

Winston Wins Major Appellate Victory in Seventh Circuit Involving Collections of Persian Artifacts

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Winston & Strawn won a major appellate victory in the Seventh Circuit last week, involving the Foreign Sovereign Immunities Act (FSIA) and artifacts in the collections of the Field Museum of Natural History and the University of Chicago's Oriental Institute (the Museums).

The case arose out of proceedings in which victims of a 1997 terrorist attack in Jerusalem sued Iran in federal district court in Washington, D.C. and won a \$71 million dollar default judgment against Iran. To collect on that judgment, the plaintiffs initiated attachment proceedings against three collections of Persian artifacts in Chicago—the Persepolis and Chogha Mish collections at the University of Chicago's Oriental Institute, and the Herzfeld Collection at the Field Museum of Natural History. The artifacts at the Oriental Institute, excavated in the 1930's and 1960's, are on long-term academic loan from Iran. The Field Museum purchased the Herzfeld artifacts in 1945 and Iran makes no claim to them. According to the plaintiffs, however, the artifacts were stolen from Iran during the earlier part of the twentieth century before their sale.

The FSIA provides that, with certain exceptions, a foreign state's property located in the United States is immune from attachment. The district court in this case, however, held that this FSIA immunity is an "affirmative defense" that must be invoked by the foreign state personally. This ruling prompted Iran to appear in the case. But after the plaintiffs were allowed to pursue broad general assets discovery against Iran, Iran appealed to challenge both the discovery and the ruling that had forced it to appear in the first place.

After agreeing with Iran and the Museums that it had jurisdiction to hear the appeal, the Seventh Circuit called both orders "seriously flawed" and reversed. The court held that the FSIA makes sovereign property presumptively immune from attachment, and that such immunity must be addressed by a court, regardless of whether the foreign state appears and asserts it. The court further held that a judgment creditor of a foreign state must identify the specific property he seeks to attach, and cannot compel a foreign state to submit to general assets discovery.

The Field Museum will now be able to argue not only that it is the rightful owner of the artifacts in its collection, but also that, even if owned by Iran, the artifacts are immune from attachment under the FSIA.

The Winston team included partners [George Lombardi](#) and [Mike Brody](#).

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