

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
Northern Division

UNITED STATES OF AMERICA,

Plaintiff,

- against -

Civil No. 13-cv-01183-CCB

3 Knife-Shaped Coins, 12 Other Chinese Coins, and
7 Cypriot Coins,

Defendants.

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GOVERNMENT’S OPPOSITION TO MOTION FOR RECONSIDERATION
AND TO CLAIMANT’S PROPOSED DISCOVERY SCHEDULE

The United States of America, by its counsel, opposes Claimant’s Motion for Reconsideration and its Response to the Court’s Order Regarding Scheduling. In support of its opposition, the Government says the following.

Overview

This litigation is now in its fifth year. At each turn, Claimants have been rebuffed in their effort to turn a simple civil forfeiture case against a handful of ancient coins into a test of the ability of the United States of America to honor its treaty obligations and to protect the cultural patrimony of countries from which objects of antiquity have been looted and sold to collectors. Each court that has considered Claimants’ arguments -- this court, the Fourth Circuit, and the Supreme Court of the United States -- has told Claimants that they may not do so. We are still here – in the fifth year – for only one reason: Claimants’ refusal to take ‘no’ for an answer. Now they have raised all of their rejected arguments yet again – this time in the guise of a motion for reconsideration of

the court's most recent rebuff, and also in an attempt to take discovery on the very issues and arguments that they have been told that they may not pursue. It is time for this court to put a stop to this waste of judicial resources by informing Claimants that the court will adjudicate the narrow issues that remain in the forfeiture case and nothing more.

Background

The defendant property was seized by Customs and Border Protection in 2009. In 2010, Claimants filed a civil lawsuit challenging the enactment of the statutes and regulations underlying the Government's forfeiture action. This court rejected that challenge in 2011, the Fourth Circuit affirmed the district court in 2012, and the Supreme Court denied *cert.* in March, 2013. The Fourth Circuit's decision is reported at *Ancient Coin Collectors Guild v. U.S. Customs and Border Protection*, 698 F.3d 171 (4th Cir. 2012).

On April 22, 2013, the Government filed this forfeiture action, seeking the forfeiture of the defendant property under 19 U.S.C. § 2609 and related statutes and regulations in accordance with the Fourth Circuit's decision. Claimants answered the complaint on June 19, 2013. At the court's direction, the parties filed opposing suggestions for a scheduling order, and on July 26, 2013, the court conducted a conference call to resolve the differences. In the end, the court agreed with the Government's suggestion that discovery be suspended until the Government filed a motion to strike certain portions of Claimants' Answer to the Verified Complaint. Such a motion, the court said, would serve as a vehicle for determining whether the scope of the litigation, and hence the scope of discovery that the parties would be permitted to conduct, would be narrowed to those issues fairly before the court in this matter.

The Government filed its motion on September 17, 2013. (ECF 12) It argued that most

of Claimants' responses to the Verified Complaint raised issues that were resolved by the Fourth Circuit in its 2012 decision and were not subject to challenge in the instant case. Among other things, the Government argued that Claimants were attempting to renew their challenge to the basis for, and the procedures used to draft and promulgate, the statutes and regulations implementing the Convention on Cultural Property. In the Government's view, the court was no longer concerned with, and Claimants could not relitigate, *why and how* the applicable statutes and regulations were enacted, nor whether the defendant property *should have been* designated as archaeological material covered by those statutes and regulations. The only issue remaining in light of the Fourth Circuit's decision, the Government argued, was whether the property *has been* so designated so that it is subject to forfeiture in this proceeding.

In addition, the Government moved to strike Claimants' attempt to relitigate, by way of an affirmative defense, whether the Government is required to prove that the defendant property was first discovered in Cyprus and China. That assertion, the Government argued, was expressly foreclosed by the Fourth Circuit's decision.

Claimants responded to the Government's motion by attempting to recast its challenges in the form of an Amended Answer to the complaint. (ECF 13) Claimants then moved to set a discovery schedule that would have allowed them to conduct discovery on the very issues that, in the Government's view, were foreclosed. (ECF 19) The court denied the latter motion on November 8, 2013 (ECF 21), and granted the Government's motion to strike the Amended Answer on June 3, 2014. (ECF 22)

In its June 3 Order, the court agreed with the Government that Claimants were attempting to relitigate issues that were foreclosed. "It is abundantly clear," the court said, "that [Claimant]

seeks to expand the scope of this forfeiture action well beyond the limits set forth by the Fourth Circuit in its controlling opinion.” Order at 1. That opinion, the court continued, “forecloses any further challenge to the validity of the regulations.” Moreover, the court noted that Claimants were continuing to argue that it was part of the Government’s burden to establish that the coins were first discovered within and subject to the export control of either Cyprus or China. “This argument is also foreclosed by the Fourth Circuit’s opinion.” Order at 2.

The only remaining issues in the case, the court concluded, were whether the coins have in fact been listed “by type or other appropriate classification,” and if so, whether Claimants can establish that the coins fall with one of the exceptions to forfeiture set forth in the statute. Order at 1-2, citing *Ancient Coin Collectors Guild*, 698 F.3d at 183.

In response to the court’s June 3 Order, Claimants have filed the instant motion for reconsideration (ECF 24), and yet another attempt to obtain permission to conduct discovery on the foreclosed issues. (ECF 25)

Discussion

There is no need to discuss Claimants’ motion for reconsideration in any detail. Without citing any new information, they are essentially arguing for the fourth time that they should be allowed to challenge *the reasons* why the statutes and regulations were enacted, *the process* by which they were enacted, and *the motives* of the individuals involved in the enactment process. This court said that they may not do so in 2011; the Fourth Circuit said that they may not do so in 2012; and this court said again that they may not do so in June of this year. To Claimants’ *fourth attempt* to raise the same issues the court should say, enough is enough.

Claimants’ discovery request makes their objective clear. As their “first discovery issue,”

Claimants ask to be allowed to inquire why the Government believes that the coins were first discovered in Cyprus or China. Response Regarding Scheduling at 3. Second, Claimants ask to be allowed to conduct discovery “into the process under which the Government listed the defendant property” under the CPIA. *Id.* at 4. Finally, Claimants seek discovery as to whether some “mid and low level State Department employees responsible for preparation of the designated lists” played an improper role in the initiation of the instant forfeiture case. All of these issues lie outside the scope of the issues that remain to be litigated and/or are plainly irrelevant to these proceedings.

Conclusion

For all of these reasons, the court should deny the motion for reconsideration and should issue an order limiting discovery to the questions remaining before the court: do the defendant coins fall within the class or category of objects designated as cultural property subject to forfeiture under the applicable statute and regulations, and if so, can Claimants meet their burden of proof on the defense set forth in the statute. The Government has no objection to the length of time permitted for discovery as long as its scope is properly limited to those issues.

Respectfully submitted,

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