UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STOCKBRIDGE MUNSEE COMMUNITY, Plaintiff, v. UNITED STATES OF AMERICA, *et al.,* Defendants.	No. 1:08-cv-01031

DEFENDANTS' REPLY IN SUPPORT OF MOTION TO TRANSFER VENUE AND TO SUSPEND OBLIGATION TO ANSWER IN THE DISTRICT OF COLUMBIA

Plaintiff, the Stockbridge Munsee Community, Band of Mohican Indians ("Stockbridge-Munsee"), challenges the Department of Interior's ("Interior" or "Defendant") decision to take certain lands located in New York into trust for the benefit of another tribe, the Oneida Indian Nation of New York. Pl.'s Am. Compl. ¶ 1. Plaintiff's Amended Complaint alleges that some of the land Interior intends to take into trust for the Oneida is actually within the exterior boundaries of a historical Stockbridge-Munsee reservation, and thus, Interior's decision is arbitrary and capricious under the Administrative Procedure Act ("APA"). See generally Id.

On August 28, 2008, Defendants moved to have this case transferred to the Northern District of New York in order to allow for all of the cases challenging the Oneida land-into-trust decision at issue in this case to be decided in the forum in which the land at issue is located. See Mem. of Law in Support of Mot. to Transfer Venue and to Suspend Obligation to Answer in the District of Columbia (Dkt. 6) (hereinafter Def.'s Mem.). On September 8, 2008, Plaintiff filed

its objection to transfer, relying on two primary reasons: 1) Plaintiff claims its challenge is vastly different from the other six challenges pending in the Northern District of New York and 2) Plaintiff's challenge here "does not raise any of the issues presented in the [Stockbridge-Munsee] pending land-claim action." Pl. Stockbridge-Munsee Community's Mem. Of Law in Opp'n To Fed. Def.'s Mot. To Transfer Venue (Dkt. 7) (hereinafter "Pl.'s Mem.") at 22.

As Defendant pointed out in its opening memorandum, the strongest reason to transfer this action to the Northern District of New York is that the interests of justice will best be advanced by such a transfer. The interests of justice are furthered by preventing unnecessary expense to the public and duplicative use of judicial resources. Continental Grain Co. v. FBL-585, 364 U.S. 20, 26; see also Martin-Trigona v. Meister, 668 F. Supp. 1, 3 (D.D.C. 1987) ("The interests of justice are better served when a case is transferred to the district where related actions are pending."). And most importantly, the interests of justice are promoted when a localized controversy is resolved locally where concerned entities may closely follow the proceedings. Citizen Advocates for Responsible Expansion (I-Care) v. Dole, 561 F. Supp. 1238, 1240 (D.D.C. 1983); Gulf Oil v. Gilbert, 330 U.S. 501, 509 (1947). Nothing raised by Plaintiff in its opposition changes the analysis that this compelling interest can only be furthered by transfer of this case to the Northern District of New York. Armco Steel Co. v. CXS Corp., 790 F. Supp. 311, 324 (D.D.C. 1991).

I. THE INTERESTS OF JUSTICE WEIGH HEAVILY IN FAVOR OF TRANSFERRING THIS CASE TO THE NORTHERN DISTRICT OF NEW YORK

A. Plaintiff's challenge the same administrative decision as do six other related cases in the Northern District of New York.

Plaintiff spends much of its Memorandum in Opposition attempting to distinguish its challenge to the land-into-trust decision from the other filed challenges in the Northern District of New York. Pl.'s Mem. at 6-14. Plaintiff characterizes its case and claims here as "turn[ing] exclusively on issues relating to the Government's exercise of its trust responsibilities" which are not dependant on a specific location to be decided. Id. at 1. Then twelve pages later, Plaintiff characterizes its case and the claims raised in Plaintiff's Complaint as APA claims. Id. at 14.

Plaintiff also attempts to artificially distinguish the relief being sought between it and the other Plaintiffs in New York as it is not seeking to completely invalidate Interior's land-into-trust decision; however, as Plaintiff fully admits, Plaintiff seeks to have a subpart of Interior's land-into-trust decision remanded (with directions) to Interior (specifically the portion regarding the approximately 3,300 acres that Plaintiff believes to be its land and not Oneida land). Pl.'s Mem. at 5.

Plaintiff believes that different claims and demands for relief require a denial of the transfer motion. See generally Pl.'s Mem. Importantly, the case law finding that related cases favor transfer do not require identical claims or relief for a motion to transfer to be granted. See Def.'s Mem. at Ex. E, Towns of Ledyard, et al. v. Unites States, Civ. No. 95-0880, slip op. at 4; Def.'s Mem. at Ex. A, Santee Sioux Tribe of Nebraska, slip. op. at 9; Def.'s Mem. at Ex. B, Cheyenne-Arapho Tribe of Oklahoma v. Reno, Civ. No. 98-cv-065 (D.D.C.), slip op. at 4

(transferring the action based in part due to a consolidated action pending in another jurisdiction); Def.'s Mem. at Ex. C, Apache Tribe of the Mescalero Reservation v. Reno, Civ. No. 96-115 (D.D.C.), slip op. at 6 (transferring action based in part on action raising the same broad challenge already pending in the transferor jurisdiction). At this early stage of litigation, contrary to Plaintiff's speculation about which court will decide which matters, see Pl.'s Mem. at 26, it is difficult to state exactly the manner in which any final decisions would overlap or be duplicative. But, we do know that all of the cases (the Stockbridge-Munsee case here and the pending cases in New York) challenge the same administrative decision and the same regulation (25 C.F.R. Part 151), and that avoiding the potential for inconsistent results favors hearing all the challenges in one forum.[1/] See Pl.'s Mem. Ex. A-F; see also Mem. of P. & A. in Support of Oneida Nation of New York's Unopposed Mot. for Permission to Intervene as Def., Ex. 4 (Dkt. 8-4) (listing the other pending APA cases in the Northern District of New York as related cases to the Stockbridge-Munsee land-claim case).

B. The Northern District of New York's familiarity with the land claim disputes of the Oneida and the Stockbridge-Munsee favors transferring to the Northern District of New York.

In Defendant's opening memorandum, Defendant relayed the history of the Northern District of New York's familiarity with the fundamental underlying issue for Plaintiff here, that being whether the approximately 3,300 acres Interior intends to take into trust for the Oneida Indians is Stockbridge-Munsee land. Def.'s Mem. at 2, 11. Defendant specifically pointed to

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[1/]Plaintiff argues that the fact that two different sections within the Department of Justice are staffing the different cases somehow undercuts Defendant's argument regarding efficiency, and distinguishes its case from the others. Pl.'s Mem. at 20, n. 9. Government positions between the cases will be coordinated and the fact remains that defending all the cases in one forum will result in less chance of conflicting decisions.

Plaintiff's pending land claim, which raises the same question. Id. at 2 (citing to Pl.'s Am. Compl. ¶ 44); see also Pl.'s Am. Compl. ¶ 59 ("Specifically, the amended complaint [in Stockbridge's land claim case] relying on the [Oneida] Nation's intervention without limitation and for all purposes, named the [Oneida] Nation as a defendant and asserted claims in ejectment against the [Oneida] Nation *to the lands that are also the subject of this action, that is those lands purchased by the [Oneida] Nation subsequent to its intervention in the Stockbridge land-claim action that are situated within the 1788/1794 New Stockbridge treaty reservation and which have never been part of any Oneida reservation*.") (emphasis added).

In response, Plaintiff claim throughout its brief that there is no overlap in issues between the case it already has pending in New York and the case here. Pl.'s Mem. at 17, 22. But in the next footnote, Plaintiff does concede (as it must) that the land at issue here is "a portion of the land that is the subject matter of the Stockbridge land-claim action, so the matters are not entirely unrelated." Id. at 17, n. 6. In addition, one of the issues that Plaintiff claims Interior should have discussed more thoroughly in its land-into-trust Record of Decision are the effects of the decision on the "viability of Stockbridge's pending land-claim action." Pl.'s Am. Compl. at ¶¶ 81, 90, 93, 96, 99, 102, 105; see also Pl.'s Mem. at 13. Moreover, the Plaintiff's actions belie their words. As mentioned in Def.'s Mem. at 11, n.2, Plaintiffs sought in its pending New York suit to secure an all Writs Act injunction against the Secretary of the Interior taking any action to take the land-into-trust, which is at issue in the District of Columbia lawsuit. See Mem. of P. & A. in Support of Oneida Nation of New York's Unopposed Mot. for Permission to Intervene as Def., Ex. 3 (Dkt. 8-3). In short, the Northern District of New York's history with these matters weighs in

favor of transfer.[2/]

C. An administrative decision being made in the District of Columbia does not create a sufficient nexus to the forum.

Plaintiff claims that the fact the Record of Decision was signed in the District of Columbia by a high ranking Interior official transforms the decision into a national decision and creates a sufficient nexus to this forum. Pl.'s Mem. at 21. As Defendant stated in its opening memorandum:

> Courts in this circuit must examine challenges to personal jurisdiction and venue carefully to guard against the danger that a plaintiff might manufacture venue in the District of Columbia. By naming high government officials as defendants, a plaintiff could bring a suit here that properly should be pursued elsewhere.

Cameron v. Thornburgh, 983 F. 2d 253, 256 (D.C. Cir. 1993); see also DeLoach v. Phillip Morris Co., 132 F. Supp. 2d 22, 25 (D. D.C. 2000) (noting that venue is inappropriate in the District of Columbia where "the only real connection [the] lawsuit has to the District of Columbia is that a federal agency headquartered here (USDA) is charged with generally regulating and overseeing the [administrative process]."); Ex. D, Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin v. United States, Civ. No. 01-1042 (D.D.C.), slip op. at 6. "Mere involvement on the part of federal agencies, or some federal officials who are located in Washington D.C., is not determinative." Shawnee Tribe v. United States, 298 F. Supp. 2d 21, 25-26 (D.D.C. 2002). In short, as stated throughout Defendant's opening memorandum, the issues raised in this case concern tribal, state and local interests in lands located in New York;

[2/]Plaintiff also claims that the District of Columbia is a more convenient location for it based on airline schedules. Pl.'s Mem. at 19. Regardless, the fact that Plaintiff already has pending litigation regarding similar issues in the Northern District of New York undermines Plaintiff's convenience claim.

Interior making the decision here at its headquarters in the District of Columbia does not change that fact.

D. Local controversies should be decided in local forums.

Plaintiff acknowledges that the six pending actions in the Northern District of New York raise local concerns, but somehow claims that its action does not. Pl.'s Mem. at 16-17, 23. As set forth in Defendants' opening memorandum, the parcels of land giving rise to the present dispute are located in New York. Moreover, the party who is to receive the land in question – is also located in New York. If the land is to be taken into trust (either the entire parcel or the 3,300 that Plaintiff here challenges), it is the local citizens in New York who will be potentially affected by the land being under Indian jurisdiction rather than state jurisdiction. See also Pl.'s Mem. at 23 (listing examples of potential localized controversies resulting from taking land-into-trust: tax jurisdiction and revenues, the application of and enforcement of state and local environmental, safety, building, fire, and law enforcement, etc.).

Accordingly, this case (as well as those cases pending in the Northern District of New York) implicates interests in New York. See Shawnee Tribe v. United States, 298 F. Supp. 2d 21, 26 (D.D.C. 2002), (ordering transfer based on "local interest in deciding a sizable local controversy at home"); Southern Utah Wilderness Alliance v. Norton, 315 F. Supp. 2d 82 (D.D.C. 2004) (the plaintiff sought venue in the District of Columbia of a dispute involving twenty-one parcels of land in Utah. There, the Court concluded that National Environmental Policy Act considerations were localized interests that "directly touch[ed] local citizens." Id. at 88. The Court granted the Government's transfer motion, stating that "[i]t makes sense that these alleged consequences would be most particularly felt in Utah, and thus that the courts of Utah

would have a clear interest in resolving the dispute." Id.. (citing Trout Unlimited v. United States Department of Agriculture, 944 F. Supp. 13, 20 (D.D.C. 1996)). Here, the ramifications and considerations resulting from review in the District of Columbia would impact New York lands and citizens, and will not affect lands or citizens of the District of Columbia.

CONCLUSION

For these reasons, Defendants' motion for transfer to the Northern District of New York, and to suspend answering Plaintiff's Complaint in the District of Columbia should be granted.

Dated this 18th day of September 2008.

Respectfully submitted,

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