

Mark Tratos, Esq. (NV Bar No. 1086)
Donald L. Prunty, Esq. (NV Bar No. 8230)
GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway
Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792 3773
Facsimile: (702) 792 9002
Email: TratosM@gtlaw.com, PruntyD@gtlaw.com

Troy A. Eid, Esq. (CO Bar No. 21164)
Robert S. Thompson IV, Esq. (CO Bar No. 90894)
GREENBERG TRAURIG, LLP
1200 17th Street
Suite 2400
Denver, Colorado, 80202
Telephone: (303) 572 6500
Facsimile: (303) 572 6540
Email: EidT@gtlaw.com, ThompsonRo@gtlaw.com

Counsel for GRAND CANYON SKYWALK DEVELOPMENT, LLC

**IN THE HUALAPAI TRIBAL COURT
HUALAPAI RESERVATION, STATE OF ARIZONA**

THE HUALAPAI INDIAN TRIBE OF)
THE HUALAPAI INDIAN)
RESERVATION, Arizona,)

Plaintiff)

VS.)

GRAND CANYON SKYWALK)
DEVELOPMENT, LLC, a Nevada)
limited liability company,)

Defendant.)

Appeal Case No. 2012-AP-012

CASE NO. 2012-CV-017

**NOTICE OF APPEAL FROM AUGUST 3, 2012 MINUTE ENTRY AND ORDER OF
THE COURT ON DEFENDANT'S MOTION IN OPPOSITION TO TAKINGS
DECLARATION**

Defendant Grand Canyon Skywalk Development, LLC (“GCSD”) hereby appeals to the Hualapai Court of Appeals the Tribal Court’s August 3, 2012 *Minute Entry and Order on Defendant’s Motion in Opposition to Takings Declaration* issued by the Honorable Lawrence C. King (“Order”). Specifically, and pursuant to Section 10.5(A), Defendant appeals the Court’s conclusion that “jurisdiction is proper in this matter.” Order at 2 (copy of Order attached hereto).

Briefly, the basis for GCSD’s appeal is that GCSD is a non-Indian and neither the Tribe, the Tribal Court, the Hualapai Tribal Council (the “Tribal Council”), nor any representative of the Tribe has the authority to exercise civil regulatory or civil adjudicatory jurisdiction over the non-Indian Defendant, or Defendant’s non-Indian Nevada contract interests, which the Tribe purports to have seized by eminent domain. The Tribe’s purported taking – by eminent domain power arising under Hualapai Tribal law – does not extend to GCSD’s off-reservation, Nevada contract rights.

The Tribal Court’s conclusion that there is jurisdiction over the Tribe’s purported taking of GCSD’s non-Indian, Nevada-based contract rights is incorrect. The Tribal government cannot reach beyond its Reservation borders and take the intangible personal property of a non-resident, non-Indian located in another state. A sovereign’s power to condemn property extends no farther than its borders, and property to be taken by a sovereign must be taken within its jurisdictional boundaries. *Mayor & City Council of Baltimore v. Baltimore Football Club Inc.*, 624 F. Supp. 278, 284 (D. Md. 1985); Nichols on Eminent Domain (3d ed. 1980), §§ 2.07, 2.12.

GCSD is and always has been located in Nevada. Its company offices are Nevada, its headquarters are in Nevada, its principal place of business is in Nevada, and its owners are domiciled in Nevada. Under the long-established maxim that the location of intangible personal property follows the owner (*mobilia sequuntur personam*, the “mobilia doctrine”), GCSD’s

intangible contract rights reside in Nevada, beyond the territorial limits of whatever eminent domain powers the Tribe might have. See *Blodgett v. Silberman*, 277 U.S. 1, 9-10 (1928); *Texas v. New Jersey*, 379 U.S. 674, 681-82, n.10 (1965). Because the Tribe lacks civil regulatory jurisdiction over non-Indian GCSD to effectuate a taking of GCSD's intangible Nevada contract rights, the Tribal Court also lacks civil adjudicatory jurisdiction with respect to the Tribe's taking efforts. *Strate v. A-1 Contractors*, 520 U.S. 438, 459 n.14 (1997).

Indeed, the United States Supreme Court's jurisprudence with respect to tribal civil regulatory and civil adjudicatory jurisdiction makes clear that there is no basis for Tribal jurisdiction in the instant matter. See *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316 (2008); *Nevada v. Hicks*, 533 U.S. 353 (2001); *Atkinson Trading Co. v. Shirley*, 532 U.S. 645 (2001); *Strate*, 520 U.S. 438; *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982); *Montana v. United States*, 450 U.S. 544 (1980). Therefore, GCSD seeks reversal of Judge King's Order finding that the Tribal Court has jurisdiction.

Defendant's appeal is proper at this time pursuant to Section 10.3 of the Hualapai Code which provides that "Any party to a civil action ... dissatisfied with a final judgment or order of the Tribal Court may appeal therefrom to the Tribal Court of Appeals." GCSD is dissatisfied with the Court's conclusion regarding jurisdiction and therefore appeals therefrom. And GCSD's appeal is timely pursuant Section 10.4(A)(1). GCSD shall post the requisite administrative fee for this appeal with the Clerk of Court.

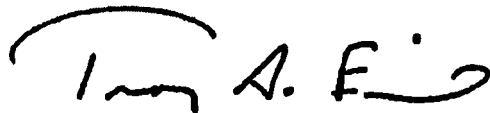
Pursuant to Section 10.5(A)(1) of the Hualapai Code, Defendant states that its name, address and telephone number are as follows: Grand Canyon Skywalk Development, LLC, 5985 W. Wigwam, Las Vegas, NV 89139, (702) 220 8372. GCSD is reachable through its counsel. GCSD is represented by the law firm of Greenberg Traurig LLP and specific counsel as follows:

Mark Tratos, Esq. (NV Bar No. 1086)
Donald L. Prunty, Esq. (NV Bar No. 8230)
GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway
Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792 3773
Facsimile: (702) 792 9002
Email: TratosM@gtlaw.com, PruntyD@gtlaw.com

Troy A. Eid, Esq. (CO Bar No. 21164)
Robert S. Thompson IV, Esq. (CO Bar No. 90894)
GREENBERG TRAURIG, LLP
1200 17th Street
Suite 2400
Denver, Colorado, 80202
Telephone: (303) 572 6500
Facsimile: (303) 572 6540
Email: EidT@gtlaw.com, ThompsonRo@gtlaw.com

This appeal of the Court's jurisdictional finding notwithstanding, GCSD will timely submit the materials required in the Court's Order, namely the schedule of discovery and hearings and a brief on the two legal issues identified in the Order for supplemental briefing.

Respectfully submitted this 8th day of August 2012,



Troy A. Eid, Esq. (CO Bar No. 21164)
Robert S. Thompson IV, Esq. (CO Bar No. 90894)
GREENBERG TRAURIG, LLP
1200 17th Street, Suite 2400
Denver, Colorado, 80202
Telephone: (303) 572 6500
Facsimile: (303) 572 6540
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Las Vegas, Nevada 89169
Telephone: (702) 792 3773
Facsimile: (702) 792 9002
Email: TratosM@gtlaw.com, PruntyD@gtlaw.com

CERTIFICATE OF SERVICE

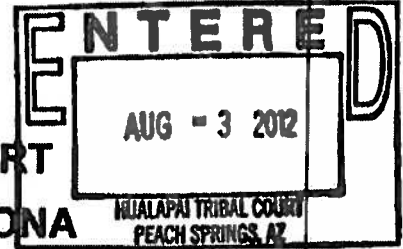
This is to certify that on August 8, 2012, a true and correct copy of the foregoing Notice of Appeal of Grand Canyon Skywalk Development, LLC was filed and mailed via United States mail to:

Glen Hallman
Paul K. Charlton
Jeffrey D. Gross
Christopher W. Thompson
Gallagher & Kennedy, P.A.
2575 East Camelback Road
Phoenix, Arizona 85016-9225
(602) 530-8000



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**IN THE HUALAPAI TRIBAL COURT
HUALAPAI RESERVATION, ARIZONA**



THE HUALAPAI INDIAN TRIBE OF THE
HUALAPAI INDIAN RESERVATION,
Arizona,

Plaintiff,

vs.

GRAND CANYON SKYWALK
DEVELOPMENT, LLC, a Nevada limited
liability company,

Defendant.

Case No.: 2012-CV-017

MINUTE ENTRY AND ORDER

This matter is before the Court on Defendant's Motion in Opposition to Takings Declaration. Plaintiff filed an Opposition, to which Defendant replied. The Court heard oral argument from the parties. Defendant is represented by counsel for the limited purpose of arguing jurisdiction.

I. BACKGROUND

A Declaration of Taking was filed with this Court on February 8, 2012. The declaration pursuant to Section 2.16(F)(2-4) of the Hualapai Tribe Law and Order Code, declared that the Hualapai Tribe has taken possession of all interests of Grand Canyon Skywalk Development, LLC (GCSD) in that certain Development and Management Agreement by and between GCSD and 'Sa' Nyu Wa (SNW), a tribally chartered corporation, dated December 31, 2003 and that certain first amendment to Development and Management Agreement by and between GCDC and SNW dated September 10, 2007 (hereinafter individually and collectively referred to as the "Skywalk Agreement").

1 The Declaration requested that an Order be entered that absolute title in such
2 contract interests vests in the Tribe and that the Tribe shall be the party to the Skywalk
3 Agreement in full place and stead of GCSD, with the right to just compensation vesting
4 in GCSD.

5 The property to be taken is the construction and management of the Skywalk
6 located at Eagle Point within the Hualapai Tribal Reservation.

7 The Hualapai Indian Tribe filed a Complaint in Condemnation on February 8,
8 2012. The Tribal Court issued an Order vesting absolute Title to contract interests to
9 that certain Development and Management Agreement by and between GCSD and 'Sa'
10 Nyu Wa (SNW), a tribally chartered corporation, dated December 31, 2003 and that
11 certain first amendment to Development and Management Agreement by and between
12 GCDC and SNW dated September 10, 2007, in the Hualapai Tribe.

13 The Court on February 17, 2012 issued an Order: Severance of §2.16(K) from
14 the Condemnation Ordinance pursuant §2.16(T) because it invaded the province of the
15 Court, and violated the Separation of Powers and therefore was unconstitutional.

16 17 II. DISCUSSION

18 TRIBAL RULES OF CIVIL PROCEDURE

19 The Court finds that jurisdiction is proper in this matter.

20 Section 3.1 (D) of the Hualapai Law and Order Code provides that "[a]s to any
21 matters that are not covered by the Tribal Constitution, codes, ordinances or resolutions
22 of the Tribe or by Tribal Common Law or by applicable federal law or regulation, the
23 Tribal Court may be guided by common law as developed by other Tribal, federal or
24 state courts."

25 EMINENT DOMAIN

1 "Eminent domain is the power of the sovereign to take property for public use
2 without the owner's consent." 1 J. Sackman, Nichols' The Law of Eminent Domain Sec.
3 1.11, at 1-7 (3d ed. 1981). To exercise the power of eminent domain, the government
4 must prove that the four elements set forth in the Fifth Amendment are present: (1)
5 private property (2) must be taken (3) for public use (4) and with just compensation.

6 These elements have been interpreted broadly. The first element requires that
7 the property taken be private. Private property includes land as well as fixtures, leases,
8 options, stocks, and other items. The second element refers to the taking of physical
9 property, or a portion thereof, as well as the taking of property by reducing its value.
10 Property value may be reduced because of noise, accessibility problems, or other
11 agents. Dirt, timber, or rock appropriated from an individual's land for the construction of
12 a highway is taken property for which the owner is entitled to compensation. In general,
13 compensation must be paid when a restriction on the use of property is so extensive
14 that it is tantamount to confiscation of the property.

15 The third element, public use, requires that the property taken be used to benefit
16 the public rather than specific individuals. Whether a particular use is considered public
17 is ordinarily a question to be determined by the courts. However, if the legislature has
18 made a declaration about a specific public use, the courts will defer to legislative intent
19 (*Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 104 S. Ct. 2321, 81 L. Ed. 2d 186
20 [1984]). Further, "[t]he legislature may determine what private property is needed for
21 public purpose ... but when the taking has been ordered, then the question of
22 compensation is judicial" (*Monongahela Navigation Co. v. United States*, 148 U.S. 312,
23 13 S. Ct. 622, 37 L. Ed. 463 [1893]).

24 To determine whether property has been taken for public use, the courts first
25 determined whether the property was to be used by a broad segment of the general

1 public. The definition of public use was later broadened to include anything that
2 benefited the public, such as trade centers, municipal civic centers, and airport
3 expansions.

4 The last element set forth in the Fifth Amendment mandates that the amount of
5 compensation awarded when property is seized or damaged through condemnation
6 must be fair to the public as well as to the property owner (*Searl v. School District No. 2*
7 *of Lake County*, 133 U.S. 553, 10 S. Ct. 374, 33 L. Ed. 740 [1890]).

8 In a Takings action, the government does not acknowledge taking. Property
9 owner files a "reverse condemnation" action accusing government of taking, seeking
10 just compensation. Takings cases usually involve a temporary invasion of property, or
11 restriction on use of property – which is called a "regulatory" or "constructive" taking.

12 Condemnation usually consists of two phases: proceedings that relate to the right
13 of the condemnor to take the property, and proceedings to set the amount of
14 compensation to be paid for the property taken.

15 In the instant matter, the Court takes Judicial Notice that the property within the
16 exterior boundaries of the Hualapai Reservation was established for the benefit of the
17 members of the Hualapai Tribe. Title to said land is held in trust by the United States of
18 America for the Hualapai Tribe. The plain language of a statute controls its
19 interpretation. *Maine v. Thiboutot*, 448 U.S. 1, 4, 9, 100 S.Ct. 2502, 2504, 2506, 65
20 L.Ed.2d 555 (1980). As such, the Court finds that the Hualapai Tribe does not need to
21 take its own property back by eminent domain. The Skywalk Agreement in section
22 2.2(s) states clearly that Ownership of the Site and all Project Improvements shall be
23 and remain in the Nation throughout the Construction Term and the Operating Term.

24 However, the "Law of the Case" dictated that the Court institute hearing pursuant
25 to the Eminent Domain Ordinance.

1
2 **III. ORDERS**

3 **IT IS ORDERED** that the parties submitted to the Court a schedule for discovery
4 and hearings in this matter within the next 15 days.

5 **IT IS ORDERED** that the parties brief the question of 1. Can eminent domain be
6 used by the Tribe when the Tribe owns the land, and 2. Is a contract right subject to
7 government taking or contract remedies when the parties are a Tribe and a private
8 party. The briefs should be no more than 10 pages due 21 days from the date of this
9 order.

10 **SO ORDERED** this 3rd day of August 2012.

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12 /s/ Lawrence C. King
13 Honorable Lawrence King
14 Judge, Hualapai Indian Tribe
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Wendy Creason
Tel 303.685.7415
Fax 720.904.7617
creasonw@gtlaw.com

HUALAPAI TRIBAL
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FILED

August 9, 2012

VIA FEDERAL EXPRESS

The Hualapai Tribal Court
Attn: Clerk
960 Rodeo Way
Peach Springs, Arizona 86434

Re: **Case No. 2012-CV-017**
The Hualapai Indian Tribe of The Hualapai Indian Reservation
v. Grand Canyon Skywalk Development, LLC

Dear Clerk,

Please find attached a cashier's check (certified bank check) in the amount of \$50.00 to cover the filing fees associated with the filing of the Notice of Appeal From August 3, 2012 Minute Entry and Order of the Court on Defendant's Motion in Opposition to Takings Declaration, filed via facsimile on August 8, 2012. A courtesy copy of the filing is attached for your reference.

Should you need any additional information or have questions, please do not hesitate to contact this office. Thank you.

Sincerely,



Wendy Creason
Assistant to Jennifer H. Weddle

.wc
Attachments
LV 419825769v1

HUALAPAI COURT OF APPEALS

Preliminary Checklist

(Form to be Completed & Transmitted Electronically to Chief Justice Within
2 Business Days of the Filing of the Notice of Appeal or Petition for a Writ and
Prior to Commencing Preparation of the Record on Appeal)

Case Name (Always Place Plaintiff/Petitioner's Name in Tribal Court First)

The Hualapai Tribe -VS- Grand Canyon Skywalk
Development LLC

Appellate Case Number: 2012-AP-012

Tribal Court Case Number: 2012-CV-017

Panel of Justices for Case: Williams, Clinton & Ferguson

Lead Justice: Williams

A. Title on Notice of Appeal/Petition for Writ Document:

Notice of Appeal

B. Date Notice of Appeal/Petition for Writ Filed:

(Note: Notices/Petitions Should Only be Filed if Received *with* Fees or a
Motion to Fee Waiver)

C. Did the Notice/Petition Contain a Certificate or Other Proof of Service on
Opposing Parties and their Legal Representatives?

Please Circle: Yes No

(Note: Any Documents Received Without a Certificate or Other Proof of
Service on Opposing Parties and their Legal Representative Should *Not* be
Filed)

D. Order from Which Notice/Petition is Taken as Stated in the Notice/Petition:

Minute Entry and Order

Preliminary Checklist Case No: 2012-AP-012

E. Was the Order from Which Notice/Petition is Taken a Final Order?

Please Circle: Yes ☒ No Uncertain

(Attach the Order from Which Notice/Petition is Taken.)

F. Date of the Order from Which Notice/Petition is Taken: August 3, 2012

G. Number of Days Elapsed Between Filing of the Order from Which Notice/Petition is Taken and the Filing Date of the Notice/Petition:
6 dys.

H. Was the Notice/Petition Timely (that is, was the Notice of Appeal filed within 30 days of the Order; or was the Petition for a Writ filed within 15 days of the Order (App. Rule 16(c)(i))?

Please Circle: ☒ Yes No

I. If the Answer to H. Above was No, Did the Last Day for Filing a Notice/Petition Fall on a Day on which the Court was Closed?

Please Circle: Yes No

J. If the Answer to I. Above was Yes, Was the Notice/Petition Filed on the Next Business Day on Which the Court was Open?

Please Circle: Yes No

K. Was a Motion to Waive the Filing Fee or a Motion for a Stay filed with the Court of Appeals?

Please Circle: Yes ☒ No

Prepared By:

Clerk's Initials: ma

Date Prepared: 8/9/12

Date Transmitted to Chief Justice: Williams

Preliminary Checklist Case No: 2012-AP-012