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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

EMPIRE HOMES RIVERSIDE 72, LP,

Plaintiff and Respondent,

v.

CITY OF BEAUMONT,

Defendant and Respondent;

WESTERN RIVERSIDE COUNTY
REGIONAL CONSERVATION
AUTHORITY,

Claimant and Appellant.

E052045

(Super.Ct.No. RIC432973)

OPINION

APPEAL from the Superior Court of Riverside County. John V. Stroud (retired judge of the Sacramento Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) and Gary B. Tranbarger, Judges. Reversed with directions.

Best Best & Krieger, Stephen DeBaun, Jeffrey V. Dunn and Thomas J. Eastmond for Claimant and Appellant.

Rutan & Tucker, Hans Van Ligten and Megan K. Garibaldi for Plaintiff and Respondent.

Aklufi and Wysocki, Joseph S. Aklufi and David L. Wysocki for Defendant and Respondent.

Plaintiff and respondent Empire Homes Riverside 72, LP (Empire) sued defendant and respondent City of Beaumont (the City) for money remaining in a City account following a construction project. The City characterized the money as being the proceeds of “a Local Development Mitigation Fee” and disclaimed any interest in the funds. The City argued that it should be granted interpleader relief (Code Civ. Proc., § 386), because the money in the fund either belonged to Empire or claimant and appellant Western Riverside County Regional Conservation Authority (Western). The trial court granted the City’s motion for interpleader relief, which discharged the City from the lawsuit and substituted-in Western. (Code Civ. Proc., § 386.) Ultimately, the trial court concluded the funds belonged to Empire.

Western raises two primary contentions on appeal, with a variety of subissues. First, Western asserts the trial court erred by granting the City’s motion for interpleader relief (Code Civ. Proc., § 386), because the funds were ultimately determined to be construction money, not mitigation fees. Second, Western asserts that if the City’s motion for interpleader relief was properly granted, then the judgment awarding the funds to Empire was improper as a matter of law. We conclude the trial court erred by granting the City’s motion for interpleader relief. We reverse the judgment.

FACTUAL AND PROCEDURAL HISTORY

A. WRIT PETITION AND COMPLAINT

On August 5, 2009, Empire filed a Verified Petition for Writ of Mandate and Complaint for Declaratory Relief (the complaint) against the City. In the complaint, Empire alleged it was the successor-in-interest to Seneca Springs Investment Co. (Seneca), and had all rights, titles, and interests to funds formerly belonging to Seneca. Seneca owned approximately 280 acres of land in the City (the property), which was intended for a residential and commercial development project; the development project was known as the Seneca Springs Development (the development).

Empire further alleged that in order to finance a portion of the development, the City created the City of Beaumont Community Facilities District No. 93-1 to (1) levy special taxes and issue bonds to fund the construction, as well as the acquisition and installation of various facilities on the property; and (2) “credit all or a portion of the development fees imposed by the City on the [development].” (Govt. Code, § 53311 et seq. [“Mello-Roos Community Facilities Act of 1982”].)

The complaint next alleged that on about January 4, 2004, Seneca and the City entered into a written agreement entitled “City of Beaumont Community Facilities District No. 93-1 Improvement Area No. 19A Facilities and Fee Credit Agreement,” wherein Seneca agreed to construct facilities related to the development, and “the City agreed to reimburse Seneca for all of its costs and expenses.”

Empire alleged Seneca completed all the improvements, and “Seneca was entitled to payment of funds for certain improvements acquired by the CFD.” Empire

further alleged money was transferred from the Community Facilities District Fund to the City's fund for Seneca's benefit. According to Empire, those funds were meant to cover fees that may have applied to Seneca while constructing the development.

Empire alleged that at the time of filing the complaint, the City was holding \$1,575,054 for the benefit of Seneca (the money).

Empire asserted Seneca made numerous requests to the City for the release of the money. Seneca asserted the money was not needed to pay any outstanding or anticipated Multi-Species Habitat Conservation Plan (MSHCP) fees, because the development was exempt from the fees per a development agreement. Empire alleged the City agreed Seneca was exempt from the MSHCP fees, but the City still refused to release the money.

Empire's first cause of action sought a writ of mandate. Empire argued the development was exempt from the MSHCP fee, and therefore, the money should be released to Seneca. Empire asserted the trial court should issue a writ of mandate directing the City to release the money to Empire. Empire's second cause of action sought declaratory relief. Empire alleged there was a dispute over the money being held by the City, in that Empire believed the money should be released to Empire. Empire argued the trial court should declare the money belonged to Seneca.

B. MOTION FOR SUBSTITUTION AND DISCHARGE OF THE CITY

On August 18, 2009, the City filed a motion to discharge the City from Empire's lawsuit and substitute Western, a public agency, in its place. The City asserted that it had no interest in the money, but both Empire and Western claimed an interest in the

money. The City contended fees were levied on the development by Western, but Empire asserted it was exempt from such fees; therefore, the City was unable to determine which claim to the money was valid, and therefore, it would deposit the money with the clerk of the trial court. The City requested that it be discharged from the case, so that Empire and Western could settle the issue by interpleading. (Code Civ. Proc., § 386.)

C. WESTERN'S OPPOSITION

Western opposed the City's motion for substitution and discharge. Western asserted an interpleader could not be used in this action, because the amount of money due to Western was unsettled, and an interpleader was inappropriate when the sum of money was not fixed. Western argued that it was unclear how much fee money was due to Western by Empire, because Western could not determine how many homes were permitted or approved as part of the development, and therefore could not calculate the amount of fees that were owed to it. Western asserted the City should not be discharged from the lawsuit, because if it were discharged, then Western could be left with inadequate funds.

D. THE CITY'S RESPONSE

In its response, the City argued that it should be discharged from the lawsuit, because the City had no interest in the money. The City asserted Western did not present any evidence that it was unable to determine the amount of fees owed to it, and that Western's argument was "mere speculation."

E. TRIAL COURT'S RULING

The trial court, with Judge Tranbarger presiding, ordered that the City be dismissed from the lawsuit upon the deposit of the money with the clerk of the trial court. The written judgment does not explain the trial court's specific reasons for its ruling; rather, the order reflects that it is based "[u]pon proof made to the satisfaction of the Court that the Motion ought to be granted."¹ On October 29, 2009, the City deposited the money with the clerk of the trial court.

F. WESTERN'S ANSWER AND MOTION FOR JUDGMENT ON THE PLEADINGS

Western filed an answer to the complaint, and primarily denied the allegations or claimed that it lacked sufficient knowledge to respond to the allegations. Western also raised a variety of affirmative defenses, such as failure to exhaust administrative remedies and unclean hands. Western did not provide details as to the affirmative defenses; rather, it raised general allegations that Empire was not entitled to the relief "to the extent its purported claims and causes of action" were barred by the various affirmative defenses. Western filed a motion for a judgment on the pleadings, which, with Judge Weathers presiding, was granted as to Empire's first cause of action for a

¹ The trial court's discharge and substitution order provided, in part: "Upon proof made to the satisfaction of the Court that the Motion ought to be granted, [¶] IT IS ORDERED that the Motion be and it hereby is granted and that respondent be and it hereby is dismissed from this action and discharged from all liability to either petitioner or claimant on its depositing with the Clerk of the Court, within 10 days hereof, the sum of \$1,575,054.00, the sum demanded by petitioner and the above-named claimant and which respondent admits to be due and owing."

writ of mandate. Thus, Empire was left only with its second cause of action, which sought declaratory relief.

G. EMPIRE'S TRIAL BRIEF

In Empire's trial brief, it explained that it did not owe MSHCP fees because (1) Seneca did not obtain building permits, because Seneca "sold out of" the development and "never built a single home," and obtaining permits is the triggering event for owing MSHCP fees; (2) the City was responsible for imposing the MSHCP fees, and the City concluded that Seneca was exempt from the fees; and (3) the development emanated from a 1993 development agreement with a prior owner, Loma Linda University, and (a) the 1993 agreement predated the creation of the MSHCP fees, and (b) the 1993 agreement precluded the imposition of new impact fees unless the fee was for critical facilities and services.

H. TRIAL: OPENING ARGUMENTS

On June 28 and 29, 2010, the trial court, with Judge Stroud presiding, held a bench trial in the instant case. At the start of the proceedings, Empire explained its position to the trial court. Empire asserted it never had an agreement with Western, and that Western had "a different claim" that was "based on some relationship they have with [the City]." Empire explained "as the master developer, my case is actually against Beaumont"; Empire said the City agreed Empire was exempt from the MSHCP fees, but Western disagreed with the City's conclusion. Empire then said the issues in the lawsuit "got nothing to do with Western," because the agreements at issue involved Seneca and the City.

After Empire’s presentation, the trial court asked, “Why is the City of Beaumont being released then from this? It would appear that one of you should have perhaps a continuing claim against the City of Beaumont.” Empire responded that Western had tried to keep the City as a party in the case, because there might be broader claims against the City; however, Empire’s trial counsel said, “All of that has nothing to do with me.” The trial court said to Empire, “Maybe you should have opposed [the motion to discharge] too.” Empire disagreed, saying, “No, because I know what that money is. . . . [¶] My client’s case is a little different than their claim in that my client[’s case] is based on its relationship with Beaumont. Their^[2] claim is their relationship with Beaumont. . . . If they don’t get the money, Beaumont, if it owes it to anyone, owes it to them.”

The trial court explained that it appeared either Empire or Western “might have a legitimate claim if the City of Beaumont was negligent or didn’t comply with what they should have.” Empire stipulated that Western would “get to sue [the City] the minute we’re done.”

Western argued that, attached to Empire’s complaint was an exhibit entitled “City of Beaumont Facilities District No. 93[-]1, Seneca Springs[-]series 2000,” that reflected the MSHCP fee was supposed to be paid at the building permit stage of the development. Western argued the exhibit amounted to a binding admission by Empire that it agreed to pay the MSHCP fees. The trial court asked if Seneca had pulled the

² We infer from the context that “Their” refers to Western.

building permits. Western asserted it did not matter if Seneca had obtained the building permits, because there is “a distinction in the law” that triggers a statute of limitations for challenging fees as soon as the fees are imposed as a condition for approving a development project. So, Western argued it did not matter when the fees were supposed to be paid, because if Seneca believed the fees were wrongly imposed, then it needed to challenge the fees closer to the time that they were imposed as part of the development agreement.

Western alleged that Empire’s claim was time-barred by the Mitigation Fee Act. The trial court asked the parties if they could agree on the facts related to the status of the development. Empire replied, “I don’t believe so.” Western replied that it had information approximately one year old that 954 units were part of the development, but 726 building permits had been issued by the City. Western alleged the money amounted to the exact amount of fees due for 954 units. The trial court asked if Seneca had built any of the homes, because the trial court believed that was the time the fee should have been collected. Empire stated that Seneca was the master developer and did not build any of the homes.

Western argued its claim was against the City, because it was the City’s obligation to collect the MSHCP fees. Western said it was in the process of auditing the City to determine the amount of fees the City owed to Western.

The trial court asked if the statute of limitations defense could be raised by Western or if the defense was limited to the City. Western argued the defense was available to it as well, because the defense showed that Empire could not establish a

claim to the money. The trial court said, “[F]rom what I’ve seen so far, I would like to have three parties here. The City of Beaumont, as well as the two of you and try to do the right thing with the necessary parties.”

Empire responded by making an oral motion for judgment on the pleadings.

Empire asserted Western’s answer did not explain why it was entitled to the money, and the City had waived the statute of limitations defense. Empire asserted it was entitled to judgment in its favor because Western did not plead an affirmative basis for being owed the money. Western argued the trial court would not have brought it in as a party in the interpleader unless the court found Western had an affirmative claim to the money.

Empire responded the action “was not an interpleader.” Although unclear, it appears Empire was asserting the action was based on a complaint for declaratory relief. The trial court asked the parties to present their evidence.

I. TRIAL: EMPIRE’S EVIDENCE

Russell Van Cleve (Van Cleve) owned Seneca. Empire was a limited partnership, which Van Cleve also owned. Empire was the successor in interest to Seneca. In regard to the development, Seneca performed approximately \$60,000,000 to \$70,000,000 worth of work, such as grading hundreds of acres of property, installing miles of sewer and storm drain systems, and creating streets, curbs, and gutters. The work by Seneca was completed in 2005 or early 2006.

Seneca did not obtain any building permits, and it did not build any homes in the development. However, the City approved the engineering plans for the grading, sewer, and storm drains sometime around 2000 or 2002. Seneca never paid development fees

to the City. Specifically, in regard to the MSHCP fee, Van Cleve knew that Seneca did not pay the fee because “[Seneca] didn’t build any houses.”

Per the “City of Beaumont Community Facilities District No. 93-1, Improvement Area No. 6A1, Facilities and Fee Credit Agreement,” some of Seneca’s costs of building the infrastructure were reimbursed by the City—approximately \$30,000,000. However, not all the funds that were required to be reimbursed were reimbursed. The amount of money outstanding, according to Van Cleve, was \$1,575,054—the same amount deposited with the Clerk of the trial court. When asked if any building permits had been obtained for the development, Van Cleve responded that “700-some houses [were] built.”

Marc Gerber (Gerber) was Vice President of Seneca. Gerber explained that Seneca graded the lots for the homes to “blue top,” which meant the pads were finished and ready for construction. However, Gerber noted that Seneca did not build any of the houses in the development. Gerber testified that Seneca did not earn a fee credit for MSHCP fees. Further, Gerber explained that the Community Facilities District did not finance the MSHCP fees, because it was only allowed to pay for infrastructure. Gerber did not know whether MSHCP fees had ever been paid for the development.

J. TRIAL: WESTERN’S EVIDENCE

Honey Bernas (Bernas) was the Director of Administrative Services for Western, and she was responsible for the collection of MSHCP fees, as well as the budgeting and accounting of Western. Bernas calculated the MSHCP fees owed on the development, and concluded that it was the same amount deposited with the Clerk of the trial court by

the City. Bernas stated she was unaware of any authority possessed by Western permitting it to overturn a decision by the City to waive or credit a MSHCP fee. Bernas testified Western had not sued the City to collect the MSHCP fees on the development. When Bernas made this statement, the trial court said, “So, maybe the State Controller is going to take over on this money.”

Bernas testified she was aware of Western agreeing with cities or the county that certain projects could be exempt from MSHCP fees because of the specific terms of a development agreement.

K. CLOSING ARGUMENTS

1. *EMPIRE’S ARGUMENT*

After the close of evidence, Empire argued it was entitled to approximately \$30,000,000 in reimbursements from the Community Facilities District fund, and that Seneca was never obligated to pay the MSHCP fee. Empire asserted that Judge Tranbarger had concluded the money deposited with the clerk of the trial court was owed to either Empire or Western, and Western did not put forth any evidence that it was entitled to the money.

2. *WESTERN’S ARGUMENT*

In response to trial court questioning, Bernas explained that Western only collects the MSHCP fee one time, when the building permit is issued, so it does not collect one fee from the master developer and a second fee from the building contractor. Western argued that the MSHCP fee associated with the development was “a development fee imposed on the project.” The trial court stated the fee would also be

imposed when a person obtained building permits to construct homes on the lots Seneca graded. Western argued Judge Tranbarger found Western had a viable claim to the money, due to the City's resolution to collect the fees.³ Western asserted Empire's claim to the money was time-barred because its claim was based on breach of contract, and Empire was beyond the four-year limit for filing a suit to recover the money. Next, Western argued its claim to the money (supported by a City resolution) trumped Empire's contractual claim to the money. Additionally, Western argued there was no evidence that the 1993 development agreement, which predated the City's resolution, exempted Empire from paying the MSHCP fee. Western asserted the mere existence of the 1993 development agreement was not sufficient evidence to support the finding that Empire was exempted from paying the MSHCP fee.

Further, Western argued Empire needed to show it complied with the Government Tort Claims Act, because the Act applied to cases where a person or entity is seeking money from a government agency, even if the case arises out of a contract. Western argued that, as a government agency itself, it was not required to comply with the Act if it were to file a lawsuit compelling the City to comply with the terms of its resolution. The trial court responded, "I don't have that case." Western contended that once Judge Tranbarger discharged the City from the lawsuit, the City was discharged

³ The City approved and adopted Resolution No. 2003-29, which implemented a program for collecting MSHCP fees on development projects in the City. Resolution No. 2003-29 provides that MSHCP fees "shall be paid for each Development Project to be constructed with the City," and "[t]here shall be no refund of all or part of any Local Development Mitigation Fee."

from any liability related to the funds deposited with the trial court, which barred Western from asserting a claim against the City.

Western went on to argue that Judge Tranbarger found the money consisted of MSHCP fees collected by the City. Western concluded such a finding was made because “[o]therwise Western has no business being in this case. Western can’t be in this case unless [the trial] Court acknowledges that it found that these are MSHCP fees collected and levied on this [development].”

The trial court said, “Beaumont may have messed up here. I don’t want to use the wrong term, but there may have been a big mistake made by the City of Beaumont in handling this.”

Following the trial court’s statement, Western argued the City took inconsistent positions. On one hand, the City’s Planning Director Ernest Egger (Egger) had written a letter opining that the development was exempt from MSHCP fees,⁴ but on the other hand, the City moved to have Western substituted into the lawsuit based on the theory that the money collected was the MSHCP fees due on the development and Western may have a valid claim to the money. The trial court commented that the City was not denying Empire’s claim; rather, the City took the position that it did not know to whom

⁴ In Egger’s letter, he wrote: “[T]he City of Beaumont is precluded from collecting the Local Development Mitigation Fees (‘LDMF’) relating to projects with Development Agreements which predate the MSHCP program. The Seneca Springs Specific Plan has a Development Agreement with provision[s] which preclude our application of the MSHCP fees. [¶] Given that the Effective Date of the Development Agreement is December 8, 1993, we believe it clear that the City may not apply the LDMF to the Seneca Springs Project.”

the money was owed. Western argued that Egger's opinion in the letter should be found to be binding on the City, because the opinion was inconsistent with the City's duties pursuant to the resolution.

Western then asserted it was brought into the lawsuit "because there was a finding these are MSHCP fees that were levied and collected by Beaumont." The trial court responded, "It wasn't a finding. It was an allegation by the City. There's no finding."

Next, Western argued Empire was not entitled to a reimbursement of the MSHCP fees, because all the evidence reflected that Empire or Seneca had not paid the MSHCP fees. Western asserted, "if you don't pay the fees, you don't get the refund." Western then posed the question, "So, who gets these fees?" Western argued the City resolution required the fees to be remitted to Western "if they're levied and collected," so as a matter of law they should go Western.

The trial court asked if it was Western's position that the bonds for the development were the source of the money. Western responded, "Yes." The trial court asked if Empire's position was that the development was exempt from the MSHCP fees. Western responded that the development was not exempt from the MSHCP fees, but that there was a Fee Credit Agreement. The trial court asked if it was Western's position that "it" (which is unclear but might refer to the money at issue) came from bond proceeds, rather than building permits. Western responded, "Right. But if you put yourself in our shoes for a moment, in our capacity, we take the fees once they're levied

and collected It doesn't matter whether they're paid for by the builder, or by the developer.”

Western again argued the problem in this case was that Empire was seeking reimbursement for a fee that it never paid. Further, Western argued a 2004 agreement between the City and Seneca superseded the 1993 agreement, so Seneca was not exempt from paying MSHCP fees by virtue of the 1993 agreement. Western reiterated there were statute of limitations issues with the case, as well as exclusive remedy issues, because the matter was subject to the Mitigation Fee Act.

The trial court asked why Empire should have to go through the various procedural steps after receiving Egger's letter reflecting the City agreed with Empire's position that the development was exempt from the MSHCP fees. Western argued Egger's letter was not the City's official position, rather, the resolution was the City's official position, which explained why the City never released the money to Empire after many years had passed. Western then asserted that since Empire filed a lawsuit to have the money released to it, then Empire needed to follow the exclusive remedy provisions in the Mitigation Fee Act.

3. *EMPIRE'S RESPONSIVE ARGUMENT*

At the outset of Empire's responsive argument, counsel said, “It dawned on me, listening to counsel, that . . . [the City] has made this more difficult than it has to be.” Empire asserted a declaration filed by the City with its motion to be discharged “create[d a] misunderstanding that the fee was levied and collected.” Empire argued if

the money had been collected as MSHCP fees then it would have been remitted to Western “years and years ago.”

The trial court asked, “How do I resolve that it was actually collected for Western?” Empire responded, “I don’t think you can.” Empire explained there was no evidence of the MSHCP fees being levied and collected or of the money coming “from a MSHCP account.” Empire argued it was not its position that it was seeking a refund of MSHCP fees. Rather, Empire was asserting the money was construction money owed to Empire; however, the City did not release the money to Empire because Western was asserting the money was owed to it. Empire argued that since the fee was not levied and collected at the time of obtaining a building permit, then the money could not be MSHCP fees.

The trial court pointed out that the City resolution provided for MSHCP fees to be collected when a developer divides a property into multiple parcels. Empire responded, “Right,” and argued that Western could do “whatever [it] has to do with the City of Beaumont, once this is over.” Empire argued that if the money was never MSHCP fees, then Western was not “harmed in any way by being a party to this action.” The trial court asked if Judge Tranbarger’s order barred Western from suing the City in a separate action. Empire responded, “No,” because the order “says, ‘The motion be granted, that Respondent be and hereby is dismissed from this action, and discharged from all liability to either Petitioner or Claimant, on its depositing with the clerk of the court within ten days hereof the sum of \$1.575 million plus change.’”

The trial court pointed out that Western fell within the category of “claimant.” Empire responded, “[I]t’s a question.” Empire opined that Western’s rights were not “extinguished if these funds turn out not to be the MSHCP fees.” Empire suggested the trial court find the money was the proceeds of the Community Facilities District construction fund, and that the City failed to collect any MSHCP fees. Empire concluded, “The evidence in the record is these are construction funds from the [Community Facilities District].”

The trial court asked, “How do I clarify that?” Empire reiterated, “I think the finding would be, ultimately, that the only evidence that was presented is that this was a proceeds [*sic*] of the [Community Facilities District] for the construction fund, and that the City of Beaumont did not levy or collect any MSHCP fees.” The trial court asked Western if it had any evidence to the contrary—evidence that the money was collected as MSHCP fees. Western responded, “[T]he City has indicated that for this [development], the fees were paid out of the [Community Facilities District], and from the [Community Facilities District] to the City.”

Empire explained to the trial court that, in order to sell bonds, a city has to explain the purpose of the bonds. Empire asserted that Community Facilities Districts “break into two categories: facilities and services.” Empire argued that the bonds in this case were issued for “facilities: To build stuff,” and “[a]s a matter of law, they were not allowed to pay those mitigation fees.” Empire explained that Seneca provided \$60,000,000 to \$70,000,000 in improvements, including items such as extra lanes for arterial roads. Empire asserted that such improvements were covered by the

Transportation Uniform Mitigation Fee (TUMF), because the extra lanes served a broader purpose. In that situation, the Fee Credit Agreement with the City would provide “a fee credit, for the TUMF improvement.” Empire asserted that it would also receive a credit for building a sewer, a “sewer fee credit.” Empire asserted, “Credit doesn’t mean the City was writing a check. It meant that we have—I didn’t know this would be an issue. We have agreements with the City where it allocates for other types of fees. We did \$6 million of road improvements, and we’re getting \$3.7 million in TUMF credit.” Empire argued that the Fee Credit Agreement did not address the MSHCP fee, because Seneca was “not building anything that relates to the MSHCP fee.”

Empire explained that the City never collected the MSHCP fees, because the City determined that the development was exempt from the fees, as per Egger’s letter. Empire explained, “The only way to get money out of [the fund] was to submit information that you had done work provided by the [Community Facilities District].”

Further, Empire argued only the City could decide when to impose and collect fees; Western only had an auditing function—it cannot impose and collect fees. Thus, Empire asserted the City was “the decision maker,” and Egger’s letter reflected that the City decided the development was exempt from the fees.

4. *WESTERN’S RESPONSE ARGUMENT*

Western argued the 1993 agreement was not the only agreement related to the development, the 1993 agreement did not prevent the City from enacting a resolution to impose the MSHCP fees on the development, and the City adopted a resolution

imposing MSHCP fees. Western argued that before Seneca graded the housing pads, the City was required to collect the MSHCP fees, by virtue of the construction work Seneca was planning to perform, i.e., grading and installing sewage lines.

Western expressed concern that it was “hearing now that these weren’t MSHCP fees at all,” after Judge Tranbarger brought Western into the case and discharged the City on the basis that the money was MSHCP fees. Western asked the trial court to (1) find that Empire’s lawsuit was time-barred, (2) find the lawsuit was not filed in compliance with the Mitigation Fee Act, and (3) order the money be released to Western.

L. JUDGMENT

In rendering its judgment, the trial court said, “This is a really difficult . . . this is a case that really brings me to the fact that we are fallible, . . . I feel [Empire] is entitled to the money. . . . [¶] I have sympathies for—I really wish there was the order previously made in this case, had the City of Beaumont still been involved. It may have resulted in a judgment that I would have had more confidence in had they been here and also been a target of a judgment in the case. I don’t want to minimize the responsibility of Western and what they do. It’s obviously a necessary . . . entity to do the work that they’re doing. [¶] However, my feeling is that this was somehow bundled improperly by—unbundled, I should say, by the City of Beaumont, and I have to make my ruling based upon what I’ve heard [during the trial] on this case. [¶] So, I do find in favor of [Empire].”

DISCUSSION

A. ORDER FOR INTERPLEADER RELIEF

1. *CONTENTION*

Western contends the trial court erred by granting the City's motion for interpleader relief (Code Civ. Proc., § 386), because the funds were identified as MSHCP funds during the motion for interpleader relief, but identified as construction money at the end of the trial. Western asserts the motion for discharge and substitution should not have been granted if the money is construction funds, because Western is only interested in collecting MSHCP fees. In other words, interpleader was not proper relief for the City because Western and Empire are asserting two different debts against the City—Western is seeking MSHCP fees, while Empire is seeking construction bond money.

We conclude the trial court erred in the granting the motion for interpleader relief; however, while Western focuses on the trial court's two findings, we focus on an issue that we believe is at the root of the problem identified by Western, and that is Empire's complaint.

2. *LAW: INTERPLEADER*

“When a person may be subject to conflicting claims for money or property, the person may bring an interpleader action to compel the claimants to litigate their claims among themselves. (Code of Civ. Proc., § 386, subd. (b).) Once the person admits liability and deposits the money with the court, he or she is discharged from liability and freed from the obligation of participating in the litigation between the claimants.

[Citation.] The purpose of interpleader is to prevent a multiplicity of suits and double vexation. [Citation.] ‘The right to the remedy by interpleader is founded, however, not on the consideration that a [party] may be subjected to double liability, but on the fact that he is threatened with double vexation in respect to one liability.’ [Citation.]” (*City of Morgan Hill v. Brown* (1999) 71 Cal.App.4th 1114, 1122, fn. omitted (*Morgan Hill*)).

In an interpleader action, it is “required that the claimants seek the same thing, debt, or duty.” (*Morgan Hill, supra*, 71 Cal.App.4th at p. 1123.) “If the claims do not relate to the same thing, debt, or duty, then interpleader is improper. [Citation.] As the California Supreme Court explained, ‘. . . the very rationale of interpleader compels the conclusion that [Code of Civil Procedure section 386] does not allow the remedy where each of the claimants asserts the right to a different debt, claim or duty.’ [Citation.]” (*Ibid.*)

4. STANDARD OF REVIEW

We review the granting of the order of substitution for an abuse of discretion. (*Youtz v. Farmer’s & Merchants’ Nat. Bank of Los Angeles* (1916) 31 Cal.App. 370, 373.) “““The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason.””” (*Goodman v. Lozano* (2010) 47 Cal.4th 1327, 1339.)

5. ANALYSIS

In the City’s motion for substitution and discharge, it asserted that Empire’s complaint concerned “a contract between [Empire] and [the City] in which Western claims a beneficial interest, namely: the payment by [Empire] of a Local Development

Mitigation Fee in the amount of \$1,575,054.00; that Western has made a demand therefor”

Empire’s complaint sets forth at least three bases for being owed money from the City. It is these various theories set forth in the complaint that led to the problems Western identifies in its opening brief. As we will explain, Empire’s different theories cause interpleader to be an unreasonable form of relief for the City. Without certainty as to why Empire believes it is entitled to the money, interpleader cannot be an appropriate form of relief in this case.

The first theory advanced in Empire’s complaint is that it is owed the money “for certain improvements acquired by the CFD,” which we infer is a reference to the Community Facilities District. Empire supports this theory with a citation to Government Code section 53313.51. Government Code section 53313.51 provides, when a Community Facilities District is involved, a city may “enter into an agreement for the construction of discrete portions or phases of facilities to be constructed and purchased.” The agreement between the city and contractor or developer must “[s]pecify a price or a method to determine a price for each facility or discrete portion or phase of a facility.” (Gov. Code, § 53313.51, subd. (d).) Next, the agreement must “[s]pecify procedures for final inspection and approval of facilities or discrete portions of facilities, for approval of payment, and for acceptance and conveyance or dedication of the facilities to the local agency.” (Gov. Code, § 53313.51, subd. (e).)

Empire asserts that it is owed money “for certain improvements acquired by the CFD.” It appears, under this theory, that Empire is asserting it was not fully paid for the

facilities that it constructed. Empire alleges, “Improvements were constructed, inspected and approved, approved for payment, and accepted by Respondent, and deposited for the credit of Seneca with the City to be used for payment of certain fees.” It seems that Empire is alleging that it was not paid or was not paid in full “for certain improvements acquired by the CFD,” since it has left out “and Seneca was paid” from the list of allegations, and it asserts the money was “for certain improvements acquired by the CFD.”

The second theory advanced by Empire is that it is owed money as credit for MSHCP fees. In the complaint, Empire asserts, “the amount deposited for the MSHCP Fee is not necessary to remain on deposit as the Project is exempt from the MSHCP Fee, and thus should be returned to Seneca.” In this allegation, it appears that Empire is not entitled to the money for constructing improvements, rather, it is entitled to a refund of the MSHCP fee. In other words, Seneca has been paid in full for all the construction work, per the Government Code section 53313.51 agreement, and now there needs to be a refund of the MSHCP fees paid on the Development.

The third theory advanced in Empire’s complaint is that Empire is entitled to any overage of funds in the account. In Empire’s complaint it alleges: “There is a current dispute between [Empire], on the one hand, and [the City], on the other with respect to the release of the funds currently held on deposit for the benefit of Seneca. [Empire] contends Seneca’s funds held on deposit for potential MSHCP Fees should be released to Respondent, as successor to Seneca.” In this third allegation, Empire does not explain why it is entitled to money that was only *potentially* MSHCP fee money. It

appears from this allegation that the money could have been MSHCP money, but it was not, and therefore, since this money has no purpose, it should belong to Empire.

The problem with granting interpleader relief when Empire has asserted at least three different theories for being entitled to the money, is that it is unclear if Empire and Western are asserting a right to the same thing, debt, or duty. (See *Morgan Hill*, *supra*, 71 Cal.App.4th at p. 1123 [“same thing, debt, or duty”].) Western’s interest is in collecting MSHCP fees. Under the first theory, if Empire is owed money due to not having been paid in full on its Government Code, section 53313.51 construction contract, then Western and Empire are seeking to enforce different debts against the City. On one hand, Western is seeking money for MSHCP fees, and on the other hand, Empire is seeking construction money. The City could be liable to *both* parties for the two different debts. Thus, interpleader would not be proper, because interpleader discharges the City “from liability to all or any of the conflicting claimants, although their titles or claims have not a common origin, or are not identical but are adverse to and independent of one another.” (Code Civ. Proc., § 386, subd. (a).)

Under the second theory, if Empire is seeking a refund of MSHCP fees, then interpleader could be proper. Empire and Western are asserting a right to the exact same thing—MSHCP fees—and there is not a secondary debt that could result in the City being responsible to both parties—either the money belongs to Empire or it belongs to Western. Nevertheless, granting interpleader relief may not have been proper under this scenario either, because Western has asserted the theory that if Empire was granted an exemption from owing the MSHCP fees, then the City may be liable for

the fees, due to erroneously granting the exemption. Therefore, joinder of Western may have been the more reasonable solution, so as to resolve the disputes in a more practical and expeditious manner. As opposed to having Empire sue the City for the refund of Western's fees, and then have Western sue the City for erroneously granting Seneca an exemption from the fees. (Code Civ. Proc., § 389 [joinder].)⁵

As to the third theory, if Empire is alleging that it is entitled to whatever money remains in the account, then Empire and Western are again not asserting an interest in the same funds. Western wants to collect MSHCP fees, and Empire is only claiming an interest in the "leftovers." The City could owe money to *both* parties for different reasons. Again, under this theory joinder might have been the best solution. In a single lawsuit, it could be determined (1) if the MSHCP fees apply to the project, (2) whether the City erred by exempting Seneca from the fees, if the City did in fact do so; and (3) whether Empire should collect whatever money is remaining in the account even if Empire has not asserted a specific reason for being owed the money.

Overall, it is unclear why exactly Empire believes it is owed the money: it may be because it is owed for construction improvements, it may be because it is owed a MSHCP fee refund, and/or it may be that Empire is entitled to any leftover funds in the account. Since the exact basis for Empire's alleged entitlement to the funds cannot be deciphered, there is no way to determine if Empire and Western are asserting an interest

⁵ In part, joinder of party is proper when leaving the party out of the lawsuit would leave a party who is already in the lawsuit open "to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of [a] claimed interest." (Code Civ. Proc., § 389.)

in the same thing, debt, or duty. Put differently, it cannot be determined if the City is potentially liable to *both* parties for two different debts. Thus, it was not reasonable to grant the City interpleader relief, because it is possible that Empire and Western are asserting two different and legitimate debts owed by the City.

This uncertainty in Empire’s pleadings plagued the trial and resulted in the problem that Western complains of on appeal. At the interpleader motion stage, the City argued that Empire was seeking “payment . . . of a *Local Development Mitigation Fee* in the amount of \$1,575,054.00; that Western made a demand therefor,” which relates to the second theory. (Italics added.)

However, at the trial phase, Empire argued, “We’re proverbially two ships passing in the night. They never were, and *we’re not claiming they were, MSHCP fees that are entitled to be refunded.* That’s not true. We had money that was due to us, which the City ultimately didn’t give to us, because [the City] said, ‘Hey, we’ve got this issue with these other folks, but we never said, and the testimony from my side was, we didn’t owe MSHCP fees. The money that was in that account was *construction money* out of bond funds, contrary to Counsel’s assertion and argument for which there’s no evidence. [¶] The evidence here is it was *construction fund money*” (Italics added.) As Empire continued, it argued, “I think the finding would be, ultimately, that the only evidence that was presented is that this was a proceeds [*sic*] of the CFD *for the construction fund*, and that the City of Beaumont did not levy or collect any MSHCP fees.” (Italics added.) At the trial phase, Empire seemed to be advocating the first theory, or perhaps the third theory; it is unclear if Empire is claiming that money is still

owed for the price of constructed improvements, or if it is asserting a general right to any construction money left in the account, regardless of having been paid in full.

In sum, interpleader could not reasonably be granted to the City in this action, because it is unclear if Empire and Western are asserting the same or different debts owed by the City, and thus, it is unclear if the City could be liable to *both* parties. Therefore, we conclude the trial court abused its discretion in granting the City's motion for interpleader relief. As a result of the error in granting interpleader relief, the judgment must be reversed. (See *Simas v. Conselho Supremo Da Uniao Portugezada Estado Da California* (1920) 184 Cal. 511, 513-514 [error in interpleader order is reversible]; see also *Culley v. Cochran* (1932) 124 Cal.App. 730, 731, 733 [error in discharging a party is reversible].)

The City asserts the trial court did not err because Empire and Western are arguing over the same debt—MSHCP fees. The City is correct that one of the theories advanced in Empire's complaint is that it is entitled to a refund of MSHCP fees; however, the City's argument ultimately fails because Empire has asserted two other reasons for being entitled to the money. Since it cannot be determined with certainty exactly which theory Empire plans to rely upon, it cannot be reasonably determined if the City is a disinterested party. (See *Lincoln Nat. Life Ins. Co. v. Mitchell* (1974) 41 Cal.App.3d 16, 19 ["The determination of the propriety of interpleader has turned on whether the stakeholder is truly a disinterested party"]) Moreover, the problem with the City's argument was amply demonstrated during the trial phase, when Empire argued, "They never were, and we're not claiming they were, MSHCP fees that are

entitled to be refunded.” Empire itself has contradicted the City’s characterization of Empire’s theory of liability. Thus, we are not persuaded by the City’s assertion.

Next, the City asserts that the language from the *Morgan Hill* case “is meaningless,” specifically the language that an interpleader action must involve parties who seek the “the same thing, debt or duty from the same obligor.” (*Morgan Hill, supra*, 71 Cal.App.4th at p. 1124.) The City argues Empire’s lawsuit seeks a determination of the “character of the monies” in the fund. Thus, all the trial court needed to do was determine if the money in the fund was MSHCP fee money or whether it was something else. If the money is not MSHCP fees, then it does not belong to Western.

The City’s assertion illustrates why joinder could have been proper in this case, as opposed to interpleader relief. (See Code Civ. Proc., §§ 386 [interpleader], 389 [joinder].) Assuming the City is correct, and all the trial court needed to do was determine the character of the money, there is still a problem with granting interpleader relief. The problem is that interpleader relief allows for “the applicant or interpleading party [to] be discharged from liability to all or any of the conflicting claimants, although their titles or claims have not a common origin, or are not identical but are adverse to and independent of one another.” (Code Civ. Proc., § 386, subd. (a).)

If the trial court determined the money in the fund was construction bond money, as argued by Empire, and not MSHCP fees, that does not equate with a finding that MSHCP fees are not owed Western, *in addition* to the construction money owed to Empire. The City may have erroneously exempted Seneca from the MSHCP fees, and

therefore the City could be liable to Western for the mistake. (City of Beaumont Resolution No. 2003-29 [MSHCP fee program].) Interpleader relief would allow the City to be discharged from liability to Western, which is unreasonable in this case given the uncertainty in Empire's complaint. Joinder, on the other hand, would allow the disputes to be tried together so as to address the "substantial risk of [a party] incurring double, multiple, or otherwise inconsistent obligations by reason of [a] claimed interest." (Code Civ. Proc., § 389, subd. (a).)

Empire contends the trial court only discharged the City from liability for the funds deposited with the court "and nothing more." According to Empire, "[If] the interpled funds were demonstrated not to be MSHCP Fees, then the City never owed the interpled funds to [Western]." Empire next asserts, "[T]he reason Western is barred from collecting these interpled funds from the City is because they were shown by the trial evidence to be *CFD reimbursement* due to [Empire] and not MSHCP fees." (Italics added.) There are two flaws in Empire's assertion.

First, Empire contends that the City was discharged from liability for the funds deposited with the court "and nothing more." This is problematic because, in Empire's complaint, it asserted that the money in the City's account was collected for *both* "construction" and "development fees." Thus, the City could have committed an accounting error, whereby there should be money in the account for *both* Empire and Western, because they may both be asserting legitimate debts. Interpleader results in the City being discharged from "liability to all or any of the conflicting claimants,

although their titles or claims have not a common origin, or are not identical but are adverse to and independent of one another.” (Code Civ. Proc., § 386, subd. (a).)

If (1) the City is discharged from the lawsuit; (2) the City is freed from liability; (3) Empire and Western both possibly have legitimate claims to the account; (4) the money in the account was supposed to be for construction and development fees; and (5) there is insufficient money in the account to satisfy both parties’ claims, then it is unclear how Western could bring a separate lawsuit against the City to collect the fees. We note that Western could potentially have a separate lawsuit against the City seeking consequential damages for wrongfully withholding the fees, but it is unclear how Western could sue the City *directly* for the fees, following the court’s order granting the City interpleader relief. (See *Wells Fargo Bank, N.A. v. Zinnel* (2004) 125 Cal.App.4th 393, 400 [consequential damages]; see also *Hellman Commercial Trust & Savings Bank v. Alden* (1929) 206 Cal. 592, 599-600 [suing after interpleader].) Thus, we find Empire’s assertion to be unpersuasive.

The second problem we find in Empire’s argument is associated with Empire’s claim that “the reason Western is barred from collecting these interpled funds from the City is because they were shown by the trial evidence to be *CFD reimbursement* due to [Empire] and not MSHCP fees.” (Italics added.) As Empire points out, the trial court ultimately concluded that the funds were a “CFD reimbursement due to [Empire] and *not MSHCP fees.*” (Italics added.) This is problematic, because the City was discharged from liability following the City’s characterization of the funds as “Local Development Mitigation Fee[s].” Empire cannot have it both ways. If the funds are a

“CFD reimbursement due to [Empire] and not MSHCP fees,” then there are two different, possibly legitimate, debts at issue, and the City must remain a party to the lawsuit. Only if Empire was seeking a refund of MSHCP fees could discharge of the City have possibly been correct, but as Empire writes in its respondent’s brief, the funds were “not MSHCP fees.”

Empire’s argument again reflects why joinder—not interpleader—could have been the proper procedure. There are multiple issues that need to be addressed with all three necessary parties: Western, Empire, and the City. For example, (1) Does the City owe Western MSHCP fees on the development?; (2) Is Empire owed more construction money for the development?; (3) Is Empire entitled to whatever money remains in the account after all bills have been paid? In sum, we are not persuaded by Empire’s assertion.

B. REMAINING CONTENTIONS

Western asserts that if this court concludes the City’s motion for interpleader relief was properly granted, then the judgment awarding the funds to Empire was improper as a matter of law. We have concluded *ante*, that the trial court erred by granting the City’s motion for interpleader relief. Thus, we do not address Western’s remaining contention.

DISPOSITION

The judgment is reversed. The trial court is directed to (1) enter an order vacating its order granting the City’s motion for discharge and substitution, and then (2) enter an order denying the City’s motion for discharge and substitution. The orders

should result in the City and Empire being in the position they would have been in if the motion for discharge and substitution had initially been denied by the trial court. If the interpled funds have already been released to Empire, then the trial court is directed to enter an order requiring the immediate restoration of those funds to the custody of the court. Appellant, Western, is awarded its costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER
J.

We concur:

McKINSTER
Acting P. J.

RICHLI
J.