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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

McBRIDE'S RV STORAGE, LLC,

Plaintiff and Appellant,

v.

CITY OF CHINO,

Defendant and Appellant.

D068045

(Super. Ct. No. CIVRS1102515)

APPEALS from a judgment of the Superior Court of San Bernardino,
Gilbert G. Ochoa, Judge. Affirmed in part; reversed in part and remanded with
directions.

Gutierrez | Fierro | Erickson, Jimmy L. Gutierrez, Arturo N. Fierro; Pollak, Vida &
Fisher and Daniel P. Barer for Defendant and Appellant.

Law Office of William K. Crowe, William K. Crowe; Law Office of Richard A.
Harvey and Richard A. Harvey for Plaintiff and Appellant.

I.

INTRODUCTION

McBride's RV Storage, LLC (MRV) filed a petition for writ of mandate against the City of Chino (the City) seeking reimbursement for costs it incurred in constructing various public facilities mandated by the City of Chino Planning Commission (Planning Commission) as a condition of the Planning Commission's June 2005 approval of MRV's development project. MRV sought the reimbursement pursuant to provisions in the City's municipal code that require the City to provide reimbursement where the cost to construct mandated public facilities exceeds the developer's obligation to pay applicable development impact fees.¹ MRV also requested that the trial court rescind three conditions that the Planning Commission imposed in its May 2011 approval of MRV's application to extend its permits to construct two phases of the project.

The City defended against the petition by contending that MRV's request for reimbursement was barred by the applicable three-year statute of limitations contained in Code of Civil Procedure section 338, subdivision (a), and that MRV's request to rescind the Planning Commission's conditions was procedurally deficient in a number of ways, including that MRV failed to provide a sufficient administrative record. MRV argued in response that its action was not barred by the applicable statute of limitations, and that, in

¹ A development impact fee is a "monetary exaction, other than a tax or special assessment, that is charged by the city to the applicant, either an owner or a developer, in connection with development approval of a development project for the purpose of defraying all or part of the cost of public facilities related to the development project." (Chino Mun. Code, § 3.45.020(F).)

the alternative, the City should be estopped to assert a statute of limitations defense.

MRV also argued that its request to rescind the Planning Commission's conditions was properly before the trial court.

The trial court concluded that MRV's cause of action seeking reimbursement for the cost of construction of various public facilities had not yet accrued because the City had never provided MRV with a final determination of the applicable development impact fees. In light of this conclusion, the trial court did not reach MRV's estoppel theory. The trial court rejected MRV's request to rescind the Planning Commission's conditions on a number of grounds, including that MRV had failed to provide an adequate administrative record. The court entered judgment granting MRV a peremptory writ of mandamus directing the City to provide MRV with a calculation of the development impact fees for the project and any reimbursement due to MRV.

On appeal, the City contends that the trial court erred in concluding that MRV's claim against it was not barred by the applicable statute of limitations. Specifically, the City argues that the trial court erred in concluding that MRV's cause of action against the City had not accrued because the City failed to provide MRV with a final calculation of the development impact fees for the project. In response, MRV argues that even assuming the trial court erred in concluding that MRV's cause of action had not accrued, the matter should be remanded to the trial court with directions to consider MRV's contention that the City should be estopped from asserting its statute of limitations defense.

We agree with the City that the trial court erred in concluding that MRV's claim against the City had not accrued, and also agree with MRV that the matter should be remanded to the trial court with directions to consider MRV's estoppel theory.

In a cross-appeal, MRV contends that the trial court erred in denying its request to rescind three conditions imposed by the Planning Commission. We conclude that the trial court properly denied MRV's request on the ground that MRV failed to lodge the relevant administrative record.

Accordingly, we reverse the trial court's ruling granting MRV relief on its reimbursement request and remand the matter to the trial court with directions to determine whether the City should be estopped to assert its statute of limitations defense. We affirm the trial court's ruling denying MRV's request that the court rescind three conditions imposed by the Planning Commission in its approval of MRV's permit extension application.

II.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Project*

In 2005, MRV sought to develop a parcel of property located in an area of the City called "The Preserve" (the Project). MRV intended to complete the Project in three phases. Phase 1 of the Project, a recreational vehicle storage facility, was completed as of June 2006. In May 2011, the Planning Commission approved MRV's request to extend the validity of permits to construct phases 2 and 3 of the Project. In approving MRV's request, the Planning Commission imposed several conditions, including

requiring MRV to provide an easement across part of its property, construct a driveway across another portion of the property and remove a temporary building on the site.

Phases 2 and 3 of the Project have yet to be constructed.

B. *This proceeding*

In February 2012, MRV filed the operative third amended complaint (petition for writ of mandate).² In its petition, MRV alleged that the City had required MRV to construct various public facilities, including storm drains as well as street paving and curbing, as part of its May 2005 approval of the Project.³ MRV claimed that it had constructed these public facilities "[i]n reliance on the representations by [the City] that [MRV] would be reimbursed" for the costs of constructing such facilities. MRV alleged that it had completed phase 1 of the Project by June 15, 2006.⁴

MRV further alleged that it was entitled to reimbursement for the costs of constructing the facilities pursuant to provisions of the City's municipal code. MRV stated that the City's municipal code contains provisions that allow the City to impose various development impact fees on projects such as MRV's. MRV noted that the code further provides that a developer shall be entitled to reimbursement for the costs of constructing mandated public facilities where the costs of constructing those facilities

² MRV filed its initial complaint in 2011.

³ It is undisputed that these conditions were actually imposed in June 2005 by the Planning Commission in connection with its approval of two permits, Site Approval No. 2005-02 and Special Conditional Use Permit No. 2005-02.

⁴ It is undisputed that all of the public facilities were constructed during phase 1.

exceeds the otherwise applicable development impact fee. MRV alleged that it was entitled to various reimbursements pursuant to these provisions of the municipal code.

MRV also alleged that, in May 2011, the Planning Commission imposed three additional, unreasonable conditions in connection with MRV's request to extend its permits to construct the final two phases of the Project.⁵

MRV requested that the trial court order the City to reimburse MRV a total of \$1,754,219 for the public facilities that MRV had constructed. MRV also requested that the court rescind the three conditions that the Planning Commission imposed in May 2011.

C. *The parties' contentions at trial*

The trial court held a bench trial on MRV's writ petition.⁶ During the trial, the City claimed that MRV's cause of action seeking reimbursement for the costs of constructing the mandated public facilities had accrued on June 15, 2006 because MRV had constructed all of the facilities by this date.⁷ The City argued that MRV's petition was barred by the applicable three-year statute of limitations contained in Code of Civil Procedure section 338, subdivision (a), because MRV did not file its third amended

⁵ MRV's writ petition did not specifically explain the precise manner by which these conditions were imposed. However, it is undisputed that the Planning Commission imposed them in approving MRV's request to extend its permits to construct the final two phases of the project.

⁶ Although the trial court indicated at the outset of the trial that it would try the City's statute of limitations defense first, the court permitted the parties to examine the witnesses on the merits of MRV's claims throughout the proceeding.

⁷ The City also presented evidence that it provided MRV with an estimate of the applicable development impact fees on the Project in approximately December 2005.

complaint until February 2012. The City also contended that MRV's request to rescind the Planning Commission's May 2011 conditions was procedurally deficient for a number of reasons, including that MRV had failed to lodge the applicable administrative record.⁸

MRV argued that its cause of action seeking reimbursement was timely filed and that, in any event, the City should be estopped from asserting a statute of limitations defense. MRV supported this contention by arguing that the City had not begun to calculate the development impact fees on the Project until 2010 or 2011, and that the final calculation of such fees was a necessary prerequisite to the accrual of MRV's cause of action. MRV also requested that the trial court issue a writ rescinding the three conditions imposed by the Planning Commission on the Project in approving MRV's request to extend its permits on the Project in May 2011.

D. *The trial court's ruling*

The trial court entered a statement of decision granting MRV's writ petition in part. With respect to the City's statute of limitations defense to MRV's request for reimbursement for the costs of constructing the mandated public facilities, the trial court ruled:

"[MRV] has not argued [Code of Civil Procedure] section 338[, subdivision] (a) does not govern this claim. The Court therefore CONCLUDES that section 338's three-year statute of limitations governs. [¶] The Court also FINDS that the evidence establishes that [MRV] constructed the required improvements by June 15, 2006; that as of June 2006, [MRV] had the City's estimate

⁸ The City also contended that MRV had failed to exhaust its administrative remedies and that its request to rescind the conditions was barred by the 90-day statute of limitations contained in Government Code section 65009.

of the Development Impact Fees, and knew the costs of construction; and that [MRV] did not commence its mandamus claim until February 3, 2012. [¶] The Court CONCLUDES, as a matter of law, that Petitioner's claim has not yet accrued because the City has not yet provided Petitioner a final calculation of the development impact fees for the project. [¶] The Court therefore CONCLUDES, as a matter of law, that [MRV's] cause of action is not barred by Code of Civil Procedure section 338."

The trial court also issued a writ directing the City to take the following action with respect to MRV's request for reimbursement:

"The Court further CONCLUDES that a writ shall issue commanding the City to prepare and deliver to [MRV], within 60 days of the date of entry of judgment, a calculation of Development Impact Fees and any applicable credit of reimbursement for Site Approval No. 2005-02 and Special Conditional Use Permit No. 2005-02. [MRV] shall then have 30 days to accept or reject the calculation, then take any necessary action."

With respect to MRV's request that the trial court rescind the Planning Commission's conditions of approval, the court ruled:

"[T]he Court CONCLUDES as a matter of law that [MRV's] request to rescind Conditions of Approval 4.1., 4.2, and 6.9, which were imposed by the Planning Commission's decision of May 16, 2011, is barred because [MRV] failed to exhaust its administrative remedies by not objecting to the conditions and not appealing the decision to the City Council; it is barred by Government Code section 65009 because [MRV] did not file its action within 90 days of the Planning Commission's decision and it is not subject to Government Code section 66020; it is barred because [MRV] failed to show that it was entitled to relief under Code of Civil Procedure section 1094.5; and it is barred because [MRV] did not present any administrative record of the proceedings that took place before the Planning Commission on May 16, 2011."

The trial court entered judgment granting MRV a peremptory writ of mandamus in a manner consistent with its statement of decision.

E. *The appeals*

The City timely appealed from the trial court's judgment, and MRV timely filed a cross-appeal from the judgment.⁹

III.

DISCUSSION

A. *The City's appeal*

1. *The trial court erred in concluding that MRV's cause of action against the City had not accrued*

The City claims that the trial court erred in concluding that MRV's cause of action against it had not yet accrued and, therefore, was not barred by the three-year statute of limitations contained in Code of Civil Procedure section 338, subdivision (a).

a. *Standard of review*

Where "the relevant facts are not in dispute, the application of the statute of limitations may be decided as a question of law." (*International Engine Parts, Inc. v. Feddersen & Co.* (1995) 9 Cal.4th 606, 611.) The City does not raise any challenge to the trial court's factual findings, but rather, contends that the trial court made an error of

⁹ While this appeal was pending, the City filed a request to augment the clerk's transcript with a February 21, 2014 notice of ruling of the trial court's order denying MRV's request for attorney fees and a May 7, 2014 amended judgment. Prior to the transfer of this matter to this court, the Court of Appeal, Fourth District, Division Two issued an order deeming the City's request to be a request for judicial notice and reserving consideration of the request.

We grant the City's request for judicial notice. The amended judgment awarded MRV costs, but is otherwise identical in all material respects to the original judgment. Since the amended judgment makes no substantial modification of the original judgment, we liberally construe the parties' notice of appeals to constitute appeals from the amended judgment. (See Cal. Rules of Court, rule 8.100(a)(2).)

law in concluding that MRV's cause of action had not accrued because the City had not calculated the applicable development impact fees. We review a trial court's resolution of questions of law de novo. (See, e.g., *In re Marriage of Freitas* (2012) 209 Cal.App.4th 1059, 1073 [stating that de novo standard of review applies where appellant raises a question of law].)

b. *Governing law*

i. *The applicable statute of limitations*

Code of Civil Procedure section 338, subdivision (a) provides a three-year statute of limitations for "[a]n action upon a liability created by statute, other than a penalty or forfeiture." The trial court concluded, and the parties do not dispute on appeal, that the three-year statute of limitations contained in Code of Civil Procedure section 338, subdivision (a) applies to MRV's petition for writ of mandamus seeking reimbursement for the costs of constructing public facilities pursuant to the City's municipal code. (*Branciforte Heights, LLC v. City of Santa Cruz* (2006) 138 Cal.App.4th 914, 926 ["The statute of limitations applicable to a writ of mandamus under Code of Civil Procedure section 1085 depends upon the nature of the obligation sought to be enforced."].)

"Generally, a cause of action accrues and the statute of limitation begins to run when a suit may be maintained." (*County of San Diego v. Myers* (1983) 147 Cal.App.3d 417, 421 (*Myers*).) "In other words, '[a] cause of action accrues "upon the occurrence of the last element essential to the cause of action." ' " (*Ibid.*)

In applying this general rule where a plaintiff seeks to recover from a public entity, the "statute . . . begins to run at the time when the plaintiff first had the power to

make [a] demand [for recovery]," and the plaintiff "cannot delay the running of the statute of limitations by postponing the time of demand upon the proper officials."

(Dillon v. Board of Pension Commrs. (1941) 18 Cal.2d 427, 430 (Dillon).)

ii. *The relevant municipal code provisions*

Chapter 3.45 of the City's municipal code establishes a scheme for imposing development impact fees on developments constructed within The Preserve. The City imposes the fees in order to finance the costs of constructing public facilities within The Preserve. (Chino Mun. Code, § 3.45.010(C).)¹⁰ The specific facilities to be financed are outlined in two reports ("the reports") that are incorporated into the municipal code.

Section 3.45.090 (Section 3.45.090) establishes the time when such fees will be imposed and establishes that the City must provide a developer with written notice of the imposition of such fees. Section 3.45.090(A) provides in relevant part:

"The applicability of each fee established by this chapter shall be determined for each developing property on which a development project is proposed at the time of the development approval of the development project. Immediately following a development approval, the city shall provide a written notice to the owner and the developer of each development project that describes each fee that has been imposed on the development project, as well as other dedications, reservations or exactions, and the amounts."

Section 3.45.110 (Section 3.45.110) provides that when a developer is required to construct a public facility described in the reports as a condition of a development

¹⁰ Further Section references are to the Chino Municipal Code unless otherwise specified.

approval, the developer shall be entitled to receive a credit toward payment of the development impact fees imposed on the project.

Section 3.45.110(B) outlines the "basis and procedure for earning and receiving a project credit." Section 3.45.110(B) provides:

"1. The owner or developer of any development project within [T]he [P]reserve shall have constructed a public facility described in the reports and required to be constructed by the development approval of the development project.

"2. In the event that an owner or developer constructs such a public facility, the owner or developer may apply the project credit to offset an obligation of the owner or developer to pay a fee imposed pursuant to this chapter, provided that the project credit shall be limited to reduce an obligation for a fee in the same fee category as the category of the public facility so constructed. After deducting a project credit against the applicable fee due hereunder, the owner or developer shall pay the obligation remaining in the fee category against which the project credit was applied.

"3. The city engineer shall determine the amount of the project credit for the construction of a public facility described in the reports requested by an owner or developer. Each project credit shall be certified by the city engineer after final completion and acceptance of each such public facility, based on final accepted and approved 'as-built plans' and specifications and review of actual cost documentation, subject to appeal to the city council pursuant to Section 3.45.130.^[11]

"4. A project credit may be earned for each phase by an owner or developer, provided the owner or developer deposits performance and payment bonds for the applicable public facilities or otherwise guarantees their completion, as required by the city engineer, subject to appeal to the city council pursuant to the procedures prescribed in Section 3.45.130."

¹¹ Section 3.45.130 provides that a developer may appeal "any determination of the city engineer hereunder" to the Chino City Council.

Section 3.45.110(C) provides that a developer is entitled to reimbursement when the costs of constructing a public facility described in the reports exceed the otherwise payable development impact fee. Section 3.45.110(C) provides in relevant part:

"The city acknowledges that a public facility described in the reports may cost the owner or developer more to construct it than the fee otherwise payable hereunder as the owner's or developer's fair share for such a public facility. In the event that an owner or developer constructs a public facility described in the reports and the actual cost to construct it exceeds the fee otherwise payable hereunder as the owner's or developer's fair share for such a public facility, such an owner or developer shall be entitled to a project reimbursement in an amount equal to the difference between the actual construction cost and the fee payable hereunder for the fair share of such public facility."

Section 3.45.110(C)(1) provides that "[p]roject reimbursements, other than those for storm drains and sewers, will be administered and calculated pursuant to the provisions of Section 3.40.110^[12] of this Code." Section 3.40.100 provides that, under certain specified circumstances, the City will enter into a reimbursement agreement with a developer, of up to 10 years in duration, through which a developer will be reimbursed for the costs of constructing a public facility. Section 3.40.100(B)(3) provides that the funds used to finance such agreements will be obtained through the imposition of development impact fees on similar projects.¹³ Section 3.40.100 provides in relevant part:

¹² The reference to Section 3.40.110 is a drafting error; that section does not pertain to project reimbursements. It appears that the intended reference is to Section 3.40.100, which outlines the bases on which a developer is entitled to a project reimbursement.

¹³ Section 3.40.100 is contained within Chapter 3.40 of the City's municipal code, which establishes a scheme for imposing development impact fees throughout the City.

"A. Whenever a developer is required, as a condition of approval of a development permit, to construct a public facility described herein which public facility is determined by the city to have supplemental size, length or capacity over that needed for the impacts of that development, and when such construction is necessary to ensure efficient and timely construction of the public facilities network and the development itself, a reimbursement shall be offered. The reimbursement amount shall not include the portion of the public facility needed to provide services or mitigate the need for the public facility or the burdens created by the development. . . .

"B. 1. The amount of the reimbursement agreement provided for in subsection A of this section shall be based on the construction costs of the public facilities constructed by the developer based on a table of equivalent costs for similar construction which table of equivalent costs shall be developed by the city engineer and revised annually.

"2. The actual amount of the reimbursement shall be determined and certified by the city engineer based on the final completion of all public facilities and based on final accepted and approved 'as-built' plans and specifications.

"3. The reimbursement agreement shall specify the amount of reimbursement to the developer from the development impact fee fund. All such reimbursements shall be paid only from the appropriate account within the development impact fee fund such that reimbursements for any public facility shall be made from the account within the fund containing moneys collected for financing of specific projects of a similar nature to those constructed by the developer who is the holder of the reimbursement agreement.

"4. No reimbursement agreement shall be for a period of more than ten years."

Section 3.45.110(C)(3) provides that storm drain and sewer project reimbursements shall be priority reimbursements, rather than subject to the reimbursement agreement scheme referred to in Section 3.45.110(C)(1).

c. *Application*

At the outset, we observe that the trial court's conclusion that MRV's "claim *has not yet accrued*," is in conflict with the trial court's *granting relief* on that claim. (Italics added.) If the trial court were correct in concluding that MRV's claim has not yet accrued, then MRV would not be entitled to maintain this action against the City. (See *Myers, supra*, 147 Cal.App.3d at p. 421 [cause of action accrues " 'upon the occurrence of the last element essential to the cause of action' " and "a suit may be maintained"].) For the reasons discussed below, we conclude that the trial court erred in its determination that MRV's claim against the City seeking reimbursement pursuant to Section 3.45.110 had not yet accrued.

The trial court concluded that MRV's claim seeking reimbursement has not accrued because "the City has not yet provided [MRV] a final calculation of the development impact fees for the project." This reasoning is unpersuasive because there is nothing in Section 3.45.110 that suggests that a developer must wait until it receives the City's development impact fee calculation before *seeking* a credit or reimbursement pursuant to that provision. Nor is there anything in the relevant municipal code provisions that indicate that a developer may not file suit until the City provides the development impact fee calculation. In fact, as the trial court found, MRV did not wait until it had a final determination of the development impact fees before filing its writ petition. Rather, it filed this writ petition seeking reimbursement despite the fact that the City had failed to provide a final calculation.

While it is true that the City's *determination* of the amount of the development impact fee is a necessary prerequisite to the City's determination of the applicable credit or reimbursement, it is not the *determination* of the amount of the development impact fee that establishes when the developer's cause of action accrues. Rather, the developer's cause of action seeking recovery of money claimed under Section 3.45.110 accrues where the developer has "the power to make [a] *demand* [for recovery]." (*Dillon, supra*, 18 Cal.2d at p. 430, italics added.) We agree with the City that a cause of action that seeks a credit or reimbursement under Section 3.45.110 accrues upon the developer's completion of the construction of a public facility for which a credit or reimbursement is sought. It is upon such completion that a developer has "the power to make [a] demand [for recovery]" (*Dillon, supra*, at p. 430) by filing a request for a credit or reimbursement for the cost of construction of such public facility.¹⁴ We therefore reject MRV's contention that its cause of action against the City had not accrued "[g]iven the City's inability to come to a conclusion on [MRV's] [development impact fees] and the reimbursements and credits due [to] [MRV]."

¹⁴ In *Dillon*, the Supreme Court concluded that a widow's cause of action to establish her right to receive certain pension proceeds "accrued to [the widow] at the time of her husband's death," but that the running of the statute of limitations was equitably tolled from the time the widow filed her claim with the applicable administrative agency until the time the agency rendered its decision on her claim. (*Dillon, supra*, 18 Cal.2d at p. 431.) We need not decide whether a developer's cause of action seeking to establish an entitlement to a credit or reimbursement under section 3.45.110 is tolled during the period during which the City is considering a developer's request for credit or reimbursement because MRV has presented no argument that the doctrine of equitable tolling applies in this case.

This conclusion is strengthened by the fact that Section 3.45.090(A) provides that the City is to determine the applicable development impact fee "at the time of the development *approval* of the development project." (Italics added.) This provision clearly directs the City to determine the applicable development impact fee prior to the time a developer completes the construction of a public facility and seeks a credit or reimbursement. In a case such as this, in which the City has failed to timely determine the applicable development impact fee, that failure cannot reasonably be considered to provide a basis for precluding a developer from filing a suit requesting relief on its claim for credit or reimbursement. (See *Myers, supra*, 147 Cal.App.3d at p. 421 [cause of action accrues when "a suit may be maintained"].)¹⁵ On the contrary, where the City has failed to timely determine the applicable development impact fee, a developer may file a writ petition to require the City to determine the development impact fee and provide a reimbursement or a credit.

Unless there is some basis for excusing the developer from compliance with the statute of limitations, the developer must file a writ petition within the three-year period provided in Code of Civil Procedure section 338, subdivision (a). Because it is undisputed that MRV completed construction of the public facilities for which it seeks

¹⁵ Notwithstanding the trial court's *granting* relief to MRV on its claim against the City for reimbursement pursuant to Section 3.45.110, the necessary implication of the trial court's conclusion that a developer's claim against the City for reimbursement does not accrue until the City determines the applicable development impact fees would be that a developer could *not* maintain such a suit until the City determined the applicable development impact fees. (See *Myers, supra*, 147 Cal.App.3d at p. 421 [cause of action accrues when "a suit may be maintained"].)

reimbursement no later than June 2006, MRV was required to bring its cause of action against the City seeking reimbursement pursuant to Section 3.45.110 no later than June 2009,¹⁶ unless the City is estopped from asserting a statute of limitations defense. (See pt. III.A.2., *post.*)

MRV's arguments to the contrary are not persuasive. MRV's primary argument is that "[t]here was substantial evidence that Chino and [MRV] agreed that no credit/reimbursement would be calculated until [MRV's] project was further along."

While evidence of an agreement between the parties not to calculate MRV's eligibility for a credit or reimbursement until sometime after the three-year limitation period is certainly relevant to MRV's contention that the City should be estopped to assert its statute of limitations defense, such evidence is not relevant to the question of when MRV's cause of action accrued under the statute. We are not persuaded by MRV's contention that "[t]he earliest it could be argued the statute of limitations commenced was in late 2010/early 2011 when it was clear [MRV] was not going to be able to proceed, at least for the time being, with Phases 2 and 3, and the parties commenced to settle accounts." MRV does not explain why its cause of action accrued only upon its decision to "settle accounts." Further, such a contention is contrary to *Dillon*, which provides that a claimant "cannot delay the running of the statute of limitations by postponing the time of demand upon the proper officials." (*Dillon, supra*, 18 Cal.2d at p. 430.)

¹⁶ As noted previously (see fn. 2, *ante*), MRV's initial complaint in this matter was filed in 2011. Even assuming that the allegations in the operative writ petition related back to the 2011 complaint, MRV's suit was filed long after June 2009.

2. *The matter must be remanded to the trial court to permit that court to determine whether the City should be estopped from asserting a statute of limitations defense*

In light of its conclusion that MRV's cause of action had not accrued and that its claim was not barred by the applicable statute of limitations, the trial court did not address whether the City should be estopped to assert a statute of limitations defense. MRV contends that, even assuming that this court concludes that MRV's cause of action accrued in 2006 and would otherwise be barred by the statute of limitations, the matter should be remanded to the trial court to permit that court to consider whether the City should be estopped from asserting a statute of limitations defense. We agree.

- a. *Governing law*

"The doctrine of equitable estoppel is based on the theory that a party who by his declarations or conduct misleads another to his prejudice should be estopped from obtaining the benefits of his misconduct.'" (*Cotta v. City and County of San Francisco* (2007) 157 Cal.App.4th 1550, 1567.) The doctrine may be applied "to preclude a defendant from asserting the statute of limitations as a defense to an untimely action where the defendant's conduct induced the plaintiff into forbearing to file suit." (*Moncada v. West Coast Quartz Corp.* (2013) 221 Cal.App.4th 768, 807-808.) "A defendant will be estopped to invoke the statute of limitations where there has been "some conduct by the defendant, relied on by the plaintiff, which induces the belated filing of the action." [Citation.] It is not necessary that the defendant acted in bad faith or intended to mislead the plaintiff. [Citations.] It is sufficient that the defendant's

conduct in fact induced the plaintiff to refrain from instituting legal proceedings.' "

(*Holdgrafer v. Unocal Corp.* (2008) 160 Cal.App.4th 907, 925.)

"The doctrine of equitable estoppel may be applied against the government where justice and right require it." (*Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, 306;

see, e.g., *J.P. v. Carlsbad Unified School Dist.* (2014) 232 Cal.App.4th 323, 334

[" 'Estoppel may . . . be invoked where conduct on behalf of the public entity induces a reasonably prudent person to avoid seeking legal advice or commencing litigation.' "].)

In *Honig v. San Francisco Planning Dept.* (2005) 127 Cal.App.4th 520, 529, the court outlined the four elements of equitable estoppel that generally must be established in order to prevent a defendant from asserting a statute of limitations defense:

" 'A defendant will be estopped to assert the statute of limitations if the defendant's conduct, relied on by the plaintiff, has induced the plaintiff to postpone filing the legal action until after the statute has run. [Citation.]' [Citation.] The elements of equitable estoppel are: (1) the party to be estopped must be apprised of the facts; (2) that party must intend that his or her conduct be acted on, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the party asserting the estoppel must be ignorant of the true state of facts; and (4) the party asserting the estoppel must reasonably rely on the conduct to his or her injury."

"Where, as here, a party seeks to invoke the doctrine of equitable estoppel against a governmental entity, an additional element applies. That is, the government may not be bound by an equitable estoppel in the same manner as a private party unless, 'in the considered view of a court of equity, the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or

policy which would result from the raising of an estoppel.' " (*City of Oakland v. Oakland Police & Fire Retirement System* (2014) 224 Cal.App.4th 210, 240.)

" 'The determination of whether a defendant's conduct is sufficient to invoke the doctrine is a factual question entrusted to the trial court's discretion.' " (*Hopkins v. Kedzierski* (2014) 225 Cal.App.4th 736, 756.)

b. *Application*

In the trial court, MRV presented considerable evidence to support its contention that the City should be estopped to assert a statute of limitations defense. For example, one of the owners of MRV, Andrew McBride, testified that a Chino employee named Joe Indrawan¹⁷ told McBride that MRV would have to wait until "Phase 2 of the project" for the City to calculate development impact fees and that MRV "had to wait until the [development impact fees] were completed because that was the amount [*sic*] to determine the credit or reimbursement costs."

The record also contains evidence that MRV supplied the City with evidence of the costs of construction related to its requests for reimbursement in 2006 and that City employees assured MRV that it would be reimbursed for certain improvements prior to the statute of limitations running. The record also contains extensive undisputed evidence that the City continued to negotiate with MRV concerning MRV's reimbursement requests in 2010 and 2011, after the statute of limitations would have run. The trial court also found that the City had never provided MRV with a final calculation

¹⁷ McBride testified that MRV had "lots of discussions" with Indrawan concerning approvals by the City related to the project.

of the development impact fees applicable to the project. All of this evidence is relevant to a determination of whether the City took actions that caused MRV to forebear from filing suit within the applicable statute of limitations.

Under these circumstances, MRV is entitled to have the matter remanded to the trial court in order to permit that court to determine whether the doctrine of equitable estoppel applies to prevent the City from asserting its statute of limitations defense.

c. *The City's arguments against remand are not persuasive*

In its reply brief, the City presents several arguments in support of its claim that this court should not remand the matter to the trial court on the equitable estoppel issue. We conclude that none of the City's arguments present a reason for declining to remand the matter on this issue.

First, the City argues that MRV is not entitled to "a [s]econd [c]hance" to litigate its estoppel theory. This argument is unpersuasive because the trial court never reached MRV's estoppel theory, since it ruled in MRV's favor on other grounds. A remand would provide MRV with its first opportunity to obtain a ruling on its estoppel theory.

The City also contends that remand is not appropriate because MRV failed to adequately plead equitable estoppel in its writ petition. (Citing *Minish v. Hanuman Fellowship* (2013) 214 Cal.App.4th 437, 459 ["The general rule is that estoppel must be specifically 'pleaded in the complaint with sufficient accuracy to disclose the facts relied upon.' "].) We disagree. MRV sufficiently alleged facts giving rise to an estoppel theory in its petition. For example, MRV alleged the following:

"[MRV] is informed and believes, and based thereon alleges, that as a result of the actions taken by [the City] as alleged in this paragraph and elsewhere in this Petition, that [the City] was apprised of the facts, to wit: its obligation to reimburse [MRV] for the cost to construct the Public Improvements, that [the City] knew, since it was a condition of approval for the Project, that [MRV] would advance the costs to construct the Public Improvements, and that [MRV] did not, and had no reason to believe, [the City] would fail to reimburse it for the costs to construct the Public Improvements. [MRV] timely delivered the appropriate receipts for the Public Improvements it constructed to [the City] which, in turn, continually indicated to [MRV] it was reviewing the data, the receipts and the Public Improvements in order to come to a conclusion as to how much of the total cost of the Public Improvements would be subject to reimbursement. [MRV] did not receive any alleged 'final' list of acceptable costs which would be subject to reimbursement or credit until 2011."

In addition, the City never objected to the adequacy of MRV's equitable estoppel allegations by way of demurrer, answer, or even an objection at trial. Under these circumstances, the City's objections on appeal to the adequacy of MRV's allegations do not provide a basis for refusing to remand the matter to the trial court. (See *Chapin v. City Commission of Fresno* (1957) 149 Cal.App.2d 40, 45-46 [appellants waived claim as to adequacy of respondent's petition for writ of mandate by failing to raise objection in trial court by demurrer or answer]; cf. Code Civ. Proc., § 430.80, subd. (a) ["If the party against whom a complaint or cross-complaint has been filed fails to object to the pleading, either by demurrer or answer, that party is deemed to have waived the objection unless it is an objection that the court has no jurisdiction of the subject of the cause of

action alleged in the pleading or an objection that the pleading does not state facts sufficient to constitute a cause of action").¹⁸

The City also contends that the MRV "[s]carcely [p]ursued [i]ts [e]stoppel [t]heory [b]elow." However, as the City acknowledges in its brief, MRV referred to its estoppel theory in numerous briefs in the trial court. Further, at the outset of the trial, MRV's counsel stated the following:

"We believe the City will argue either through testimony or in final argument that the claims were filed too late for the . . . construction costs. [¶] We say our position is they were not filed too late. You, the City, continually negotiated and represented to the McBrides that the construction costs would be allowed and reimbursed until such time as you found out the real significant number that would be reimbursed, then you came up with this claim."

In addition, during the trial, the trial court asked MRV's counsel whether MRV wanted to present any witnesses with respect to the City's statute of limitations defense. MRV's counsel responded:

"We were going to offer Mr. Andrew McBride to discuss primarily the events leading up to the 2011 notice that the claims were . . . at issue.^[19] *We have pled waiver and estoppel as to the City's actions,*

¹⁸ The City also argues that MRV never specifically pled certain facts related to its estoppel theory, such as that Indrawan purportedly told McBride that there would be a delay in processing McBride's request for reimbursement. This argument does not provide a basis for refusing to remand since the trial court could reasonably allow MRV to amend its petition to add such allegations in the event that the City were to raise such an objection on remand. (See *Mills v. Forestex Co.* (2003) 108 Cal.App.4th 625, 641 ["A plaintiff who fails to sufficiently plead such facts normally should be permitted to amend his or her complaint to do so."].)

¹⁹ MRV's counsel was apparently referring to a June 6, 2011 letter from MRV's counsel to the City's counsel providing the City with notice of MRV's claim for " 'reimbursement' expenses for those certain public facilities installed at the expense of [MRV]"

and I think they're [sic] very relevant to application [sic] of statute of limitations." (Italics added.)

Accordingly, we conclude that MRV clearly pursued its estoppel theory in the trial court.

Finally, the City contends that MRV failed to present substantial evidence to support its equitable estoppel theory in the trial court. We disagree. MRV presented evidence from which the trial court could have reasonably found that the City's conduct induced MRV into forbearing from filing suit. (See *Moncada v. West Coast Quartz Corp.*, *supra*, 221 Cal.App.4th at pp. 807-808 [summarizing gravamen of the operation of the doctrine of equitable estoppel to a statute of limitations defense].) Specifically, in light of the evidence discussed in part III.A.2.b., *ante*, the trial court could find that the City misled MRV into believing that the City would reimburse MRV for the costs of construction; that the City acted in a manner that suggested to MRV that there would be no need to file a lawsuit in order to obtain reimbursement; that MRV did not know that the City would not grant its requests for reimbursement; and that MRV reasonably relied on the City's assurances of reimbursement throughout the period during which it could have otherwise filed a writ petition seeking such reimbursement. (See *Holdgrafer v. Unocal Corp.*, *supra*, 160 Cal.App.4th at p. 926 [stating "the essential elements of the equitable estoppel doctrine" were established by jury's findings that "(1) [Defendant], through its statements or conduct, had induced Plaintiffs to believe that they need not file a lawsuit in order to receive an amicable settlement of their claims against [Defendant]; (2) [Defendant] intended for Plaintiffs to so rely on those statements or conduct; (3) Plaintiffs were 'ignorant of the true state of the facts'; and (4) Plaintiffs reasonably

relied on [Defendant's] statements or conduct in postponing their lawsuit".) In addition, the trial court could reasonably find that the injustice that would result from a failure to estop the City from asserting a statute of limitations defense, i.e., MRV having to bear the entire cost of construction of the public facilities at issue, is sufficient to justify any adverse affect on public policy. (See *City of Oakland v. Oakland Police & Fire Retirement System*, *supra*, 224 Cal.App.4th at p. 240 [listing additional element applicable to assertion of equitable estoppel against a public entity].)²⁰

d. *Proceedings on remand*

For the reasons stated above, we conclude that the matter must be remanded to the trial court to permit the court to make factual findings as to whether MRV established the existence of the elements of equitable estoppel. After making these findings, the trial court shall determine whether the doctrine of equitable estoppel applies to prevent the City from asserting a statute of limitations defense.

With respect to the procedure to be employed by the trial court on remand, we recognize that the trial court has already conducted a bench trial. We emphasize that we are not ordering the trial court to conduct a new trial. Rather, the trial court is free to

²⁰ In its ruling in favor of MRV, the trial court stated the following:

"It is the City's responsibility to give [MRV] a number so that [it] can say, this number stinks or I accept it completely. Then [MRV] can try to exhaust [its] administrative remedies by going to the City Council. [MRV] was denied that opportunity. [MRV] was denied due process in this case. Now you are asking me to say that . . . the alleged claim should be blocked because the City decided to do nothing. The City decided they weren't going to come up with a figure? That is just incredibly unfair to me."

employ whatever procedures it deems necessary and legally appropriate in making the required findings and conclusions of law. To the extent that the trial court determines that the doctrine of equitable estoppel applies to prevent the City from asserting a statute of limitations defense, the court may enter a new judgment affording MRV the same relief on its writ petition that the trial court previously granted. To the extent that the court determines that the doctrine of equitable estoppel does not apply, the trial court may enter a new judgment in favor of the City on the ground that MRV's action is barred by the statute of limitations contained in Code of Civil Procedure section 338, subdivision (a).

B. *The trial court did not err in denying MRV's petition for writ of mandate insofar as the petition requested that the court rescind three conditions that the Planning Commission imposed in its approval of MRV's permit extension application*

In its cross-appeal, MRV contends that the trial court erred in denying its request to rescind three conditions that the Planning Commission imposed in its May 2011 approval of MRV's permit extension application. The City contends that the trial court properly denied MRV's request for several reasons, including that MRV failed to lodge the administrative record related to the Planning Commission's approval in the trial court. We conclude that the trial court properly denied MRV's writ petition on the ground that MRV failed to lodge the relevant administrative record.²¹

²¹ In light of our conclusion, we need not consider the City's numerous alternative arguments for affirming this portion of the judgment, including that MRV's action is barred by the statute of limitations contained in Government Code section 65009 and that MRV failed to exhaust its administrative remedies.

1. *Factual and procedural background*

In the operative petition for writ of mandate, MRV requested that the trial court "direct the City to rescind the . . . 2011 [Planning Commission's conditions of approval] which require [MRV] to furnish an easement across the frontage of its property along Kimball Avenue," "to rescind the condition of the 2011 [conditions of approval] requiring [MRV] to construct a 26 foot wide driveway across [MRV's] property," and to "direct [the City] to cease and desist from requiring the present office building to be replaced by a 'permanent' building."

The City filed a trial brief in which it contended that MRV's petition was procedurally deficient in several respects, including that MRV "did not produce the administrative record regarding the Planning Commission's approval of [MRV's] project," as statutorily required. The City argued that without a record of the Planning Commission's proceedings, the trial court had no basis upon which it could rescind the Planning Commission's conditions.

After the close of evidence on its writ petition, MRV's counsel requested that the court issue a writ rescinding the three challenged conditions of approval. The City's counsel reiterated that MRV's request was procedurally deficient for several reasons, including that MRV had failed to exhaust its administrative remedies and that MRV's petition was barred by the statute of limitations contained in Government Code section

65009.²² MRV's counsel argued that MRV had filed its petition within the longer statute of limitations contained in Government Code section 66020, which counsel contended applied to MRV's lawsuit.²³ The trial court took the matter under submission and permitted the parties to file supplemental briefing concerning the City's contention that MRV's petition was procedurally barred.

In its supplemental brief, MRV contended that it had timely filed its writ petition pursuant to Government Code section 66020 and that it was not required to exhaust any administrative remedies prior to filing the petition. MRV also maintained that the City should be estopped from claiming that MRV had failed to exhaust its administrative remedies because the 2011 Planning Commission approvals had "explicitly directed [MRV] to the procedure set forth in Government Code [section] 66020." (Underscoring omitted.)

The City filed a supplemental brief in which it claimed that MRV's petition was procedurally barred for numerous reasons, including that MRV had "failed to submit the administrative record of the proceedings before the Planning Commission and no evidence about those proceedings was introduced at trial."

²² Government Code section 65009, subdivision (c)(1)(E) provides a *90-day* statute of limitations for actions to "determine the reasonableness, legality, or validity of any condition attached to a variance, conditional use permit, or any other permit."

²³ Government Code section 66020, subdivision (d)(2) provides that a party may have up to *180 days* to file "an action to attack, review, set aside, void, or annul the imposition of the fees, dedications, reservations, or other exactions imposed on a development project."

In its statement of decision, the trial court noted, "The law requires [MRV] to provide to the Court an administrative record sufficient to permit the Court to review and analyze the proceedings that led to the decision [MRV] challenges, and to make the inquiry prescribed in subdivision (b) of Code of Civil Procedure section 1094.5." The court also ruled that MRV had failed to provide such a record, stating, "[T]he Court CONCLUDES as a matter of law that [MRV's] request to rescind Conditions of Approval 4.1, 4.2, and 6.9, which were imposed by the Planning Commission's decision of May 16, 2011 . . . is barred because [MRV] did not present any administrative record of the proceedings that took place before the Planning Commission on May 16, 2011."

2. *Governing law*

" 'Judicial review of most public agency decisions is obtained by a proceeding for a writ of ordinary [Code of Civil Procedure section 1085] or administrative [Code of Civil Procedure section 1094.5] mandate.' " (*Jefferson Street Ventures, LLC v. City of Indio* (2015) 236 Cal.App.4th 1175, 1196.) A petition for writ of administrative mandamus "is limited to the record compiled by the administrative agency, and the agency's findings of fact must be upheld if supported by 'substantial evidence.' " (*State Bd. of Chiropractic Examiners v. Superior Court* (2009) 45 Cal.4th 963, 977.)²⁴

²⁴ Review of an agency's decision by way of a petition for *ordinary* or *traditional* mandamus "is even more deferential; the agency's findings must be upheld unless arbitrary, capricious, or entirely lacking evidentiary support." (*State Bd. of Chiropractic Examiners v. Superior Court, supra*, 45 Cal.4th at p. 977.) MRV does not make any argument on appeal that it was entitled to prevail on its claims by way of a petition for ordinary mandamus.

In *Elizabeth D. v. Zolin* (1993) 21 Cal.App.4th 347, 354, the Court of Appeal outlined the well-established law requiring a petitioner seeking a petition for writ of administrative mandate to provide an adequate administrative record in the trial court:

"Under [Code of Civil Procedure] section 1094.5, subdivision (a), '[a]ll or part of the record of the proceedings before the inferior tribunal, corporation, board, or officer may be filed with the petition, may be filed with respondent's points and authorities, or may be ordered to be filed by the court.' Even though [Code of Civil Procedure] section 1094.5, subdivision (a) allows both parties in a mandamus proceeding to file either 'all or part' of the record of the administrative proceeding for review by the court, this does not mean respondent is *required* to file the administrative record or that petitioner is *relieved* from the burden of providing a sufficient enough record to establish error.

"In a [Code of Civil Procedure] section 1094.5 proceeding, it is the responsibility of the petitioner to produce a sufficient record of the administrative proceedings; ' . . . otherwise the presumption of regularity will prevail, since the burden falls on the petitioner attacking the administrative decision to demonstrate to the trial court where the administrative proceedings were unfair, were in excess of jurisdiction, or showed " 'prejudicial abuse of discretion.' " ' "

3. *Application*

It is undisputed that MRV failed to lodge with the trial court the administrative record of the proceedings before the Planning Commission related to the imposition of the challenged conditions. As a result, the record does not contain a transcript of the hearing at which the Planning Commission imposed the conditions. MRV acknowledges on appeal that a party seeking a writ of mandate pursuant to Code of Civil Procedure sections 1094.5 and 1094.6 must provide the trial court with a "complete record" of the decision under review. (Code Civ. Proc., § 1094.6, subd. (c) [specifying contents of the "complete record" in an administrative mandamus proceeding as including "the transcript

of the proceedings, all pleadings, all notices and orders, any proposed decision by a hearing officer, the final decision, all admitted exhibits, all rejected exhibits in the possession of the local agency or its commission, board, officer, or agent, all written evidence, and any other papers in the case"].) It is clear that MRV failed to provide such a record. The trial court therefore did not err in concluding that MRV could not prevail on its writ petition "because [MRV] did not present any administrative record of the proceedings that took place before the Planning Commission on May 16, 2011."

We also reject MRV's contention that, despite its failure to lodge the administrative record, it is entitled to reversal of the judgment because its action may be characterized as a direct action under Government Code section 66020 rather than a petition for writ of administrative mandate, and a party purportedly need not lodge the administrative record in a direct action brought pursuant to Government Code section 66020. Even assuming that MRV is correct that "Government Code section 66020 provides for an action outside the requirements of writs of mandate," it is clear that MRV did not bring such an action in this case.²⁵

MRV concedes on appeal that it "proceeded at trial on the conditions imposed and at issue in this cross-appeal via a petition for writ of mandate." However, MRV contends that this court should construe this lawsuit as one brought pursuant to Government Code section 66020 because MRV filed a supplemental trial brief in the trial court in which it

²⁵ MRV does not cite any authority that Government Code section 66020 provides a substantive cause of action that may be brought independently of a petition for writ of mandate.

argued that "Government Code section 66020 governs the conditions of approval at issue."

We are not persuaded. MRV may not change its theory of the case for the first time on appeal. (*See, e.g., Flatley v. Mauro* (2006) 39 Cal.4th 299, 321, fn.8.) MRV's verified petition in the trial court sought a "writ of mandate," and MRV's counsel requested that the trial court "issue a writ" rescinding the three challenged conditions of approval. Even in its supplemental brief in the trial court, MRV characterized this lawsuit as a "mandate petition." At no time in the proceedings in the trial court did MRV contend that it was bringing a direct action under Government Code section 66020. The City repeatedly argued in the trial court that the lack of an administrative record barred MRV's claims and the trial court relied on this argument (among others) in rejecting MRV's claims. Under these circumstances, the theory of the case doctrine applies and prevents MRV from obtaining a reversal of the judgment on a ground it never pressed in the trial court. (*See Cable Connection, Inc. v. DIRECTV, Inc.* (2008) 44 Cal.4th 1334, 1350, fn. 12 ["The rule is well settled that the theory upon which a case is tried must be adhered to on appeal. A party is not permitted to change his position and adopt a new and different theory on appeal. To permit him to do so would not only be unfair to the trial court, but manifestly unjust to the opposing litigant."].)

Accordingly, we conclude that the trial court did not err in denying MRV's petition for writ of mandate insofar as the petition requested that the court rescind three

conditions imposed by the Planning Commission in its approval of MRV's permit extension application.²⁶

IV.

DISPOSITION

The May 7, 2014 amended judgment is reversed.

The trial court's ruling granting MRV relief on its request for reimbursement pursuant to Chapter 3.45 of the Chino Municipal Code is reversed and the matter is remanded to the trial court with directions to determine whether the City should be estopped to assert a statute of limitations defense in accordance with part III.A.2., *ante*.

The trial court's ruling denying MRV's request that the trial court rescind three conditions imposed by the Planning Commission in its approval of MRV's permit extension application is affirmed.

The trial court is permitted to conduct any further ancillary proceedings it deems necessary on remand, including determining whether, and to whom, to award costs as a prevailing party at the conclusion of the proceedings on remand.

At the conclusion of the proceedings on remand, the trial court shall enter a new judgment incorporating the trial court's rulings on remand and the court's prior ruling denying MRV's request to rescind the permit conditions.

²⁶ We have serious doubts concerning whether the MRV provided a sufficient record for the trial court to rescind the conditions, regardless of how its claim is categorized. MRV cites no authority suggesting that a party may prevail on a direct claim against an agency under Government Code section 66020 without lodging with the trial court the administrative record of the agency's decision that it seeks to overturn.

In the interest of justice, each party is to bear its own costs on appeal.

AARON, J.

WE CONCUR:

McINTYRE, Acting P. J.

IRION, J.