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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 BFL Construction Co., Inc., an Arizona
10 corporation,

11 Plaintiff,

12 v.

13 ORIX Real Estate Capital, LLC f/k/a
14 Lument Real Estate Capital, LLC, a
15 Delaware limited liability company, Leetex
16 Group, LLC, a Texas limited liability
17 company,

18 Defendants.

No. CV-23-00228-TUC-EJM

ORDER

19 Currently pending before the Court is Defendant ORIX Real Estate Capital, LLC
20 f/k/a Lument Real Estate Capital, LLC's Motion to Transfer to the Prescott Division (Doc.
21 15). Defendant ORIX Real Estate Capital, LLC f/k/a Lument Real Estate Capital, LLC
22 ("ORIX") seeks transfer of this action to the Prescott Division of the District Arizona. For
23 the following reasons, the Court will grant the motion and order that the case be transferred
24 to the Prescott Division of the District of Arizona.

25 **I. BACKGROUND**

26 Plaintiff filed its First Amended Complaint ("FAC") (Doc. 11) in this cause of
27 action against Defendant ORIX and Defendant Leetex Group, LLC ("Leetex"), and alleges
28 a claim for tortious interference with contract against both defendants, as well as claims

1 for aiding and abetting and negligence against Defendant Leetex. According to the FAC,
2 Plaintiff and non-party Pinon Lofts, LLC “entered a HUD Cost Plus with a Guaranteed
3 Maximum Price Contract . . . for the construction of a 45-unit HUD insured market-rate
4 apartment project . . . located [in] . . . Sedona, [Arizona.]” FAC (Doc. 11) at 2 ¶ 8. Pinon
5 Lofts, LLC contracted with non-party Brian Andersen/BMA Architecture LLC (“BMA”)
6 to prepare the “Plans and Specifications” for construction of the project. *Id.* at 3 ¶ 14.
7 Plaintiff asserts that “[t]he Project Plans and Specifications were not constructible,
8 requiring numerous changes to BFL's work and BFL was required to perform these
9 changes.” *Id.* at 4 ¶ 24. Plaintiff alleges that Defendant Leetex “participated in regular on-
10 site meetings throughout the Project, during which BFL, Pinon Lofts, and BMA discussed
11 undisclosed site conditions and problems with the Plans and Specifications, both of which
12 were delaying the Project.” *Id.* at ¶ 25. “To avoid delay, Pinon Lofts, BMA and Leetex
13 by its agent/subcontractor Scott Laughery[,] . . . waived HUD and Contract requirements
14 for prior written approval of change orders by directing BFL to perform changes to its work
15 without prior written approval by Pinon Lofts, BMA, HUD, and ORIX.” *Id.* at 4–5 at ¶
16 27. Ultimately, “BFL completed its work to construct the Project.” FAC (Doc. 11) at 5 ¶
17 34.

18 Plaintiff asserts that “[d]uring the Project, ORIX and Leetex knew or should have
19 known that delays in Project work were caused by changed conditions and conflicts, errors
20 and omissions in Project Plans and Specifications, all of which were beyond control of
21 BFL.” *Id.* at 6 ¶ 41. Plaintiff further asserts that “[b]efore and after BFL’s change order
22 requests for additional work and additional time including change order #74 were
23 wrongfully rejected, Leetex and ORIX failed to act with due diligence and good faith by
24 wrongfully identifying BFL as responsible for delays in substantial completion of the
25 Project.” *Id.* at 6–7 at ¶ 42. Plaintiff alleges that “[a]fter Substantial Completion, Leetex
26 failed to properly identify BFL’s progress of work in its HUD Trip Reports.” *Id.* at 7 at ¶
27 47. Plaintiff claims that its “continued status as a[] HUD approved general contractor and
28 developer is dependent upon [its] timely completing HUD projects in accordance with the

1 Project Plans and Specifications.” FAC (Doc. 11) at 7 ¶ 43. Plaintiff alleges that Defendant
2 Leetex represented that it had abandoned the Project, and Defendant ORIX and Pinon Lofts
3 sought and received approval from HUD to escrow the payments due to Plaintiff in an
4 account held by Defendant ORIX. *Id.* at 8–10 ¶¶ 50, 52, 54–66. Plaintiff asserts that it has
5 yet to receive payment of the monies held in escrow. *Id.* at 9–10 ¶ 64. On December 29,
6 2023, Plaintiff voluntarily dismissed Defendant Leetex from this cause of action. *See* Not.
7 of Dismissal (Doc. 19).

8 9 **II. ANALYSIS**

10 Defendant ORIX seeks a change of venue from the Tucson Division to the Prescott
11 Division of the District of Arizona. *See* Def. ORIX’s Mot. to Transfer to the Prescott Div.
12 (Doc. 15).

13 ***A. Local Rules***

14 The Rules of Practice and Procedure of the United States District Court for the
15 District of Arizona¹ provide: “Unless otherwise ordered by the Court, all civil and criminal
16 cases founded on causes of action . . . arising in the Prescott division shall be tried in
17 Prescott[.]” LRCiv 77.1(b). The Prescott Division is comprised of Apache, Navajo,
18 Coconino, Mohave, and Yavapai counties. LRCiv 77.1(a). The construction project giving
19 rise to this litigation was located in Sedona, Arizona. FAC (Doc. 11) at 2 ¶ 8. Sedona,
20 Arizona is in both Yavapai and Coconino counties. *See* Sedona Arizona—County Online
21 Map Services, *available at* [https://www.sedonaaz.gov/your-government/departments/gis-](https://www.sedonaaz.gov/your-government/departments/gis-maps/county-online-map-services)
22 [maps/county-online-map-services](https://www.sedonaaz.gov/your-government/departments/gis-maps/county-online-map-services) (last visited July 24, 2024). The FAC indicates that
23 “[a]ll relevant events took place within Yavapai County, Arizona.” FAC (Doc. 11) at 2 ¶
24 5. Because the events occurred in Yavapai County, the Local Rules instruct that venue is
25 proper in the Prescott Division.

26 ***B. Statutory Change of Venue***

27 Plaintiff objects to transfer, noting that it is headquartered in Tucson and “received
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¹ These are also referred to as the Local Rules.

1 the loan proceeds from ORIX to pay the laborers, subcontractors and supplies” at the
2 Tucson headquarters. Pl.’s Response (Doc. 16) at 3.

3 Section 1404(b), Title 28, United States Code, provides that “[u]pon motion,
4 consent or stipulation of all parties, any action, suit or proceeding of a civil nature or any
5 motion or hearing thereof, may be transferred, in the discretion of the court, from the
6 division in which pending to any other division in the same district.” 28 U.S.C. § 1402(b).
7 “Intradistrict transfers pursuant to 28 U.S.C. § 1404(b) are discretionary transfers subject
8 to the same analysis as under 28 U.S.C. § 1404(a) but are judged by a less rigorous
9 standard.” *Cheval Farm LLC v. Chalon*, No. CV-10-01327-PHX-ROS, 2011 WL
10 13047301 at *2 (D. Ariz. Jan. 19, 2011) (quotations and citations omitted). “Section
11 1404(a) is intended to place discretion in the district court to adjudicate motions for transfer
12 according to an individualized, case-by-case consideration of convenience and fairness.”
13 *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988) (quotations and citations
14 omitted). In weighing the appropriateness of transfer, “the court may consider: (1) the
15 location where the relevant agreements were negotiated and executed, (2) the state that is
16 most familiar with the governing law, (3) the plaintiff’s choice of forum, (4) the respective
17 parties’ contacts with the forum, (5) the contacts relating to the plaintiff’s cause of action
18 in the chosen forum, (6) the differences in the costs of litigation in the two forums, (7) the
19 availability of compulsory process to compel attendance of unwilling non-party witnesses,
20 and (8) the ease of access to sources of proof.” *Jones v. GNC Franchising, Inc.*, 211 F.3d
21 495, 498–99 (9th Cir. 2000).

22 Here, there is no dispute this cause of action could have been brought in the Prescott
23 Division of the Arizona District Court. As such, “the issue is whether the case should be
24 transferred to the [Prescott] Division based on convenience and fairness.” *Cheval Farm*
25 *LLC*, 2011 WL 13047301 at *3. Plaintiff is headquartered in Tucson, Arizona, but
26 acknowledges that Defendant “is a Delaware entity whose involvement was performed by
27 agents in its Columbus, Ohio office.” Pl.’s Response (Doc. 16) at 2. Dismissed Defendant
28 Leetex is a Texas entity, who acted through its subcontractor Scott Laughery, who is also

1 a resident of Tucson, Arizona. *Id.* Plaintiff further acknowledges that relevant non-parties
2 are not in Tucson—“Pinon Lofts, LLC is headquartered in Scottsdale, BMA Architecture
3 is located in Gilbert, Babbit-Smith is located in Mesa, and the project was overseen by the
4 Denver Office of the Department of Housing and Urban Development.” *Id.* Plaintiff
5 asserts that non-parties “reached out and solicited” its involvement in the Project and that
6 involvement occurred at its Tucson headquarters and Phoenix office. *Id.* at 3.

7 Plaintiff asserts that it engaged in negotiations with non-party Pinon Lofts from
8 Tucson, but concedes that “there is no agreement between the Parties to this action.” *Id.*
9 at 5. Further, the Tucson and Prescott Divisions would both apply Arizona law. Plaintiff
10 chose Tucson as the forum because its headquarters is located here, but as discussed, *supra*,
11 it recognizes Defendant and other relevant entities are located elsewhere in the state or
12 beyond its borders. As such, this factor leans only slightly in Plaintiff’s favor. Plaintiff
13 urges that its substantial contacts with Tucson, as well as Defendant Leetex’s agent, Scott
14 Laughery’s, contact with Tucson weighs in favor of maintaining the case here. Pl.’s
15 Response (Doc. 16) at 5. Neither Defendant ORIX or any of the other non-parties,
16 however, have any contact with Tucson, and the Project took place in Sedona. The Parties
17 do not suggest a difference in the cost of litigation between Tucson and Prescott. The
18 availability of compulsory process to compel an unwilling non-party witness weighs
19 weakly in favor of Prescott. Both Tucson and Prescott are just beyond the 100-mile radius
20 of Phoenix, so to the extent that is where many non-party witnesses reside, neither is more
21 convenient. *See* Fed. R. Civ. P. 45(c)(1). Because the Project took place in Sedona,
22 however, to the extent there are witnesses in and around Sedona, Prescott is a more
23 appropriate venue. Similarly, ease of access to sources of proof weighs weakly in favor of
24 Prescott.

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26 **III. CONCLUSION**

27 This is not a case in which the factors provide stark evidence regarding the
28 appropriate venue. The Court finds, however, that multiple factors lean in favor of transfer

1 to the Prescott Division. In making this determination, the Court finds the Project's
2 location, the events giving rise to this litigation, and possible non-party witnesses residing
3 in or around Sedona, all of which are within the Prescott Division, particularly compelling.
4 Furthermore, this result is consistent with our Local Rules.

5 Accordingly, IT IS HEREBY ORDERED that Defendant ORIX Real Estate Capital,
6 LLC f/k/a Lument Real Estate Capital, LLC's Motion to Transfer to the Prescott Division
7 (Doc. 15) is GRANTED.

8 IT IS FURTHER ORDERED that the Clerk of Court is directed to transfer this case
9 to the Prescott Division of the District of Arizona.

10 Dated this 25th day of July, 2024.

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13 Eric J. Markovich
14 United States Magistrate Judge
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