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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

WILLIAM BARKETT et al.,)	Case No.: 1:14-cv-01698 - LJO - JLT
Plaintiffs,)	
v.)	ORDER DENYING DEFENDANT’S MOTION FOR A CHANGE OF VENUE
)	
SENTOSA PROPERTIES LLC, et al.,)	(Doc. 3)
Defendants.)	
)	

Defendant Sentosa Properties, LLC seeks a change of venue to the Southern District of California. (Doc. 3). Plaintiffs William Barkett; Monterey Financial Advisors, LLC; Parker Dam Development; Wasco Investments, LLC; and Barusa, LLC filed their opposition to the motion on November 17, 2014 (Docs. 12-13), to which Defendant filed a reply on November 24, 2013 (Doc. 14). The Court heard the oral arguments of the parties on December 1, 2014. For the reasons set forth below, Defendant’s motion for a change of venue is **DENIED**.

I. Factual and Procedural History

Plaintiffs report they “owned certain real property located in Kern County just north of State Highway 46 within the city limits of Wasco, California (the ‘Subject Property’).” (Doc. 12 at 2.) According to Plaintiffs, “Wasco Investments acquired the Subject Property in 2007 in anticipation of obtaining new zoning and entitlements to change the Subject Property from farming uses to mixed use commercial.” (*Id.*) Plaintiffs assert that Wasco Investments “obtained two loans from Defendant WF

1 Capital, Inc.,” which “were secured by the Subject Property and personally guaranteed by Plaintiff
2 William Barkett and his wife Lisa Barkett.” (*Id.*; *see also* Doc. 1 at 17, ¶¶13-14.) Defendant Sentosa
3 Properties was assigned the beneficial interests in the loans in 2008. (*Id.*; Doc. 1 at 17-18, ¶17.)

4 Plaintiffs allege that in 2009, “Wasco Investments entered into an agreement to sell a portion
5 of the development to WalMart.” (Doc. 1 at 17, ¶ 16.) As part of this transaction, “approximately \$3
6 million was paid to WF Capital, Inc. in exchange for a release of any security interests in the portion
7 of the property sold to WalMart.” (*Id.*)

8 Plaintiffs allege that in September 2009, “Plaintiffs and WF Capital entered into a Forbearance
9 Agreement regarding the obligations contended by WF Capital to be owed on the Subject Property.”
10 (Doc. 1 at 18, ¶ 18.) According to Plaintiffs, they relied upon the agreement and “continued their
11 efforts to obtain entitlements and zoning . . . and to move forward with development of the Subject
12 Property.” (*Id.*, ¶¶ 18-19.) Further, Plaintiffs allege they “agreed to forgo the opportunity to file a
13 bankruptcy petition to seek reorganization of the debt on the Subject Property and to protect their
14 investment.” (*Id.*, ¶ 19.)

15 Despite the forbearance agreement, in 2010, “WF Capital filed suit in Washington State against
16 Plaintiff Barkett and his wife Lisa Barkett seeking a judgment on the guarantees.” (Doc. 1 at 18, ¶ 20.)
17 The court entered judgment against the Barketts, “and the judgment was filed in California.” (*Id.*)
18 Plaintiffs assert that despite the entry of judgment, they “entered into a Second Forbearance Agreement
19 on June 26, 2011,” with WF Capital. (*Id.*, ¶ 21.) Plaintiffs allege the same parties “entered into an
20 Amendment to the Second Forbearance Agreement” with Defendant Sentosa. (*Id.*) Plaintiffs contend
21 that “[t]he parties agreed to specific reduced amounts that were due under the terms of the various loan
22 documents and judgments,” and Plaintiffs again “agreed to refrain from seeking relief from the
23 bankruptcy courts.” (*Id.*) Plaintiffs assert the defendants “agree[d] to forebear from any action to
24 foreclose on the Subject Property or attempt to enforce the judgments.” (*Id.*, ¶ 25.)

25 Plaintiffs assert the agreed upon deadlines in the Amended Second Forbearance Agreement
26 were not met, but “Defendant Senstosa took no action to enforce its judgments or to otherwise exercise
27 any of its claimed rights under the loan documents or the judgments . . . because . . . the parties
28 continued to work together toward the development of the Subject Property.” (Doc. 1 at 18-19, ¶ 22.)

1 According to Plaintiffs, “[w]ith Defendants (sic) knowledge Plaintiffs paid hundreds of thousands of
2 dollars on . . . consultants and engineers over the time period of 2007 to the present,” and they “were
3 successful in getting approval of a tentative map and of selling one parcel to Wal-Mart.” (*Id.*, ¶ 24.)

4 Plaintiffs allege they negotiated an Improvement Agreement and a Tax Sharing Agreement with
5 the City of Wasco related to the Subject Property in April 2014, under which “Plaintiffs would receive
6 a credit of \$750,000 and the remaining amount of the site improvement costs would be borne by the
7 City initially and allocated via assessment on the Subject Property.” (Doc. 1 at 19-20, ¶ 26.) However,
8 during the course of obtaining the Improvement Agreement, “the City of Wasco became concerned that
9 there were liens of record against the Subject Property that either needed to be removed or that needed
10 to agree to subordinate rights of the City of Wasco as developed under the Improvement Agreement.”
11 (*Id.* at 20, ¶ 28.) Plaintiffs assert Defendants Sentosa and Huang were aware of the agreement with the
12 City of Wasco, “participated at all times in the negotiations and agreed to, and did, execute
13 Subordination Agreements and Petitions and Waivers relating to the Assessment District that was
14 created thereby.” (*Id.*, ¶ 26.)

15 According to Plaintiffs, Defendants Sentosa and Huang “entered into an agreement that Sentosa
16 would conduct a non-judicial foreclosure in the second position in order to eliminate any of the liens of
17 record junior to that lien.” (Doc. 1 at 20, ¶ 28.) Plaintiffs assert that under the alleged agreement:
18 “Defendants would grant to Plaintiffs or their assignee an Option to re-acquire the Subject Property for
19 a specified price and agree to permit Plaintiffs, at Plaintiffs’ expense, to continue to process the
20 development. No foreclosure would take place until the Option was in place.” (*Id.* at 20-21, ¶ 28.)
21 Plaintiffs allege, however, that “Defendants proceeded to complete a nonjudicial foreclosure sale of the
22 Subject Property without any warning to Plaintiffs.” (*Id.* at 22, ¶ 34.)

23 Plaintiffs filed a complaint in Kern County Superior Court on August 20, 2014, asserting the
24 defendants are liable for fraud and breach of contract, and seeking declaratory relief, including a
25 determination “that there is no longer any amounts owed on the loans or the judgments.” (Doc. 1 at 15,
26 ¶¶ 23-28) and that “Plaintiffs hold an option to purchase the Subject Property.” *Id.* at 28. Sentosa filed
27 a Notice of Removal on October 29, 2014, thereby initiating the action in this Court. (Docs. 1-2.) On
28 October 30, 2014, Sentosa filed the motion for a change of venue now pending before the Court,

1 asserting the Southern District of California is the proper venue for adjudication of Plaintiffs' claims.
2 (Doc. 3.)

3 **II. Legal Standard**

4 "For the convenience of parties and witnesses, in the interest of justice, a district court may
5 transfer any civil matter to any other district or division where it might have been brought." 28 U.S.C.
6 § 1404(a). The Supreme Court explained the § 1404(a) analysis should be an "individualized, case-
7 by-case consideration of convenience and fairness." *Van Dusen v. Barrack*, 376 U.S. 612, 622 (1964).
8 Accordingly, courts consider several factors, including:

- 9 (1) plaintiff's choice of forum, (2) convenience of the parties, (3) convenience of the
10 witnesses, (4) ease of access to the evidence, (5) familiarity of each forum with the
11 applicable law, (6) feasibility of consolidation with other claims, (7) any local interest
in the controversy, and (8) the relative court congestion and time of trial in each forum.

12 *Williams v. Bowman*, 157 F. Supp. 2d 1103, 1106 (N.D. Cal. 2001) (citing *Decker Coal Co. v.*
13 *Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986)); *see also Jones v. GNC Franchising,*
14 *Inc.*, 211 F.3d 495, 498-99 (9th Cir. 2000).

15 The party seeking a change of venue has the burden to demonstrate the transfer is appropriate.
16 *Commodity Futures Trading Comm'n v. Savage*, 611 F.2d 270, 279 (9th Cir. 1979). Whether to grant
17 a change of venue is within the discretion of the District Court. *See Ventress v. Japan Airlines*, 486
18 F.3d 1111, 1118 (9th Cir. 2007) (explaining the determination of the proper venue "involves subtle
19 considerations and is best left to the discretion of the trial judge").

20 **III. Discussion and Analysis**

21 **A. Convenience of the parties**

22 Evaluating the parties' convenience, the Court considers Plaintiffs' choice of forum, the
23 parties' contacts with the forum, and the contacts relating to Plaintiffs' claims in the chosen forum.
24 *Jones v. GNC Franchising*, 211 F.3d 495, 498-99 (9th Cir. 2000), *cert. denied*, 531 U.S. 928 (2000).
25 The Ninth Circuit explained the Court "must balance the preference accorded plaintiff's choice of
26 forum with the burden of litigating in an inconvenient forum." *Jones*, 211 F.3d at 498. In general, a
27 plaintiff's choice of forum is given substantial weight, because courts attach a "strong presumption in
28 favor of [the] plaintiff's choice of forum." *Piper Aircraft v. Reyno* 454 U.S. 235, 255 (1981); *Decker*

1 *Coal*, 805 F.2d at 843. However, the deference accorded to a plaintiff’s choice of forum may be
2 lessened in certain circumstances. *Lou v. Belzberg*, 834 F.2d 730, 739 (9th Cir. 1987).

3 In *Lou* the Ninth Circuit instructed: “In judging the weight to be accorded [the plaintiff’s]
4 choice of forum, consideration must be given to the extent of both [the plaintiff’s] and the [defendant’s]
5 contacts with the forum, including those relating to [the plaintiff’s] cause of action.” *Id.*, 834 F.2d at
6 739 (citing *Pacific Car & Foundry Co. v. Pence*, 403 F.2d 949, 954 (9th Cir. 1968)). A plaintiff’s
7 choice “is entitled to only minimal consideration” if the Court finds “the operative facts have not
8 occurred within the forum and the forum has no interest in the parties or subject matter.” *Id.*

9 Here, the case was filed originally in Kern County Superior Court, which is encompassed within
10 the Eastern District. (Doc. 1.) However, Sentosa reports that “[t]he Plaintiffs all reside and are
11 organized or incorporated in La Jolla, California, San Diego County, in the Southern District.” (Doc.
12 3-1 at 5.) Further, Sentosa asserts: “the loans were all executed by Plaintiffs in La Jolla, California; the
13 Guarantees were executed in San Diego County, California; Wasco, Parker Dam, Barusa, William
14 Barkett, and Lisa Barkett executed the Forbearance Agreements in San Diego, California; the Judgment
15 was registered in San Diego County where all of the Plaintiffs reside; and the Judgment is being
16 enforced by the Southern District of California.” (*Id.* at 12.) Thus, Sentosa concludes that “all of the
17 key events that gave arise to this action occurred within the Southern District.” (*Id.*, emphasis in
18 original.)

19 Plaintiffs maintain that the Eastern District is an appropriate venue “because the Subject
20 Property is there.” (Doc. 12 at 5.) Plaintiffs assert that they elected to file within the Eastern District
21 due to the location of the Subject Property. (*Id.*) Further, Plaintiffs assert, “[m]ost, if not all, of the
22 events surrounding the issue[s] took place in Kern County. (*Id.* at 6.)

23 Notably, the complaint indicates that part of the fraud claim is based upon Defendants’ actions
24 related to the negotiation of the Improvement Agreement according to which Plaintiffs agreed to give
25 up their claims under the Tax Sharing Agreement in exchange for Wasco fronting much of the
26 infrastructure development costs. (Doc. 1 at 25) Plaintiffs allege that Defendants participated in the
27 negotiation of the Improvement Agreement and were fully aware of its requirements. *Id.* at 19-20 ¶ 26.
28 The complaint alleges further that Defendants executed “Subordination Agreements and Petitions and

1 Waivers” related to the formation of the assessment district that was formed to recoup the cost of the
2 infrastructure improvements that would be paid by the City of Wasco. *Id.* at 20 ¶ 27. Meanwhile, the
3 City of Wasco negotiated with WalMart to execute a similar agreement to the one entered into by
4 Plaintiffs and the City of Wasco. *Id.* at 21 ¶ 30. Counsel for Defendants participated in the
5 negotiations with WalMart. *Id.* During this time, Plaintiffs also were in process of obtaining an
6 amended map that would allow the sale of individual parcels. *Id.* at 31. Defendants approved the
7 proposed map and were aware that Plaintiffs were engaged in negotiating the sale of the parcels. *Id.*
8 Plaintiffs contend that the acts by Defendants in these negotiations induced them to continued forward
9 toward development of the property and spend considerable money for the purpose of best positioning
10 Defendants to seize the property—and the benefits of Plaintiffs’ efforts and money—through
11 foreclosure of the property. *Id.* at 24-25.

12 Though Defendants characterize this current action as one that relates only to the failed third
13 forbearance agreement the allegations set forth above include claims related to the Improvement
14 Agreement, the efforts related to drafting the new map and the efforts to secure the improvements on
15 the WalMart property which would benefit the subject property. In doing so, Defendants fail to support
16 that these actions occurred in the Southern District. Indeed, it seems unlikely that the City of Wasco’s
17 actions occurred anywhere other than in the City of Wasco.

18 Given the allegations in the complaint, it appears the chosen forum maintains contacts relating
19 to Plaintiffs’ claims, and Plaintiffs’ choice of forum is entitled to more than minimal consideration.
20 Thus, Defendants have not carried their burden to demonstrate that the Southern District is a more
21 convenient forum for the parties.

22 **B. Convenience of the witnesses**

23 Convenience for witnesses is one of the most important factors in the determination of whether
24 to grant a change of venue. *Los Angeles Memorial Coliseum Comm’n v. Nat’l Football League*, 89
25 F.R.D. 497, 501 (C.D. Cal. 1981). A transfer of venue “may be denied when witnesses either live in
26 the forum district or are within the 100-mile reach of the subpoena power” because individuals cannot
27 be compelled to testify when they reside beyond the boundaries of the Court’s subpoena power.” *Id.* at
28 501 (citing Fed. R. Civ. P. 45(e); *U.S. Industries, Inc. v. Procter & Gamble Co.*, 348 F. Supp. 1265

1 (S.D.N.Y. 1972)). Consequently, to show inconvenience for witnesses, “the moving party should state
2 the witnesses’ identifies, locations, and content and relevance of their testimony.” *Meyer Mfg. Co. Ltd.*
3 *v. Telebrands Corp.*, 2012 WL 1189765 at *6 (E.D. Cal. 2012) (citing *Florens Container v. Cho Yang*
4 *Shipping*, 245 F. Supp. 2d 1086, 1092-93 (N.D. Cal. 2002); *see also E. & J. Gallo Winery v. F. & P.*
5 *S.p.A.*, 899 F. Supp. 465, 466 (E.D. Cal. 1994) (“[a]ffidavits or declarations are required to identify key
6 witnesses and a generalized statement of their anticipated testimony”).

7 Sentosa asserts “key witnesses are located in the Southern District” and other “witnesses can
8 easily travel to the Southern District.” (Doc. 3-1 at 9.) Plaintiffs assert the convenience of witnesses
9 weighs against a transfer of venue because “[t]he City of Wasco and all of its representatives, including
10 legal counsel, Thomas Schroeter, reside in Kern County.” (Doc. 12 at 6.) Though it is not explained
11 what relevant evidence may be provided from representatives of the City of Wasco or its counsel,
12 Sentosa fails to meet its obligation to “identify relevant witnesses, state their location and describe their
13 testimony and its relevance” to demonstrate inconvenience of non-party witnesses. *Williams v.*
14 *Bowman*, 157 F. Supp. 3d 1103, 1108 (N.D. Cal. 2001); *see also E. & J. Gallo Winery*, 899 F. Supp. at
15 466. Thus, Defendant has not demonstrated non-party witnesses would suffer inconvenience, and this
16 factor does not support a change in venue.

17 **C. Interest of Justice**

18 “Consideration of the interest of justice, which includes judicial economy, may be determinative
19 to a particular transfer motion, even if the convenience of the parties and witnesses might call for a
20 different result.” *Regents of the University of California v. Eli Lilly and Co.*, 119 F.3d 1559, 1565 (Fed.
21 Cir. 1997) (citation omitted). Evaluating the interest of justice, the Court considers the ease of access
22 to evidence; familiarity of the forums with the applicable law; and the differences in litigation in each
23 forum, including court congestion and time of trial. *Burke v. USF Reddaway, Inc.*, 2013 U.S. Dist.
24 LEXIS 3074, at *15 (E.D. Cal. Jan. 8, 2013) (citing *Jones*, 211 F.3d at 498-99). Also, the Court may
25 consider the existence of a pending related action in the forum to which transfer has been proposed.
26 *Amazon.com v. Cendant Corp.*, 404 F.Supp.2d 1256, 1259 (W.D. Wash. 2005).

27 a. Ease of access to evidence

1 Sentosa has not identified any specific evidence that is located in the Southern District. Even if
2 the Court presumes that the evidence related to the alleged agreements would be located where the
3 negotiations of the forbearance agreements occurred, Defendants have failed to prove, as discussed
4 above, only occurred in the Southern District. It appears that evidence related to the Improvement
5 Agreement and the amended property map may be located in Kern given the allegations of the
6 complaint that indicated that officials with the City of Wasco were heavily involved at least to the
7 extent that these negotiations were informed by and motivated in part by the Improvement Agreement
8 negotiated with the City of Wasco. Thus, Defendants have failed to meet their burden of proof that
9 venue should be changed based upon this factor.

10 b. Pendency of a related action

11 The Supreme Court explained: “To permit a situation in which two cases involving precisely
12 the same issues *are simultaneously pending* in different District Courts leads to the wastefulness of
13 time, energy and money that § 1404(a) was designed to prevent.” *Cont’l Grain Co. v. Barge FBL-585*,
14 364 U.S. 19, 26 (1960) (emphasis added). Thus, the Ninth Circuit has determined that “the pendency
15 of an action in another district is important because of the positive effects it might have in possible
16 consolidation of discovery and convenience to witnesses and parties.” *A. J. Indus.*, 503 F.2d at 389.

17 Significantly, here, there is no active, ongoing case in the Southern District.¹ That court has
18 entered the abstract of judgment and has issued an order assigning Plaintiff’s interest in assets held in
19 the Southern District to Defendants toward the goal of satisfying the judgment and charging Plaintiff’s
20 interest in Wasco Investments, LLC with the unpaid judgment.² The Southern District had no occasion
21 to consider the merits of the current action or, even, the one in the Western District of Washington.

22 ///

24 ¹ The Court may take judicial notice of a fact that “is not subject to reasonable dispute because it (1) is generally
25 known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose
26 accuracy cannot reasonably be questioned.” Fed.R.Evid. 201. The accuracy of a court’s records cannot reasonably be
27 questioned, and judicial notice may be taken of court records. *Mullis v. United States Bank. Ct.*, 828 F.2d 1385, 1388 n. 9
(9th Cir.1987); *Valerio v. Boise Cascade Corp.*, 80 F.R.D. 626, 635 n. 1 (N.D.Cal.1978), aff’d 645 F.2d 699 (9th Cir.1981);
see also Colonial Penn Ins. Co. v. Coil, 887 F.2d 1236, 1239 (4th Cir.1989). Thus, the Court takes judicial notice of the
28 actions taken in the matter of *Sentosa Properties, LLC., v. William J. Barkett and Lisa Barkett*, Case No. 14-cv-1622 L
(JLB) filed in the Southern District of California.

² Notably, this included assignment of any monies collected by Wasco Investments according to the Tax Sharing Agreement which is at issue in this litigation.

1 c. Familiarity of the forums with applicable law

2 Both the Southern District and Eastern District Courts will be equally familiar with California
3 law. As a result, this factor does not weigh in favor of a change in venue.

4 d. Court congestion in each forum

5 The Court must consider “the administrative difficulties flowing from court congestion” when
6 considering the interest of justice. *Decker Coal*, 805 F.2d at 843 (citing *Piper Aircraft*, 454 U.S. at
7 255). The judges in this Court maintain the busiest dockets in the nation. Data for the twelve-month
8 period ending June 30, 2014, indicates the median time interval between filing of a document and any
9 court action was 3.1 months in the Southern District and 5.9 months in the Eastern District. United
10 States Courts, “Table C-5: Time Intervals From Filing to Disposition of Civil Cases Terminated, by
11 District and Method of Disposition,” available at [http://www.uscourts.gov/Statistics/StatisticalTables](http://www.uscourts.gov/Statistics/StatisticalTablesForTheFederalJudiciary/june-2014.aspx)
12 [ForTheFederalJudiciary/june-2014.aspx](http://www.uscourts.gov/Statistics/StatisticalTablesForTheFederalJudiciary/june-2014.aspx) (last visited November 25, 2014). Although civil cases move
13 through the Court in a timely manner, recognizing the congestion in this Court, this factor weighs in
14 favor of transfer to the Southern District.

15 **IV. Conclusion and Order**

16 Based upon the foregoing, the Defendant has not carried the burden to demonstrate the transfer
17 is required. *See Commodity Futures Trading Comm’n*, 611 F.2d at 279. Defendant has not shown the
18 convenience of the parties or witnesses weigh in favor of a transfer. Further, despite the significant
19 congestion of cases faced by this Court, Defendant has not established that the interests of justice
20 weigh in favor of a change of venue. Accordingly, **IT IS HEREBY ORDERED**: Defendant’s motion
21 for a change of venue (Doc. 3) is **DENIED**.

22
23 IT IS SO ORDERED.

24 Dated: December 4, 2014

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE