



GRAND CANYON SKY WATCH Arizona Federal Court addresses arbitration enforceability:

The Case: The order entered February 13, 2013, in *Grand Canyon Skywalk Development, LLC v. 'Sa' Nyu Wa, Inc.*ⁱ reflects important principles supporting the enforceability of arbitration awards when a dispute arises in economic development in Indian country. Grand Canyon Skywalk Development (GCSD), a Las Vegas, Nevada developer, and 'Sa' Nyu Wa, a corporation chartered by and wholly owned by the Hualapai Tribe (SNW), entered into a management agreement for the construction and operation of a glass viewing bridge (the Skywalk) at the Grand Canyon on the Hualapai Indian Reservation. After the Skywalk opened, controversies arose between GCSD and SNW, and GCSD invoked the arbitration agreement contained in the management agreement between the parties. While the arbitration was pending, the Tribe submitted a declaration of taking, seeking to condemn GCSD's interest in the project, and moved to dismiss the arbitration. However, the Hualapai Tribal Court held the arbitration agreement enforceable and that SNW had waived its immunity from mandatory arbitration and enforcement of arbitration obligations for purposes of the management agreement. SNW refused to attend the arbitration; nonetheless, after considering testimony of witnesses, exhibits and briefs, the arbitrator ruled in favor of GCSD, awarding over \$28 million in damages and attorneys' fees. In its recent order, the federal court confirmed the arbitration award and rejected SNW's defenses to the jurisdiction of the arbitrators, under the Hualapai Tribe's Constitution, and that the eminent domain proceeding mooted the arbitration.

The Significance of *Grand Canyon Skywalk*: The case reflects an important remedy that may be available in the rare circumstance in which a tribal entity repudiates its agreement and its dispute resolution provisions and a developer must rely on judicial enforcement. SNW is a corporation chartered by the Hualapai Tribe, not under state or federal law. Hence, it arguably enjoys sovereign immunity from suit. Consequently, the contractual arbitration and court enforcement provisions of the management agreement were critical to GCSD. The decisions of the Tribal Court, the arbitrator, and the Federal Court combined to afford a remedy, despite the Tribe's efforts to condemn the developer's interest.

The Take Away: *Grand Canyon Skywalk* reflects the importance of a clear and unambiguous waiver of immunity, a clear choice of acceptable forum, and clear remedial provisions in a development agreement with a tribe or tribal entity. It also reflects that tribal courts are capable of exercising judicial independence, even when the tribe is taking directly contrary positions.

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ⁱ No. CV-12-08183-PCT-DGC (D. Az. Feb. 11, 2013).