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2 NOT FOR PUBLICATION

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4
5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE DISTRICT OF ARIZONA
7

8 Allstate Life Insurance Company,)

9 Plaintiff,)

10 vs.)

11 Robert W. Baird & Co. Inc., *et al.*,)

12 Defendants.)

13 _____)
14 Ronald Covin, *et al.*,)

15 Plaintiffs,)

16 vs.)

17 Robert W. Baird & Co., Inc., *et al.*,)

18 Defendants.)
19 _____)

Lead Case No. CV-09-8162-PCT-GMS

Consolidated with:
Case No. CV-09-8174-PCT-GMS

ORDER

20 Pending before the Court is the Motion for Judgment on the Pleadings filed by Wells
21 Fargo Bank, N.A. (“Wells Fargo”), who is a Third-Party Defendant in this action. (Dkt. #
22 140.) As set forth below, the Court grants the Motion in part and denies it in part.¹

23 **BACKGROUND**

24 In 2005, the Town of Prescott Valley, Arizona (the “Town”) entered into an
25 agreement with Prescott Valley Event Center, LLC (“PVEC”) to develop and construct a
26 _____

27 ¹The parties’ requests for oral argument are denied as the Court has determined that
28 oral argument will not aid in its decision. *See Lake at Las Vegas Investors Group v. Pac. Malibu Dev.*, 933 F.2d 724, 729 (9th Cir. 1991).

1 multipurpose event center (the “Event Center”) in Prescott Valley. Pursuant to this
2 Development Agreement, the Town agreed to use certain tax revenues (“Transaction
3 Privilege Revenues” or “TPT Revenues”) for payments to investors who provided financing
4 for the Event Center. (Dkt. # 95 at 25 ¶ 2.) Specifically, the Town agreed to deliver payments
5 out of these Revenues to PVEC, which was then required to use the money to pay down debt
6 service obligations owing to the Event Center’s financiers. (*Id.* at ¶ 28.) In the latter part of
7 2005, however, PVEC assigned its right to receive payments from the Town to Wells Fargo,
8 which had been appointed as indenture trustee for \$35 million in Bonds that were issued to
9 finance the Event Center. According to the Town, this assignment required Wells Fargo to
10 step into the shoes of PVEC and to use the Town’s payments “ to pay the debt service owing
11 to Bondholders.” (*Id.* at ¶ 28.) The Town further alleges that a November 2005 Indenture of
12 Trust Agreement (the “Indenture”), which sets forth Wells Fargo’s obligations to
13 Bondholders, contains similar provisions requiring Wells Fargo to use the TPT Revenues to
14 pay principal and interest on the Bonds. (*Id.* at ¶ 29.)

15 In September 2007, approximately one year after completion of the Event Center,
16 Wells Fargo began requesting TPT Revenue to make debt service payments due to
17 Bondholders. (*Id.* at ¶ 19.) After the Town made the first payment, Wells Fargo distributed
18 the funds to the Bondholders. Similar transactions occurred in October 2008 and April 2009.
19 Then, in September 2009, Wells Fargo sent an invoice to the Town requesting payment of
20 \$1,159,179.76 to make an October 2009 debt service payment to the Bondholders. But, while
21 the Town promptly transferred a portion of its TPT Revenue to Wells Fargo, the latter never
22 disbursed any of the money to Bondholders, though the Town alleges that Wells Fargo was
23 required to do so under the Development Agreement and the Indenture. Instead, the majority
24 Bondholder, Allstate Life Insurance Company (“Allstate”), had directed Wells Fargo to
25 forbear the disbursement based on the belief that the Town and those involved with obtaining
26 financing for the Event Center had committed securities fraud in issuing the Bonds. (*Id.* at
27 24.) Thus, rather than disburse the \$1,159,179.76 to Bondholders, Wells Fargo used it to
28 “enable [Allstate’s] counsel . . . to pursue legal action” on Allstate’s behalf. (*Id.*)

1 After Wells Fargo withheld payment of the October Distribution from the
2 Bondholders, Fitch Ratings (“Fitch”) downgraded the Bonds from “B” to “D” and then
3 withdrew its rating completely. According to the Town, the downgrade and the subsequent
4 decline in the value of the Bonds was a direct result of Wells Fargo’s decision to withhold
5 the October 2009 Distribution. Wells Fargo, however, asserts that the decline in value was
6 a result of misstatements and omissions made by those who issued the Bonds.

7 In September 2009, Allstate filed the instant lawsuit alleging that the Town, and those
8 who helped the Town obtain financing for the Event Center, committed fraud and violated
9 securities laws. Several Bondholders (the “Class Action Plaintiffs”) then filed a class-action
10 complaint alleging similar claims. After Allstate and the Class Action Plaintiffs (collectively
11 “Plaintiffs”) initiated this action, the Town filed Counterclaims against Plaintiffs and a Third-
12 Party Claim against Wells Fargo. According to the Town, Wells Fargo withheld TPT
13 payments from the Bondholders in violation of the Development Agreement and the
14 Indenture. (Dkt. # 95 at 34.) In its Counterclaim, the Town seeks relief based on three
15 theories: (1) statutory interpleader under 28 U.S.C. § 1335; (2) a third-party claim pursuant
16 to Federal Rule of Civil Procedure 14(a); and (3) declaratory relief clarifying how the TPT
17 Revenue should be disbursed. (*Id.* at 35–37.) Wells Fargo now moves to dismiss the
18 Counterclaim pursuant to Federal Rule of Civil Procedure 12(c).

19 LEGAL STANDARD

20 A motion for judgment on the pleadings filed pursuant to Federal Rule of Civil
21 Procedure 12(c) is generally assessed under the same standard as a Rule 12(b)(6) motion to
22 dismiss for failure to state a claim. *See Aldabe v. Aldabe*, 616 F.2d 1089, 1093 (9th Cir.
23 1980). The Court must construe the pleadings “in the light most favorable to the nonmoving
24 party,” *Living Designs, Inc. v. E.I. DuPont de Nemours & Co.*, 431 F.3d 353, 360 (9th Cir.
25 2005), and will only grant the motion “when, taking all the allegations in the non-moving
26 party’s pleadings as true, the moving party is entitled to judgment as a matter of law.”
27 *Fajardo v. County of L.A.*, 179 F.3d 698, 699 (9th Cir. 1999).

1 In ruling on a motion for judgment on the pleadings, a court cannot consider evidence
2 outside the pleadings unless the motion is treated as one for summary judgment pursuant to
3 Federal Rule Civil Procedure 56. *See* Fed. R. Civ. P. 12(d). The Court may, however,
4 consider documents that are attached to the relevant pleading as exhibits or are “referenced
5 extensively” in the pleading and “accepted by all parties as authentic.” *See Van Buskirk v.*
6 *Cable News Network, Inc.*, 284 F.3d 977, 980 (9th Cir. 2002).²

7 DISCUSSION

8 I. The Town Has Not Stated a Claim for Statutory Interpleader.

9 Federal courts may exercise interpleader jurisdiction when (1) a party possesses
10 “money or property” of \$500 or more or is “under any obligation . . . [in] the amount of
11 \$500” or more and (2) “[t]wo or more adverse claimants . . . are claiming or may claim to be
12 entitled to such money or property” or to “the benefits arising” from that obligation. 28
13 U.S.C. § 1335(a); *see Libby, McNeill & Libby v. City Nat’l Bank*, 592 F.2d 504, 507 (9th Cir.
14 1978) (“[A] basic jurisdictional requirement of a statutory interpleader action is that there be
15 ‘adverse claimants’ to a particular fund”) (citation and footnote omitted); *Indianapolis Colts*
16 *v. Baltimore*, 741 F.2d 954, 956 (7th Cir. 1984) (rejecting interpleader where there were no
17 adverse claims). Even where “the titles or claims of the conflicting claimants do not have a
18 common origin, or are not identical, but are adverse to and independent of one another,”
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20 ²The Town and Wells Fargo request consideration of documents pertaining to the
21 transactions between the Town, PVEC, and Wells Fargo. Specifically, the Town requests
22 consideration of the Development Agreement and the Indenture (Dkt. # 152), while Wells
23 Fargo requests consideration of the Assignment Agreement between Wells Fargo and PVEC
24 (Dkt. # 140). In resolving the instant matter, the Court may consider the “contents of the [the
25 Town’s Counterclaim]” and “evidence on which the [Counterclaim] ‘necessarily relies’ if:
26 (1) the [Counterclaim] refers to the document; (2) the document is central to the
27 [Counterclaim]; and (3) no party questions the authenticity of the copy attached.” *See Marder*
28 *v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006). This standard is met with respect to the
Development Agreement and the Indenture. The Assignment Agreement, however, is not
central to the Town’s claims. Thus, in issuing this Order, the Court considers the
Development Agreement and the Indenture, but not the Assignment Agreement. *See Van*
Buskirk, 284 F.3d at 980 (noting that a documents outside of the pleadings may be
considered, but only if they are “referenced extensively” in the pleadings).

1 interpleader jurisdiction is properly invoked so long as the claims pertain to the same fund
2 or stake. 28 U.S.C. § 1335(b); *see Sanders v. Armour Fertilizer Works*, 292 U.S. 190, 199
3 (1934) (noting that the statute covers adverse claims “no matter on what grounds urged,” so
4 long as those claims concern a common stake). Where “only one party ma[kes] a claim
5 against the fund[,]” however, there can be no interpleader. *See Libby*, 592 F.2d at 508.

6 The requirements for statutory interpleader are not satisfied in this case because there
7 are no adverse claimants to a common fund. To the extent that the TPT Revenue even
8 constitutes a common fund, only one entity, Wells Fargo, has asserted an interest in that
9 Revenue. According to the Town, both Wells Fargo and the Bondholders assert or may assert
10 a claim to the TPT Revenue. In their Answers to the Town’s Counterclaim, however, both
11 sets of Plaintiffs deny any claim “to amounts paid, now available to be paid, or required to
12 be paid in the future under the . . . Development Agreement.” (Dkt. ## 129 at ¶ 1; 131 at ¶
13 1.) Plaintiffs, therefore, have apparently disclaimed any claim adverse to Wells Fargo in the
14 TPT Revenue. Because Plaintiffs have disavowed any present interest in the TPT Revenue,
15 leaving Wells Fargo as the only entity claiming a right to the fund, the Town’s claim for
16 interpleader necessarily fails.

17 Moreover, courts have frequently rejected interpleader claims similar to the Town’s
18 claim in the case at bar. For instance, in *Libby*, 592 F.2d at 508, the Ninth Circuit found
19 interpleader jurisdiction lacking where all but one of the potential claimants explicitly
20 disavowed any claim to the common fund. *Id.* The court so held, even though several of the
21 claimants asserted causes of action against *Libby*. *Id.* In dismissing the interpleader action,
22 the Ninth Circuit distinguished earlier cases that allowed interpleader to go forward where
23 a claimant had disavowed an interest to a common fund. *Id.* (distinguishing *Dakota Livestock*
24 *Co. v. Keim*, 552 F.2d 1302, 1307 (8th Cir. 1977) and *Royal School Laboratories, Inc. v.*
25 *Town of Waterton*, 358 F.2d 813, 815 (2d Cir. 1966)). These courts allowed interpleader
26 claims to proceed because, while the claimants disavowed any interest in the common fund,
27 those claimants asserted separate claims that were “inextricably interrelated” to the common
28 fund. *Dakota Livestock*, 552 F.2d 1302, 1307; *Royal School Laboratories*, 358 F.2d at 815.

1 In *Libby*, on the other hand, the Ninth Circuit refused to exercise interpleader jurisdiction
2 because the parties raised claims that were “entirely separate and distinct from the
3 transactions that had produced the deposited fund.” *See Libby* 592 F.2d at 509 (quoting
4 *Dakota Livestock*, 552 F.2d at 1308;) *see also Gaines v. Sunray Oil, Co.*, 539 F.2d 1136,
5 1142 (8th Cir. 1976) (dismissing interpleader claim for lack of adverse claimants where the
6 claimants raised separate claims that were independent of any common fund).

7 As in *Libby*, Plaintiffs in this case assert an independent theory of liability against the
8 Town that is unrelated to any common fund. *See* 592 F.2d at 508. Here, Plaintiffs allege
9 securities fraud and seek damages from the Town’s general fund based on the Town’s
10 alleged omissions and misstatements related to Bonds issued to finance the Event Center.
11 Rather than seek relief based on the non-payment of TPT Revenues, Plaintiffs’ claim is
12 premised on the allegedly inflated value of the Bonds at the time of purchase. Accordingly,
13 Plaintiffs’ claim against the Town arises from a “transaction[] entirely separate and distinct
14 from the transactions” related to the TPT Revenues. *See Libby*, 592 F.2d at 508 (quoting
15 *Dakota Livestock*, 552 F.2d at 1308). Thus, because Plaintiffs’ claim is not “inextricably
16 interrelated” with a common fund, the Town’s claim for interpleader fails as a matter of law.
17 *See Royal School Laboratories*, 358 F.2d at 815.

18 The Town alleges that interpleader is necessary to protect it from double liability for
19 the value of the TPT Revenue. Nevertheless, to the extent that the Bondholders have or may
20 have a claim to the TPT Revenue paid to Wells Fargo, that claim would appear to lie against
21 Wells Fargo rather than the Town. To be sure, the Town may be correct that Wells Fargo has
22 misappropriated the TPT Revenue by using it to fund the instant litigation. But this alone is
23 not a basis for interpleader when the alleged claimant specifically disavows an interest to the
24 common fund and when the party seeking interpleader fails to identify a legal basis upon
25 which the claimant might assert a right to that fund. Nonetheless, as discussed below, to the
26 extent that the Town was damaged by Wells Fargo’s alleged breach of the Development
27 Agreement and the Indenture, the Town may pursue relief through its third-party and
28 declaratory judgment claims.

1 **II. The Town Has Stated a Third Party Claim.**

2 Federal Rule of Civil Procedure 14(a) permits “[a] defending party . . . , as a third-
3 party plaintiff,” to assert claims against “a nonparty who is or may be liable to it for all or
4 part of the claim against” the third-party plaintiff. *See* Fed. R. Civ. P. 14(a). In other words,
5 if the facts are such that the third-party defendant may be liable for all or part of the third
6 party plaintiff’s liability to the original plaintiff, the third party complaint should be allowed
7 to stand. *See Jensen Elec. Co. v. Moore, Caldwell, Rowland & Dodd, Inc.*, 873 F.2d 1327,
8 1330 (9th Cir. 1989).

9 In its Counterclaim, the Town alleges that Wells Fargo’s failure to pay monies from
10 the TPT Revenue to Bondholders, as allegedly required in the Development Agreement, may
11 increase the Town’s liability to the Bondholders. If so, Wells Fargo could be liable to the
12 Town for a commensurate increase in its liability. According to the Counterclaim, Wells
13 Fargo’s decision to stop making disbursements to the Bondholders caused Fitch to
14 downgrade its rating for the Bonds from “B” to “D” and to later withdraw its rating
15 altogether. (Dkt. # 95 at 29 ¶26.) At this stage of the litigation, the Court cannot conclude as
16 a matter of law that the subsequent drop in the Bonds’ value, for which the Bondholders
17 allege that the Town is liable, could not be at least partially the result of this downgrade.
18 Accordingly, because the Bondholders allege that the Town is liable for the full amount of
19 their investment, and because the Town contends that at least part of its alleged liability is
20 a consequence of Wells Fargo’s alleged non-compliance with the Development Agreement,
21 it is plausible that Wells Fargo could be found liable for some portion of the Bondholders’
22 claims against the Town. The Court, therefore, finds that the Town has adequately alleged
23 a third-party claim against Wells Fargo.

24 Wells Fargo’s argument that the Town is without standing to invoke a third-party
25 claim is without merit. According to the Town, the Development Agreement prevents Wells
26 Fargo from using the Town’s money to litigate this action. (*See* Dkt. # 152, Ex. A at ¶¶
27 4.3.74, 4.3.76; *see also* Dkt. # 95 at 31 ¶ 28). Assuming this is correct, the Town, as a party
28 to the Development Agreement, has standing to enforce that provision of the Agreement

1 against Wells Fargo. And, while Wells Fargo contends that the Town lacks standing to
2 enforce the Indenture because the Town is not a party to that Agreement, the Town’s
3 Counterclaim avers that the Indenture, which apparently requires Wells Fargo to use the
4 money disbursed by the Town to pay Bondholders, was “designed to implement the Trustee’s
5 obligation to handle and disburse [the] amounts received from the Town (and from other
6 sources) strictly as required by the Development Agreement.” (*See* Dkt. # 95 at 31¶ 29.)

7 To the extent that Wells Fargo contends that it was authorized as a matter of law to
8 use the Town’s money to fund the instant litigation, there may be questions of fact that
9 preclude judgment on a motion to dismiss. According to Wells Fargo, the Assignment
10 Agreement between PVEC, the original trustee, and Wells Fargo relieves the latter from any
11 obligation, duty, or liability under the Development Agreement—including any obligation
12 to use the Town’s money to pay debt service on the Bonds. The Town, on the other hand,
13 contends that this provision only relieves Wells Fargo from PVEC’s duties pertaining to the
14 construction and management of the Event Center—not of the obligation to use the Town’s
15 money to pay Bondholders. At this point in the proceedings, however, the Court need not
16 determine whether the Assignment Agreement absolves Wells Fargo of the requirement that
17 the Town’s money be used exclusively for the payment of debt service. As a procedural
18 matter, the Assignment Agreement is not properly before the Court for purposes of the
19 Motion for Judgment on the Pleadings. *See supra* n. 2. Furthermore, viewing the facts in the
20 light most reasonable to the Town, it is at least plausible that Wells Fargo is subject to the
21 Development Agreement’s provision that allegedly precludes Wells Fargo from using the
22 Town’s funds to finance this litigation.

23 **III. The Town Has Stated a Claim for Declaratory Judgment.**

24 According to the Ninth Circuit, there are “two criteria for determining whether
25 declaratory relief is appropriate: ‘(1) when the judgment will serve a useful purpose in
26 clarifying and settling the legal relations in issue, and (2) when it will terminate and afford
27 relief from the uncertainty, insecurity, and controversy giving rise to the proceeding.’”
28 *Bilbrey by Bilbrey v. Brown*, 738 F.2d 1462, 1470 (9th Cir. 1984) (quoting *McGraw-Edison*

1 *Co. v. Preformed Line Prods. Co.*, 362 F.2d 339, 342 (9th Cir. 1966), *cert. denied*, 385 U.S.
2 919 (1966)).

3 Declaratory relief may serve a useful purpose in this action in clarifying whether the
4 Development Agreement and Indenture prohibit Wells Fargo from using payments from the
5 Town's TPT Revenue to finance Allstate's lawsuit against the Town. Declaratory relief may
6 also be helpful in determining whether, and to what extent, Wells Fargo's alleged breach of
7 the Development Agreement increased the potential liability to the Town for its alleged
8 misconduct. The Town, therefore, has stated a claim for declaratory relief.

9 **IT IS THEREFORE ORDERED** that Wells Fargo's Motion for Judgment on the
10 Pleadings (Dkt. # 140) is **GRANTED** in part and **DENIED** in part as set forth in this Order.

11 **IT IS FURTHER ORDERED** that the Town's Motion to Deposit Money Subject to
12 Interpleader with the Clerk of the Court (Dkt. # 154) is **DENIED**.

13 DATED this 9th day of June, 2010.

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15 _____
16 G. Murray Snow
17 United States District Judge
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