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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Grand Canyon Skywalk Development,
LLC,

Plaintiff,

v.

'Sa' Nyu Wa, Inc., et al.,

Defendants.

No. CV-12-8030-PCT-DGC

ORDER

Plaintiff Grand Canyon Skywalk Development, LLC ("GCSD") filed an application for confirmation of arbitration award which was randomly assigned to Judge Frederick J. Martone. No. 12-cv-08183, Doc. 1. Defendant 'Sa' Nyu Wa, Inc. ("SNW") filed a motion for judicial transfer pursuant to Local Rule 42.1. Doc. 63. The motion has been fully briefed (Docs. 64, 66), and neither party has requested oral argument. For the reasons set forth below, the Court will grant Defendant's motion.

I. Background.

In 2003, Plaintiff entered into a formal revenue-sharing agreement with SNW, a corporation wholly owned by the Hualapai Indian Tribe ("the Tribe"), for the planning, construction, and operation of a glass skywalk and related facilities on the edge of the Grand Canyon, located entirely within the Hualapai reservation. See No. 12-cv-08183, Doc. 1-1 at 1-50. In 2011, Plaintiff initiated arbitration against SNW for breach of contract claims related to the parties' 2003 Development and Management Agreement

1 (“2003 Agreement”). Doc. 63 at 2. SNW moved to dismiss the arbitration on the
2 grounds that the tribal corporation had sovereign immunity and the terms of the 2003
3 Agreement required Plaintiff first to obtain an order from the Federal District Court of
4 Arizona before commencing arbitration. *Id.* Arbitrator Shawn K. Aiken denied SNW’s
5 motion on November 21, 2011 (Doc. 38-2), and proceeded with the arbitration despite
6 SNW’s continued objections (Doc. 63 at 2).

7 On April 4, 2011, the Hualapai Tribal Council passed an ordinance that purports to
8 allow the Tribe to condemn Plaintiff’s contract rights in the skywalk. Doc. 1, ¶ 2. Days
9 before, Plaintiff filed a complaint for declaratory and injunctive relief, seeking to prevent
10 the Tribe from passing and acting upon the ordinance. No. 3:11-cv-8048-DGC, Doc. 1.
11 This Court dismissed the complaint in the interest of requiring Plaintiff to exhaust its
12 tribal court remedies. *Id.*, Doc. 33.

13 On February 7, 2012, the Tribal Council exercised its authority under the
14 ordinance, claimed ownership of Plaintiff’s contract rights, terminated the ongoing
15 arbitration, and, according to Plaintiff, seized control of the skywalk and its operation.
16 Doc. 1, ¶ 3. Plaintiff filed a second complaint for declaratory and injunctive relief and an
17 expedited motion for a temporary restraining order (“TRO”), asking the Court to enjoin
18 SNW and several named Tribal Council members from enforcing the condemnation on
19 the grounds that doing so constituted an illegal “taking” of Plaintiff’s contractual rights.
20 Docs. 1, 4.

21 After extensive briefing and oral arguments, in which Plaintiff argued that the
22 Court had jurisdiction over its complaint and its request for a TRO and that a number of
23 exceptions to the tribal court exhaustion requirement applied, the Court found that none
24 of the claimed exceptions applied and that comity compelled it to require Plaintiff to
25 exhaust its remedies in the Hualapai Tribal Court (“the Tribal Court”). Doc. 58 at 14.
26 Accordingly, the Court denied Plaintiff’s motion for a TRO, but elected to stay the action
27 while Plaintiff litigated its claims in the Tribal Court. *Id.* at 15. Plaintiff appealed the
28 Court’s rulings requiring exhaustion, and that appeal is currently pending before the

1 Ninth Circuit. Doc. 61 at 2.

2 Litigation over Defendants' condemnation and alleged unlawful taking proceeded
3 in the Tribal Court. Doc. 61 at 2. During this time, the Tribal Court ruled that the parties
4 could proceed with arbitration. *Id.* Plaintiff continued with the arbitration, but SNW did
5 not appear or participate. Docs. 61 at 6; 62 at 3. On August 16, 2012, Arbitrator Shawn
6 Aiken issued a Final Arbitration Award in favor of Plaintiff and against SNW in the
7 amount of \$28,572,810.25. Doc. 61 at 7. That is the award Plaintiff now seeks to
8 confirm. Doc. 64 at 5-6; *see* No. 12-cv-08183, Doc. 1.

9 **II. Legal Standard.**

10 Local Rule 42.1(a)(1) provides in pertinent part that:

11 Any party may file a motion to transfer the case or cases
12 involved to a single Judge whenever two or more cases are
13 pending before different Judges and any party believes that
14 such cases: (1) arise from substantially the same transaction
15 or event; (2) involve substantially the same parties or
16 property; (3) involve the same patent, trademark, or
17 copyright; (4) call for determination of substantially the same
18 questions of law; or (5) for any other reason would entail
19 substantial duplication of labor if heard by different Judges.

20 LRCiv 42.1(a). District courts have broad discretion in determining whether to grant
21 such motions. *See Badea v. Cox*, 931 F.2d 573, 575 (9th Cir. 1991).

22 **III. Discussion.**

23 Plaintiff argues, as a preliminary matter, that the Court should deny SNW's
24 motion for transfer because the Court stayed the previous action and there is no pending
25 case before the Court. Doc. 64 at 6. Plaintiff additionally argues that (1) the two actions
26 do not arise from substantially the same events or involve substantially the same
27 questions of law, (2) the two actions do not involve substantially the same parties or
28 property, and (3) SNW has failed to show that transfer would promote judicial economy.
Doc. 64 at 6-10.

The Court is not persuaded that Rule 42.1(a)(1) does not apply to a stayed action.
Upon determining that Plaintiff must exhaust its remedies in the Tribal Court, the Court
had the option of dismissing or staying the action. By electing to stay the action, the

1 Court retained jurisdiction and required the parties to file status reports on the Tribal
2 Court litigation. Doc. 58 at 15. The action is pending for purposes of Rule 42.1(a)(1).

3 **1. Arising from Same Events and Involving Same Questions of Law.**

4 Plaintiff argues that the events giving rise to the arbitration consisted of contract
5 disputes under the 2003 Agreement stemming from Defendants' actions up to but no later
6 than December 31, 2011, while the action before this Court involved the Tribe's
7 subsequent condemnation and taking of Plaintiff's contract rights. Doc. 64 at 7. Thus,
8 Plaintiff argues, the two actions are factually distinct and require the resolution of
9 different legal issues. *Id.*

10 As Plaintiff acknowledges (Doc. 64 at 8), the narrow issue the Court would need
11 to address in determining whether or not to confirm Plaintiff's award in arbitration is
12 whether "the arbitrator[] exceeded [his] powers, or so imperfectly executed them that a
13 mutual, final, and definite award upon the subject matter submitted was not made."
14 9 U.S.C. § 10(a)(4). The Court cannot conclude that this issue is factually and legally
15 distinct from the issues presented in the stayed action. SNW argues that the arbitrator
16 exceeded his authority by continuing the arbitration following the condemnation because
17 from that moment the Tribe purportedly assumed Plaintiff's rights under the 2003
18 Agreement. Doc. 63 at 3, 4-5, ¶¶ 1-2. The Tribe's legal authority to take such rights
19 under the power of eminent domain is at issue in Plaintiff's action challenging the
20 condemnation. Thus, although Plaintiff's underlying contract claims may be distinct
21 from the claims at issue in the stayed action, the facts and legal issues upon which the
22 Court would need to rely when determining whether or not to confirm the arbitration
23 award are substantially the same as those raised in the previous suit.

24 **2. Involving Substantially the Same Parties or Property.**

25 Plaintiff argues that the pending actions do not involve substantially the same
26 parties because the action it brought before this Court involved twelve additional named
27 defendants. Doc. 64 at 9. The addition of twelve individually-named Tribal Council
28 members is not material because the pleadings largely treat the council members as

1 surrogates for the Tribe or Tribal Council. Doc. 66 at 5. Both actions are, at their core,
2 disputes between Plaintiff and the Tribe or its proxies over rights stemming from the
3 2003 Agreement between Plaintiff and SNW. The suits involve substantially the same
4 parties.¹

5 **3. Considerations of Judicial Economy.**

6 This Court has already expended time and judicial resources becoming familiar
7 with the 2003 Agreement and the complex series of factual events that underpin both the
8 arbitration and the stayed case. The parties have previously made both written and oral
9 arguments before this Court related to the Tribe's purported right to assume Plaintiff's
10 contract rights through the exercise of eminent domain. Although the Court has not
11 previously ruled on these issues, it will not be starting from a blank page. Moreover,
12 Plaintiff previously requested that its action for declaratory and injunctive relief be
13 assigned to this Court on the basis that the Court had dismissed without prejudice its
14 earlier complaint for declaratory and injunctive relief filed prior to the challenged
15 condemnation. Doc. 5; *see* No. 3:11-cv-8048-DGC. Because considerations of judicial
16 economy, like the previous factors discussed, weigh in favor of transfer, the Court will
17 grant SNW's motion.

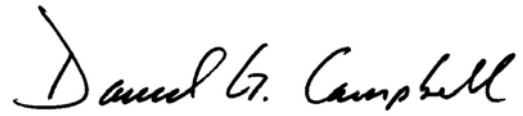
18 **IT IS ORDERED:**

- 19 1. Defendant SNW's motion for transfer (Doc. 63) is **granted**.
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24 ¹ Plaintiff also argues that the two disputes do not pertain to substantially the same
25 property because the arbitration award concerns monetary damages arising from
26 Plaintiff's breach of contract claims and the stayed action concerns intangible contract
27 rights. Doc. 64 at 9-10. Because Rule 42.1(a)(1) names "parties or property" in the
28 disjunctive, it is sufficient that the parties are substantially the same. *See, e.g., Smith v.*
Sperling, No. 11-0722-PHX-PGR, 2011 WL 4101508, at *1-2 (D. Ariz. Sept. 14, 2011)
("A transfer is proper if transferring satisfies any one of the factors provided in LRCiv
42.1(a).")

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2. The Clerk shall transfer Case No. 12-cv-08183-FJM to this Court.
Dated this 21st day of November, 2012.



David G. Campbell
United States District Judge