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United States District Court,
S.D. Indiana,
Indianapolis Division.

AUTOCEPHALOUS GREEK-ORTHODOX
CHURCH OF CYPRUS and The Republic of Cy-
prus, Plaintiffs,

v.

GOLDBERG & FELDMAN FINE ARTS, INC., and
Peg Goldberg, Defendants.

No. IP 89-304-C.

Aug. 3, 1989.

NOLAND, District Judge.

Summary of Decision

In this case the Court is asked to decide the right of possession as between the plaintiffs, the Autocephalous Greek-Orthodox Church of Cyprus (“Church of Cyprus”) and the Republic of Cyprus, and the defendants, Peg Goldberg (“Goldberg”) and Goldberg & Feldman Fine Arts, Inc., of four Byzantine mosaics created in the early sixth century. The mosaics, made of small chips of colored glass, were originally affixed to and for centuries remained in a church in Cyprus, a small island in the Mediterranean. In 1974, Turkish military forces invaded Cyprus and seized control of northern Cyprus, including the region where the church is located. At some point in the latter 1970s, during the Turkish military occupation of northern Cyprus, the mosaics were removed from their hallowed sanctuary. The plaintiffs claim that the Church of Cyprus has never intended to relinquish ownership of the mosaics, that *1376 the mosaics were improperly removed without the authorization of the Church or the Republic of Cyprus, and that the mosaics should be returned to the Church. The defendants, on the other hand, claim that export of the mosaics was authorized by Turkish Cypriot officials, and that in any event Goldberg should be awarded the mosaics because she purchased them in good faith

and without information or reasonable notice that they were stolen. Having heard and reviewed all the evidence in the case, the Court concludes that possession of the mosaics must be awarded to the plaintiff, the Autocephalous Greek-Orthodox Church of Cyprus.

II. Jurisdiction

This Court has original jurisdiction over the subject matter of this action based on diversity of citizenship pursuant to [28 U.S.C. § 1332\(a\)](#). Plaintiff the Republic of Cyprus is a sovereign nation located on the island of Cyprus in the Mediterranean Sea. Plaintiff Autocephalous Greek-Orthodox Church of Cyprus is a religious organization with its principal offices in Nicosia, Cyprus. Defendant Goldberg & Feldman Fine Arts, Inc. is a corporation organized and existing under the laws of the state of Indiana, with its principal place of business in Carmel, Indiana. Defendant Peg Goldberg is a citizen of the state of Indiana. The amount in controversy in this case exceeds the sum of \$10,000, exclusive of interest and costs.

III. Historical Setting and Factual Background

The facts established by the evidence presented are as follows.

A. The Mosaics of the Church of the Panagia Kanakaria

This case involves a dispute as to the ownership of four Byzantine mosaics. These four mosaics were originally part of a larger mosaic (“the original mosaic”). The original mosaic was affixed to the apse of the Church of the Panagia Kanakaria (“Kanakaria Church”) in the village of Lythrankomi, Cyprus, in 530 A.D. Except for a unique quirk of fate, the original mosaic would have ceased to exist a thousand or more years ago. During the period of Iconoclasm (roughly the 8th century), government edicts mandated the destruction of religious artifacts so that

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such religious “images” would not be the subject of veneration. These iconoclast edicts were responsible for the destruction of many significant religious artifacts. The original Kanakaria mosaic is one of only six or seven Byzantine mosaics to survive the ravages of Iconoclasm and the passage of time.

The original Kanakaria mosaic depicted Jesus as a young boy seated in the lap of his mother, the Virgin Mary, who sat on a throne surrounded by a mandorla of light. The figures of Jesus and the Virgin Mary were bordered on each side by depictions of two archangels. This central composition was in turn bordered by a frieze containing *1378 the busts of the twelve apostles. The original mosaic was made of small pieces of colored glass referred to in the art world as tesserae.

As stated previously, the original mosaic was affixed to the apse of the Kanakaria Church in the early sixth century. Over the centuries, the mosaic has deteriorated. By 1960, all that remained of the original Kanakaria mosaic was the figure of Jesus, the bust of the North Archangel, and nine of the twelve apostles. Between 1959 and 1967, the mosaic was cleaned and restored under the sponsorship of the Department of Antiquities of the Republic of Cyprus, the Church of Cyprus, and Harvard University's Dumbarton Oaks Center for Byzantine Studies. With the knowledge gained in its efforts to restore the mosaic, Dumbarton Oaks published an authoritative volume on the Kanakaria Church and its art: *The Church of the Panagia Kanakaria at Lythrankomi in Cyprus: Its Mosaics and Frescoes*, authored by A.H.S. Megaw and E.J.W. Hawkins (1977).

The four mosaics at issue in this case were once a part of the original Kanakaria mosaic. These four mosaics depict the figure of Jesus as a young boy and the busts of the North Archangel, the apostle Matthew, and the apostle James. Each of the four mosaics measures approximately two feet by two feet.

This brief background enables one to understand the origin of the four mosaics at issue in this case and their invaluable and irreplaceable significance to Cyprus's cultural, artistic, and religious heritage. Had it not been for an unusual series of events, these four mosaics would probably have remained in the Kanakaria Church to this day-undisturbed in their deteriorating but readily recognizable state.

C. The Theft of the Mosaics

Since the 1974 Turkish invasion, the government of the Republic of Cyprus and the Church of Cyprus have generally been denied access to occupied northern Cyprus. However, since that time they have received reports from persons in the occupied area that several churches and national monuments have been looted and destroyed and that many mosaics, frescoes, and icons in those churches and national monuments have been stolen or destroyed. When Father Christopher fled occupied northern Cyprus in July 1976, the mosaics were still intact and affixed to the apse of the Kanakaria Church. Sometime between August 1976 and October 1979, the interior of the Kanakaria Church was vandalized and the mosaics were forcibly removed from the apse of the church. The mosaics were severely damaged during their removal. Neither the Republic of Cyprus nor the Church of Cyprus has ever authorized the removal or sale of the Kanakaria mosaics.

E. The Mosaics Resurface

Goldberg is president and majority shareholder of Goldberg & Feldman Fine Arts, Inc. The co-owner of the company is George Feldman who serves as its vice president. Since becoming an art dealer in 1981, Goldberg has dealt almost exclusively in 19th and 20th century paintings, etchings, and sculptures. Goldberg is not, nor does she claim to be, an expert in Byzantine art.

On June 30, 1988, Goldberg flew to Amsterdam, The Netherlands, to inspect and possibly purchase for a client a painting by Amadeus Modigliani. The availability of a Modigliani painting for sale was brought to Goldberg's attention by Robert Fitzgerald, an art dealer from Indianapolis whom she “had known [] casually since 1980 or '81.” Tr. 433. It was Fitzgerald who had located the purported Modigliani; he was to

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help facilitate the sale. In Amsterdam, Goldberg met Fitzgerald. Fitzgerald then took Goldberg to meet the owner of the painting. After inspecting the painting, Goldberg developed doubts “about being able to prove the authenticity of the painting.” Tr. 438. At this point, the sale of the Modigliani painting fell through.

After the Modigliani sale fell through, Fitzgerald mentioned to Goldberg another deal. On July 1, 1988, Fitzgerald informed Goldberg that he was aware of four early Christian mosaics that were for sale. Later that day, Fitzgerald introduced Goldberg to Michel van Rijn, a Dutch art dealer, and Ronald Faulk, an attorney from California. Goldberg knew very little about van Rijn or Faulk. She was told, however, that van Rijn was once convicted in France for forging Marc Chagall's signature to prints of that artist's work and that he also had been sued by an art gallery “[f]or failure to pay money.” Tr. 539. She was also aware that Faulk was in Europe to act as attorney for Fitzgerald and van Rijn.

At this July 1st meeting, van Rijn showed Goldberg photographs of the four Byzantine mosaics, and she immediately “fell in love” with them. Tr. 447. van Rijn told her that the seller requested \$3 million for the four mosaics. She was also told that the seller was interested in selling the mosaics quickly because he “had recently become quite ill and had [a] cash problem.” Tr. 457.

All of the information that Goldberg received regarding the mosaics and the seller came from Fitzgerald, van Rijn, or Faulk. van Rijn told Goldberg that the seller of the mosaics was a Turkish antiquities dealer. In addition, he told her that the seller had “found” the mosaics in the rubble of an “extinct” church in northern Cyprus while serving as “an archaeologist from Turkey assigned to northern Cyprus.” Tr. 456. According to van Rijn, the seller had been granted permission by Turkish Cypriot authorities to retain the mosaics and, in the late 1970s, to export them to Germany. Goldberg was not told the identity of the seller at the initial meeting on July 1st; however, two days later she was told that the seller was a man named Aydin Dikman.

Previously, on June 28, 1988, Faulk went to meet

with Dikman in Munich, Germany. Faulk was sent to meet with Dikman at the direction of his clients, van Rijn and Fitzgerald. It is interesting to note that Fitzgerald sent Faulk to meet with Dikman even before Fitzgerald mentioned the mosaics deal to Goldberg. In Munich, Faulk discussed a possible sale with Dikman, and Dikman gave him photographs of the mosaics.

At the July 1st meeting in Amsterdam, Goldberg knew that Faulk and Dikman had met earlier to discuss the sale of the mosaics.*1382 Goldberg asked Faulk to travel to Munich to inform the seller of her interest in purchasing the mosaics. At Goldberg's direction, Faulk met with Dikman on July 1st and 2nd. Faulk was shown documents that Dikman claimed were proof that the mosaics had been exported properly from northern Cyprus. Faulk returned to Amsterdam on July 2nd and reported to Goldberg that, in his opinion, the export documents appeared to be in order. At trial, the defendants offered Exhibits 702, 3015, and 3016, as support for their contention that Goldberg reasonably believed the mosaics had been properly exported. None of these documents, however, even mentions Dikman or the four mosaics at issue in this case.

For example, exhibit 702 is a sales invoice from a “Goklaney's Cash & Co.” to an individual named Helga Bechly. The invoice refers to five floor mosaics, not the four wall mosaics at issue in this case. The Court is at a loss to understand how this sales invoice substantiates the defendants' contentions that Dikman found the mosaics in the rubble of an extinct church, and that Turkish Cypriot officials authorized the export of the mosaics.

On July 3, 1988, while still in Amsterdam, Goldberg negotiated an agreement with van Rijn, Fitzgerald, and Faulk, whereby “the parties agree[d] to acquire the mosaics for their purchase price of \$1,080,000 (U.S.)” Exhibit 700. The agreement also provided that the parties would split the profits made on any future resale of the mosaics as follows: Goldberg & Feldman 50 %; Fitzgerald 22.5 %; van Rijn 22.5 %; and Faulk 5 %. *Id.* This agreement was executed on July 4th in Amsterdam. *Id.*

Later, Goldberg and Fitzgerald traveled to Geneva,

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Switzerland, to investigate a lead on a second possible Modigliani and to examine the mosaics. On July 5th, Faulk and Dikman transported the mosaics by airplane from Munich to Geneva. The mosaics were stored in crates in the free port area of the Geneva airport. The mosaics never passed through Swiss Customs.

After arriving in Geneva, Faulk and Dikman met Goldberg in the free port area of the airport. This was the only time that Goldberg met Dikman. Dikman introduced himself to Goldberg and then left. In the presence of Faulk, Goldberg then inspected the four mosaics. Upon seeing the mosaics, she "was in awe" and wanted to buy them "more than ever." Tr. 486. She was concerned, however, about their deteriorating condition.

Goldberg testified that while she was in Geneva she inquired as to whether the mosaics had been reported as stolen or missing and whether any applicable treaties might prevent the mosaics from being imported into the United States. She testified that she contacted, by telephone, the International Foundation for Art Research ("IFAR") in New York and UNESCO's office in Geneva. In addition, Goldberg claims she telephoned customs offices in the United States, Germany, Switzerland, and Turkey.

F. Goldberg Secures Financing

Goldberg has done business with Merchants National Bank of Indianapolis ("Merchants") for about five years. Her principal contact at the bank is Otto N. Frenzel III, Vice Chairman of Merchants National Bank & Trust Company of Indianapolis and Chairman of the Board of Merchants National Corporation. Goldberg and Frenzel have known each other for several years and have developed a good friendship. In addition, Frenzel and his wife have purchased art from Goldberg on several occasions, and Merchants has requested Goldberg's assistance in evaluating whether to loan money for art purchases.

In Amsterdam, while contemplating the purchase of the Kanakaria mosaics, Goldberg knew she would have to borrow a substantial amount of money if she were to purchase the mosaics. She called Frenzel at his home to discuss possible financing from Mer-

chants. Frenzel indicated that if Goldberg were certain about the propriety of purchasing the mosaics, he would attempt to arrange a loan for her. Frenzel *1383 referred her loan request to Timothy Massey, Vice President of the Professional Banking Department. Frenzel testified that he can recommend individuals for loans by volunteering to a loan officer his impressions of an individual's background, what he might know about a person, and what a person's expertise might be. Frenzel told Massey that Frenzel thought that Goldberg was a very bright individual with regard to art, that she was credible, and that she had a great deal of expertise. Frenzel also indicated to Massey that he, Frenzel, was comfortable with Goldberg.

Goldberg testified that she told Frenzel and Massey that the bill of sale of the mosaics to her would reflect a purchase price of \$1.2 million. She further testified that she told Frenzel that out of this amount, she would either keep or receive back from the seller ten percent of the amount, or \$120,000, to pay for her expenses, such as insurance, shipping, restoration, and operation of the business. Massey testified in his deposition that he understood the purchase price to be \$1.2 million, and that he did not know at the time of the loan that she intended to keep ten percent of the loan. Frenzel testified in his deposition that he understood the purchase price to be \$1.2 million.

After Goldberg arrived in Switzerland, Merchants agreed to loan her \$1,224,000 for the purchase of the mosaics. Goldberg signed a business promissory note binding Goldberg & Feldman Fine Arts, Inc. as a corporation and herself individually on the loan. She also signed a security agreement offering the mosaics as security for the loan. Upon returning home to Indiana, Goldberg signed an additional agreement with Merchants, granting the bank five percent of the profits of the resale of the mosaics, not to exceed \$175,000.

G. Goldberg Purchases the Mosaics

The sale and transfer of the mosaics was originally scheduled for July 5th; however, a delay in securing financing from Merchants prevented Goldberg from consummating the sale on that date. The \$1.2 million from Merchants did not arrive at a bank in Geneva

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until July 7th. The \$1.2 million was in \$100 bills and was placed in two carrying bags. Of the \$1.2 million, Goldberg kept \$120,000 in cash, and gave the remaining \$1,080,000 to Faulk and Fitzgerald for the purchase of the mosaics.

Goldberg testified that she did not know how the \$1,080,000 was to be divided among the seller and the middlemen. She testified that she thought the middlemen would receive a small amount as commission, such as \$80,000. However, the remaining \$1,080,000 was actually divided as follows:

- \$350,00 to Dikman as payment for the mosaics;
- \$282,500 to van Rijn as a commission;
- \$297,500 to Fitzgerald as a commission;
- \$70,000 to an attorney in London;
- \$80,000 to Faulk for legal fees and/or assistance in facilitating the sale.

Tr. 318-20. Upon completion of the sale on July 7th, Dikman issued a "General bill of sale" to Goldberg & Feldman Fine Arts, Inc. Exhibit 9. The bill of sale lists \$1.2 million as the price Goldberg paid for the mosaics. *Id.*

On July 8, 1988, Goldberg returned with the mosaics to the United States. Goldberg insured the mosaics for \$1.2 million and declared their value at U.S. Customs to be \$1.2 million. As previously noted, Goldberg paid \$1.08 million for the mosaics.

H. Significant Events in Indiana

Goldberg returned to Indiana with the four mosaics and with approximately \$70,000 of the \$120,000 she kept from the Merchants loan. In Europe she spent approximately \$50,000 on conversion charges, shipping and insurance, and the purchase of four paintings and a small piece of art in The Netherlands. Goldberg testified that she deposited the remaining \$70,000 in several of her bank accounts in Indiana. Exhibits 2201 through 2209 show a series of deposits, each under \$10,000, in various business or per-

sonal accounts of Goldberg. At some point after Goldberg returned to Indiana with the mosaics, Frenzel and another*1384 Indiana resident, Dr. Stewart Bick, acquired interests in the resale profits of the mosaics.

Frenzel personally loaned Goldberg \$25,000 in an unrelated art transaction. Frenzel stated in his deposition that the terms of the loan were ten percent interest and a two percent interest in the resale profits of the mosaics.

Additionally, at some point after Goldberg's return to Indiana, Dr. Bick and Frenzel together acquired an interest in the resale profits of the mosaics. Fitzgerald testified that he and van Rijn each sold half of their interest in the resale profits to Dr. Bick. Dr. Bick gave them \$780,000 for such interests. Fitzgerald received \$375,000 for his half of his interest. As van Rijn and Fitzgerald each originally owned 22 1/2 percent of the resale profits, this sale of interests to Dr. Bick gave him a 22 1/2 percent interest in the resale profits, and left van Rijn and Fitzgerald with a 22 1/2 percent interest. Of this percentage, Dr. Bick sold an eight percent interest to Frenzel for \$390,000. Frenzel testified that he gave \$390,000 of his own money to Dr. Bick and acquired the additional eight percent interest. This, when combined with Frenzel's two percent noted earlier, provides Frenzel with a total of ten percent interest in the resale profits. Massey testified in his deposition that Merchants loaned Dr. Bick \$390,000. It was Massey's understanding that, with Dr. Bick's borrowed \$390,000 and with Frenzel's personal \$390,000, Dr. Bick and Frenzel purchased and owned an interest in the resale profits of the mosaics.

Goldberg intended to sell the mosaics. Beginning in the fall of 1988, she contacted at least two people in an attempt to market and sell the mosaics. By October 1988 Goldberg had discussed the sale of the mosaics with Dr. Geza von Habsburg, an art dealer operating out of Geneva and New York. In October of 1988 von Habsburg contacted Dr. Marion True of the Getty Museum in California and discussed whether the Getty would be interested in purchasing the mosaics. Dr. True explained that the Getty does not collect Byzantine art and told von Habsburg that, because of her close working relationship with Cyprus,

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it would be necessary for her to contact her friend Dr. Vassos Karageorghis about the mosaics. Dr. True had developed a working relationship with Dr. Karageorghis, and he had often spoken to her of Cyprus's attempts to recover the mosaics. Dr. True then called Dr. Karageorghis, who told her that export of the mosaics was not authorized by Cyprus and that the mosaics she described were the mosaics which Cyprus had been so interested in recovering. Dr. True gave Dr. Karageorghis the name of Geza von Habsburg and how to contact him.

In November 1988, Dr. Karageorghis and Papageorghiou, in conjunction with Cyprus's Director General of the Ministry of Foreign Affairs, contacted the Ambassador of Cyprus in Washington, D.C. They informed the Ambassador of the mosaics' existence in the United States and suggested that immediate and discreet action be taken to recover the mosaics. The embassy then began working with its attorneys, the plaintiffs' Washington law firm in this case, to determine the location and possessor of the mosaics. Embassy officials worked discreetly so as not to put the mosaics in any danger or cause them to disappear underground again.

By January 1989, Goldberg had also contacted her friend and art mentor Barbara Divver, who is an art dealer in New York. Divver contacted her friend John Walsh, Director of the Getty Museum, about the Getty's possible acquisition of the mosaics. Goldberg and Divver had agreed that if the Getty Museum eventually purchased the mosaics, Goldberg would give Divver a ten percent commission. Walsh directed that Dr. True, because she was more familiar with Cyprus's situation regarding the mosaics, respond to Divver's inquiry. Dr. True spoke with Divver and explained to her substantially the same things she had discussed with von Habsburg. Dr. True told Divver that Dr. True would report this contact to the plaintiffs' Washington law firm and to U.S. Customs, which she did.

*1385 The plaintiffs and their attorneys eventually learned that the mosaics were in Goldberg's possession in Indianapolis. The plaintiffs wrote to Goldberg requesting the return of the mosaics. Upon the defendants' refusal, the plaintiffs instructed their attorneys to file suit to recover the mosaics.

Throughout this opinion, the Court will discuss such additional facts as may be necessary to support the determinations reached herein.

V. Choice-of-Law

A federal district court exercising diversity jurisdiction under [28 U.S.C. § 1332](#) must apply state substantive law. [Erie Railroad Co. v. Tompkins](#), 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938); [DeValk Lincoln Mercury, Inc. v. Ford Motor Co.](#), 811 F.2d 326, 329 (7th Cir.1987). Moreover, a federal district court sitting in diversity must follow the choice-of-law rules of the state in which it sits to determine which state's substantive law to apply. [Klaxon Co. v. Stentor Elec. Mfg. Co.](#), 313 U.S. 487, 61 S.Ct. 1020, 85 L.Ed. 1477 (1941); [DeValk](#), 811 F.2d at 329. Therefore, this Court, exercising diversity jurisdiction over this suit, must apply the choice-of-law rules of the state in which it sits, namely, Indiana.

A. Indiana Law Analysis

[3] Indiana's traditional choice-of-law doctrine was *lex loci delicti commissi*, which dictated that the place where the wrong was committed governed which state's substantive law to apply. [Hubbard Mfg. Co., Inc. v. Greeson](#), 515 N.E.2d 1071, 1073 (Ind.1987). This traditional rule has been modified, however. In [W.H. Barber Co. v. Hughes](#), 223 Ind. 570, 63 N.E.2d 417 (1945), the traditional *lex loci* rule was modified in the area of contract law. "The modified rule allowed the state with the most significant contacts to apply its substantive law even if the breach occurred in another state." [Hubbard](#), 515 N.E.2d at 1073. Similarly, in [Hubbard, supra](#), the Indiana supreme court modified the traditional rule in the area of tort law, and adopted the "most significant contacts" analysis in torts as well as in contracts. *Id.*; see [Consolidated Rail Corp. v. Allied Corp.](#), 692 F.Supp. 924, 927 (N.D.Ind.1988). Today, [Hubbard](#) is the leading case to discuss Indiana's choice-of-law rules.

Indiana's contacts to this suit are more significant

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than those of any other jurisdiction. Defendant Peg Goldberg is a citizen of Indiana. Defendant Goldberg & Feldman Fine Arts, Inc. is an Indiana corporation with its principal place of business in Indiana. The purchase of the mosaics was effected largely through the efforts of an Indiana art dealer, Robert Fitzgerald. The purchase of the mosaics was financed by a loan obtained from an Indiana bank, Merchants; Merchants presently holds a security interest in the mosaics in the amount of \$1,200,000. Several Indiana residents (Goldberg, Fitzgerald, Dr. Bick, Frenzel) and one Indiana corporation (Merchants) hold an interest in any profits realized on the resale of the mosaics. The original resale agreement among Goldberg, Fitzgerald, van Rijn, and Faulk stipulated that Indiana law would govern any disputes arising out of the agreement. This indicates Goldberg's belief that the laws of her home state, Indiana, were more significant to this transaction. Finally, the mosaics are presently in Indiana and have been in Indiana since they were transported from Geneva in July 1988. For these reasons, Indiana has a significant interest in the application of its law to this transaction. Therefore, the Court concludes that Indiana has the most significant contacts to this suit. Indiana law applies.

B. Swiss Law Analysis

[4] The conclusion that Indiana substantive law applies in this case is bolstered by Swiss choice-of-law principles. As Professor Arthur von Mehren testified at trial:

The choice of law rules of another system may assist in certain cases a forum in determining its ultimate choice of the applicable law.... [I]t may be of interest to the forum and of help to the forum in reaching a conclusion to consider what view would be taken by the courts of another legal order if the matter were before those courts.

This Court will now examine Swiss choice-of-law principles for whatever light they may shed on the issue of which jurisdiction's substantive law should be applied under the facts of this case. Swiss choice-of-law rules also dictate that Indiana substantive law should control.

As a general rule, Swiss law applies the so-called *lex*

situs principle in determining choice-of-law in cases where the ownership of tangible, movable property is disputed. *Id.* at 10. Under the *lex situs* rule, a forum court must apply the substantive law of the place where the tangible, movable property was physically located at the time of its sale. *Id.* If this general rule applies in the present case, then Swiss law governs because the mosaics were physically present in Switzerland when the sale was consummated. However, the general rule does not apply in this case.

Swiss law recognizes an exception to the general *lex situs* rule. As Professor von Mehren explained, under Swiss choice-of-law rules,

an exception is made for situations in which the goods though physically present, have only a fortuitous and transitory or casual connection with the legal order in question. This is often expressed as the exception for goods in transit.

Id. at 10, 11. If a transaction falls within this "in transit" exception, then the law of the situs does not apply; instead, the law of the place of destination applies. *Id.* at 11. In the case *sub judice*, the place of destination is Indiana. Therefore, if the exception for property in transit applies, then Indiana substantive law governs.

The Court agrees with Professor von Mehren's opinion that the "in transit" exception applies in this case. *Id.* at 18. The mosaics were transported from Munich to Geneva. Upon their arrival in Geneva, the mosaics were placed in storage in the free port area of the Geneva airport; there they remained in storage for four days until being shipped to Indianapolis. The mosaics never passed through Swiss customs. The mosaics never entered the Swiss stream of commerce. Their presence in Switzerland was temporary, as was intended. Those involved with the transaction intended that if the sale were consummated, the mosaics were to be shipped to Indiana; if not, the mosaics were to be returned to Germany. For the foregoing reasons, the Court concludes that under Swiss law the "in transit" exception to the general *lex situs* rule would apply. Therefore, the law of the place of destination controls, which in this case is Indiana. Accordingly, Swiss choice-of-law rules would agree with this Court's earlier conclusion that Indiana substan-

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tive law controls under the facts of this case.

VI. Substantive Law

A. Indiana Substantive Law

[5] At every appropriate opportunity in their complaint, the plaintiffs request that possession of the mosaics be awarded to the plaintiff Church of Cyprus. Under Indiana law, replevin is the proper legal theory for the recovery of personal property. “A replevin action is a speedy statutory remedy designed to allow one to recover possession of property wrongfully held or detained as well as any damages incidental to the detention. The only issue *necessarily* decided in a replevin action is the *1396 right to present possession.” [State Exchange Bank of Culver v. Teague](#), 495 N.E.2d 262, 266 (Ind.App.1986) (emphasis in original). Indiana courts have long adhered to this theory. Although the mosaics were originally fixtures, attached to the apse of the Kanakaria Church, they may be replevied as long as their separate identities may be determined. A fixture severed from the real property to which it first attached becomes personal property and may be replevied.

The plaintiffs have requested the return of the mosaics. It is undisputed that the mosaics are significantly important to the Church and Republic of Cyprus. Papageorghiou testified that the mosaics have unique religious and spiritual significance to the Church and Republic of Cyprus. [Tr. 84-85](#). Father Pavlos Maheriotis, Abbot of the Holy Monastery of Machaeras in Cyprus and a senior official and representative of the Archbishop of the Church of Cyprus, testified that the Church of Cyprus wants the mosaics returned because “they are our spiritual treasures. They were once put up on the wall and they were sanctified through the prayers and through the holy liturgy and they are part of our Christian life.” [Tr. 263](#). Dr. Vikan, the plaintiffs' art expert, testified that wall mosaics were the spiritual and artistic manifestation of the Byzantium culture. By lining the walls of sacred places with holy figures, the people of the Byzantine culture “create[d] a kind of sacred space for worship and veneration within that interior.” [Tr. 337-38](#). Dr. Vikan further testified that the original Kanakaria mosaic is of even greater significance be-

cause only six or seven mosaics survived both the ravages of iconoclasm, in which “images were outlawed and then they were consciously destroyed by imperial edict in Byzantium,” and the passage of time. [Tr. 338](#). Because the plaintiffs have requested the return of their uniquely valuable mosaics, the Court considers replevin as the more appropriate characterization of this case, including return of the mosaics as the more appropriate remedy. Therefore the Court will analyze the plaintiffs' claims under the elements of a cause of action for replevin.

In Indiana to prove a claim for replevin, a plaintiff must prove that he has title or *1397 right to ownership, that the property has been unlawfully detained, and that the defendant is in wrongful possession of the property. [Snyder v. International Harvester Credit Corp.](#), 147 Ind.App. 364, 261 N.E.2d 71, 73 (1970) (citations omitted); I.L.E. Replevin § 42 (West 1960). The Court now applies the elements of replevin to the facts of this case.

Finally, to recover under replevin, the plaintiffs must prove that the defendants are in wrongful possession of the mosaics. The defendants concede that the mosaics are in their possession. Thus the issue is whether the defendants' possession of the mosaics is wrongful. As previously noted, the Court has concluded that the mosaics were stolen. There are long established rules of law in Indiana that a thief never obtains title to stolen items, and that one can pass no greater title than one has. [Torian v. McClure](#), 83 Ind. 310 (1882); [Breckenridge v. McAfee](#), 54 Ind. 141 (1876). Therefore, one who obtains stolen items from a thief never obtains title to or right to possession of the item. *Id.*

Under Indiana law, as outlined, a thief obtains no title to or right to possession of stolen items and can pass no title or right to possession to a subsequent purchaser. *1399 The mosaics were stolen. For purposes of this analysis, it is of no significance whether Aydin Dikman originally stole the mosaics, or who originally stole them. Further, it matters not whether Goldberg purchased the mosaics from Dikman alone,

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or from Dikman, van Rijn, and Fitzgerald, or from only van Rijn and Fitzgerald. The evidence of theft and chain of possession under the facts of this case lead only to the conclusion that Goldberg came into possession of stolen property. Under Indiana law, she never obtained any title or right to possession.^{FN22} Therefore, the Court concludes that the defendants are in wrongful possession of the mosaics.

^{FN22.} As shown above, under Indiana law even a *bona fide* purchaser cannot acquire title to or right to possession of stolen property. Therefore, because the Court has concluded that the mosaics were stolen, there is no need to determine whether Goldberg was a *bona fide* purchaser under Indiana law.

The Court notes that in some situations a “middleman,” for lack of a better term, may obtain voidable title and pass good title to a *bona fide* purchaser for value without notice of the original ownership. One who induces the original owner by fraudulent representations to sell an item acquires voidable title to the item. A *bona fide* purchaser for value, without notice of the original ownership, may acquire good title to the item from the middleman. Boyer, *Survey of the Law of Property*, 712-15 (1981). As between the original owner whose property is stolen and the *bona fide* purchaser who acquires the stolen item from a thief, the law will protect the original owner, because he did nothing and evidenced no intent to part with title to his property. As between an original owner who intentionally relinquished title to his property (albeit under fraudulent circumstances) and the *bona fide* purchaser from a fraudulent middleman, however, the law will protect the *bona fide* purchaser. The original owner lost his protection, ostensibly, when he parted with title to his property.

There is some indication that Indiana follows the voidable title rule. *Alexander v. Swackhamer*, 4 N.E. 433, 436 (Ind.1886); *Breckenridge v. McAfee*, *supra*, 54 Ind. at

^{147.} However, it is not necessary to apply this analysis to the facts of this case because there is absolutely no evidence that the plaintiffs ever intended to part with title to or possession of the mosaics by sale, export, fraudulent relinquishment of title, or otherwise. As a matter of law no one in the chain of possession of the mosaics ever obtained voidable title; thus Goldberg could not be a *bona fide* purchaser under this analysis.

^[6] Under Indiana law, the Court concludes that the plaintiffs have made credible and persuasive showings on the elements necessary for the replevin of personal property. The Indiana cases holding *1400 that a thief obtains no title to stolen property recognize a long-standing rule. The cases establish law which increases in precedential value over time. As the plaintiffs have proven their case for replevin, the Court concludes that possession of the mosaics must be awarded to the plaintiff Church of Cyprus.

B. Swiss Substantive Law

^[7] Assuming, *arguendo*, that Indiana substantive law does not apply in this case, the Court next considers the issues under Swiss law. Under Swiss law, a purchaser of stolen property acquires title superior to that of the original owner only if he purchases the property in good faith. *Tr. 19* (von Mehren). A bad faith purchaser of stolen property never acquires title. *Id.* at 20. As Professor von Mehren explained at trial, to conclude that a purchaser did not act in good faith, a court must *either* find that the purchaser actually knew that the seller lacked title, *or* find that “an honest and careful purchaser in the particular circumstances would have [had] doubts with respect to the capacity of the seller to transfer property rights.” *Id.* at 24.

Swiss law presumes that a purchaser acts in good faith. *Id.* at 26. However, a plaintiff seeking to reclaim stolen property may overcome this presumption. *Id.* To do so he must show that suspicious circumstances surrounded the transaction which should have caused an honest and reasonably prudent purchaser to doubt the seller's capacity to convey property rights. *Id.* If the plaintiff shows that the circum-

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stances surrounding the transaction should have created such doubt, then the defendant purchaser has the burden of establishing his good faith. A purchaser establishes his good faith by showing that he took steps to inquire into the seller's capacity to convey property rights and that such steps reasonably resolved such doubt. *Id.*

1. *Suspicious Circumstances*

As previously set forth, under Swiss law, this Court must begin its analysis by presuming that Goldberg purchased the mosaics in good faith. The plaintiffs argue that they have overcome this presumption by showing that suspicious circumstances surrounded the sale of the mosaics sufficient to cause an honest and reasonably prudent purchaser in Goldberg's position to doubt whether Dikman had the capacity to convey property rights. Therefore, plaintiffs contend, Goldberg cannot rest on the presumption that she purchased the mosaics in good faith. The Court agrees.

Many suspicious circumstances surrounded the sale of the mosaics. First, Goldberg knew the mosaics came from an area occupied by foreign military forces. Goldberg testified that at the time of the sale she was aware that Turkish military forces had invaded Cyprus in 1974 and that the Turks have been in control of northern Cyprus since that time. Tr. 460. She was told by Michel van Rijn that the mosaics had been "found" by the seller in the rubble of an "extinct" church in northern Cyprus and that the church had been damaged during the Turkish invasion. Tr. 469-70. Goldberg herself admitted on direct examination that the origin of the mosaics raised suspicions in her mind:

Q. I believe you said that Mr. van Rijn told you these mosaics were from Cyprus. Did that set off any warning bells in your mind?

A. Well, yes. I mean, I knew that Cyprus had been a British colony for a number of years. I knew that the island had changed hands, or parts *1401 of it had changed hands many times, and I did know that at least for the last 14 or 15 years the island had been divided.

Tr. 459-60.

Second, the very nature of the items for sale warranted that a potential purchaser should proceed with caution. As Professor von Mehren explained:

Here we have not an ordinary object, nor do we have an object that is typical movable property. Instead we have mosaics that are unique, that have great cultural and artistic value, that have also great economic value. These mosaics were, up until very recently, not movable property at all. They were part of a building. They were immovable property. When one has an object that was not movable property and it then is turned into movable property and appeared on the market and is of great and unique value, the circumstances require an explanation as to how that came about. Was this a legitimate series of events, or not?

In addition, these objects are not ordinary commercial objects. They are objects that have religious and cultural significance. They are the kind of objects that do not ordinarily enter into commerce, and here they are in commerce, or being offered for sale. A careful and honest purchaser would have to understand and explain why ... these mosaics should now be offered on the market.

Third, a vast disparity existed between the appraised value of the mosaics and the price Goldberg paid for them. Goldberg paid \$1.08 million, in cash, for the mosaics; six months later, she offered to sell them to the Getty Museum for \$20 million. Exhibit 52. Prior to her purchase of the mosaics, Goldberg received an appraisal of their value from van Rijn. He valued the mosaics at approximately \$1.2 million for each of the three smaller pieces and approximately \$2.4 million for the mosaic depicting Christ, or a total of \$6 million for all four mosaics. Exhibit 43. Art dealer Robert Roozmond appraised the value of the mosaics at two million pounds, or approximately \$4 million. Exhibit 44. Robert Fitzgerald, an art dealer with 28 years experience, valued the mosaics at \$3 to \$5 million. Tr. 316. The defendants' art expert, Andre Emmerich, estimated the market value of the mosaics to be between \$5 and \$6 million. Emmerich Deposition 81.

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Fourth, Goldberg knew very little about the seller, Aydin Dikman. Everything she knew about Dikman she learned from middlemen: Fitzgerald, van Rijn, and Faulk. She was told that Dikman was a Moslem Turk attempting to sell Christian mosaics from northern Cyprus. She was also told that Dikman “found” the mosaics while he was employed as “an archaeologist from Turkey assigned to northern Cyprus.” Tr. at 456. The Court believes that a reasonable purchaser would have found it peculiar that a Turkish archaeologist would be in the business of selling Cypriot antiquities. As the plaintiffs' art expert Dr. Vikan testified:

the one thing that really strikes me about this as being strange is that he [Dikman] is an archaeologist. This is a good thing, I guess, but when in the world did archaeologists get in the business of selling antiquities? I mean this is bizarre.

Tr. 350. In addition, Goldberg met the seller, Dikman, only once. That brief *1402 meeting occurred on July 5, 1988, or two days before the sale was consummated. This was the only time Goldberg and Dikman ever communicated directly with each other. Finally, as previously discussed, no document such as a bill of sale or export paper links *Dikman* to these mosaics.

Fifth, the cast of characters acting as middlemen, namely, Michel van Rijn, Ronald Faulk, and Robert Fitzgerald, were themselves suspect. Goldberg knew very little about Michel van Rijn; she first met him on July 1, 1988, or six days before the sale was consummated. She did know, however, that he was a felon. Goldberg testified that at the time of the sale she knew van Rijn had been convicted in France for art forgery. She also knew that van Rijn was being sued by an art gallery for “[f]ailure to pay money.” Next, Goldberg knew very little about Ronald Faulk. She knew only that he was an attorney from California and that he was representing Fitzgerald and van Rijn in this transaction. Goldberg was, however, familiar with Robert Fitzgerald, the principal middleman. She “had known him casually for several years.” Tr. 533. She knew, for example, that in the past Fitzgerald had used the names Robert Jones, Robert Jones-Fitzgerald, and Robert Fitzgerald-

Jones. Tr. 533. She also knew that Fitzgerald had been sued for his involvement in a transaction involving a purported Michelangelo modello. Tr. 323-24, 433-35. In addition, Goldberg knew that all three middlemen were to profit financially from the sale of the mosaics.

Finally, the haste with which the transaction was carried out raises suspicions. Goldberg first learned of the mosaics on July 1, 1988. On July 4th, she signed a contract with the three middlemen to divide the mosaics' resale profits. Later on July 4th Goldberg traveled from Amsterdam to Geneva. There she inspected the mosaics on July 5th. The sale was consummated on July 7th. On July 8th, the mosaics were on an airplane to the United States. The rush with which this sale took place raises suspicions. As Dr. Vikan testified:

The timing of the sale [raises suspicions]. July 2nd [to] July 7th. What is the big hurry? These things have been in somebody's warehouse in Munich for ten years, nine years. Why such a hurry now? If you are in such a hurry why not put a good faith deposit down, why not put your funds in escrow, why not write a contract with the contingency this contract will go into effect on the 1st of September with the delivery of all funds contingent on the satisfactory resolution of provenance, authenticity, and restorability....

All of the foregoing sets of circumstances, especially when considered together, raise significant suspicions. For these reasons, the Court concludes that suspicious circumstances surrounded this sale sufficient to cause an honest and reasonably prudent purchaser in Goldberg's position to doubt Dikman's capacity to convey property rights to the mosaics. The Court cannot improve on Dr. Vikan's summation of the suspicious circumstances surrounding this sale: “All the red flags are up, all the red lights are on, all the sirens are blaring.” Tr. 353. Because such suspicious circumstances existed, Goldberg cannot rest on the presumption, which she is afforded under Swiss law, that she purchased the mosaics in good faith. Instead, Goldberg now bears the burden of establishing her good faith. She may do so by showing that she took steps to inquire into Dikman's capacity to

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convey property rights to the mosaics *1403 and that such steps reasonably resolved any doubts as to Dikman's capacity to convey such property rights.

2. Goldberg's Inquiry

Next, the Court will examine the steps Goldberg took to inquire into Dikman's capacity to convey property rights to the mosaics. As a prefatory matter, the Court notes that all of Goldberg's inquiries took place *after* July 4, 1988, which is the date she signed an agreement with the middlemen to split the profits from any future resale of the mosaics.

Goldberg testified that she telephoned authorities at UNESCO's office in Geneva. She cannot recall the name of any individual she spoke with at UNESCO, Switzerland. Goldberg testified that the purpose of her call was to determine "whether or not there were any applicable treaties which would have covered the removal of the items from northern Cyprus in the mid to late 1970s to Germany." Tr. 497. Thus, Goldberg inquired about treaties, not about the mosaics. She did not inquire as to whether the mosaics had been reported as stolen or whether existing claims might exist. In fact, she did not mention the mosaics at all. Further, Goldberg did not contact UNESCO's office in Paris, which is UNESCO's "central gathering point" for information concerning art and cultural property. Emmerich Depo. at 73.

Goldberg also testified that she telephoned the International Foundation for Art Research (IFAR) in New York. IFAR is an international organization that collects information concerning stolen art. Goldberg does not recall the name of any individual she spoke with at IFAR. No document sent to or received by IFAR confirms Goldberg's telephone call. IFAR has no record of Goldberg's alleged telephone call in July 1988. IFAR has a procedure whereby a formal search can be made of its files to determine whether a particular work of art has been listed as missing or stolen. Lowenthal Deposition 17. The cost is \$25, which is billed to the requesting party. *Id.* Goldberg did not request that such a formal search be conducted, nor was she billed for any informal search IFAR may have conducted of its files in July 1988.

Next, Goldberg testified that she telephoned customs

offices in the United States, Switzerland, Germany, and Turkey. She cannot recall, however, the name of any person she allegedly contacted at any of these customs offices. She testified that she asked whether the mosaics had been reported as missing or stolen. Tr. 493-97. Her testimony is not corroborated by a single document sent to or received from any such customs office. In addition, on December 18, 1988, Goldberg prepared "an outline" of "the steps that we [Goldberg and Feldman] took and the knowledge we had of the pieces." Tr. 567. No mention is made in this outline of any calls placed to or contacts made with U.S., Swiss, German, or Turkish Customs.

Next, the Court will examine briefly the steps Goldberg failed to take in determining whether Dikman had the capacity to transfer property rights to the mosaics. First, and most significantly, Goldberg never contacted the Republic of Cyprus or the Church of Cyprus, even though she was told the mosaics came from an "extinct" church in northern Cyprus. Contacting Cyprus is the first logical and necessary step a potential purchaser should have taken to determine the provenance of the mosaics. The importance of contacting Cyprus was highlighted by Dr. Vikan during his direct examination:

Q. Assuming that a prudent person did not want to walk away from this transaction, what, if anything, should that person have done to pursue the transaction?

A. Call the Republic of Cyprus, the only thing you can do.

Q. And why, in your view, is that the only thing you can do?

A. Because the object is [from] there. I'll use the metaphor of the smelly fish. The smelly fish is lying in front of you and it ha[s] Cyprus written on [its] side. The only way you can lift that is to get in touch *1404 with the people who can tell you the truth.

Tr. 353.

Second, Goldberg never contacted the so-called Turkish Republic of Northern Cyprus, formerly

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known as the Turkish Federated State of Cyprus, even though she was told that the seller, Dikman, discovered the mosaics while he was working as “an archaeologist from Turkey assigned to northern Cyprus.” Goldberg later refers to Dikman as “the official archaeologist for the northern one-third of Cyprus, known as the Turkish Federated Republic of Cyprus.” Exhibit 12. By contacting the Turkish Republic of Northern Cyprus, Goldberg could have verified whether Dikman had ever served as the “official archaeologist” of that country and whether the mosaics had ever been exported properly from northern Cyprus.

Third, Goldberg failed to contact Interpol, the international police organization headquartered in France, to investigate whether the mosaics had been reported as stolen. In light of this, the defendants' point that plaintiffs failed to report the theft of the mosaics to Interpol is of little significance.

Finally, Goldberg did not consult a single disinterested expert on Byzantine art prior to purchasing the mosaics. Goldberg is not, nor does she claim to be, an expert in Byzantine art. Rather, she deals almost exclusively in 19th and 20th century American and European paintings, etchings, and sculptures. Art dealer Barbara Divver suggested to Goldberg that she seek independent, expert advice from one familiar with Byzantine art, but Goldberg failed to do so. Even defendants' own art expert, Andre Emmerich, testified that an art dealer should secure expert advice before venturing into areas in which he is not expert. Emmerich Deposition 57-61.

As the foregoing discussions indicate, Goldberg made only a cursory inquiry into the suspicious circumstances surrounding the sale of the mosaics. Further, the Court has noted additional steps that Goldberg utterly failed to undertake. Therefore, the Court concludes that Goldberg's inquiry was deficient in resolving doubts as to Dikman's capacity to convey property rights to the mosaics.

In summary, the Court concludes that suspicious circumstances surrounded the sale of the mosaics which should have caused an honest and reasonably prudent purchaser to doubt whether Dikman had the capacity to convey property rights. Further, the Court con-

cludes that Goldberg, in making only a cursory inquiry into Dikman's capacity to convey property rights to the mosaics, failed to take reasonable steps to resolve that doubt. Goldberg did not purchase the mosaics in good faith.

Conclusion

Regarding issues of credibility in this case, the Court finds that the evidence and testimony of the plaintiffs is more credible and persuasive. Indeed, in many instances the manner in which the defendants and associated individuals proceeded in this case reflects negatively on the credibility of the defendants' case.

As previously discussed, under Indiana law and in the alternative under Swiss law, defendant Goldberg never obtained good title to or any right to possession of the mosaics. The plaintiffs have made a proper showing in all respects for the return of the mosaics. The Court concludes that under the circumstances of this case, possession of the property at issue, and not money damages in lieu of return of the actual property, is the more appropriate remedy. Accordingly, the Court orders that the mosaics must be returned to the true and rightful owner, the Church of Cyprus.