construes that these paragraphs assert factual allegation(s) which require a response, Jerold Collings denies all allegations contained in these paragraphs.

9. Paragraphs 29, 30 and 31 of Complaint: Jerold Collings does not have sufficient

knowledge to enable him to admit Paragraphs twenty nine (29), thirty (30), and thirty one (31) of the Complaint, and therefore denies the allegations set forth in each of these paragraphs of the Complaint In Rem.

10. Paragraph 32 of Complaint: In response to paragraph thirty two (32) of the Complaint In Rem, Jerold Collings denies each allegation contained therein. By way of further answer, Jerold Collings states that the Defendant Property Shield was not smuggled out of the United States but was shipped to the EVE Auction House pursuant to the shipping instructions provided by the EVE Auction House to Jerold Collings.

11. Paragraph 33 of Complaint: In response to paragraph thirty three (33) of Complaint In Rem, Jerold Collings denies said allegations. By way of further answer, Jerold Collings, upon information and belief, states that a buyer was found for the Property who would then donate the Defendant's Property to the Acoma Pueblo but this proposal was refused by the Plaintiff herein.

12. Paragraph 34 of Complaint: With regard to paragraph thirty four (34) of the Complaint In Rem, Jerold Collings is without sufficient knowledge of the first two sentences of paragraph thirty four (34) to enable him to admit or deny them, and he therefore denies the same. With regard to the remaining allegations of paragraph thirty four (34), Jerold Collings denies them and it is Jerold Collings' further information and belief that the Tribunal de Grande Instance ("TGI"), a French Court of original jurisdiction, when presented with a lawsuit to stop the auction of alleged Hopi Culture items in Paris stated in essence that the Hopi Tribe's argument that the items in question were inalienable was not relevant and questioned whether there was sufficient evidence to prove that the items being auctioned were, in fact, owned by the Hopi tribe.

13. Paragraphs 35 and 36 of Complaint: Jerold Collings is without sufficient knowledge to enable him to admit or deny the allegations of Paragraphs thirty five (35) and thirty six (36) of the Complaint, and he therefore denies them.

14. Paragraph 37 of Complaint: In response to Complaint In Rem paragraph thirty seven (37), Jerold Collings reiterates each of his responses to the paragraphs 1 to 36 inclusive of the Complaint In Rem as if fully set forth herein.

15. Paragraph 38 of Complaint: Paragraph thirty eight (38) of the Complaint In Rem contains a statement of law to which no factual answer is required. If, however, the Court construes that paragraph thirty eight (38) asserts factual allegation(s) which require a response, Jerold Collings denies all such allegations.

16. Paragraph 39 of Complaint: Jerold Collings denies the allegations in paragraph thirty nine (39) of the Complaint In Rem.

17. Paragraph 40 of Complaint: In response to Complaint In Rem paragraph forty (40), Jerold Collings reiterates each of his responses to paragraphs 1 through 36 of the Complaint In Rem as if fully set forth herein.

18. Paragraph 41 of Complaint: Paragraph forty one (41) of the Complaint In Rem contains a statement of law to which no factual answer is required. If, however, the Court construes that paragraph forty one (41) asserts factual allegation(s) which require a response, Jerold Collings denies all such allegations.

19. Paragraph 42 of Complaint: Jerold Collings denies the allegations set forth in paragraph forty two (42) of the Complaint In Rem.

AFFIRMATIVE DEFENSES

First Affirmative Defense

For a further and separate answer to the Complaint for Forfeiture, Claimant states that the Complaint fails to state facts sufficient to constitute a cause of action against the Defendant Property, or to justify forfeiture to the United States of the Defendant Property.

Second Affirmative Defense

For a further and separate answer to the Complaint for Forfeiture, Claimant states that Plaintiff has failed to show and is incapable of showing by a preponderance of the evidence that there is any justification for the forfeiture of the Defendant Property or that this forfeiture action should be maintained.

Third Affirmative Defense

For a further and separate answer to the Complaint for Forfeiture, Claimant states that pursuant to 18 U.S.C. §983(d) and applicable case law, Claimant is an innocent owner of the Defendant Property and that any and all acts and/or omissions alleged in the Complaint as grounds for forfeiture were committed without the actual or constructive knowledge or consent of Claimant.

Fourth Affirmative Defense

For a further and separate answer to the Complaint for Forfeiture, Claimant states that at all times relevant to the Complaint, Claimant acted in good faith with regard to the Defendant Property.

Fifth Affirmative Defense

For a further and separate answer to the Complaint for Forfeiture, Claimant states that Plaintiff is not entitled to a forfeiture judgment because Plaintiff has not acted in good faith with regard to the Defendant Property or this action.

Sixth Affirmative Defense

For a further and separate answer to the Complaint for Forfeiture, Claimant states that pursuant to 18 U.S.C. §983(g), forfeiture of the Defendant Property would constitute a penalty that is grossly disproportionate to the gravity of any offense which Claimant may have committed (which Claimant denies), and is a violation of the Eighth Amendment to the United States Constitution.

Seventh Affirmative Defense

Plaintiff's claim is barred by laches, waiver, unclean hands and/or equitable estoppel, as may be shown by the conduct of Plaintiff and/or Acoma Pueblo.

Eighth Affirmative Defense

The Defendant Property has been a family heirloom of the Collings family since before the enactment in 1979 of the Archaeological Resources Protection Act, 16 U.S.C. §§ 470aa, *et. seq.*, and, as such, is exempt from the provisions of said Act.

Ninth Affirmative Defense

Jerold Collings hereby reserves and claims the protections of all of his constitutional rights pursuant to the Constitution of the United States of America, including but not limited to the rights reserved to him by the Fifth and Fourteenth Amendments to the Constitution.

WHEREFORE, Claimant respectfully requests that this Court:

- a. Dismiss Plaintiff's Complaint with prejudice and enter judgment on behalf of Claimant;
- b. Order that the Defendant Property be returned or released forthwith to Claimant and that Claimant be awarded his reasonable attorney fees in defending this action, pursuant to 28 U.S.C. § 2465; and

c. Provide such other and further relief as the Court deems just and proper.

REQUEST FOR RELIEF

WHEREFORE, Jerold Collings requests:

1. That the Defendant Property be returned to Jerold Collings;
2. That, in the alternative, Jerold Collings be allowed to further investigate the claims of the Acoma Pueblo to the Defendant Property and explore mutually satisfactory future action regarding said Defendant Property.

DECLARATION UNDER PENALTY OF PERJURY

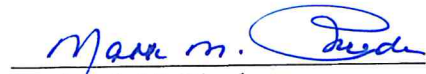
Pursuant to 28 U.S.C.A. § 1746, I declare and verify under penalty of perjury that the foregoing is true and correct.

Executed on February 7, 2019.


JEROLD COLLINGS

Respectfully submitted (pursuant to
15 U.S.C.A. §7001, and NM.R. USDCT
CIV CM/ECF Proc., § 6(c)),

RHODES & SALMON, P.C.


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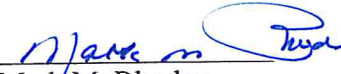
CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of February 2019 a copy of the foregoing pleading was served via first-class mail upon:

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