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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY, Plaintiff and Appellant, v. ALAMEDA PRODUCE MARKET, LLC, et al., Defendants and Respondents.	B212643 (Los Angeles County Super. Ct. No. BC313010)

APPEAL from an order of the Superior Court of Los Angeles County, James R. Dunn, Judge. Reversed and remanded.

Jones Day, Elwood Lui, Brian M. Hoffstadt, and Brian D. Hershman; Robert E. Kalunian, Acting County Counsel, Charles M. Safer, Assistant County Counsel, and Joyce L. Chang, Principal Deputy County Counsel, for Plaintiff and Appellant.

Oliver, Sandifer & Murphy, Connie Cooke Sandifer, and Cynthia C. Marian for Defendant and Respondent Alameda Produce Market, LLC.

No appearance for Defendant and Respondent American Apparel.

Plaintiff Los Angeles County Metropolitan Transportation Authority (MTA) appeals from the order dismissing its eminent domain complaint. MTA contends that the order of dismissal must be reversed because neither defendant had standing to challenge the taking of the property. MTA argues that defendant Alameda Produce Market, Inc. (APMI), which owned the property, statutorily waived all claims and defenses other than a claim for greater compensation under Code of Civil Procedure section 1255.260,[1] and that defendant American Apparel, Inc., which used the property for overflow employee parking, had no legal or equitable interest in the property. We conclude that MTA is correct on both points. Accordingly, we reverse the order of dismissal and remand for further proceedings.

BACKGROUND

In 1996, the federal court issued a consent decree that required MTA to improve the quality of bus service in Los Angeles. In January 2004, the federal court ordered MTA to place an additional 145 buses in service by December 2004. Because its existing facilities were insufficient to accommodate the additional buses and employees necessitated by the order, MTA decided to expand its downtown Los Angeles Division I facility by acquiring APMI's nearby property, which consists of "approximately 115,000 square feet of vacant and undeveloped contiguous parcels generally located at 1345 East 7th Street in the City of Los Angeles" (the property). According to MTA's Tim Lindholm, the property is a "key component" of the Division I expansion project.

On March 25, 2004, MTA's governing board adopted a resolution of necessity that authorized the taking of the property for the Division I expansion project. On April 1,

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[1] All further statutory references are to the Code of Civil Procedure.

Section 1255.260 provides: "If any portion of the money deposited pursuant to this chapter is withdrawn, the receipt of any such money shall constitute a waiver by operation of law of all claims and defenses in favor of the persons receiving such payment except a claim for greater compensation."

2004, MTA filed the instant complaint against APMI[2] (erroneously sued as Alameda North Parking, Inc.) to acquire the property by eminent domain. MTA utilized the quick-take procedure by depositing $6.3 million as the probable amount of compensation and filing a motion for immediate possession of the property. (See § 1255.410;[3] *Redevelopment Agency of San Diego v. Mesdaq* (2007) 154 Cal.App.4th 1111, 1120-1122 (*Mesdaq*) [quick-take procedure explained].)

In its answer to the complaint, APMI raised numerous objections to the taking of the property. In particular, APMI objected that MTA had failed to adopt a valid resolution of necessity that satisfied the requirements of the eminent domain law. (§ 1250.370, subd. (a).) As will be discussed, APMI ultimately prevailed on this objection at trial, which resulted in the dismissal of the complaint.

Before trial, MTA notified the interested parties of its deposit of probable compensation. (§ 1255.020.) In response to the notice, three lenders with liens against the property (VCC Alameda, LLC, California National Bank, and Namco Capital Group) (the lenders) applied to withdraw a portion of the deposited funds. (§ 1255.210.) MTA objected to the lenders' applications for withdrawal of the deposit on the ground that there were other interested parties. MTA served the other interested parties with notice

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2 The complaint identified VCC Alameda as the owner of the property. However, VCC Alameda had transferred the property to APMI on March 31, 2004, the day before the complaint was filed.

3 Section 1255.410, subdivision (a) provides in relevant part: "At the time of filing the complaint or at any time after filing the complaint and prior to entry of judgment, the plaintiff may move the court for an order for possession under this article, demonstrating that the plaintiff is entitled to take the property by eminent domain and has deposited pursuant to Article 1 (commencing with Section 1255.010) an amount that satisfies the requirements of that article. [¶] . . . The motion shall include a statement substantially in the following form: 'You have the right to oppose this motion for an order of possession of your property. If you oppose this motion you must serve the plaintiff and file with the court a written opposition to the motion within 30 days from the date you were served with this motion.'"

of the right to object to the lenders' applications for withdrawal, and requested that the trial court determine the appropriate amount of any withdrawal of the deposit. (§ 1255.230, subds. (c), (d).)

APMI, which received notice of the lenders' applications for withdrawal of the deposit, did not object to the lenders' withdrawals. On the contrary, APMI's Miguel Echemendia[4] signed the verified applications for withdrawal of VCC Alameda and Namco. VCC Alameda's counsel filed a declaration stating that APMI's counsel did not object to the lenders' withdrawals of the deposit.

The lenders signed a stipulation with MTA regarding the amounts of their respective withdrawals from the deposit of probable compensation.[5] Significantly, the

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[4] According to MTA's trial brief, "Echemendia was designated as the person most knowledgeable for APMI during deposition regarding the issues presented in this right to take trial. While Mr. Meruelo [APMI's principal] previously testified before this Court that Mr. Echemendia was APMI's Chief Financial Officer, Mr. Echemendia was uncertain as to whether he was an officer of APMI, and identified himself as a consultant."

[5] The stipulation stated: "WHEREAS, Plaintiff, LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY ('MTA'), a public body, has deposited with the Clerk of the above-entitled court a sum of $6,300,000 for the taking of the property located on the northwest corner of the intersection of Alameda Street and 7th Street in the [C]ity of Los Angeles ('Subject Property');

"WHEREAS, Defendant VCC ALAMEDA, LLC (hereinafter 'Trustholder') is the holder of a note and trust deed of the Subject Property which has been designated for condemnation by plaintiff;

"WHEREAS Plaintiff MTA has deposited $6,300,000;

"WHEREAS RPM Investments, Inc. has disclaimed any and all interest in the instant action;

"WHEREAS Jerash, LLC has disclaimed any and all interest in the instant action;

"WHEREAS Bank of America has disclaimed any and all interest in the instant action;

"WHEREAS Alameda Produce Market Inc., a California Corporation, erroneously sued and served herein as Alameda North Parking, Inc. is not objecting to instant withdrawal of funds;

"WHEREAS NAMCO is requesting the sum of $2,140,000.00 be made payable to Driscoll & Fox Client Trust Account on behalf of the Trustholder;

(Fn. continued.)

stipulation stated that APMI "is not objecting to instant withdrawal of funds." On June 10, 2004, the trial court adopted the stipulation in its order authorizing the withdrawals of $2.5 million by California National Bank,[6] $1.5 million by VCC

"WHEREAS the sum of $62,500 shall remain on deposit for the estimated potential tax purposes;

"WHEREAS California National Bank is requesting the sum of $2,554,794.97 as of June 4, 2004 plus $492.17 per day thereafter to be made payable to California National Bank c/o Joshua D. Wayser;

"WHEREAS $7,500 shall remain on deposit for city tax assessments;

"WHEREAS $40,000 shall remain on deposit for potential future city tax assessments;

"WHEREAS Metropolitan Transportation Authority ('MTA') and the City of Los Angeles agree that future tax assessments for the subject property will be paid by MTA, either in installments or as a lump sum;

"WHEREAS the remaining balance of $1,495,205.03, minus $492.17 per day thereafter, shall be made payable to the Driscoll & Fox Client Trust Account on behalf of VCC ALAMEDA, LLC[;]

"WHEREAS, upon full payment, California National Bank, VCC ALAMEDA, LLC, and NAMCO will execute disclaimers in the instant lawsuit;

"IT IS SO STIPULATED AND AGREED between the parties that of the $6,300,000 that is on deposit with the court as the probable just compensation, certain amounts may be withdrawn as follows:

"1. The order shall direct the Clerk of this Court to issue a draft in the amount of $2,140,000.00, made payable to the Driscoll & Fox Client Trust Account on behalf of Defendant NAMCO . . . .

"3. [*Sic*.] The order shall direct the Clerk of this Court to issue a draft in the amount of $2,554,794.97 as of June 4, 2004 plus $492.17 per day thereafter, made payable to California National Bank, c/o Joshua Wayser . . . .

"4. [*Sic*.] The order shall direct the Clerk of this Court to issue a draft in the amount of $1,495,205.03, made payable to the Driscoll & Fox Client Trust Account on behalf of Defendant VCC ALAMEDA, LLC . . . ."

6 According to its promissory note, California National Bank was: (1) "entitled to all . . . compensation, awards, and other payments or relief" for the "taking of the property," whether or not the security was impaired; (2) assigned "[a]ll such proceeds and rights of action"; and (3) "entitled to commence, appear in and prosecute any action or proceedings or to make any compromise or settlement, in connection with such loss, taking or damage."

Alameda, and $2.1 million by Namco. It is undisputed that the funds were used to pay APMI's loans and that disclaimers of interest were filed by the lenders in this litigation.[7] (§ 1250.325.)

In August 2004, MTA sought to take immediate possession of the property. APMI objected that American Apparel, which had used the property for parking, had not been served with the complaint. In response to this objection, MTA served American Apparel with the complaint as a Doe defendant on August 13, 2004. On September 13, 2004, American Apparel answered the complaint and raised numerous objections to the taking of the property, including MTA's failure to adopt a resolution of necessity that satisfied the requirements of the eminent domain law. (§ 1250.370, subd. (a).)

In October 2004, MTA increased its deposit of probable compensation from $6.3 million ($6.1 million of which had been withdrawn by the lenders) to $8.5 million.

On November 24, 2004, MTA took pretrial possession of the property. After improving the property's pavement, fencing, and drainage, MTA began using the property in June 2005 for additional bus and employee parking as part of its expanded Division I facility.

Between December 2005 and May 2006, the trial court conducted a three-day bench trial on APMI's and American Apparel's objections to MTA's taking of the

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[7] The record contains the following evidence regarding Namco's withdrawal of the deposited funds:

Richard Meruelo was the sole owner of APMI and a company named Merco Group. Before this litigation was filed, Merco gave Namco a $22.2 million promissory note secured by a deed of trust to a property owned by Merco. After Merco defaulted on its note, Merco and APMI offered Namco, as additional collateral for Merco's note, a security interest in APMI's property (the property involved in this litigation), which APMI acquired on March 31, 2004. Namco agreed and recorded an amendment to Merco's note and deed of trust that listed APMI's property as additional collateral. At the same time, Namco also granted APMI a $2.25 million line of credit secured by the property involved in this litigation. On April 1, 2004, MTA filed the present action to acquire APMI's property. Namco, which disbursed $933,000 to APMI under the line of credit, withdrew over $2 million from the deposited funds, which it used to pay off APMI's line of credit and reduce the balance on Merco's note.

property. The trial court also heard, but did not decide, MTA's contention that neither APMI nor American Apparel could challenge the taking in light of APMI's statutory waiver (§ 1255.260) and American Apparel's lack of an enforceable interest in the property.

On July 12, 2006, the trial court entered an order of conditional dismissal. (§ 1260.120, subd. (c)(2).) Without addressing the issues of APMI's statutory waiver and American Apparel's lack of an enforceable interest in the property, the trial court agreed with APMI's and American Apparel's objections that: (1) the resolution of necessity was conditional in that it required MTA "to negotiate further with the appropriate defendants for a plan of 'mutually agreeable parking'"; and (2) in violation of the condition, MTA had failed to engage in meaningful negotiations for mutually agreeable parking, which invalidated the so-called conditional resolution.[8] The trial court concluded that, in light of MTA's failure to fulfill the condition of the resolution, the complaint would be dismissed unless MTA engaged in "fully informed, good faith negotiations . . . as contemplated by the Resolution." The trial court directed the parties to select a mediator to oversee the further negotiations, during which MTA would be allowed to continue using the property.

Between February 2007 and approximately July 2008, MTA and APMI engaged in further negotiations for mutually agreeable parking under the direction of the mediator, retired Court of Appeal Justice John Zebrowski. MTA and APMI discussed several options, including the joint development of a parking structure on the property, which was fenced and paved but had no structures on it.

On August 7, 2008, the mediator issued a report stating that MTA had failed to negotiate in good faith by insisting that the parking structure must include at least 100

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[8] The record is undisputed that MTA ordered its staff to cease negotiating a joint project in January 2006.

ground-floor bus parking spaces, when the property would only accommodate a structure with 87 or 88 bus parking spaces on the ground floor.[9]

On August 25, 2008, MTA filed a supplemental brief that requested rulings on several unresolved issues, including its claim of statutory waiver against APMI. MTA cited a recent appellate opinion, *Mesdaq*, *supra*, 154 Cal.App.4th 1111 (filed on Aug. 31, 2007), which held that the mortgage lender's withdrawal of the deposit of probable compensation to satisfy the owner's indebtedness had resulted in the owner's waiver of all claims and defenses under section 1255.260 except a claim for greater compensation. MTA argued that APMI, whose lenders also had used the withdrawn funds to pay APMI's loans, similarly had waived all claims and defenses except a claim for greater compensation.

On August 26, 2008, the trial court refused to rule on the issue of statutory waiver after striking MTA's supplemental brief as unauthorized. It indicated that it would enter a final order dismissing the complaint and restoring the property to APMI in light of the mediator's finding that MTA had failed to negotiate in good faith. In response to MTA's inquiry whether the order would also require APMI to return the funds withdrawn from the deposit of probable compensation, the trial court stated that MTA would have to pursue other remedies in order to recover the deposit.

On September 5, 2008, MTA filed an ex parte application that again requested a ruling on its statutory waiver claim against APMI under section 1255.260 and *Mesdaq*.

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9 The report stated that "[t]he LACMTA staff can fairly be described as taking the position that if at least 100 buses could not be parked on the ground floor, then the idea of providing for employee parking for adjacent businesses must be totally abandoned." "[T]he staff never explained why parking for not less than 100 buses on this site was absolutely necessary, . . . the staff never . . . attempted to weigh the importance of the Board's concern for employee parking versus a 'shortfall' of twelve or thirteen bus parking spaces, and . . . the staff flatly refused an invitation to study the proposed plans to determine whether it actually is legally and physically possible to fit 100 buses on the ground floor with parking above."

The trial court again declined to rule, stating that the issue was not properly before the court.

On September 5, 2008, the trial court entered the final order of dismissal that is the subject of this appeal. The September 5, 2008 order stated that because of MTA's failure to negotiate for mutually agreeable parking, the July 12, 2006 order of conditional dismissal would be deemed an order of permanent dismissal. The September 5 order required MTA to relinquish the property to APMI within 90 days, but did not require the return of the deposit.

MTA filed motions for new trial, to set aside the final order of dismissal, and to obtain rulings on its claims of statutory waiver as to APMI and lack of standing as to American Apparel. On November 4, 2008, the trial court denied MTA's motions. As to the statutory waiver claim, the trial court distinguished *Mesdaq* and found that APMI's receipt of the deposited funds did not result in a waiver under section 1255.260 because, unlike the owner in *Mesdaq*, APMI did not consent to the lenders' withdrawals. The trial court did not elaborate on the basis for American Apparel's standing.

On November 25, 2008, MTA timely appealed from the September 5, 2008 order of dismissal and subsequent orders.[10] At some point during this period, APMI filed a

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10 In its opening brief, MTA describes the September 5 order as "unprecedented" because it "not only let the owner keep its property, it inexplicably authorized the owner also to keep the $6.1 million Metro had deposited with the court clerk when Metro took prejudgment possession of the property. Although the owner's lenders, with the owner's knowledge and assistance, had long ago withdrawn the money and applied the funds to pay off the owner's mortgages on the property, the trial court held that the property owner was entitled [to] 'have its cake and eat it too' by retaining the property and by keeping millions in taxpayer dollars used to make that property debt-free. Moreover, the order divests Metro of property it has been actively using for nearly four years to provide essential bus services to the taxpayers of Los Angeles County, and on which Metro had made substantial improvements."

bankruptcy petition and was succeeded in this litigation by Alameda Produce Market, LLC., which filed the sole respondent's brief on appeal.[11]

DISCUSSION

MTA contends that neither defendant was entitled to challenge the taking of the property in light of (1) APMI's statutory waiver under section 1255.260 and (2) American Apparel's lack of an enforceable interest in the property; and that contrary to the trial court's ruling, (3) the resolution of necessity did not require the negotiation of mutually agreeable parking, and thus the resolution was not invalidated by the failure to negotiate. Alternatively, MTA contends that even if it does not prevail on the first three issues, (4) it was entitled to a conditional dismissal in order to correct any defects in the resolution of necessity, or (5) its surrender of the property should have been made contingent on the repayment of the deposit. Because we agree with the first two contentions, we need not reach the remaining issues.

I. Statutory Waiver

MTA contends, as it did below, that the lenders' withdrawal of the deposited funds to satisfy APMI's loan obligations resulted in a statutory waiver under section 1255.260 of APMI's claims and defenses other than a claim for greater compensation. We agree.

Section 1255.260 provides: "If any portion of the money deposited pursuant to this chapter is withdrawn, the receipt of any such money shall constitute a waiver by operation of law of all claims and defenses in favor of the persons receiving such payment except a claim for greater compensation."

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[11] The bankruptcy court entered an order lifting the automatic stay as to this litigation on August 28, 2009. (*In re Meruelo Maddux Properties, Inc.* (Bankr. C.D. Cal., No. 1:09-bk-13356-KT).)

A. The Mesdaq Decision

In *Mesdaq, supra*, 154 Cal.App.4th 1111, the appellate court considered whether the lender's partial withdrawal of the deposit of probable compensation to satisfy the property owner's loan obligation was sufficient to trigger a statutory waiver of the owner's claims and defenses under section 1255.260. The appellate court found that there was a statutory waiver. It concluded that the owner, having received the benefit of the withdrawn funds through the repayment of his loan obligation, had received the funds within the meaning of section 1255.260, resulting in a waiver of all claims and defenses except a claim for greater compensation.

MTA argues that this case is similar to *Mesdaq* because APMI also received the benefit of the withdrawn funds through the repayment of its loan obligations. MTA contends that the trial court erroneously distinguished *Mesdaq* by reading into the statute a requirement that the owner must explicitly consent to the lender's withdrawal of the deposit in order to effect a waiver.

In *Mesdaq*, the lender had stipulated with Mesdaq, the owner of the subject property who was objecting to the taking, that its share of any recovery in the action would come from the final compensation award. (154 Cal.App.4th at p. 1138.) When Mesdaq fell behind in his loan payments, however, the lender applied to withdraw a portion of the deposit of probable compensation in order to satisfy Mesdaq's loan obligations. Mesdaq informed the trial court that although the lender was prohibited by their stipulation from withdrawing the deposit of probable compensation, he did not oppose the partial withdrawal in order to pay the balance due on his mortgage. (*Id.* at pp. 1138-1139.) Accordingly, the trial court authorized the lender's partial withdrawal, which was applied toward Mesdaq's mortgage. When Mesdaq subsequently appealed from the judgment to challenge the taking of the property, the appellate court dismissed his appeal on the ground that, as a result of the lender's partial withdrawal of the deposit to satisfy Mesdaq's loan obligation, he had received a portion of the deposit and had statutorily waived the right to object to the taking: "We need not reach these contentions because, by statute, Mesdaq has waived his appellate right to challenge the taking of his

property by consenting to the withdrawal of the Agency's deposit of 'probable compensation' by his lender, First National Bank, to pay off Mesdaq's mortgage." (*Mesdaq, supra,* 154 Cal.App.4th at p. 1118.)

In concluding that a waiver under section 1255.260 may extend from the lender who made the withdrawal to the property owner who received the funds, the appellate court stated: "Construing the statute, it is beyond dispute that a 'portion' of the Agency's deposit for Mesdaq's property was 'withdrawn,' and thus any further challenge to the taking of the property is precluded as to 'the persons receiving such payment.' (§ 1255.260.) Recognizing this, Mesdaq argues only that since FNB [First National Bank] (i.e., not Mesdaq) actually received the deposit, any statutory waiver 'runs only to FNB.' We disagree. [¶] We do not believe there is any legal distinction under section 1255.260 between FNB and Mesdaq with respect to the withdrawal of funds in this case. The money withdrawn was used to satisfy *Mesdaq's indebtedness* to FNB, resulting in a direct increase in the value of Mesdaq's ownership interest in the condemned property, and relieving him of his mortgage obligations and accrual of interest on those obligations. Such a transaction easily constitutes Mesdaq's 'receipt of' the money withdrawn from the deposit. (§ 1255.260.)" (*Mesdaq, supra,* 154 Cal.App.4th at p. 1140.)

In support of this conclusion, the appellate court noted that Mesdaq had consented to the lender's withdrawal notwithstanding the stipulation that prohibited the withdrawal: "Further, the payment of Mesdaq's indebtedness with the deposit funds was accomplished with Mesdaq's explicit consent. Mesdaq noted in his pleadings with the court that FNB did not have the legal authority to withdraw the Agency's deposit, but nonetheless informed the court that he (the rightful owner of the deposit) did not object to FNB's withdrawal of the funds for the purpose of satisfying *Mesdaq's* loan obligation. (See § 1255.230, subd. (d) [specifically authorizing parties to object to withdrawal requests].) Accordingly, the trial court, emphasizing Mesdaq's lack of objection, authorized FNB's withdrawal. (See § 1255.220 [requiring court to permit withdrawal if applicant is 'entitled to receive' funds from deposit].) We see no distinction between this scenario—where Mesdaq consented to the withdrawal of the deposit by his bank to pay

off his loan on the property—and a scenario where Mesdaq himself withdrew the deposit and forwarded it to FNB for that purpose. In both situations, Mesdaq has received the funds from the Agency's deposit, and section 1255.260 consequently mandates a waiver of any future objections to the taking." (*Mesdaq*, *supra*, 154 Cal.App.4th at p. 1140.) However, the court noted, "We express no opinion on the question of whether Mesdaq would have waived his right to challenge the taking on appeal if the trial court had permitted FNB to withdraw the deposit over Mesdaq's objection." (*Id.* at p. 1140, fn. 20.)

The court concluded: "In light of the statutory waiver, Mesdaq has waived 'all claims and defenses' with respect to the eminent domain action 'except a claim for greater compensation.' (§ 1255.260.) As it is undisputed that a challenge to an agency's right to take property is not 'a claim for greater compensation,' it necessarily follows that Mesdaq has waived the claims raised in his appeal. (*Ibid.; Mt. San Jacinto* [*Community College Dist. v. Superior Court* (2007)] 40 Cal.4th [648,] 665; *Clayton* [*v. Superior Court* (1998)] 67 Cal.App.4th [28,] 33.)" (*Mesdaq*, *supra*, 154 Cal.App.4th at p. 1140.)

B. Analysis

As previously mentioned, the trial court distinguished *Mesdaq* on the ground that APMI, unlike the property owner in *Mesdaq*, did not explicitly consent to the lenders' withdrawal of the deposited funds. In support of this distinction, APMI argues that MTA's reliance on *Mesdaq* is misplaced because "*Mesdaq* presented a unique fact situation in which the lender entered into a stipulation with the owner, Mesdaq, effectively limiting its right to condemnation proceeds (i.e., payment to the lender could be made only at the conclusion of the case, 'out of the proceeds of the compensation award')."

APMI also contends that because it purposely left over $2 million of the deposit untouched in order to preserve its objections to the taking of the property, the lenders' partial withdrawals of the deposited funds could not have resulted in a waiver of APMI's

claims and defenses under section 1255.260. APMI argues that because its acceptance of benefits was involuntary, there was no statutory waiver. We are not persuaded.

The record does not support APMI's assertion that its acceptance of benefits was involuntary. On the contrary, the evidence was undisputed that APMI had notice of the lenders' applications for withdrawal and that APMI did not object. Moreover, the evidence indicates that in authorizing the lenders' withdrawals, the trial court relied on the lenders' representations, which APMI does not deny, that APMI did not object to the withdrawals. We therefore conclude that under the circumstances, the evidence was sufficient, as a matter of law, to establish that APMI's acceptance of benefits was voluntary.

APMI urges that because *Mesdaq* radically changed the law, its reasoning should not be applied to this case. There is no reason, however, to believe that *Mesdaq* changed the law. *Mesdaq* applied an existing statute to facts that may not have been addressed in earlier published cases, but it did not change the law.

Finally, APMI contends that the notice of the right to object to the applications for withdrawal was deficient. Allegedly, the notice was insufficient because it did not warn that the failure to object to the withdrawal would result in a waiver of the right to object to the taking of the property. However, APMI provides no legal authority to support its assertion that the notice was deficient. As MTA points out, the notice was sent under section 1255.230, subdivision (c), which states that the "notice shall advise such parties that their failure to object will result in waiver of any rights against the plaintiff to the extent of the amount withdrawn." We conclude the notice complied with the statute, and APMI has not shown that anything more was required.

In summary, we conclude there is no valid basis for distinguishing this case from *Mesdaq*. We hold that, as in *Mesdaq*, the lenders' withdrawal and use of the deposited funds to pay APMI's loans was indistinguishable from APMI's receipt of the funds, and therefore resulted in a waiver of APMI's claims and defenses other than a claim for greater compensation.

II. Standing

MTA contends that because the evidence at trial showed that American Apparel had no legal or equitable interest in the property, it is not a proper defendant in this action. (Citing §§ 1250.350 [only a defendant may object to the agency's right to take the subject property]; 1250.230 [a defendant is a person who claims a legal or equitable interest in the property]; § 1235.125 [an interest in property includes any right, title, or estate in property].) We agree.

The evidence at trial showed that American Apparel had occasionally used the property for overflow employee parking, but that it did not have a lease to the property. American Apparel's Dov Charney testified that its employees had parked "illegally" on the property by "trespassing on the property."

APMI contends that because American Apparel was served as a defendant in this action, American Apparel has a right to object to the taking and, therefore, has standing to be heard in this litigation. We disagree with APMI's conclusion. Even though American Apparel was served as a defendant in this case, the evidence at trial showed that it is not a proper defendant because it has no enforceable interest in the property. At best, the evidence supported a finding that American Apparel had a license to use the property for overflow employee parking. A license to use property, however, is not enforceable against third persons (*Qualls v. Lake Berryessa Enterprises, Inc.* (1999) 76 Cal.App.4th 1277, 1285), does not create an interest in property (*Eastman v. Piper* (1924) 68 Cal.App. 554, 560), and does not create a compensable interest in eminent domain proceedings (*Hubbard v. Brown* (1990) 50 Cal.3d 189, 196). We therefore conclude that, based on the evidence produced at trial, American Apparel is not a proper defendant in this action.

III. Conclusion

In light of our determination that neither defendant is entitled to object to the taking of the property, the order of dismissal must be reversed in its entirety. MTA is entitled to remain in possession of the property; APMI's successor, Alameda Produce

Market, LLC, may pursue a claim for greater compensation if it wishes to do so; and American Apparel is to be dismissed for lack of standing.

DISPOSITION

The order of dismissal is reversed. The matter is remanded for further proceedings consistent with the views set forth in this opinion. MTA is awarded its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

SUZUKAWA, J.

We concur:

WILLHITE, Acting P.J.

MANELLA, J.