

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO**

HAROLD L. RUPP SR. TRUST, an Idaho trust; and VEDA J. RUPP REVOCABLE LIVING TRUST, an Idaho trust,

Plaintiffs,

vs.

CITY OF POCAATELLO, an Idaho municipality; MILLENNIAL DEVELOPMENT PARTNERS, LLC, a Utah limited liability company; PORTNEUF DEVELOPMENT, LLC, an Idaho limited liability company; PORTNEUF BUILDERS, LLC, and Idaho limited liability company; BRIAN BLAD, in both his official and individual capacities; KEN PAPE, individually; ARVIL B. SWANEY, individually; and JOHN OR JANE DOES 1-10,

Defendants.

Case No. 4:22-cv-50-SEH

**ORDER**

**BACKGROUND**

This case, asserting declaratory judgment and monetary relief claims, was filed February 4, 2022.<sup>1</sup> Named Plaintiffs are Harold L. Rupp Sr. Trust and the Veda J. Rupp Revocable Living Trust (“Plaintiffs”). Named defendants are the City of Pocatello, Idaho (“Pocatello”); Millennial Development Partners, LLC (“Millennial”); Portneuf Development, LLC (“Portneuf Development”); Portneuf Builders, LLC (“Portneuf Builders”); Ken Pape (“Pape”); Brian Blad, Mayor of Pocatello, Idaho (“Blad”); and Arvil B. Swaney (“Swaney”).

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<sup>1</sup> Doc. 1.

On February 4, 2022, Plaintiffs also filed suit in Idaho state court (Bannock County District Court) naming all the same Defendants as in this case except for Blad.<sup>2</sup> Both cases involve the same operative facts and subject matter, namely a 930-acre tract of land located near Pocatello in Bannock County, Idaho.<sup>3</sup> Plaintiffs' claims in the Idaho state court case are grounded in: (1) breach of contract; (2) intentional interference with prospective economic advantage; and (3) fraud.<sup>4</sup> The claims before this Court assert: (1) unlawful regulatory taking of private property for public use; (2) civil conspiracy; and (3) misrepresentation in commercial advertising.<sup>5</sup>

Separate Answers have been filed by the Portneuf Defendants, Pocatello, and Millennial Defendants in the Idaho state court case.<sup>6</sup> Currently filed and pending in this Court are three fully briefed motions to dismiss: (1) a March 16, 2022, Motion to Dismiss<sup>7</sup> and a Memorandum in Support of Motion to Dismiss,<sup>8</sup> filed by Portneuf Development, Portneuf Builders, and Pape (collectively "Portneuf Defendants"); (2) a March 21, 2022, Motion to Dismiss<sup>9</sup> and a

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<sup>2</sup> Appropriate judicial notice has been taken of the state court proceedings. Fed R. Evid. 201. *See Harold L. Rupp Sr. Trust v. City of Pocatello*, CV03-22-398 (Idaho Dist. Ct. Feb. 4, 2022).

<sup>3</sup> *See* Doc. 1 at 4.

<sup>4</sup> *See generally* Compl., *Harold L. Rupp Sr. Trust v. City of Pocatello, et al.*, CV03-22-398 (Idaho Dist. Ct. Feb. 4, 2022).

<sup>5</sup> *See generally* Doc. 1.

<sup>6</sup> *See Harold L. Rupp Sr. Trust v. City of Pocatello, et al.*, CV03-22-398 (Idaho Dist. Ct. Feb. 4, 2022).

<sup>7</sup> Doc. 12.

<sup>8</sup> Doc. 12-1.

<sup>9</sup> Doc. 17.

Memorandum in Support of Motion to Dismiss,<sup>10</sup> filed by Blad and Pocatello (collectively “City Defendants”); and (3) a March 30, 2022, Motion to Dismiss<sup>11</sup> and a Memorandum in Support of Motion to Dismiss<sup>12</sup> filed by Millennial and Swaney (collectively “Millennial Defendants”). Issues raised by Defendants and addressed in the several motions to dismiss and memoranda include *forum non conveniens* and the *Colorado River* doctrines.<sup>13</sup> On June 23, 2022, the Court conducted a hearing and heard argument on Portneuf Defendants’ Motion to Dismiss,<sup>14</sup> City Defendants’ Motion to Dismiss,<sup>15</sup> and Millennial Defendants’ Motion to Dismiss.<sup>16</sup>

### DISCUSSION

When considering *Colorado River* doctrine issues, courts are to consider and weigh:

(1) whether either court has assumed jurisdiction over the property at stake; (2) the relative convenience of the forums; (3) the desire to avoid piecemeal litigation; (4) the order in which the forums obtained jurisdiction; (5) whether state or federal law controls; (6) whether the state proceeding is adequate to protect the parties’ rights; (7) the desire to avoid forum shopping; and (8) whether the state court proceedings will resolve all issues before the federal court.<sup>17</sup>

Under the doctrine of *forum non conveniens*, a court may resist imposition upon its

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<sup>10</sup> Doc. 17-1.

<sup>11</sup> Doc. 21.

<sup>12</sup> Doc. 21-1.

<sup>13</sup> See *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976).

<sup>14</sup> Doc. 12.

<sup>15</sup> Doc. 17.

<sup>16</sup> Doc. 21.

<sup>17</sup> *Evans v. Hepworth*, 433 F. Supp. 3d 1171, 1178 (D. Idaho 2020) (citing *Seneca Ins. Co., Inc. v. Strange Land, Inc.*, 862 F.3d 835, 841 (9th Cir. 2017)).

jurisdiction even when authorized by the letter of a general venue statute.<sup>18</sup> Additionally, *forum non conveniens* principles permit a court to consider:

“[W]hen an alternative forum has jurisdiction to hear [a] case, and when trial in the chosen forum would ‘establish . . . oppressiveness and vexation to a defendant . . . out of all proportion to plaintiff’s convenience,’ or when the ‘chosen forum [is] inappropriate because of considerations affecting the court’s own administrative and legal problems,’ the court may, in the exercise of its sound discretion, dismiss the case,” even if jurisdiction and proper venue are established.<sup>19</sup>

This case warrants application of both the *Colorado River* doctrine and the doctrine of *forum non conveniens* to the issues. To varying degrees, every *Colorado River* factor weighs in favor of abstention. Relevant consideration of the doctrine of *forum non conveniens* favor dismissal, as well.

Dismissal on abstention grounds will be ordered. Other issues raised by Defendants’ motions to dismiss need not be addressed.

Upon the record:

**ORDERED:**

Portneuf Defendants’ Motion to Dismiss;<sup>20</sup> City Defendants’ Motion to Dismiss;<sup>21</sup> and Millennial Defendants’ Motion to Dismiss<sup>22</sup> are GRANTED IN PART as to the doctrine of *forum*

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<sup>18</sup> *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 507 (1947).

<sup>19</sup> *American Dredging Co. v. Miller*, 510 U.S. 443, 447–48 (1994) (citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241 (1981) (quoting *Koster v. (American) Lumbermens Mut. Cas. Co.*, 330 U.S. 518, 524 (1947))).

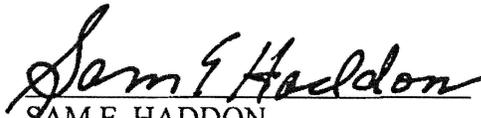
<sup>20</sup> Doc. 12.

<sup>21</sup> Doc. 17.

<sup>22</sup> Doc. 21.

*non conveniens* and the *Colorado River* doctrine and DENIED IN PART as to all other issues raised. The case is DISMISSED without prejudice.

DATED this 24<sup>th</sup> day of June, 2022.

  
SAM E. HADDON  
United States District Judge