Professor Clarkson was quoted in an article on a legal dispute between the Hualapai tribe corporation, 'Sa' Nyu Wa, and Grand Canyon Skywalk Development over an unfinished visitor center.


Management of Grand Canyon Skywalk on Shaky Ground

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GRAND CANYON WEST, Ariz. — When the Hualapai Native American tribe opened up the Skywalk on their land on the Grand Canyon’s western rim in 2007, there was hope that the glass-bottomed bridge could bring prosperity to the small Northern Arizona tribe. But four years later, the tribe is now immersed in an escalating dispute with the developer that financed the project and manages the attraction.

There are accusations of breach of contract and transgressions on both sides. But both sides can agree that the Skywalk is drawing tourists.

On an afternoon in the middle of the week, hundreds of tourists wait their turn to stroll on the glass bridge. An usher keeping track of the visitors has counted more than 1450 visitors on her shift. In 2010, some 620,000 tourists visited. Each one paid $29.99 just to enter the Skywalk, and many will fork over another $27.99 to take home a photo. Most come by bus or helicopter on package tours.

“It’s breathtaking really, it’s unbelievable,” said Melissa Peck, a tourist from New Jersey as she gazed down at the bottom of the canyon, 4,000 feet below.

The structure was built when Las Vegas businessman David Jin struck a deal with the Hualapai tribe. He would put up $30 million to build the Skywalk and a Visitor Center, and then would manage the site for the next 25 years. The profits would be split evenly between Jin’s corporation, Grand Canyon Skywalk Development, LLC, and the tribe’s corporation, ‘Sa’ Nyu Wa. But now both sides say the other isn’t keeping up their end of the bargain. The Hualapai’s main grievance is the unfinished visitor center.

The line of tourists winds through the unfinished building on the way to the Skywalk entrance. The exterior of the building is complete, but inside it looks like a construction zone. It’s been that way since the attraction opened, said Waylon Honga, a member of the Hualapai Tribal Council.

“There’s no ceiling, there’s no interior walls, It is one big empty space,” said Honga, as he toured the empty space that is supposed to house a restaurant and a gift shop for tourists. “It’s got a long ways to go.”

Honga and the rest of the council insist the unfinished construction is Jin’s fault.

“What is stipulated in the contract was for Mr Jin to extend the water, the sewer and electric lines and complete the building. And it hasn’t been done.”
Jin maintains that the utilities are the tribe’s responsibility. He has plenty of his own accusations against the tribe—including embezzlement. According to Jin’s spokeswoman Aimee Romero, Jin hasn’t received his share of the profits. “Mr. Jin has not received any of the management fees that were agreed to by the tribe since 2007.”

Those owed fees could be as high as $8 million, according to Jin’s estimates. Romero said Jin has tried to pursue arbitration with the tribe, but the tribe has refused. For their part, the tribal council says Jin’s claims are false.

Now they are weighing whether to use newly acquired powers of eminent domain to undo Jin’s contract to manage the Skywalk. The council passed an ordinance earlier this month that would allow the tribal government to use that power for the first time.

“The Hualapai Tribal Council is just looking out for the best interest of its membership,” said Honga.

Asserting eminent domain would be a highly unusual legal move in this case, according to legal experts.

“I don’t know that any tribe and any outside investor have gone down this path before,” said Gavin Clarkson, a law professor specializing in tribal economic development at the University of Houston Law Center.

Still Clarkson says the tribal government should have the power to void the contract and pay Jin the value of what he would have earned. That argument was echoed by the tribe’s attorney, Paul Charleton. “Any contractor who enters into an agreement with a government has to follow rules of that government,” said Charleton. “If the contractor enters into an agreement with the Hualapai people, it has to follow Hualapai rules.”

But prominent tribal law expert Troy Eid joined David Jin’s legal team out of fear that such a move by the tribe could have damaging effects on other development projects in Indian country. Eid contends that the tribe does not have authority to assert eminent domain over Jin’s property rights, since he and his company are outside of the tribe.

“The bottom line is if a tribe can come in and condemn someone’s contract, when two corporations are doing business, that has a chilling effect on all private parties that might want to do business with Indian nations,” said Eid.

After the Hualapai Tribal Council approved the new eminent domain ordinance, Jin’s company, Grand Canyon Skywalk Development, LLC, asked a federal judge to stop the tribe from seizing the company’s contract. The judge rejected Jin’s request since the tribe had not taken action, but he has ordered discovery. Another motion is pending in tribal court that could compel both sides to enter into arbitration.

In the meantime, up on the Skywalk, tourists like Melissa Peck are missing out on some of the amenities.
“I have to tell you I was shocked when I walked in, because I thought the inside of the building was a gift shop,” said Peck. “But then when I saw nothing was there, I was kind of taken aback.”