

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

FRESNO COUNTY FIRE PROTECTION
DISTRICT,

Plaintiff and Appellant,

v.

CITY OF FRESNO,

Defendant and Respondent.

F065573

(Super. Ct. No. 10CECG03056)

OPINION

APPEAL from a judgment of the Superior Court of Fresno County. M. Bruce Smith, Judge.

Law Offices of William D. Ross, William D. Ross and Kypros G. Hostetter for Plaintiff and Appellant.

Francine M. Kanne, Interim City Attorney, David P. Hale, Chief Assistant City Attorney, Shannon L. Chaffin, Deputy City Attorney; Meyers, Nave, Riback, Silver & Wilson, Amrit S. Kulkarni, Claudia Gorham, Peter S. Hayes; Aleshire & Wynder and Stephen R. Onstot for Defendant and Respondent.

-ooOoo-

In 2003, when the City of Fresno (the City) was seeking to annex certain parcels of land served by the Fresno County Fire Protection District (the District), the two public entities entered into an agreement entitled “TRANSITION AGREEMENT ... REGARDING TRANSFER OF CERTAIN GENERAL AD VALOREM REAL PROPERTY TAX REVENUE GENERATED BY ANNEXATIONS” (the agreement). The agreement provided that, for a specified period of time after each annexation, the City would pay the District a portion of the ad valorem tax revenues generated from the annexed territory based on a formula in the agreement. After the City annexed a number of parcels and made payments to the District pursuant to the agreement, a dispute arose between the parties over how to calculate the amount that the City was required to pay. In particular, the parties disagreed about the date to be used for measuring base year revenue under the agreement.¹ The City had applied the date articulated in the contractual provision defining the term “base year revenue,” but the District believed a later date should be used, which would result in increased sums due the District.

The District filed a complaint alleging breach of contract and related causes of action, claiming it had been underpaid. The City then moved for judgment on the pleadings on the ground that under the unequivocal terms of the agreement, the City’s interpretation was correct as a matter of law—thus, the District failed to state a cause of action. The trial court agreed with the City’s position, granted the motion for judgment on the pleadings without leave to amend, and entered judgment in favor of the City. The District now appeals, contending the trial court erred in construing the agreement because, allegedly, the interpretation adopted by the trial court conflicted with existing statutory law and failed to consider other contractual provisions. We conclude that the

¹ As will be seen, base year revenue was the essential starting point in computing the amount owed by the City under the agreement. Specifically, the City was required to pay the District a percentage of base year revenue concerning each annexation.

trial court correctly construed the agreement. Since the District failed to state a cause of action and no basis for possible amendment is apparent, we affirm the judgment.

FACTS AND PROCEDURAL HISTORY

The Agreement

The City and the District entered into the subject agreement on November 20, 2003. The recitals to the agreement outlined the parties' basic reasons for entering it, including the following: the District was the primary provider of fire protection services within its territorial boundaries and it received ad valorem tax revenue from real property therein; the City was seeking to annex certain territory that would be detached from the District; and, upon completion of said annexation and detachment, the District would be relieved of being the primary provider of fire protection services to the territory involved. The recitals further stated: "(5) Without affecting CITY's obligation to assume the primary provider obligation for detached territory as of the effective date of any such detachment, CITY and DISTRICT wish to provide longer transition periods and more gradual phase-outs of DISTRICT's receipt of revenue from detached territories after the effective date of such detachment for the purpose of mitigating the economic effects of such detachments on DISTRICT's ability to provide fire protection service in the remainder of its jurisdiction, for the mutual benefit of CITY and DISTRICT[; and] [¶] (6) The parties intend by this Agreement that after CITY begins receiving property tax revenues from territory detached from DISTRICT and annexed to CITY, CITY shall, at the times and over the periods described below, transfer to DISTRICT the Base Year property tax revenues described below. CITY shall retain all other tax revenues from the detached/transferred territory."²

² The above stated purposes of the agreement set forth in the recitals were intended by the parties to be part of the agreement, since the first substantive provision of the agreement states that the recitals are "true and correct and are part of this Agreement," and "constitute the fundamental reasons for and basic tenets of this Agreement."

In the substantive part of the agreement following the recitals, section 2 contains the operative definitions for certain terms used in the agreement. Section 2.1 begins with an interpretive framework for the definitions: “Unless the particular provision or context otherwise requires, the definitions contained in this section (construed against the background of California laws as of the date of this Agreement regarding annexations ... and real property taxation ...) shall govern the construction, meaning, interpretation and application of such words in this Agreement, taking into account the fundamental reasons and basic tenets for same.” We highlight here several of the key definitions of special terms used in the agreement. Section 2.3 defines “‘Taxable value’” as “the value of real property ... within an annexation determined in accordance with law as shown by the equalized property tax roll of the Fresno County Assessor for the applicable determination date.” Section 2.7 specifies that “‘Approval’ means the date LAFCO [(Local Agency Formation Commission)] adopts its ‘Resolution Making Determinations’ leading to an annexation.” Sections 2.8 and 2.9 provide, respectively, that the “‘Tax lien date’” is “the annual March 1 date utilized to fix the annual equalized tax roll for the succeeding fiscal year,” and the “‘Fiscal year’” is “the July 1 [to] June 30 fiscal year utilized for property tax purposes.” Section 2.10 defines the “‘Initial determination date’ for an annexation” as “the tax lien date for the fiscal year in which LAFCO gives approval leading to that particular annexation. (For example, March 1, 2002 would be the ‘initial determination date’ for any annexation which receives LAFCO approval between July 1, 2002 through June 30, 2003.)”

Using the above definitions, section 2.12 of the agreement articulates the crucial definition of what constitutes “‘*Base Year Revenue*,’” which term (and the method of its computation) is the focal point of the parties’ dispute herein. (Italics added.) Section 2.12 provides, in part, as follows: “‘Base Year Revenue’ for an annexation means the amount derived by adding together the general purpose *ad valorem* equivalent real property tax rates for DISTRICT’s ‘parent zone’ and ‘Service Zones’ 10, 2 and 5 for

the tax rate area(s) in such annexation for the fiscal year of LAFCO's approval and then multiplying the combined rate(s) so derived times the taxable value of the tax rate area(s) of such annexation as of the initial determination date for such annexation." Section 2.12 further states: "'Base Year Revenue' does not include any revenue from any annexation which is derived from any subsequent increase in equivalent real property tax rates no matter how or when such increase(s) is/are authorized. 'Base Year Revenue' also does not include any revenue derived from increases in taxable value resulting from sales or improvement of real property occurring within an annexation after the initial determination date." Finally, section 2.12 allows a subsequent adjustment to base year revenue on July 1 "of each relevant year," but only to the extent there has been a reduction in taxable value "which results in CITY receiving less than 100 percent of the applicable 'Base Year Revenue' for such annexation"

Next, section 3 of the agreement specifies the City's payment obligations to the District under the heading "Revenue Transfers From CITY to DISTRICT." Sections 3.1 and 3.3 note that the payment obligations would become due within 60 days after the end of the fiscal year during which the City, rather than the District, began to receive ad valorem tax revenue from an annexation covered by the agreement. As to the amount due, section 3.4 provides that "[c]ommencing with the effective date³ of detachment of each annexation," the City must pay to District a percentage of the "'Base Year Revenue'" for the particular annexation:

"Commencing with the effective date of the detachment of each annexation, CITY shall be obligated to transfer to DISTRICT *the following percentages of 'Base Year Revenue' for that annexation*

³ The "'Effective date'" is defined in section 2.5 of the agreement as "the date detachment of an annexation from DISTRICT becomes effective under Government Code Section 57202." The parties hereto essentially agree that the effective date of detachment is ordinarily the date the certificate of completion is recorded. (See Gov. Code, § 57202, subd. (c).)

“(a) For Annexations Which are Determined as of the Initial Determination Date to be NOT Substantially Developed: [¶] Ninety (90%) percent for ten (10) years....”

“(b) For Annexations Which are Determined as of the Initial Determination Date to be Substantially Developed: [¶] 100% for the first year, 80% for the next year, 60% for the next year, 40% for the next year, 20% for the next year, and 0% thereafter” (Italics added.)

Also, section 3.4 allows for reductions in the amount payable by the City, stating that “such transfer obligation of CITY shall be reduced by the amount of any ad valorem real property tax revenue attributable to such annexation on and after its effective date which has been received by DISTRICT as a taxing agency.”

Section 3.2 provides that within 45 days after the date of completion of an annexation, the City shall provide certain information in writing to the District, including (a) the effective date of detachment, (b) the fiscal year of LAFCO’s approval of the annexation, (c) the annexation’s status as “not substantially developed” or “substantially developed,” (d) the initial “Base Year Revenue’ for such annexation,” and (e) the basis for the amount of any reduction against the City’s payment obligation as provided in section 3.4.

In regard to the primary responsibility to perform fire protection services in the annexed territory, section 4.3 of the agreement confirms that “[n]otwithstanding the revenue transfers from CITY to DISTRICT as herein described for each annexation covered by this Agreement, CITY will become the primary provider of fire protection services on and after the effective date of detachment of such territory from DISTRICT.”

As consideration for the agreement, the District makes certain assurances to the City in section 5 of the agreement. Section 5.1 states: “DISTRICT recognizes that the revenue transferred to it by this Agreement could otherwise have been appropriated by CITY to meet demands for fire services. In light thereof, DISTRICT agrees to use such revenues in an effort to maintain levels of DISTRICT service in areas adjacent to CITY

(which will also be available to CITY under mutual aid or other agreements) that are at least equal to or better than the levels of service provided by DISTRICT in those areas immediately adjacent to CITY as of the date of this Agreement.” Finally, section 5.2 provides that the District “covenants” that it will not oppose annexations to the City covered by the agreement.

The District’s Complaint

The District’s operative pleading at the time of the motion for judgment on the pleadings was its first amended complaint, filed February 3, 2011 (the complaint). In the complaint, the District acknowledged that the City was required to pay to the District “Transition Fees” (the complaint’s terminology for the payments due under the agreement) in amounts that were “based on percentages of ‘Base Year Revenue,’ which the City must determine using the formula in Agreement Section 2.12” However, the District further alleged that in interpreting and applying the provisions of the agreement relating to the computation of base year revenue, applicable laws had to be construed as part of the agreement. Allegedly, when such laws were read into the agreement, the conclusion that followed was that “the Parties cannot determine the Base Year revenue for each Annexation until *after* each Annexation is recorded and the County Surveyor and County Recorder move the local government boundaries, consistent with Sections 57202 and 57204” of the Government Code. Accordingly, “[b]ecause the terms of the Agreement must be interpreted and applied consistent with the [Government Code provisions] and Taxation Code, ... the City must pay Transition Fees for the Annexations based on the full amount of Base Year Revenue for the applicable Recording Date for each of the Annexations.” The agreement was allegedly breached because “the City has incorrectly applied the valuation date to determine Base Year Revenue for the calculation of the Transition Fees as an earlier date, the date LAFCO approved each of the Disputed Annexations (the ‘Approval Date’), rather than the applicable Recording Date for each of the Disputed Annexations.” The complaint alleged that base year revenue should have

included “Williamson Act Dropouts⁴ and Supplemental Assessments, made before the applicable Recording Date”

The complaint included causes of action for breach of contract, breach of implied covenant of good faith and fair dealing, account stated, open account, and declaratory relief. Each cause of action was premised upon the same essential allegations regarding how the agreement should be interpreted and the alleged breach of the agreement by the City. That is, the gravamen of each cause of action was that base year revenue had to be measured as of the date an annexation was recorded, not the earlier initial determination date used by the City. In its prayer for relief, the District claimed that it was damaged in the sum of \$1,298,199.62.

The City’s Motion for Judgment on the Pleadings

On August 30, 2011, the City filed its motion for judgment on the pleadings. The motion was made on the ground that, under the unambiguous terms of the agreement, the City’s interpretation of the agreement was correct and the District failed to state a cause of action. A hearing was held on the motion on September 29, 2011. Afterwards, the trial court issued its order granting the motion for judgment on the pleadings without leave to amend. In its order, the trial court explained as follows:

“[The District’s] interpretation flies in the face of the express terms of the agreement. Specifically, section 2.12 of the agreement states that the ‘initial determination date’ shall be the relevant date for calculating fees,

⁴ Under the Williamson Act (Gov. Code, § 51200 et seq.), real property under a Williamson Act contract (e.g., restricting the property to agricultural use for at least 10 years) is given favorable tax treatment. (See *County of Marin v. Assessment Appeals Bd.* (1976) 64 Cal.App.3d 319, 328.) If a party gives notice of nonrenewal of a Williamson Act contract, the property will be reassessed. (See Rev. & Tax. Code, §§ 423.3, 426.) Once a Williamson Act contract and its concomitant land-use restrictions have ended for a particular parcel of real property, taxes will “return to the level of taxes on comparable nonrestricted property.” (*County of Humboldt v. McKee* (2008) 165 Cal.App.4th 1476, 1496-1497.) In the present appeal, the District refers to such Williamson Act cancellations as “Williamson Act Dropouts.”

not the ‘date of recording’ or the ‘effective date’ of the annexation.... Also, section 2.12 specifically states that the ‘Base Year Revenue’ shall not include any increases in equivalent real property tax rates no matter when or how such increases are authorized, and it shall not include any revenue derived from increases in taxable value resulting from sales or improvements of real property occurring within an annexation after the initial determination date.... The District’s interpretation would allow the District to increase the Base Year Revenue in a manner that is inconsistent with this language.”

Judgment was entered on July 12, 2012. The District timely filed its notice of appeal.

DISCUSSION

I. Standard of Review

A motion for judgment on the pleadings may be granted if the complaint fails to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 438, subd. (c)(1)(B)(ii).) Since a motion for judgment on the pleadings performs the same function as a general demurrer (*Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999), we review a trial court’s order granting a motion for judgment on the pleadings as we would an order sustaining a general demurrer (*County of Orange v. Association of Orange County Deputy Sheriffs* (2011) 192 Cal.App.4th 21, 32). “‘A motion for judgment on the pleadings, like a general demurrer, tests the allegations of the complaint or cross-complaint, supplemented by any matter of which the trial court takes judicial notice, to determine whether plaintiff or cross-complainant has stated a cause of action. [Citation.] Because the trial court’s determination is made as a matter of law, we review the ruling de novo, assuming the truth of all material facts properly pled.’ [Citation.]” (*Angelucci v. Century Supper Club* (2007) 41 Cal.4th 160, 166.)

In deciding whether the complaint stated a cause of action, “[t]he reviewing court gives the complaint a reasonable interpretation, and treats the [motion] as admitting all material facts properly pleaded. [Citations.] The court does not, however, assume the truth of contentions, deductions or conclusions of law. [Citation.]” (*Aubry v. Tri-City*

Hospital Dist. (1992) 2 Cal.4th 962, 966-967.) If the allegations in the complaint conflict with attached exhibits, we rely on and accept as true the contents and legal effect of the exhibits. (*SC Manufactured Homes, Inc. v. Liebert* (2008) 162 Cal.App.4th 68, 83; *Barnett v. Fireman's Fund Ins. Co.* (2001) 90 Cal.App.4th 500, 505.) However, "if the exhibits are ambiguous and can be construed in the manner suggested by plaintiff, then we must accept the construction offered by plaintiff." (*SC Manufactured Homes, Inc. v. Liebert, supra*, at p. 83.) "'So long as the pleading does not place a clearly erroneous construction upon the provisions of the contract, in passing upon the sufficiency of the complaint, we must accept as correct plaintiff's allegations as to the meaning of the agreement.' [Citation.]" (*Aragon-Haas v. Family Security Ins. Services, Inc.* (1991) 231 Cal.App.3d 232, 239.) In deciding whether a cause of action for breach of contract exists, the interpretation alleged in the complaint must be one to which the contract is reasonably susceptible. (*Klein v. Chevron U.S.A., Inc.* (2012) 202 Cal.App.4th 1342, 1384.)

We review de novo the question of whether a cause of action has been stated, without regard for the trial court's reasons for granting the motion. (*County of Orange v. Association of Orange County Deputy Sheriffs, supra*, 192 Cal.App.4th at p. 32.) Where leave to amend was denied, we decide whether there is a reasonable possibility that the defect can be cured by amendment: "[I]f it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

II. The Trial Court Correctly Construed the Agreement

"The fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties. [Citation.]" (*Bank of the West v. Superior Court* (1992) 2 Cal.4th 1254, 1264; see also Civ. Code, § 1636 ["A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so

far as the same is ascertainable and lawful.”.) ““We ascertain that intention solely from the written contract, if possible, but also consider the circumstances under which the contract was made and the matter to which it relates.”” (*Starlight Ridge South Homeowners Assn v. Hunter-Bloor* (2009) 177 Cal.App.4th 440, 447; Civ. Code, § 1647.) When the contract is clear and explicit, the parties’ intent is determined solely by reference to the language of the agreement. (*Klein v. Chevron U.S.A., Inc., supra*, 202 Cal.App.4th at p. 1385; Civ. Code, §§ 1638 [“The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.”], 1639 [“When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible”].) “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.)

A. Formula For Calculating “Base Year Revenue” Was Clear and Explicit

Following the above rules governing construction of contracts, we agree with the trial court’s interpretation of the agreement. As discussed above, section 2.12 of the agreement defines “base year revenue” as the amount derived by ascertaining the combined tax rate(s) for the tax rate area(s) in an annexation “for the fiscal year of LAFCO’s approval” thereof multiplied by the “taxable value of the tax rate area(s) of such annexation *as of the initial determination date for such annexation.*” (Italics added.) Section 2.12 further provides: “‘Base Year Revenue’ does not include any revenue from any annexation which is derived from any subsequent increase in equivalent real property tax rates no matter how or when such increase(s) is/are authorized. ‘Base Year Revenue’ also does not include any revenue derived from increases in taxable value resulting from sales or improvement of real property occurring within an annexation after the initial determination date.”

The key terms within section 2.12 are likewise clearly defined. The “‘Initial determination date’ for an annexation” is defined in section 2.10 as “the tax lien date for

the fiscal year in which LAFCO gives approval leading to that particular annexation. (For example, March 1, 2002 would be the ‘initial determination date’ for any annexation which receives LAFCO approval between July 1, 2002 through June 30, 2003.)” The “‘Tax lien date’” is defined in section 2.8 as “the annual March 1 date utilized to fix the annual equalized tax roll for the succeeding fiscal year,” and the “‘Fiscal year’” is defined in section 2.9 as “the July 1 [to] June 30 fiscal year utilized for property tax purposes.” “‘Approval’” is defined in section 2.7 as “the date LAFCO adopts its ‘Resolution Making Determinations’ leading to an annexation.” Finally, section 2.3 defines “‘Taxable value’” as “the value of real property ... within an annexation determined in accordance with law as shown by the equalized property tax roll of the Fresno County Assessor for the applicable determination date.”

The above provisions established a very clear and definite formula: the *initial determination date* (defined as the tax lien date for the fiscal year in which LAFCO gave approval leading to that particular annexation) was the relevant date to be used for calculating *base year revenue* for an annexation. On that matter, the parties’ intentions were unambiguously expressed, with the initial determination date being designated in section 2.12 as the temporal reference point for the purpose of calculating base year revenue. Consistent with that formula and confirming that the parties meant what they said therein, section 2.12 goes on to explicitly add that base year revenue does not include any amounts attributable to subsequent increases in tax rates or property values after the initial determination date. As the trial court accurately held, the District’s proposed interpretation of the agreement (i.e., that the applicable date for calculating base year revenue extends forward in time beyond the initial determination date to the annexation recording date), “flies in the face of the express terms of the agreement” and “would allow the District to increase the Base Year Revenue in a manner that is inconsistent with this language.”

B. Other Provisions of the Agreement Were Not Inconsistent

We have explained that in defining base year revenue, the agreement clearly specified that the amount thereof was to be calculated based on the “initial determination date,” which date was defined in the agreement as “the tax lien date for the fiscal year in which LAFCO gives approval leading to that particular annexation.” The District argues this interpretation is internally inconsistent with what is expressed elsewhere in the agreement.

Before we consider such arguments, we believe it is helpful for the sake of providing a broader context and viewing the agreement as a whole to observe that in addition to the initial determination date, *other* important dates are also referenced in the agreement.⁵ For example, there are dates and/or events specified in the agreement that trigger the timing of the City’s payment obligation. Section 3.4 provides that “[c]ommencing with the *effective date* of detachment of each annexation, CITY shall be obligated to transfer to DISTRICT the following percentages of ‘Base Year Revenue’ for that annexation” (Italics added.) (§ 2.5 of the agreement defines “‘Effective date’” as “the date detachment of an annexation from DISTRICT becomes effective under Government Code Section 57202,” which for the annexations involved in this case was apparently the recording date.)⁶ Section 3.3 elaborates that the obligation to make payments to the District commences “with the first fiscal year in which CITY (instead of DISTRICT) receives general purpose ad valorem real property tax revenue from an

⁵ The agreement’s reference to several distinct dates is not surprising, since the subject matter of the agreement entails, to some extent, the interplay of processes occurring over time, such as annexation and taxation.

⁶ Since Government Code section 57202, subdivision (c), refers to the date the certificate of completion is *recorded* (when no other reorganization date is fixed by the commission), the parties agree that the effective date is ordinarily the date of recordation. Because of this statutory provision, the District uses the terms recording date and effective date interchangeably.

annexation” Section 3.1 specifies that the amounts due are “payable by CITY sixty (60) days after the end of the fiscal year during which CITY commenced to receive CITY’s apportionment of general purpose ad valorem real property tax revenue from such annexation.” The point we are briefly making is this: While the provisions in sections 3.1, 3.3 and 3.4 describe the *timing* of the City’s payment obligations to the District (i.e., after the effective date of detachment [the recording date] and revenues have been received by the City from an annexation), they are silent as to the *calculation* of the term “base year revenue” and play no part on that issue. Rather, as already discussed herein, base year revenue is defined elsewhere in the agreement—namely, in section 2.12.

The District argues that, notwithstanding the plain wording of section 2.12, base year revenue was intended by the parties to include revenue derived from increases in tax rates or taxable value *after* the initial determination date. The District contends, for example, that the City must include “Supplemental Assessments and Williamson Act Dropouts” occurring as late as the effective date (the recording date) of each annexation. According to the District, this interpretation of the agreement is supported by the fact that if section 2.12 were given the construction asserted by the City and adopted by the trial court, that section would be incompatible with: (i) the agreement’s general intent and (ii) other provisions of the agreement. We shall consider both of these arguments raised by the District.

1. Section 2.12 Not Inconsistent With General Intent

The District relies on the rule of contract interpretation that “particular clauses of a contract are subordinate to its general intent.” (Civ. Code, § 1650.) The point of the rule is that the “*main purpose of the parties* is to be given effect” (1 Witkin, Summary of Cal. Law (10th ed. 2005) Contracts, § 754, p. 845) over a particular clause that is directly at odds with that main purpose (*Real Estate etc. Co. v. Monterey Co. W.W.* (1929) 96 Cal.App. 269, 275). Accordingly, “[w]ords in a contract which are wholly inconsistent

with its nature, or with the main intention of the parties, are to be rejected” (Civ. Code, § 1653); and “[r]epugnancy in a contract must be reconciled, if possible, by such an interpretation as will give some effect to the repugnant clauses, subordinate to the general intent and purpose of the whole contract” (Civ. Code, § 1652). On the other hand, it is also well-established that where a general provision and a specific provision are in conflict, the specific provision is paramount to the general one. (Code Civ. Proc., § 1859; *Prouty v. Gores Technology Group* (2004) 121 Cal.App.4th 1225, 1235.) As always, we read the contract as a whole and attempt to give effect to every part of the contract, if reasonably practicable. (Civ. Code, § 1641.)

The District’s argument is that section 2.12 cannot be construed to mean what it appears to say, because that would be repugnant to the parties’ general intent. According to the District, the parties’ general intent was to provide an extended transition and phaseout of the District’s receipt of tax revenues, with payments to the District to be based on and include tax revenue increases *after the initial determination date*, including any increased revenue from “Supplemental Assessments and Williamson Act Dropouts” as of the recording date of each annexation. As support for this assertion, the District refers us to the language of recital Nos. 1 and 5 in the agreement. The most glaring problem with the District’s argument is that these recitals say nothing about what date must be used in computing base year revenue or how the total amount due to the District was to be calculated. Those subjects are covered elsewhere, in sections 2.12 and 3.4. It appears to us that the District has misread the relevant provisions by conflating the time period regarding which payment obligations are triggered and the date to be applied in calculating base year revenue. In any event, the purposes that are *actually* expressed in the recitals—that of providing a transitional period in which the District will, after the date of detachment, continue to receive some tax revenues (via the payments from the City) to help mitigate the economic effects of the detachment/annexation and preserve the level of services in the remainder of the District’s territory—are *not* inconsistent with the

provisions of section 2.12 addressing how the amount of base year revenue will be figured.

Additionally, the District argues section 5.1 of the agreement substantiates its argument that the general intent of the agreement is in conflict with the trial court's interpretation of section 2.12. The District is mistaken. Section 5.1 merely addresses the District's covenant to use the tax revenue it would be receiving from the City to maintain service levels in particular areas remaining in the District's jurisdiction. It does not address the calculation of base year revenue or the total amount of the tax revenue payment from the City to the District.

2. *Consistency With Specific Provisions*

The District also contends that the trial court's interpretation of section 2.12 is inconsistent with other specific terms and provisions of the agreement. In particular, the District argues that sections 2.3, 2.11 and 2.13, along with recital No. 4, establish that the agreement entitles the District to payment amounts based on tax revenue increases reflected *after* the initial determination date, such as "Supplemental Assessments and Williamson Act Dropouts," as of the recording date. We disagree.

Section 2.3 merely provides the contractual definition of the term "taxable value." It states that "'Taxable value'" is "the value of real property ... within an annexation determined in accordance with law as shown by the equalized property tax roll of the Fresno County Assessor for the applicable determination date." The last phrase, "applicable determination date," expresses the necessity that taxable value must be ascertained based on, or measured *as of*, a particular determination date. For purposes of calculating base year revenue, section 2.12 clearly supplies the applicable determination date—that is, the "initial determination date." Section 2.12 also precludes any upward adjustment to base year revenue from increases in tax rate or taxable value after the initial determination date. We detect no inconsistency between sections 2.3 and 2.12, and we

conclude that section 2.3 does not support the District's argument that the agreement allows subsequent increases in taxable value to be included in base year revenue.

Likewise, section 2.11 does not support the District's asserted interpretation. Section 2.11 defines the term "'Subsequent determination date(s)'" for an annexation to mean "the succeeding tax lien date(s) after the initial determination date for that particular annexation." The District fails to identify a single provision in the agreement that uses the term "subsequent determination date," much less a provision that uses the term in a manner that would support its interpretation of the agreement or require upward adjustments to base year revenue after the initial determination date. To the contrary, the only mention of subsequent adjustments to base year revenue is set forth in section 2.12, and that only allows the payment amount to be *reduced*, not increased, and "only for any decline in taxable value of the real property" (See also § 3.4 of the agreement [amount due to the District may be further reduced by any tax revenue amounts attributable to the annexation already received by the District as a taxing agency on or after the effective date].)

Next, the District claims that section 2.13 supports its interpretation of the agreement. That section specifically defines what is meant by the lengthy phrase (used only in section 3.4 of the agreement: "[A]ny ad valorem real property tax revenue is attributable to such annexation on and after its effective date which has been received by DISTRICT as a taxing agency." Nothing in that definition lends any support to the District's proffered interpretation of the agreement. The phrase is used in section 3.4 to require a reduction in the City's payment obligation by the amount of taxes received by the District under the circumstances described. Nothing in section 2.13 alters section 2.12's explicit requirement that base year revenue be determined as of the initial determination date and that it shall not include revenues derived from subsequent increases in tax rates or taxable value.

Similarly, recital No. 4 does not support the District's position. Recital No. 4 states: "Under Government Code Section 57202, DISTRICT is immediately relieved of such primary provider obligation for detached territory upon the effective date of any such detachment. Pursuant to Government Code Sections 54902 and 54902.1, DISTRICT may continue as a taxing agency in such territory for an additional period of time, up to eighteen (18) months, depending upon when the Statement of Change is filed with the County Auditor and Assessor, and continue to receive such property tax revenues." We agree with the City's rejoinder that "[t]his ability to continue to collect taxes has no effect on the parties' negotiated Agreement setting the benchmark date for determination of Base Year Revenue to be transferred from City to District after the annexation becomes effective." As discussed, section 3.4 of the agreement provides that if any tax revenues are collected by the District after an annexation becomes effective, it serves only to *reduce* the amount of revenue that the City is required to transfer to the District under the agreement.

III. Applicable Law Does Not Require a Contrary Interpretation

The District argues that its interpretation of the agreement is mandated by applicable law. The agreement itself acknowledges that applicable law is relevant to the interpretation of the terms of the agreement. Section 2.1 of the agreement states that, unless a particular provision or context otherwise requires, the definitions contained in section 2 of the agreement "shall govern the construction, meaning, interpretation and application of such words in this Agreement" Section 2.1 goes on to state that such definitions are to be "construed against the background of California laws as of the date of this Agreement regarding annexations [Government Code Sections 56000, et seq.] and real property taxation [Constitution, Article 13A; Division 1 of the Revenue and Taxation Code relating to 'Property Taxation']" Also, it is a general rule of contract interpretation that "all applicable laws in existence when an agreement is made, which laws the parties are presumed to know and to have had in mind, necessarily enter into the

contract and form a part of it, without any stipulation to that effect, as if they were expressly referred to and incorporated.” (*Alpha Beta Food Markets v. Retail Clerks* (1955) 45 Cal.2d 764, 771.) We interpret a contract so as to make it both reasonable and “lawful,” if that can be done without violating the intention of the parties. (Civ. Code, § 1643; see also Civ. Code, § 1636.)

In a nutshell, the District’s position is that certain statutes applicable to annexation and/or taxation conflict with the trial court’s interpretation of the agreement and require that we interpret the agreement in such a way that base year revenue must be calculated with reference to the recording date. We disagree. As will be seen, none of the statutes cited by the District are in conflict with the clear and explicit terms of the agreement. To put it another way, the statutes identified by the District do not require the parties to define what constitutes base year revenue in any particular way in their agreement; nor do those laws necessitate that a particular date be used for purposes of calculating such amount. The parties were free to negotiate a specific formula for how to measure the amounts payable to the District from tax revenues as to each annexation, and the parties did so in an unambiguous fashion in their agreement. Below, we briefly address the District’s particular arguments as to the alleged effect of certain statutory provisions on the agreement’s interpretation.

The District takes issue with an overly literal reading of the definition of “‘Initial determination date’” in section 2.10. To review, section 2.10 states that the “‘Initial determination date’ for an annexation [is] the tax lien date for the fiscal year in which LAFCO gives approval leading to that particular annexation.” Further, the term “‘Approval’” is defined in section 2.7 of the agreement to mean “the date LAFCO adopts its ‘Resolution Making Determinations’ leading to an annexation.” In challenging the trial court’s construction of these definitional provisions, the District assumes that under applicable law, the approval date for an annexation must be understood as the date when the annexation legally takes effect (i.e., the effective date or recording date), and the

District then reads that assumption back into the agreement's definitions.⁷ In any event, the District contends the recording date must be treated as the proper date for calculating base year revenue because, according to the District, the statutes dictate that result.

The gist of the District's statutory argument apparently runs as follows: Since Government Code provisions relating to annexation/detachment indicate that an annexation and detachment (also known as a reorganization) is effective upon recording (Gov. Code, § 57202, subd. (c); see also Gov. Code, §§ 57200-57204), and since reallocation of property taxes subject to the Revenue and Taxation Code must occur no later than the reorganization recording date (Rev. & Tax. Code, § 99, subd. (b)(9)), the agreement must be interpreted to mean that base year revenue is calculated as of the recording date.

To the extent these statutes generally apply, we find the agreement to be entirely consistent with them. Government Code sections 57200 to 57204 address the formal procedures by which a reorganization (an annexation and detachment) becomes final and effective. Under Government Code section 57202, subdivision (c), if the commission did not fix an effective date of the reorganization, "the effective date ... shall be the date of the recordation" Similarly, Revenue and Taxation Code section 99, subdivision (b)(9), sets forth an outer time limit for reallocation of property taxes where an annexation and detachment has occurred. It states: "No later than the date on which the certificate of completion of the jurisdictional change is recorded with the county recorder, the executive officer shall notify the auditor or auditors of the exchange of property tax revenues and the auditor or auditors shall make the appropriate adjustments as provided in subdivision (a)."

⁷ As pointed out by the City, the argument lacks coherence because the agreement never says the approval date is the date for determining base year revenue.

Nothing in the above provisions would mandate the use of the effective date (recording date) as the date for determining base year revenue in the parties' agreement. Moreover, the agreement fully comports with the laws referred to by the District. Section 2.5 of the agreement defines the "Effective date" as the "date detachment of an annexation from DISTRICT becomes effective under Government Code Section 57202." The agreement further provides in section 3.4 that the City's obligation to make the agreed-upon payments to the District (the transfer of an agreed sum from the tax revenue derived from the annexation) *commences* with the effective date of detachment. That is exactly what the applicable law provides. In other words, the parties understood that the revenue transfers could not take place until the effective date, and they built that into the agreement in the provisions describing the timing of the City's payment obligation. That fact, however, would not tie the parties' hands in negotiating how to ascertain the *amount* of property tax revenues to be exchanged. In summary, the fact that the parties chose to use an earlier date (i.e., the initial determination date) for the computation of base year revenue was simply a matter of contractual freedom and did not conflict with the cited laws.

Lastly, in a final effort to substantiate its line of reasoning, the District points out that section 3.2 requires that the City provide to the District certain information relating to the amount of the payment obligation within 45 days *after* the completion of the annexation. The information had to include (a) the effective date of detachment, (b) the fiscal year of LAFCO's approval of the annexation, (c) the annexation's status as "not substantially developed" or "substantially developed," (d) the initial "Base Year Revenue' for such annexation," and (e) the basis for the amount of any reduction against the City's payment obligation as provided in section 3.4. Section 3.2 also provided a process for resolving any disagreement as to the specific numbers provided by the City. Contrary to the City's argument, nothing in section 3.2 indicates any conflict with the statutory law cited by the District. Moreover, the timing in which the City must furnish

the information has no bearing on how the amounts due are required to be calculated, and nothing in section 3.2 purports to define how base year revenue would be computed under the agreement.

To summarize, we concur with the trial court and the City that the agreement is in conformity with the statutes referred to by the District, and those statutes do not require that we interpret the agreement in the manner suggested by the District.

IV. Conclusion

For the reasons discussed herein, we conclude that the complaint failed to state facts sufficient to state a cause of action because each cause of action was premised upon the same unsupported supposition that the agreement required the City to calculate base year revenue based on supplemental tax roll information as of the recording date for the annexation. As we have explained, the agreement provided a very clear and specific formula for calculating base year revenue, which reflected that base year revenue was to be calculated based on tax roll information as of the initial determination date for each annexation. The District's arguments to the contrary were all based on the same flawed interpretation of the agreement and of misplaced contentions regarding the effect of certain statutory provisions on the interpretation of the agreement. The District has failed to indicate any potential basis for leave to amend and none is apparent. We conclude the trial court properly granted the motion for judgment on the pleadings without leave to amend.⁸

⁸ We deny the District's request that we take judicial notice of LAFCO's "COMMISSION POLICIES, STANDARDS AND PROCEDURES MANUAL," as that document is not of substantial consequence to any issue before us and no exceptional circumstances have been presented to justify judicial notice of materials outside the record. (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, fn. 3.)

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to the City.

Kane, Acting P.J.

WE CONCUR:

Franson, J.

Oakley, J.