

Summarized by the Forest Legality Alliance

*U.S. v. 2,507 Live Canary Winged Parakeets (Brotogeris Versicolorus)*. (1988).

Background:

Pet Farm Inc., an American animal importation company, arranged for Miguel Cespedes, a Peruvian animal shipper, to capture and ship approximately 3,000 parakeets to the U.S. Even though Cespedes had documentation from a Peruvian official approving the exportation of the parakeets, this was not valid under Peruvian law and the shipment was subject to forfeiture under the Lacey Act.

Forfeiture and Claim:

US Fish and Wildlife Services received information “reasonably indicating” that the shipment of birds was in violation of Peruvian law. Upon the animals release from quarantine, FWS agents seized the birds in accordance with the Lacey Act and the Endangered Species Act.

Pet Farm Inc. then claimed the birds, arguing that the shipment had been approved by a Peruvian official and was therefore not illegal under Peruvian law and thus not subject to forfeiture under the Lacey Act. The court’s denial of the claim centered on the illegitimacy of the official’s permit and the illegality of the exportation under “supreme” Peruvian law.

The primary law referred to by the court’s rejection of Pet Farm Inc.’s claim was Peruvian Supreme Decree No. 934-73-AG, which “prohibits from anywhere in the national territory the exportation of wild live animals coming from the *forest region*.” As several experts testified, the *brotogeris versicolorus* comes solely from this forest region, thus placing it under the protection of the law. Cespedes testified that the birds had been captured in the north of the country, outside of the forest region, but the court ruled that this was irrelevant: “if the decree were interpreted to only prohibit the export of wildlife physically found within the forest region, exporters could illegally transport the wildlife from the forest region and subsequently legally export it out of Peru. This would render the decree meaningless and entirely incapable of protecting endangered or threatened Peruvian wildlife.” The court ruled, therefore, that the exportation of the birds violated Peruvian national law.

The permit issued by the Peruvian official was deemed to be invalid. Wildlife covered under the decree noted above can be exported with authorization, but the official had not undertaken the necessary steps to gain this full approval to have the birds exported, either under Peru’s regulations or under CITES.

Responsibility:

Pet Farm Inc. included in its argument the defense that they had relied on Cespedes to ensure that the exportation was legal. The court rejected this outright, stating that the burden of ensuring the exportation was legal is placed on the company who does it. The “innocent owner” defense under the forfeiture provision of the Lacey Act is, as such, “unavailable,” particularly for “major importer[s].” Thus, the court concluded that “innocent defense” is not available in a forfeiture action under the Lacey Act.”