

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 5 2026

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CITY OF CALIMESA,

Plaintiff - Appellee,

v.

EVEREST REINSURANCE COMPANY,

Defendant - Appellant.

No. 25-7356

D.C. No.

5:24-cv-00828-KK-SP

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Kenly Kiya Kato, District Judge, Presiding

Argued and Submitted August 6, 2026
Pasadena, California

Before: GRABER, KOH, and H.A. THOMAS, Circuit Judges.

Everest Reinsurance Company (“Everest”) appeals the district court’s order dismissing its counterclaims that seek to void certain development- and subdivision-related contracts in a suit brought by the City of Calimesa (the “City”). The district court held that the 90-day statutes of limitations under the Development Agreement Act and the Subdivision Map Act, Cal. Gov’t Code

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

§§ 65009 and 66499.37, bar Everest's counterclaims. In so holding, the district court rejected Everest's argument that the four-year statute of limitations under California's laws prohibiting conflicts of interest in the making of public contracts, Cal. Gov't Code § 1092(b), applies instead. We have jurisdiction under 28 U.S.C. § 1292(b). We reverse and remand for further proceedings.

We review de novo a district court's determination of the applicable statute of limitations and its dismissal of a claim on statute of limitations grounds.

Johnson v. Lucent Techs. Inc., 653 F.3d 1000, 1005 (9th Cir. 2011). We also review de novo the district court's interpretation of state law. *Paulson v. City of San Diego*, 294 F.3d 1124, 1128 (9th Cir. 2002) (en banc). Where, as here, "the state supreme court has not spoken on an issue, we must determine what result the court would reach based on state appellate court opinions, statutes and treatises." *Diaz v. Kubler Corp.*, 785 F.3d 1326, 1329 (9th Cir. 2015) (citation modified).

Under California law, "[t]o determine the statute of limitations which applies to a cause of action it is necessary to identify the nature of the cause of action, i.e., the 'gravamen' of the cause of action." *Hensler v. City of Glendale*, 876 P.2d 1043, 1057 (Cal. 1994). "Put another way, what is significant for statute of limitations purposes is the primary interest invaded by defendant's wrongful conduct." *Marin Healthcare Dist. v. Sutter Health*, 127 Cal. Rptr. 2d 113, 121 (Cal. Ct. App. 2002) (citation modified).

1. The four-year statute of limitations under section 1092(b) applies to Everest's counterclaims. The essential nature of Everest's counterclaims is to void the development- and subdivision-related contracts in question because two members of the Calimesa City Council who participated in approving those contracts allegedly had impermissible conflicts of interest. *See Lexin v. Superior Ct.*, 222 P.3d 214, 229 (Cal. 2010) ("Where a prohibited interest is found, the affected contract is void from its inception."). The right on which Everest bases its claims unmistakably arises under sections 1090 and 1092. *See* Cal. Gov't Code § 1090(a) (prohibiting public officials from being "financially interested in any contract made by them in their official capacity, or by any body or board of which they are members"); *id.* § 1092(a) (providing that any contract made in violation of section 1090 "may be avoided at the instance of any party except the officer interested therein"). Everest therefore had to bring those claims "within four years after [it] ha[d] discovered, or in the exercise of reasonable care should have discovered," the conflicts of interest. *Id.* § 1092(b).¹

2. The 90-day statutes of limitations provided in sections 65009 and 66499.37 do not apply. That the contracts at issue had to be approved by the

¹ We decline to consider the City's argument, made for the first time on appeal, that section 1092(b) does not apply because Everest does not have statutory standing to bring section 1092 claims. *See Wolf v. Life Ins. Co. of N. Am.*, 46 F.4th 979, 985 (9th Cir. 2022) ("We generally do not consider arguments raised for the first time on appeal.").

Calimesa City Council pursuant to the Development Agreement Act and Subdivision Map Act, *see id.* §§ 65867.5, 65868, 66411, does not necessarily mean that Everest is contesting the validity of those decisions pursuant to the land-use statutes. The specific object of Everest’s counterclaims is simply to void contracts—not “[t]o attack, review, set aside, void, or annul the decision of a legislative body to adopt, amend, or modify a development agreement,” *id.* § 65009(c)(1)(D), or “to attack, review, set aside, void, or annul the decision of an advisory agency, appeal board, or legislative body concerning a subdivision . . . ,” *id.* § 66499.37.

3. The City principally relies on the California Court of Appeal’s decisions in *Ching v. San Francisco Board of Permit Appeals*, 70 Cal. Rptr. 2d 700 (Cal. Ct. App. 1998), and *AIDS Healthcare Foundation v. City of Los Angeles*, 302 Cal. Rptr. 3d 342 (Cal. Ct. App. 2022). Those decisions are inapposite. The plaintiffs in *Ching* and *AIDS Healthcare*, unlike Everest, brought third-party collateral attacks on local permitting decisions that fell squarely within the scope of the land-use statutes, and they brought those claims under the Political Reform Act (“PRA”), not under section 1090. *Ching*, 70 Cal. Rptr. 2d at 702–04 (holding that “an action or proceeding under the [PRA] challenging a local permit appeal board decision must comply with the specific limitations provisions of section 65907 [predecessor statute to section 65009]”); *AIDS Healthcare*, 302 Cal. Rptr. 3d at 353 (holding

that section 65009 “applies directly” to action seeking to set aside city committee’s permit approvals based on alleged bribery scheme in violation of PRA); *see also Lexin*, 222 P.3d at 230, 241 (distinguishing section 1090, which unlike the PRA, “focus[es] on the making of a *contract* in which one has an impermissible interest”).

Further, *Ching* and *AIDS Healthcare* applied “a basic rule of statutory construction that specific statutes control [over] general ones” to resolve that the land-use statute’s 90-day limitations period controlled over the longer statutes of limitations provided by California Code of Civil Procedure section 338 and the PRA. *Ching*, 70 Cal. Rptr. 2d at 704–05; *AIDS Healthcare*, 302 Cal. Rptr. 3d at 350–53. But there is no need to resort to either this rule or other “tie-breaking rules of statutory construction” where, as here, there is no statutory conflict. *Evan Zohar Constr. & Remodeling, Inc. v. Bellaire Townhouses, LLC*, 352 P.3d 391, 399 (Cal. 2015).

REVERSED and REMANDED.