

IN THE WESTMINSTER MAGISTRATES COURT

BETWEEN :

HM REVENUE & CUSTOMS

Applicant/Complainant

V

RIAD ISSA MOHAMAD AL QASSAS

Claimant/ Respondent

RULING

1. This is an application by HM Revenue & Customs (` **The Applicant/Complainant** `) for an Order for condemnation (i.e. forfeiture) of an antique statue (` **the statue** `) seized by the Applicant in London on **1st November 2013**.
2. Seizure of the statue in question was made under the provisions of s.139 (1) of the Customs and Excise Management Act 1979 (` **the 1979 Act** `).
3. The basic claim by the Applicant is that the statue is liable to be forfeited, it being asserted by the Applicant that it was mis-declared when it was imported into the UK in early **December 2011**.
4. After the statue was seized, the Applicant arranged for an examination to be carried out by Dr Peter Higgs (` **Dr Higgs** `). Dr Higgs is a world-renowned curator, specialising in Greek Sculpture at the Department of Greece and Rome of the British Museum. He has been employed as a curator by the British Museum since May 1993.. He estimates the statue had a value of approximately **£1,500,000 to £2,000,000** when he was asked to examine the item.
5. Enquiries by the Applicant revealed that on **1st December 2011** the statue had been consigned to a distribution centre in West Drayton. The Air Waybill described the statue as a ` **marble stone piece for home decoration** ` . The country of ` **manufacture** ` was said to have been **Turkey** and that the statue had a value for customs and excise purposes of **\$110,000**.
6. On **8th December 2011**, Sean Farrell of Connoisseur International (` **Connoisseur** `) gave instructions to enter the goods under bond as a result of which VAT was not then payable , as otherwise would have been the case in respect of the importation into the UK. Also on **8th December 2011**, Hassan Fazeli (` **Mr Fazeli** `) sent an email to Mr O`Farrel (sic) of Connoisseur
7. An invoice from Hassan Fazel of Hassan Fazel Trading Company LLC (` **Hassan Fazel** `) of Sharjah, UAE was supplied stating that, on the face of that document, the statue was being sold by Mr Fazel or Hassan Trading to Connoisseur International and that the statue was over ` **one hundred years of age** ` . However, there is no evidence that Connoisseur International have ever sought to purchase the statue.

8. An email from Mr Faseli dated **8th December 2011** has been produced stating that the item in question belonged to one `Farhan`, thought by the Applicant to refer to **Farhan Yaghi** (`Mr Yaghi`). That email made reference to a document which stated that the statue was :
 - (i) **"Greek classic period 17th Century"**
 - (ii) **that Mr Fazeli or his LLC had authority to sell it**
 - (iii) **that Mr Fazeli or his LLC was the lawful owner**
 - (iv) **that it had been in Mr Fazeli's collection for some 34 years**
 - (v) **that the provenance was the Fazeli family collection since 1977.**HMRC maintain that each of these assertions is false.
9. The United Kingdom Border Agency (`UKBA`) was provided with the following representations which are not accepted by the Applicant and which, in short, form the basis of this claim for condemnation :
 - (i) that the origin is **Turkey** and that
 - (ii) it was valued at **\$110,000.**
10. The statue was lodged by Connoisseur with a professional restorer, Colin Bowles of Colin Bowles Ltd, on **8th May 2012**. The instructions to Mr Bowles were said to have been provided provided by Mr Yaghi. The invoice from Mr Bowles for services rendered was sent to **Aequitas Classical Arts Limited.** (`Aequitas`) on **31st August 2012**. A company search reveals that Mr Yaghi is the sole director of Aequitas, a limited company registered in the UK.
11. Mr Yaghi was interviewed at his solicitors' office on **21st October 2013** in respect of the statue, the subject of these condemnation proceedings. Mr Yaghi said that a Mr Al-Quassas had asked him to market the item. Mr Yaghi denied all knowledge of Mr Fazeli, and he asserted that Mr Al-Qassas was the lawful owner.
12. On **10th December 2013** a Jordanian National, Riad Issa Mohamad Al Qassas (`Mr Al-Qassas`) gave notice of claim that the item in question belonged to him and that it was not liable to be forfeited.
13. The Applicant puts Mr Al-Qassas to strict proof of the assertion that he is the lawful owner of the statue in question.
14. The full hearing commenced on **27th March 2015**. **Andrew Bird** of counsel represented the Applicant while **Ben Watson** of counsel, instructed by Devonshires solicitors, appeared for the Respondent/Claimant.
15. **LIVE EVIDENCE :**

The first live witness to be called by the Applicant was **Jonathan Wilcock**. He is an officer of HMRC who, at the material time, was employed in the Customs Criminal Investigation Team. He adopted the contents of his signed written statement dated **27th June 2014**.
16. He confirmed that, at the material time, he was the case officer before moving to another team. He confirmed the seizure of a Kudurru on **21st March 2012** suspected of having been illegally removed from Iraq. That item was imported into the UK having been sent by Hassan

Fazeli Tr Co LLC to Connoisseur Int Distribution ('XConnoisseur'). The Airway bill and import entry for that Kudurru had a declaration as to a value of **\$330** and an origin of Turkey whereas Mr Wilcock's enquiries revealed that the item had been unlawfully removed from Iraq and had an estimated value of between **£100,000** and **£200,000**. That item was seized under the provisions of **s.139** of the Customs and Excise Management Act 1979 as being liable to forfeiture under **s.49(1)(b)** of the same statute.

17. In respect of the statue the subject-matter of these proceedings, Mr Wilcock arranged for the execution of the search warrant by himself and other officers of HMRC on **13th June 2013**, of the premises of Connoisseur in West Drayton.
18. During the course of the search of Connoisseur's premises a number of documents were seized in relation to the statue as well as other items from the same consignor.
19. 7 further parcels from Hassan Fazeli were uplifted from Connoisseur during the said search. The provisional assessment by staff at the British Museum was that 5 of the 7 items contained genuine antiquities with a total value of approximately **£75,000**. The other 2 parcels were said to be fakes and of nominal value. From recollection, Mr Wilcock believed that each item had been declared as having a value of between **\$300** and **\$500**, i.e. far below their actual worth.
20. The investigations into importations made by Mr Fazeli led Mr Wilcock to seize the invoice from Hassan Fazeli Trading Co LLC dated **1st December 2011** describing the statue as a **'marble bust of a female, draped, Greek classic period'** with a value of **\$110,000** and the country of origin and manufacture as **Turkey**. The waybill from Hassan Fazeli Tr Co LLC to Connoisseur dated **1st December 2011** was also recovered.
21. A delivery note consigning the statue to Colin Bowles of Colin Bowles Ltd on the account of Farhan Yaghi was also recovered. This resulted in Mr Wilcock with other officers visiting the premises of Colin Bowles Ltd at 76 Stewart Road South West London on **1st October 2013**.
22. Mr Wilcock said that Colin Bowles had told him that the statue had been delivered to Mr Bowles on **3rd May 2012** for restoration. Mr Bowles said he had no knowledge of Hassan Fazel or Hassan Fazeli but did recognise the name Farhan Yaghi as he had dealt with him as a customer during the previous five years. Indeed Mr Bowles had told Mr Wilcock that Yaghi had commissioned the restoration work in respect of the statue. Once the restoration work had been completed, Mr Bowles raised an invoice in favour of Aequitas Classical Arts, 25, Dover Street London W.1. After payment was made to him, Mr Bowles arranged for the statue to be returned to Connoisseur on **24th September 2012**.
23. On **19th November 2013** Mr Wilcock and a fellow officer took a witness statement from Colin Bowles. Mr Wilcock, in cross-examination said he had no recollection of Mr Bowles stating that some of the repairs of the statue were less than 10 years old. Had Mr Bowles made such a comment, Mr Wilcock stated that it would have appeared in Mr Bowles' statement.
24. On **21st October 2013** Mr Wilcock attended at the premises of Devonshires solicitors to interview Mr Yaghi in the presence of his solicitor Mr Barden. Mr Yaghi said that he first became aware of the existence of the statue 4 or 5 years previously in Dubai.

25. In cross-examination , Mr Wilcock said that this was his first investigation in respect of antiquities. He confirmed tha, so far as he was aware, the statue had remained undisturbed with Connoisseur from when it was imported until November 2013. He did not recall Mr Bowles stating that the earlier repairs appeared to have been at least 10 years old. Had that been said, it would have been put into Mr Bowles` 1st witness statement. Mr Yarghi was sought in addresses linked to him in Dover Street and Maida Vale and shortly thereafter his solicitor (Mr Barden of Devonshires , who also acts for the claimant) made contact with Mr Wilcock to arrange an interview with MHMRC and Mr Yarghi.
26. I found Mr Wilcock to have been a reliable witness.
27. **VIEW AT THE BRITISH MUSEUM :**
Arrangements were made for all parties to attend the British Museum on the morning of **30th March 2015** for this court and the experts (Dr Higgs, Miss Sweek and Mr Hammond) to attend in order to view the statue in the museum. A video recording of the view was taken for later use at court.
28. Whilst all parties were at the British Museum, Dr Higgs and Miss Sweek each gave a brief demonstration highlighting a number of important matters relating to the statue, as they had previously set out in their respective reports. Their demonstrations concentrated on relevant aspects of damage and repair, as well as information relating to the age and condition of the statue. After the view was concluded all parties returned to this court where the proceedings continued.
29. **FURTHER LIVE EVIDENCE :**
Dr Peter Higgs gave evidence and adopted the contents of his reports dated **26th June 2014** and **10th March 2015**, prepared for these proceedings. He also adopted and confirmed the information that he had provided at the view at the British Museum, as reflected in the video evidence of the view that was played in court.
30. As previously mentioned, Dr Higgs is based at the British Museum in Central London. The professional opinion of Dr Higgs is that the declared provenance of the item was false and that it had been unlawfully excavated from a UNESCO World Heritage site in Libya, with the result that the statue belongs to the State of Libya. This underscores why it is submitted by the Applicant that forfeiture would not be disproportionate as the Applicant undertakes to return it to its lawful owner, to wit the State of Libya.
31. Dr Higgs further estimates the statue to have been produced around the 4th or 3rd Century BC and that it had a value of approximately **£1,500,000** and possibly as much as **£2,000,000** at the time of his examination. Very few of such statues have ever come onto the open market. He is aware of only one previous example in a Museum Collection outside of Libya, currently in the Louvre in Paris. Theoretically therefore such statue would be highly prized by a private collector and highly sought after at public auction.
32. Dr Higgs adds that most bidders however would currently be put off as this statue appears to have no reliable collectors history and lacks any reliable paper trail with other private collectors or museums. Were this statue to be lodged with the British Museum and asked for

loan Dr Higgs would have 'no hesitation' on placing an insurance valuation of £1,500,000 on the item.

33. Dr Higgs then gave examples of other items that have come onto the open market and he provided his (plausible in my view) reasons for distinguishing them from the statue in this case.
34. So far as provenance is concerned, Dr Higgs said that the statue 'appeared fresh', in that the surface preserves numerous root marks and burial deposits over broken parts of the marble and original carved surfaces, leading him to believe that it had 'fairly recently' been excavated, i.e. during the past few years.
35. Dr Higgs has participated in many important archaeological excavations in the UK, Greece and Turkey. He has considerable experience in determining the provenance of Greek and Roman Antiques. Provenance is described by Dr Higgs as being determined by means of its excavation history, findspot, type of material, style, design, technique and association with similar objects.
36. Dr Higgs is of the opinion that the statue in question is an ancient Greek marble, funerary statue of the type only produced in Cyrenaica, ancient Libya. He dates the statue as being from the 3rd or 4th centuries BC on stylistic grounds.
37. Dr Higgs described the funerary statues as all being female and believed to be either the goddess Demeter or her daughter Persephone and partly emerging from the underworld.
38. Dr Higgs pointed to the root marks on the statue's shoulder as well as other such marks on the top of its head, over its left hand and on its back. He notes the surface of the statue is in 'extremely good state of preservation, with the nose and most of the protruding drapery folds intact'. He was confident that, given time, he would be able to trace the statue's history.
39. I found Dr Higgs to be a very credible and well-informed expert witness.
40. **Tracey Sweek** then gave evidence and adopted the contents of her signed statement dated **7th March 2015**. She also adopted and confirmed the information that she had given during the course of the view at the British Museum. She is a Senior Conservator specialising in stone, wall paintings and mosaics at the Department of Conservation and Scientific Research of the British Museum. She has worked as a Conservator since 1986 and at the British Museum since November 2004. She has participated in excavations in Egypt and Sudan.
41. Miss Sweek firmly confirms the opinion of Dr Higgs that the statue appears to have been excavated 'in recent years'. She gave the rationale for her opinion, in her detailed witness statement for coming to this conclusion. I found Miss Sweek to be a very credible and well-informed expert witness.
42. **Dr Paul Bennett** then gave evidence. He adopted the contents of his 2 written statements dated **26th June 2014** and **9th March 2015**. He is a professional Field Archaeologist by profession who is Head of Mission of the Society for Libyan Studies. He specialises in all

aspects of Libyan Heritage, particularly Cultural Resource Management. He has worked intermittently in Libya since 1972. He has participated in a large number of archaeological excavations during the course of his professional life.

43. In his statements, Dr Bennett gives details of the situation in and around Cyrene, relating to the clandestine, illegal excavations as well as the worrying increase in the trafficking of antiquities. Land development for housing and holiday homes, as well as the expansion of agriculture, has resulted in the increase in the trafficking in antiquities.
44. In his opinion, there is no doubt that the statue comes from a tomb in the necropolis of Cyrene. He describes the statue as a funerary bust and explains his reasoning in his report (paragraph 25 of his witness statement) and confirmed this during the course of his evidence. I found Dr Bennett to be a very credible and well-informed expert evidence.
45. **Dave Bruce**, an officer of HMRC then gave evidence. He adopted the contents of his signed witness statement dated **26th June 2014**. He gave details of and regulations relating to import and export declarations required for freight that moves into and out of the European Union. He provided details of the arrangements relating to the use of bonded warehouses which can, in some circumstances, offer certain advantages in respect of delaying the liability for import duty and / or VAT. I found Mr Bruce to have been a reliable witness whose evidence was not the subject of any material challenge.
46. **Colin Bowles** was then called to give live evidence. He adopted the contents of his **2** witness statements, dated **19th November 2013** and **3rd October 2014** made during the course of these proceedings. He confirmed the restoration work that he had been commissioned to undertake on the statue. He is a very experienced restorer in respect of sculptures and other works of art. He confirmed that he had received notification from Sean O`Farrell of Connoisseur regarding the restoration work required for the statue. The instructions to carry out the work came from Farhan Yaghi. As asked, he raised an invoice to Aequitas Classical Arts Ltd of 25 Dover Street London W1. The invoice was subsequently paid. He as never heard of the names Hassan Fazel or Hassan Fazeli.
47. In his statement dated **3rd October 2014**, Mr Bowles recalled that there had been some evidence of previous repair carried out to the statue with the use of polyester adhesive rarely used in the restoration industry by reason of its instability. The previous repair had become brittle and showed signs of instability. He believes that this repair was at least 10 years old.
48. I found Mr Bowles to have been a very credible witness. Whether he did, in fact, say to Mr Wilcock that the earlier repairs were some 10 years or so old, must remain a matter of conjecture. I am satisfied that both Mr Bowles and Mr Wilcock are recalling events as best they were able.
49. **Dr Hafed Walda** then gave evidence and adopted his signed witness statement dated **30th June 2014** and **17th March 2015**. He is an adviser to the Department of Archaeology, Libya and has been appointed as Deputy Ambassador to the Permanent Delegation Libya to UNESCO. He is a professional archaeologist specialising in all aspects of Libyan heritage.

50. Dr Walda gave evidence relating to the threats to the `situation in and around Cyrene on the threats to the cultural heritage created by threats, clandestine excavations and illicit trading.`
51. With particular reference to the statue, Dr Walda states that in his opinion the `style is unique to Cyrene`, the ancient Greek city in Libya and former Greek colony of Thera (part of the Cyclades). He has `no doubt that the provenance of the Funerary half statue of a female from Cyrene is Cyrene and its surrounding area`. I found Dr Walda to have been a reliable and well-informed expert witness.
52. Other supporting witness statements were read as part of the Applicant`s case. This included a signed witness statement dated **8th October 2014** John Paul Labbat, a US Federal Agent . Mr Labbat gives details of what he describes as the `illicit activity involving the company Hassan Fazeli Trading, an International shipping company based in Dubai UAE which deals with cultural artefacts`. He provides details of items that were the subject of forfeiture proceedings in the USA, exported by Hassan Fazeli from Dubai, UAE into the USA in **August 2008** and **August 2010** respectively. Both of these transactions involved numerous discrepancies as to origin and value as a result of which the items in question were seized and forfeited and were in the process of being repatriated to their respective country of origin.
53. **Brett Hammond** (called by the claimant as an expert witness) was then called to give live evidence. He adopted the contents of his report dated **19th September 2014**. He is the CEO of Timeline Auctions and Managing Director of Timeline Originals based in Upminster, Essex. He has operated in the world of antiques for over 30 years and has recently been appointed as an independent valuer advising the Treasure Valuation Committee which recommends the Secretary of State valuations for items of treasure.
54. Mr Hammond has examined the statue and looked at the surfaces. He challenges the suggestion that the statue has been recently excavated adding that it is `impossible to say when it was excavated`. He states that any person trying to dispose of the statue would be hampered by its lack of provenance or collections history. The opinion of Mr Hammond is that the statue is worth between **£80,000** and **£120,000**.
55. Mr Hammond provided details of other items that have either been sold or offered for sale in recent times. Mr Hammond says that ...`I do not doubt the piece`s quality not its historic and cultural significance in the academic world. It is a truly unique piece.` he adds however that without provenance it would not be able to be sold in auction houses nor would any serious collector show interest in buying it.
56. Mr Hammond readily acknowledged that he does not possess Dr Higgs` knowledge and particular expertise. Mr Hammond thought that the statue might originate from Greece, Turkey or North Africa and cannot discount that it may have come from Libya. He referred to Christie`s auction house in New York as being the most difficult place in the world to sell prestigious items. In his opinion, they are very thorough in carrying out their due diligence enquiries. He maintained in cross-examination that the value of the item without provenance was in the order of **£80,000** and that with reliable provenance it could double (to say **£160,000**).

57. Mr Hammond acknowledged that he does not hold any formal qualifications and is not an academic. He is a member of the Society of Valuers and Auctioneers. He agreed that he has never been asked to sell an item similar to this statue. He agreed that the statue could be an image of Persephone.
58. Whilst I found Mr Hammond to have been an honest witness, I far preferred the expert evidence of Dr Higgs, Ms Sweek and Dr Bennett when considering the uniqueness of the item, its provenance and its likely value.
59. Mr Watson of counsel, for the Claimant then opened his case and it was hoped that the Claimant could then proceed to give evidence. There were then unexpected technical difficulties in obtaining internet access within the courtroom, which resulted in an adjournment being inevitable so as to enable further evidence from Mr Al Quassas and a number of defence witnesses, based abroad to be called to either give live evidence in the courtroom or via Skype.
60. However **Philip Barden**, the solicitor then retained by Mr Al Quassas, was available to give evidence, albeit out of turn. He is a partner with **Devonshires**, based in Central London. He adopted his **3** signed witness statements.
61. Mr Barden said that he has had considerable experience in acting for clients who have become embroiled in disputes relating to antiquities. He says that he understands the nature and complexities of such disputes.
62. Mr Barden agreed that he is not a professional valuer, but that, in his experience, the greater the provenance, the more valuable the item would be considered to be. He was originally acting for Mr Yaghi in this matter, and was unable to recall when he first accepted instructions from the claimant, without access to his file (which he did not have readily to hand).
63. Mr Barden said that in his opinion, auction houses were not prepared to accept antiquities said to come from Dubai, as they were often the subject of allegations of theft and were not accompanied by good title. He then referred to a number of experts who had either inspected the statue or who had been approached to give a professional valuation. He sought to produce a statement from a dealer based in New York but whose name and professional qualifications as well as address and contact numbers appear to have been redacted. I am not able to place much reliance on that document. Mr Barden was a witness helpful to this court.
64. The hearing was then adjourned to resume on **1st September 2015**. Shortly afterwards, this court were notified by Devonshires` that they were no longer in a position to represent the claimant. This court and the Applicant sent a series of emails and letters to the claimant, in short, asking whether :
- (i) he was still pursuing his claim
 - (ii) if so, whether he still intended to give evidence (if so whether in court or via Skype) and / or call witnesses to give live evidence in support of his claim, if so, then to specify their details
 - (iii) he was nominating fresh solicitors or whether he was to be representing himself.

65. This court also notified the Claimant of the requirement for him (or solicitors instructed) to attend no fewer than 3 Directions Hearings that it fixed, so as to ascertain the comprehensive answers to the queries raised in paragraph 64 above as 3 days of court time had been set aside.
66. I am told that a number of emails and letters sent to the Claimant were both in English and in Arabic. I am also informed that the Applicant wrote separately to the Claimant in similar terms. It appears that the majority of those emails and letters remained unanswered although when he did reply the Claimant appeared to confirm an intention to continue with his challenge.
67. **Gateleys** solicitors contacted the Applicant and this court in early **August 2015** to say that they had been consulted by the Claimant shortly beforehand. They asked for an adjournment of the Directions Hearing so as to enable them to confirm their instructions. This application was opposed by the Applicant but granted by the court. However, shortly before that adjourned Directions hearing was due to take place, Gateleys contacted the Applicant and the court to state that they would not be acting for the Claimant.
68. The case proceeded today, being the 1st day of the adjourned proceedings. The case was listed to commence at 10.00 a.m. Enquiries were made in the public concourse at 10.36 a.m. but there was no sign of either the Claimant, any witnesses of his and / or any solicitor to represent him. The case then proceeded.
69. This court has taken into account the witness statements that had been filed and served by Devonshires, on behalf of the Claimant. A number of these statements are admitted under the Hearsay provisions of the Civil Evidence Act 1995, proper Notice in respect thereof having been given. The rest of the statements served and filed on behalf of the Claimant are also admitted – though not as agreed documents- without opposition from the Applicant.
70. The Applicant, through the medium of its counsel, Mr Bird asks that this court gives `no weight` to these statements. I agree with Mr Bird in this regard, for the following reasons :
- (i) Neither the Claimant nor any of the witnesses have attended court to give live evidence and make themselves available for cross-examination.
 - (ii) Not one of these witnesses produces any contemporary document to support the contention that the Claimant has or ever has had any legitimate interest in the statue.
 - (iii) The Claimant has maintained that he was provided with the statue in about **2005** as part-payment to him of a debt owed to him by a Mr Jaradat. The statue was then said to have been in Dubai. The Claimant, in his signed witness statement dated 15th September 2014 states(see paragraph 10) that `` When I initially saw the statue it was in a store belonging to Mr Fazeli`. The Claimant said that he made arrangements for Mr Fazeli to ship the statue to London. However, as previously mentioned, Mr Fazeli stated in his email of 8th December 2011 that he was the lawful owner and that the statue had been in his family collection `since 1977`. These competing statements regarding ownership (Mr Jaradat / Mr Fazeli) do not sit comfortably with each other.
 - (iv) A witness statement from Abraham Omar Hroub was served under cover of a letter from Devonshires dated **17th March 2015**. He describes himself as an antiques dealer operating as Abraham Antiques in Jerusalem, Israel. He says that he visited the Claimant in

Dubai in **2008** when he was shown a marble statue, a photograph of which he purports to exhibit. He adds that the Claimant sent him photographs of the statue on **8th December 2009, 23 February 2011 and 3 March 2011**. These were said to have been sent by the Claimant to his email address `hajnabeel@hotmail.com`. However upon closer examination none of those photographs there does not appear to be a date on any of them.

71. **RULINGS :** This court has to make a finding as to whether the statue in question is liable to forfeiture. By paragraph 6 of Schedule 3 of the Customs and Excise Management Act 1979 (`CEMA`) this court is not permitted to exercise any discretion. If the findings of fact made are such that the goods in question come within the scope of something that is, in fact, liable to forfeiture then the court is required to order forfeiture.
72. The Human Rights Act 1998 is also engaged : s.6(1) thereof requires a Court not to act in a way which is compatible with Convention Rights.
73. One of the grounds upon which goods are liable to forfeiture is if they are misdeclared to HMRC (see s.167 of CEMA).
74. It has to be borne in mind, however, that Article 1 of Protocol 1 of the ECHR provides a qualified right in respect of the right of an individual to enjoy the peaceful enjoyment of his possessions.
75. As a result of the evidence received by this court (orally and in writing) I make the following findings ;
- (1) The statue comes from Cyrene, Libya
 - (2) It's value can reasonably be estimated at approximately £1,500,000
 - (3) The true owner of the statue is the State of Libya
 - (4) The statue was unlawfully excavated by persons unknown
 - (5) the following representations made (**albeit not to HMRC or UKBA**) are false :
 - (a) that the statue is Greek classic period 17th century
 - (b) that Mr Fazeli or his LLC had the legal right to sell the statue .
 - (c) that Mr Fazeli or his LLC was the rightful owner of the statue
 - (d) that it had been in a private collection for 34 years ` provenance : Fazeli family collection since 1977`.
76. I further find that the following material misdeclarations were made to HMRC
- (a) that the statue originated in Turkey
 - (b) its value when declared was \$110,000, and that such misdeclarations were made either knowingly or recklessly by Mr Fazeli.
77. I make clear that where there is a difference of evidence given by the Applicant/ Complainant on the one hand and the Claimant/ Respondent on the other, I prefer and accept the evidence of the Applicant/ Complainant , unless the contrary is so expressed. I found the account provided by Mr Al-Qassas in his witness statement as purportedly supported by a number of the witness statements from those who have not attended to give live evidence and avail themselves for cross-examination to be lacking in credibility / reliability.

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78. Further and in the alternative I have considered the provisions of paragraph 10(3) of Schedule 3 to the CEMA 1979. This states, in effect, that if a claim is not supported by sworn testimony that, as at the date of seizure, the item in question is the property of the Claimant, then Judgment 'shall' given in favour of the Applicant/ Complainant. The Claimant has NOT provided any such sworn testimony and thus I reject his claim and find in favour of HMRC.

79. I reject the submission that the claimant has any legitimate claim to the statue.

80. I am entirely satisfied that the statue is liable to forfeiture under the provisions of s.167(1)(a) and / or paragraph 10(3) of CEMA 1979.

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81. I condemn the statue as forfeit to the Crown and I reject any representation made that it would be disproportionate to do so. I am further satisfied that it would not be a breach of Article 1 of Protocol 1 as I find that the statue has never belonged to him. *The Claimant*

JOHN ZANI

DISTRICT JUDGE

WESTMINSTER MAGISTRATES COURT

1st SEPTEMBER 2015