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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

HIDDEN GLEN PARTNERS, LLC, et al.,

Petitioners,

v.

THE SUPERIOR COURT OF NAPA
COUNTY,

Respondent;

CITY OF NAPA,

Real Party in Interest.

A135029

(Napa County
Super. Ct. No. 2655542)

INTRODUCTION

This action arises out of a dispute between petitioners Hidden Glen Partners, LLC and Hidden Glen Homeowner's Association (collectively Hidden Glen) and real party in interest City of Napa (Napa) regarding Napa's failure to construct an irrigated turf field or public park on the former Hidden Glen Landfill site. Hidden Glen filed an action against Napa for, inter alia, breach of contract, specific performance and declaratory relief. The superior court granted summary adjudication of those three causes of action in favor of Napa, and Hidden Glen petitions for a writ of mandate to compel the court to vacate its order. We conclude the trial court erred in granting summary adjudication and grant the petition.

PROCEDURAL AND FACTUAL BACKGROUND

The genesis of this case was a settlement agreement in an earlier proceeding in federal court. In May, 2001, a settlement agreement was executed regarding the closure of the Hidden Glen Landfill in Napa. In exchange for dismissal of the lawsuit filed against Napa and others¹, Napa agreed to “assume responsibility for the closure of the Landfill, pursuant to the Closure Plan,^[2] . . . *and* post-closure monitoring as set forth in the Closure Plan, *and* any further investigation, remediation, removal, cleanup, containment, response action, restoration work, maintenance or monitoring of the Landfill beyond that set forth in the Closure Plan pertaining to the Hazardous Materials located on, under or emanating onto or from the Landfill Property . . . (collectively referred to as ‘Remedial Work’) as required by any regulatory agency or court.” (Italics added.)

Section 2.0 of the Closure Plan, entitled “Executive Summary” provides: “The existing vegetation atop the landfill will be removed, the landfill surface will be graded to achieve a minimum 3% slope, and a 3-foot thick, six-layer cap will be placed over the landfill. In ascending order from the landfill surface the cap will be composed of a 0.1-foot geonet composite layer for passive methane gas venting; a 1.0-foot foundation layer; a 0.1-foot low-hydraulic conductivity layer (Claymax®); a 0.1-foot geonet composite water drainage layer; a 1.5-foot soil cover layer; and a 0.5-foot topsoil layer. *The cap will be covered with a playing field turf which will be irrigated.* A 20-foot buffer will be maintained around the perimeter of the landfill. *The landfill area will be maintained as a dedicated open space within the residential development for recreational use.* No housing structures or roads will be constructed over the cap.” (Italics added.)

¹ The other defendants, Napa Garbage Service, Inc., the County of Napa, William A. Bacigalupi and the Estate of William J. Bacigalupi had a separate agreement among themselves regarding allocation of responsibility and payment for the landfill closure pursuant to the settlement agreement.

² Napa, William Bacigalupi and Napa Garbage Service, Inc. retained McLaren/Hart, Inc. to prepare a closure plan. The April 6, 2000, Closure Plan “was prepared in accordance with McLaren/Hart’s revised proposal dated February 10, 2000.”

Section 5.0 of the Closure Plan provides: “This section presents a general description of the site closure activities and proposed final cover components for the Hidden Glen Landfill. . . . [¶] Following is a brief summary of the design and closure activities that will be performed in construction of the final cover (i.e., landfill cap). A schematic of the cap design is presented as Figure 4.” Figure 4 indicates the uppermost layer of the landfill cap is “Turf.”

Section 5.3.7 of the Closure Plan states: “[t]he preliminary estimated cost for completing the cap installation as described is \$400,000 to \$450,000, plus or minus 15%. The preliminary estimated cost for installing irrigation and the turf field is \$50,000 to \$70,000, plus or minus 15%. This price assumes water and power are available nearby for the irrigation system.”

Section 6.1, entitled “Cover Assessment,” provides, in part: “After the cap is completed and the turf planted, several survey markers . . . will be installed across the turf surface.”

Section 7.0, the “Summary,” states: “In-place capping of the former burn dump is recommended as the best closure solution for the site. Using the top of the cap as open space, with a maintained lawn or turf, is viewed as a workable solution for facilitating development of the overall 14-acre site into single family housing while protecting against environmental impacts. The open space will be located within the housing development and will convert the abandoned former burn dump into a recreational lawn area to be enjoyed by the community.”

The settlement agreement also provided: “[I]n the event Defendants fail to obtain all necessary written government approvals of satisfactory completion of the Closure Plan within eight (8) months from the date of execution by the parties of this Agreement . . . then Plaintiffs and defendant City of Napa agree to enter into a ‘Subdivision Improvement Agreement’ (‘SIA’) in the form of Exhibit G hereto, and provided further that such SIA shall not under any circumstances diminish Plaintiff’s existing rights under the Vesting Tentative Map (‘VTM’) nor add obligations thereto, and said SIA shall

extend, from the date thereof for a period of not less than 2 years to perform the developer's obligations thereunder."

In January 2002, GeoTrans, Inc., the engineering firm hired to perform the landfill closure, prepared a "Landfill Cap Construction Documentation Report," (Closure Report) as required by the Closure Plan. The Closure Report indicated there were certain "deviations" from the Closure Plan, including the use of "[a]n interim hydro-seed mixture . . . applied to the landfill surface . . . to provide a vegetative cover. . . . GeoTrans understands the City of Napa will install an irrigated turf field in conjunction with residential development when the necessary power and irrigation water are available."

In February 2002, Hidden Glen acquired all rights and title to the Hidden Glen Subdivision from the Tuthill Family Partnership, one of the plaintiffs in the underlying action in federal court. Later that year, in September, Hidden Glen and Napa executed the SIA contemplated in the Settlement Agreement.

Hidden Glen agreed, in connection with negotiations with Napa, to revise certain parts of the SIA, to change the schedule and deadline for installation of the "irrigated playing field turf." Jeff Moore, a co-owner and member of Hidden Glen Partners, LLC, declared "[c]ommencing in or about January 2002, and continuing for the next several years until in or about March 2009, the City repeatedly assured [Hidden Glen], both orally and in writing, that the City would complete the installation of the irrigated turf playing field and construction of the park, while at the same time requesting that [Hidden Glen] not sue the City and that the City could have additional time to install the turf field and build the park as it had promised. In good faith and reasonable reliance on the City's repeated representations and assurances, [Hidden Glen] did not file suit against the City."

The SIA executed by Hidden Glen and Napa provides in part: "all properties, public right-of-ways, easements, and other interests to be dedicated to the City [of Napa] shall be, before acceptance thereof by the City, free and clear of all liens and encumbrances . . . and free of any and all material defects and conditions creating a hazard to public health or public safety ('Dedication Condition'); provided, however, notwithstanding the foregoing Dedication Condition, nothing thereby shall modify, alter,

or amend the Settlement Agreement and/or City's obligations, as specified therein, *including City's obligation to accept the 'Land Fill Property' in the condition called for in the Closure Plan . . . and as a public park.*" (Italics added.) Section 40 added: "Special Provisions: Pursuant to the Settlement Agreement, Developer acknowledges and agrees to grant to the City the title deed for the parcel known as Parcel A on the Final Map prepared by Michael W. Brooks and Associates, Inc. entitled 'Final Map of Hidden Glen Subdivision' consisting of 4 sheets *for the purposes of a future public park. Developer acknowledges and agrees to provide a water service connection and a 30 AMP electrical connection to Parcel A for the aforementioned reference[d] public park, at the Developer's expense, as shown on the Improvement Plans.*" (Italics added.)

Napa admits Hidden Glen "completed the construction of the irrigation water and power connections to the park site by the latter part of 2005." Thereafter, Hidden Glen contacted Napa employees regarding when the park would be installed. In a June 7, 2007, letter to Hidden Glen Partners, Larry Mazzuca, Director of Community Resources Development for the City of Napa, stated: "I would like to clarify some of the points of our agreement regarding park site development [¶] . . . You have my assurances that park design and construction has the highest priority and will be completed by the end of the year."

In October 2007, Napa contracted with a landscape architect to design a plan for Hidden Glen Park. The cost for the design and construction of the park was estimated to be \$225,000. The Napa Parks and Recreation Advisory Commission Agenda Summary Report of April 16, 2008 states: "Development of this site as a City Park is required as part of the original settlement agreement of closing this former landfill site." The Napa City Council approved the park plan, with some minor modifications, on May 20, 2008.

On March 5, 2009, Jeff Moore of Hidden Glen sent an e-mail to Jeff Frietas, the real estate manager of the City of Napa, stating: "'we need to insure the Park is installed this Spring.'" In response, Frietas indicated "'the park is not going to get built in the spring without the driveway issue being resolved first because the City will have no

practical access to the park site in that the current legal access is too steep for the City to get the necessary equipment to the site.’ ”

Hidden Glen filed the operative second amended complaint in May 2010, alleging causes of action, inter alia, for breach of contract, specific performance, and declaratory relief. The complaint sought compensatory and liquidated damages, as well as “an order to the City to specifically perform its duties under the 2001 Settlement Agreement and the SIA, particularly to install an irrigated playing field turf and complete construction of a public park.”

Napa filed a motion for summary adjudication, taking the position it had no contractual obligation to install irrigated turf or a public park, but instead was only obligated to achieve “closure of the Landfill Property in accordance with the applicable regulatory requirements.” Since Napa achieved regulatory sign-off and closure, it maintains it fulfilled all obligations under the Settlement Agreement pertaining to closure in accordance with the Closure Plan. Napa also contends even if there was a contractual obligation to install irrigated turf or a park, Hidden Glen had waived any rights in that regard, and its complaint was time-barred.

The court granted the motion as to the first three causes of action for breach of contract, specific performance, and declaratory relief, and the fifth cause of action pertaining to design review standards and guidelines, and denied it as to fourth cause of action—not at issue in this writ proceeding—for declaratory relief regarding the driveway agreement. Hidden Glen filed a motion for reconsideration regarding the first three causes of action. The court instead granted reconsideration of the matter sua sponte. The parties submitted additional briefing and evidence. The court affirmed its prior order, stating “the documents are not reasonably susceptible to the interpretation urged by [Hidden Glen]; they unambiguously impose none of the alleged obligations on the City.” The court also overruled “[t]he evidentiary objections.”

Hidden Glen filed a petition for writ of mandate on April 3, 2012. This court issued an order directing issuance of an alternative writ of mandate commanding the superior court to set aside its order filed March 14, 2002, granting Napa’s motion for

summary adjudication of the first, second and third causes of action in Hidden Glen Partners. In the event the court did not comply, we ordered Napa, as real party in interest, to file a written return to the alternative writ. Napa filed a petition for rehearing, which we denied.

Napa, via letter brief, sought to have the superior court amend its order “to address the Court of Appeal’s misunderstanding” and to find certain extrinsic evidence inadmissible, rather than vacating its summary adjudication order. Hidden Glen sought an order setting aside the March 14, 2012, order and denying the motion for summary adjudication. Following a hearing, the superior court issued an order indicating “it will not comply with the alternative writ and therefore leaves intact its March 14, 2012 order.”

DISCUSSION

Standard of Review

On review of an order summarily adjudicating issues, we review the record de novo to determine whether the prevailing party has conclusively negated necessary elements of the plaintiff’s case or demonstrated that under no hypothesis is there a material issue of fact that requires the process of trial. (*Wolf v. Superior Court* (2004) 114 Cal.App.4th 1343, 1350 (*Wolf*)). “Because the trial court’s determination is one of law based upon the moving papers, the reviewing court must make its own determination and, in doing so, must strictly construe the papers of the moving party and liberally construe those of the opponent. [Citation.] We do so mindful that “[s]ummary judgment is a drastic measure which should be used with caution so that it does not become a substitute for trial.” ’ [Citation.]” (*WYDA Associates v. Merner* (1996) 42 Cal.App.4th 1702, 1709-1710.)

“The purpose of summary judgment is not to resolve issues of fact, but rather to determine whether there are issues of fact that must be resolved through a trial. [Citations.] The function of the trial court is solely to determine whether such issues of material fact exist and not to decide the merits of the issues themselves. [Citation.] [¶] The determination of the trial court in ruling on a motion for summary judgment is one of law based upon the papers submitted. [Citation.] Upon review, we apply the

same standard applicable in the trial court, i.e., we independently review the record to determine whether there are triable issues of material fact. [Citation.] In so doing, we view the parties' evidentiary submissions in the light most favorable to the appellant as the losing party." (*EHP Glendale, LLC v. County of Los Angeles* (2011) 193 Cal.App.4th 262, 270-271, italics omitted.)³

The Order Granting Summary Adjudication

In its order reaffirming its previous grant of summary adjudication, the trial court indicated it "ha[d] reviewed all of the evidence presented by both sides concerning the Park Dispute, including the Settlement Agreement, the Closure Plan, and the SIA, and again conclude[d] that there is no evidence imposing an obligation on the City to build a park or to install an irrigated playing field." The order specifically noted the following language in the Closure Plan: "The cap will be covered with a playing field turf which will be irrigated," but concluded that, because this language is in the "Executive Summary" section, it "is, obviously, a summary of the specific terms in the Plan." The court then stated: "A reading of the actual Closure Plan, covering pages 25-31 of the Plan document, reveals the specifics of the Plan, and leaves no doubt that the irrigated playing field turf referred to in the Executive Summary is not a requirement for closure, but rather an anticipated future outcome." The court also ruled: "[R]eading in context the other document excerpts referenced in [Hidden Glen's] papers, it is clear that a park or playing field was, at most, a desired future outcome for the landfill property, but with no obligation imposed" The court further held "to the extent the City has, over the years, indicated its intention to build a park on the subject property, the evidence does not support a finding that it was required to do so. As noted by City, statements by

³ In its return, Napa contends because "contract interpretation is a question of law . . . a trial court's legal determination of the meaning of a contract should be upheld so long as it is reasonable," relying on *Burch v. Premier Homes* (2011) 199 Cal.App.4th 730, 742. *Burch* was an appeal from the denial of a motion to compel arbitration, not a summary judgment. Further, the trial court had resolved an evidentiary conflict in extrinsic evidence regarding the meaning or intent of a modification to the written arbitration agreement. In such circumstances, "any reasonable interpretation of the writing by the trial court will be upheld." (*Ibid.*)

individuals who were not involved in the negotiations and development of the Settlement Agreement and related documents are not relevant to the parties' intentions at the time the agreements were entered into." The court concluded "the documents are not reasonably susceptible to the interpretation urged by [Hidden Glen]; they unambiguously impose none of the alleged obligations on the City." The court's order also overruled "[t]he evidentiary objections."

Contract Interpretation

In order to provide context to our analysis of the contract documents, we briefly summarize the law on contract interpretation. "The fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties." [Citation.] "Such intent is to be inferred, if possible, solely from the written provisions of the contract." [Citation.] "If contractual language is clear and explicit, it governs." [Citation.]" (*State of California v. Continental Ins. Co.* (2012) 55 Cal.4th 186, 195.) "The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other." (Civ. Code, § 1641.) "[W]here there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all." (Code Civ. Proc., § 1858.)

"Where the meaning of the words used in a contract is disputed, the trial court must provisionally receive any proffered extrinsic evidence which is relevant to show whether the contract is reasonably susceptible of a particular meaning. [Citations.] Indeed, it is reversible error for a trial court to refuse to consider such extrinsic evidence on the basis of the trial court's own conclusion that the language of the contract appears to be clear and unambiguous on its face. Even if a contract appears unambiguous on its face, a latent ambiguity may be exposed by extrinsic evidence which reveals more than one possible meaning to which the language of the contract is yet reasonably susceptible." (*Wolf, supra*, 114 Cal.App.4th at pp. 1350-1351.)

The interpretation of a contract thus involves "a two-step process: "First the court provisionally receives (without actually admitting) all credible evidence concerning the parties' intentions to determine 'ambiguity,' i.e., whether the language is 'reasonably

susceptible’ to the interpretation urged by a party. If in light of the extrinsic evidence the court decides the language is ‘reasonably susceptible’ to the interpretation urged, the extrinsic evidence is then admitted to aid in the second step—interpreting the contract. [Citation.]” [Citation.] The trial court’s determination of whether an ambiguity exists is a question of law, subject to independent review on appeal. [Citation.] The trial court’s resolution of an ambiguity is also a question of law if no parol evidence is admitted or if the parol evidence is not in conflict. However, where the parol evidence is in conflict, the trial court’s resolution of that conflict is a question of fact and must be upheld if supported by substantial evidence.’ ” (*Wolf, supra*, 114 Cal.App.4th at p. 1351.)

On summary judgment, however, the trial court does not resolve questions of fact. “ ‘ “When two equally plausible interpretations of the language of a contract may be made . . . parol evidence is admissible to aid in interpreting the agreement, thereby presenting a question of fact which precludes summary judgment if the evidence is contradictory.” [Citation.]’ ” (*Wolf, supra*, 114 Cal.App.4th at p. 1351, fn. omitted.) “[C]onflicting parol evidence on the meaning of an ambiguous term creates a question of fact [citation] that precludes summary judgment.” (*Leep v. American Ship Management, LLC* (2005) 126 Cal.App.4th 1028, 1041.)

The Contract Language

Three documents constitute the agreement between the parties; the Settlement Agreement, the Closure Plan, and the Subdivision Improvement Agreement.⁴ Napa, Napa Garbage Service, Inc., and the Estate of William J. Bacigalupi, defendants in the

⁴ Napa asserts in its return that the Closure Report and Subdivision Improvement Agreement are “extrinsic evidence” and “not part of the Settlement Agreement.” However, “ ‘ “[a] contract may validly include the provisions of a document not physically a part of the basic contract ‘It is, of course, the law that the parties may incorporate by reference into their contract the terms of some other document. [Citations.]’ ” ’ ” (*Wolschlager v. Fidelity Nat. Title Ins. Co.* (2003) 111 Cal.App.4th 784, 790.) (See also Civ. Code, § 1642 [“Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together.”].)

initial case in federal court, retained McLaren/Hart to prepare a closure plan for the landfill. The final Closure Plan, dated April 6, 2000, was “prepared in accordance with McLaren/Hart’s revised proposal dated February 10, 2000.”

The following year, in May 2001, the parties to the federal action executed a settlement agreement. The federal plaintiffs, including the predecessors in interest to Hidden Glen, agreed to dismiss the lawsuit with prejudice. The defendants, including Napa, agreed to “promptly and diligently undertake and shall assume responsibility for the closure of the Landfill, *pursuant to the Closure Plan*, approved for implementation by the Integrated Waste Management Board, the Regional Water Quality Control Board, San Francisco Region and the County of Napa, and attached hereto as Exhibit A, *and* post-closure monitoring *as set forth in the Closure Plan*, and any further investigation, remediation, removal, cleanup, containment, response action, restoration work, maintenance or monitoring of the Landfill beyond that set forth in the Closure Plan pertaining to the Hazardous Materials located on, under or emanating from the Landfill Property as defined in [section] 2.2.3 (collectively referred to as ‘Remedial Work’) as required by any regulatory agency or court.” (Italics added.) The plaintiffs also agreed to “convey to the City of Napa their entire right and interest in the portion of the property on which the Landfill existed and over which the engineered cap has been installed pursuant to the Closure Plan, and the buffer area depicted in the Closure Plan, together with reasonable and necessary ingress, egress and street access to the Landfill Property”

The Closure Plan specifies “The cap will be covered with a playing field turf which will be irrigated. . . . The landfill area will be maintained as a dedicated open space within the residential development for recreational use.” The Closure Plan references the turf playing field/lawn area in at least seven more places. It specifically provides the uppermost layer of the landfill cap is “*Turf*,” estimates the cost of installing irrigation and *the turf field* as “\$50,000 to \$70,000, plus or minus 15 %,” and further provides “After the cap is completed and *the turf planted*, several survey markers . . . will be installed across the *turf surface*.” In Section 5.3.1, entitled “Surface Water

Percolation,” the Closure Plan indicates “settlement of the landfill . . . will be minimized by incorporating the following approaches in the cap system design: [¶] . . .

[¶] Restricting post-closure land use to recreational as a *turf play area*.” Finally, the Closure Plan provides “In-place capping of the former burn dump is recommended as the best closure solution for the site. Using the top of the cap as open space, *with a maintained lawn or turf*, is viewed as a workable solution for facilitating development of the overall 14-acres site into single family housing while protecting against environmental impacts. The open space will be located within the housing development and will convert the abandoned former burn dump into a *recreational lawn area* to be enjoyed by the community.”

The Settlement Agreement provided for payment of stipulated damages to the plaintiffs of \$1000 per day until completion via a performance bond obtained by the defendants should the “Remedial Work” not be finished within “eight months from the date of execution by all parties to this Agreement.” The Settlement Agreement also provided “in the event Defendants fail to obtain all necessary written government approvals of satisfactory completion of the Closure Plan within eight (8) months from the date of execution by the parties of this Agreement, . . . then Plaintiffs and defendant City of Napa agree to enter into a ‘Subdivision Improvement Agreement’” It further provided that “such SIA shall not under any circumstances diminish Plaintiff’s existing rights under the Vesting Tentative Map (‘VTM’) nor add obligations thereto, and said SIA shall extend, from the date thereof for a period of not less than 2 years to perform the developer’s obligations thereunder.”

The SIA reiterates Napa’s obligations under the Settlement Agreement, providing “nothing thereby shall modify, alter, or amend the Settlement Agreement and/or City’s obligations, as specified therein, *including City’s obligation to accept the ‘Land Fill Property’ in the condition called for in the Closure Plan . . . and as a public park.*” (Italics added.) It also contained “Special Provisions: Pursuant to the Settlement Agreement, Developer acknowledges and agrees to grant to the City the title deed for the parcel known as Parcel A on the Final Map prepared by Michael W. Brooks and

Associates, Inc. entitled ‘Final Map of Hidden Glen Subdivision’ consisting of 4 sheets for the purposes of a future public park. *Developer acknowledges and agrees to provide a water service connection and a 30 AMP electrical connection to Parcel A for the aforementioned reference[d] public park*, at the Developer’s expense, as shown on the Improvement Plans.” (Italics added.)

Despite the foregoing language in the three agreement documents, Napa claims the Settlement Agreement did not contain a “ ‘solemn promise’ by the City that it would obtain closure of the landfill in the precise manner called out in the Closure Plan.” Instead, Napa asserts that under Section 2.2.4.3 of the Settlement Agreement, it had the “*sole discretion* to negotiate the precise terms of closure, so long as it ultimately obtained regulatory sign off.” Napa thus claims any language in the Closure Plan “requiring” it to build a park with irrigated turf is “directly at odds with Section 2.2.4.3” of the Settlement Agreement.⁵

Section 2.2.4.3 of the Settlement Agreement provides: “Defendants shall have the sole right to negotiate and/or contest, on behalf of themselves and/or any of the Owner/Lender Entities, any Remedial Work obligations *imposed by a government agency*, provided that upon notice of the Remedial Work obligations, Defendants shall have timely acknowledged in writing either (a) their obligations to perform the such Remedial Work, or (b) their acceptance of the obligation to negotiate and contest such Remedial Work obligations pursuant to this [section] 2.2.4.3 under a reservations of right as to their Remedial Work obligations, which reservation shall state in good faith all reasons to the extent known that justify the reservation. Any such negotiations or defense known against a Remedial Work obligation shall not be a breach of this Agreement provided that Defendant’s negotiations or defense are in good faith and not unreasonable.” (Italics added.)

⁵ We note this is not the ground upon which the trial court granted summary adjudication. In its reconsideration ruling, the trial court concluded the language of the Closure Plan, itself, did not create an obligation to install an irrigated turf field, but “at most” indicated that a park or playing field was “a desired future outcome.”

As we have set forth, “Remedial Work” is defined in section 2.2.1 of the Settlement Agreement as including three components: (1) “the closure of the Landfill, *pursuant to the Closure Plan*, approved for implementation by the Integrated Waste Management Board, the Regional Water Quality Control Board, San Francisco Region and the County of Napa, and attached hereto to Exhibit A, *and* [(2)] post-closure monitoring *as set forth in the Closure Plan*, and [(3)] any further investigation, remediation, removal, cleanup, containment, response action, restoration work, maintenance or monitoring of the Landfill *beyond that set forth in the Closure Plan* pertaining to the Hazardous Materials located on, under or emanating onto or from the Landfill Property as defined in [section] 2.2.3 (collectively referred to as ‘Remedial Work’) *as required by any regulatory agency or court.*” (Italics added.) Thus, the Settlement Agreement contemplated, as specified in the third component, that further Remedial Work, “*beyond that set forth in the Closure Plan*” might be “required by any regulatory agency or court.” Section 2.2.3 of the Settlement Agreement, for example, expressly distinguished between “Remedial Work specified under the Closure Plan” and “any additional Remedial Work necessary to obtain site closure.”

We agree with Napa that “Remedial Work” is inclusively defined in Section 2.2.1 as embracing all three components of the described work. We part company with Napa, however, in its interpretation of Section 2.2.4.3. The discretion given to Napa by that section pertains to “any Remedial Work obligations *imposed by a government agency*”—or, in other words, to the third component of Remedial Work (i.e., “any further investigation, remediation, removal, cleanup, containment, response action, restoration work, maintenance or monitoring of the Landfill beyond that set forth in the Closure Plan pertaining to the Hazardous Materials located on, under or emanating from the Landfill Property as defined in [section] 2.2.3 . . . *as required by any regulatory agency or court*”). Section 2.2.4.3 also references the “notice” that will be given to Napa of any such Remedial Work obligations and requires Napa, to timely and in writing, do one of two things, either (a) acknowledge its obligation to do the work, or (b) negotiate and contest the obligation under a reservation of rights that spells out its good faith

justifications for the reservation. Again, these procedural provisions plainly pertain to any additional Remedial Work obligations of which Napa did not already have notice and had to decide how to address. Napa, of course, had notice of the remedial Work obligations set forth in the Closure Plan. Nor did it ever timely and in writing contest the obligation to install a turf field under a reservation of rights setting forth good faith justifications for its reservation.

Napa's proposed construction of Section 2.2.4.3—that “the Settlement Agreement gave the city sole discretion to negotiate the precise terms of closure, so long as it ultimately obtained regulatory sign off”—is not only inconsistent with the import of its language, but it would render the entirety of the Settlement Agreement and its incorporation of the Closure Plan of little value, since Napa could unilaterally contest all its “Remedial Work” obligations. Effectively, Napa claims Section 2.2.4.3 gave it the right to negotiate away or change every obligation set forth in the Settlement Agreement and Closure Plan. Given the multitude of specific references in the Settlement Agreement to the obligations set forth in the Closure Plan, that is not a reasonable construction of that section. In sum, Section 2.2.4.3., does not pertain to Napa's obligations set forth in the Closure Plan and Settlement Agreement, but rather pertains to any additional Remedial Work “beyond that set forth in the Closure Plan” necessary to obtain closure.

Napa alternatively contends the language in the Settlement Agreement and Closure Plan regarding an irrigated turf field/park “simply describes one proposed option for obtaining closure.” At oral argument, Napa's counsel maintained the Settlement Agreement did not require the Closure Plan to be “precisely followed.” As we have noted, the trial court also construed the Closure Plan in that way, holding the irrigated playing field turf was “not a requirement for closure, but rather an anticipated future outcome . . . [or] a desired future outcome.”

Napa misconstrues language in the Closure Plan referencing the “proposal” for closure as not requiring the landfill closure to be accomplished according to the Closure Plan. At the time the Closure Plan was prepared at the request of the federal court

defendants, including Napa, in April 6, 2000, there was no Settlement Agreement. The Closure Plan at that time *was* a proposal, following an earlier February 10, 2000 closure proposal. A year later, however, when the Closure Plan was incorporated into the Settlement Agreement, the parties unequivocally agreed Napa would “assume responsibility for the closure of the Landfill, *pursuant to the Closure Plan.*” (Italics added.) Thus, under the Settlement Agreement, the Closure Plan ceased being a mere proposal and became a controlling document.

The trial court found it significant that the provision of the Closure Plan providing “*The cap will be covered with a playing field turf which will be irrigated,*” was in the “Executive Summary.” (Italics added.) It concluded this language “is, obviously, a summary of the specific terms in the Plan,” and that “[a] reading of the actual Closure Plan, covering pages 25-31 of the Plan document, reveals the specifics of the Plan, and leaves no doubt that the irrigated playing field turf referred to in the Executive Summary is not a requirement for closure, but rather an anticipated future outcome.”

To begin with, the Settlement Agreement required Napa to close the landfill pursuant to the Closure Plan. It did not specify that only particular portions of the Closure Plan were operative, and the Civil Code requires “The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other.” (Civ. Code, § 1641.) Further, while entitled “Executive Summary,” that portion of the Closure Plan actually specified in great detail the closure requirements, while the portions of the Closure Plan referred to by the trial court as the “actual Closure Plan, covering pages 25-31 of the Plan document” use vaguer and more equivocal language. Page 25 of the Closure Plan begins: “This section presents a *general description* of the site closure activities. . . .” (Italics added.) The second section on page 25 states: “Following is a *brief summary* of the design and closure activities,” which includes “The vegetative layer will be composed of off-site soils capable of supporting turf vegetation with irrigation.” (Italics added.) While this section states only that the soils of the vegetative layer be “capable of supporting turf vegetation,” it is not inconsistent with the sentence in the Executive Summary.

On the record before the superior court, “the language of the entirety of the agreements” (see Civ. Code, § 1641) is reasonably susceptible to Hidden Glen’s interpretation. Where, as here, “ ‘ “two . . . interpretations of the language of a contract may be made . . . parol evidence is admissible to aid in interpreting the agreement, thereby presenting a question of fact which precludes summary judgment” [Citation.]’ ” (Wolf, supra, 114 Cal.App.4th at p. 1351, fn. omitted.)

Extrinsic Evidence

“The rule is well-settled that in construing the terms of a contract the construction given it by the acts and conduct of the parties with knowledge of its terms, and before any controversy has arisen as to its meaning, is admissible on the issue of the parties’ intent. [Citation.] . . . [T]his rule is not limited to the joint conduct of the parties in the course of performance of the contract. As stated in Corbin on Contracts, ‘The practical interpretation of the contract by one party, evidenced by his words or acts, can be used against him on behalf of the other party, even though that other party had no knowledge of those words or acts when they occurred and did not concur in them. In the litigation that has ensued, one who is maintaining the same interpretation that is evidenced by the other party’s earlier words, and acts, can introduce them to support his contention.’ [Citations.] We emphasize the conduct of one party to the contract is by no means conclusive evidence as to the meaning of the contract. It is relevant, however, to show the contract is reasonably susceptible to the meaning evidenced by that party’s conduct.” (Southern Cal. Edison Co. v. Superior Court (1995) 37 Cal.App.4th 839, 851, italics omitted.) “[I]n interpreting a contract, courts may properly consider the acts and conduct of the parties following the contract’s execution. [Citations.] As Witkin explains, ‘[t]he conduct of the parties may be, in effect, a practical construction thereof, for they are probably least likely to be mistaken as to the intent.’ (1 Witkin, Summary of Cal. Law (10th ed. 2005) Contracts, § 749, p. 838.)” (Jones v. P.S. Development Co., Inc. (2008) 166 Cal.App.4th 707, 720, italics omitted, overruled on another ground in Reid v. Google, Inc. (2010) 50 Cal.4th 512, 532, fn. 7.)

Not only does the language of the agreement support Hidden Glen’s interpretation, but the conduct and writings of Hidden Glen and Napa from 2002 through at least 2009 further demonstrate the agreement is reasonably susceptible to Hidden Glen’s interpretation. Thus, parol evidence of the parties’ intent was admissible.

“ ‘[Q]uestions of “intent” and “purpose” are ordinarily questions of fact’ [citation].” (*Byrne v. Laura* (1997) 52 Cal.App.4th 1054, 1066, citing *Redke v. Silvertrust* (1971) 6 Cal.3d 94, 103.) “ ‘When the meaning of the language of a contract is uncertain or doubtful and parol evidence is introduced in aid of its interpretation, *the question of its meaning is one of fact* [Citations.]’ ” (*Walsh v. Walsh* (1941) 18 Cal.2d 439, 444.) If the extrinsic “evidence was in conflict *or at least susceptible of conflicting inferences*, the question of the meaning of the contract was one of fact.” (*Almaden-Santa Clara Vineyards v. Paul* (1966) 239 Cal.App.2d 860, 868, italics added.) “[T]he court shall consider . . . all inferences reasonably deducible from the evidence, except summary judgment may not be granted by the court based on inferences reasonably deducible from the evidence, if contradicted by other inferences or evidence, which raise a triable issue as to any material fact.” (Code Civ. Proc., § 437c, subd. (c).)

The extrinsic evidence before the court is susceptible of conflicting inferences, raising an issue of material fact regarding the parties’ intent. Hidden Glen contends Napa is obligated to install a turf field, Napa maintains it intends, but is not required, to do so. Both inferences—obligation versus plan—can reasonably be deduced from the extrinsic evidence.⁶

The trial court improperly resolved that factual issue of the parties’ intent and purpose, holding “reading in context the other document excerpts referenced in [Hidden

⁶ While Napa maintains “most of [the extrinsic] evidence is either inadmissible or irrelevant,” it forfeited this contention as to much of the extrinsic evidence because it objected in the trial court only to portions of the declarations and exhibits thereto of attorneys David Trotter and Richard T. Bowles. (Code Civ. Proc., § 437c.) Moreover, even if certain extrinsic evidence was not admissible, reasonable inferences drawn from the extrinsic evidence to which Napa does not object supports Hidden Glen’s construction.

Glen's] papers, it is clear that a park or playing field was, at most, a desired future outcome for the landfill property, but with no obligation imposed" In resolving that issue, the court necessarily made a factual determination regarding the parties' intent. "Where, as here, the agreement is reasonably susceptible of different interpretations, summary adjudication is an inappropriate means of resolving the ambiguity." (*Byrne v. Laura, supra*, 52 Cal.App.4th at p. 1066)

Viewing the parties' evidentiary submissions in the light most favorable to Hidden Glen, as we must, we conclude the reasonable inferences demonstrate there is an issue of material fact regarding the parties' intent which cannot be resolved by summary adjudication.

Statute of Limitations, Estoppel and Waiver

Though not addressed by the trial court, Napa maintains the summary adjudication of the first three causes of action must be upheld because, as a matter of law, those causes of action were barred by the statute of limitations. Hidden Glen pleaded estoppel in its operative complaint, and the trial court, in overruling Napa's demurrer to that complaint, found it "adequately allege[d] facts to support a theory of estoppel."

" 'An estoppel may arise although there was no designed fraud on the part of the person sought to be estopped. [Citation.] To create an equitable estoppel, "it is enough if the party has been induced to refrain from using such means or taking such action as lay in his power, by which he might have retrieved his position and saved himself from loss." . . . " . . . Where the delay in commencing action is induced by the conduct of the defendant it cannot be availed of by him as a defense." ' ' " (*Vu v. Prudential Property & Casualty Ins. Co.* (2001) 26 Cal.4th 1142, 1152-1153, italics omitted.) "[W]hether . . . reliance was reasonable depends on a myriad of factual questions." (*Id.* at p. 1153.) Thus, summary adjudication would not have been properly granted on this basis.

Napa also urges we must affirm the grant of summary adjudication because, as a matter of law, Hidden Glen waived any right to require Napa to construct an irrigated turf field or park by conveying the landfill property to Napa even though the irrigated turf had not been installed, "clearly establish[ing] that [Hidden Glen] had no intention of

enforcing what they now assert is a right to require the City to construct a public park. . . .” Rather than waiving that right, a reasonable inference can be drawn from the SIA that Hidden Glen only agreed to install water and electrical connections on the landfill site so that Napa would construct the irrigated turf/park. And, the record reflects ongoing communications between Napa and Hidden Glen in which Hidden Glen urged resolution of various problems, including the conflicts regarding the driveway agreement, which Napa claimed prevented it from beginning construction of the park.⁷ These communications, at the least, indicate a triable issue regarding Napa’s claims of waiver.

DISPOSITION

Let a peremptory writ of mandate issue directing the trial court to vacate its order granting Napa’s motion for summary adjudication of the first, second and third causes of action for breach of contract, specific performance and declaratory relief and to enter a new and different order denying that motion. Petitioners are entitled to costs in this proceeding.

Banke, J.

We concur:

Marchiano, P. J.

Dondero, J.

⁷ Indeed, issues regarding the park appear to be interrelated with the issues regarding the driveway agreement, providing another reason for the breach of contract claims regarding the park to be tried with the driveway agreement claims.