Filed 2/28/11 U.S. Telepacific Corp. v. Morrissey CA1/1

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

U.S. TELEPACIFIC CORP., Plaintiff and Appellant, v. ANN C. MORRISSEY, Individually and as Trustee etc., Defendant and Respondent.	A128931 (Alameda County Super. Ct. No. RG08425560)

In conjunction with defendant Ann C. Morrissey's purchase of a commercial building, tenant U.S. Telepacific Corp. executed an estoppel certificate setting forth the rent payments and amortized tenant improvement repayments remaining under the lease. Several years later, plaintiff U.S. Telepacific Corp. (Telepacific) sought to recover tenant improvement overpayments it mistakenly paid to its lessor, Ann C. Morrissey, under the commercial lease. Telepacific appeals a bench trial judgment in Morrissey's favor. Telepacific contends the trial court erred in construing the estoppel certificate in a manner to preclude its recovery of the mistaken overpayment. As discussed below, we conclude the trial court properly construed the certificate. Because Telepacific was bound by the estoppel certificate, we affirm the judgment.

BACKGROUND

On June 1, 2000, Telepacific signed an agreement to lease commercial property—a building located at 6085 Christie Avenue, Emeryville—from owners Lorenzo and Holly

Friar. The lease term was for seven years, or 84 months. The lease commenced either June or July 2000 and, hence, was to terminate in June or July 2007.

Telepacific needed to make certain improvements in order to utilize the building as office space. In May 2001, Telepacific entered into a lease amendment under which the Friars agreed to make a contribution in the sum of $100,000 and to advance an additional, recoupable sum of $300,000 toward the improvements. Telepacific agreed to repay the $300,000 "amortized in the full amount plus interest compounded at the rate of eight percent (8%) per annum over the seventy-two (72) month period commencing with the first day of the month immediately following completion of [the improvement work]." The "seventy-two (72) month period" was evidently a reference to the remaining term of the lease at the time the parties entered into the lease amendment.

About 18 months later, in November 2002, the Friars notified Telepacific they had sold the building to 6085 Christie LLC (the LLC). At that time, a representative of the LLC, Bob Cushman, contacted Erich Everbach, general counsel for Telepacific. Cushman noted the remaining term of the lease was by then less than 72 months—in his view, the reference in the lease amendment to the "seventy-two (72) month period" evidenced an intent to amortize the improvement reimbursement payments over the remaining term of the lease, whatever that period was at the time improvement work was completed. Cushman proposed that Telepacific amortize the monthly improvement reimbursement payments over a period of 43 months. Everbach obtained approval for this repayment schedule from Gene Welsh, Telepacific's CFO, and others. The reimbursement payment, thus amortized, was $8,047.53 per month. Telepacific began making monthly payments in this amount, in addition to its monthly rent payment, in November 2002.

According to Everbach, there was a "consensus" among Telepacific's management that Cushman's proposal was a request from their new landlord "for an amendment of the lease." In effect, they regarded the proposal as a request to amend the language of the lease amendment, as to which Everbach admitted an "ambiguity . . . existed." Perhaps because Cushman linked his interpretation of the lease amendment to a

43-month repayment schedule, it appears Everbach and others at Telepacific assumed there was, at that time, 43 months remaining in the term of the lease. However, as of November 2002, when Telepacific commenced its reimbursement payments, the remaining term of the lease was actually 57 months.

Everbach did not verify that the remaining term of the lease was 43 months. Nor did Telepacific enter into any formal, written amendment to change the lease amendment's ambiguous "seventy-two (72) month" language to provide for either a 43-month repayment schedule or a schedule beginning in November 2002 and ending with the termination of the lease, however many months that might be.

In May 2003, the LLC sold the leased building to the Ann C. Morrissey Revocable Trust, with the lease assignment effective the following month. Before the close of escrow, in February 2003, Harry Altick—Morrissey's real estate agent—asked Telepacific to execute an estoppel certificate.[1] He sent Everbach a draft certificate for review and revision. Everbach forwarded the draft to Welsh and Steve Randall, Telepacific's controller, as well as several others for review, commenting that he had highlighted certain portions of the draft "to show suggested changes and . . . to show areas where we need to confirm the factual basis for the statements." According to Everbach, Telepacific's finance department reviewed the draft and approved its accuracy.

The "Tenant Estoppel," signed by Everbach and Randall on March 17, 2003, provided that the "lease" consisted of the initial lease agreement of May 2000 and the lease amendment of May 2001. It specified the term of the lease as June 1, 2000 to June 1, 2007. Among other recitals, the certificate further provided that Telepacific was paying "minimum monthly rental in installments of $49,233.35," which had been paid

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[1] The lease agreement required Telepacific to execute and deliver to the landlord a written estoppel statement certifying: the lease is unmodified, or if modified, the nature of such modification; the dates to which rent and other charges have been paid in advance, if any; and an acknowledgment that there are not, to Telepacific's knowledge, any uncured defaults on the part of landlord, or a specification of any such defaults if they are claimed. It further provided that "[a]ny such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises."

through February 28, 2003, as well as "[a]n additional $8,048 . . . paid monthly . . . for reimbursements of tenant improvements."

About 17 months later, Randall informed Everbach by e-mail that the reimbursement repayment schedule was "incorrect" in that the reimbursement would be completed after "43 months instead of the 72 months as stated in the lease [amendment]." In order to continue the payments for a 72-month period (which would have extended repayment beyond the remaining term of the seven-year lease), Randall recalculated the amortized amount at $3,707.75, instead of $8,047.53, with the lower payment to begin September 2004 and continue through September 2008. Everbach forwarded Randall's e-mail to Morrissey on August 11, 2004, telling her that Telepacific had, "in error," been paying an "increased amount" for reimbursement, and that it "now intend[ed] to reduce" the amount in order to spread reimbursement payments "over the remainder of the 72 month term." He asked Morrissey to review Randall's calculations and to call himself or Randall if she had "any questions."

According to Everbach, he and Morrissey then had a telephone conversation in which she requested that Telepacific continue making reimbursement payments in the monthly amount it had been paying, even if it meant that reimbursement payments "would end before the end of the lease." Everbach passed her request along and Telepacific "agreed to do that."

Randall had been "instructed" to continue the reimbursement payments in the amount of $8,047.53, and to "cease payment" once the total reimbursement was paid. It appears the reimbursement, beginning with the November 2002 payment, was effectively paid off after the April 2006 payment. Randall, however, left Telepacific in late 2005 or early 2006, before the last payment was due. The Telepacific controller who succeeded Randall discovered, much later, that Telepacific had not discontinued reimbursement payments of $8,047.53 after the forty-third payment, but had continued making these payments until the termination of the lease in July 2007. The controller notified Everbach, who in turn sent Morrissey an e-mail on March 14, 2008, informing her of the overpayment.

In December 2008, Telepacific initiated this action with a complaint for money had and received. It alleged Telepacific had "inadvertently" overpaid reimbursement payments due to Morrissey, and sought recovery of a total overpayment in the amount of $112,665.42.

The trial court conducted a bench trial in March 2010. Everbach testified essentially as summarized above. Morrissey testified that the amounts of monthly income—both for rental and reimbursement—set out in the estoppel certificate executed by Telepacific were "important to [her] decision" to purchase the leased building. In particular, she understood Telepacific's certification, that it was paying "[a]n additional $8,048 . . . paid monthly . . . for reimbursements of tenant improvements" to mean that these monthly payments were to continue throughout the specified term of the lease. Had she known such payments would cease at an earlier time, she would not have purchased the property for $4.1 million.

Morrissey said she received the e-mail sent by Everbach on August 11, 2004, in which Everbach expressed Telepacific's intent to reduce its reimbursement payments and that she was surprised because that had not been her understanding. She did not, however, recall any subsequent telephone conversation with Everbach about this e-mail and did not believe she ever responded to the e-mail. Morrissey said she would have "taken issue" with Telepacific had it reduced its reimbursement payments as indicated in Everbach's e-mail, because to do so was contrary to her understanding. There was, however, no reduction in the payments she received. When she received a regular payment two weeks later, she concluded there was no need to do anything.

On March 25, 2010, the trial court filed its tentative decision. The court noted that the estoppel certificate language—verifying "[a]n additional $8,048 is paid monthly by the tenant for reimbursement of tenant improvements"—specified neither the balance due at that time nor any date before the end of the lease when such payments would end. The court accepted as true Morrissey's testimony that she understood reimbursement payments would be paid through the end of the lease, had relied on this understanding in deciding to purchase the property for the amount that she did, and would have taken issue

with any reduction or early cessation of the payments as contrary to her understanding. The court determined that "the most reasonable inference to be drawn" from the recital was that reimbursement payments in the sum of $8,048 "would continue to the end of the Lease." The court ruled Telepacific was bound by this recital, citing *Plaza Freeway Ltd. Partnership v. First Mountain Bank* (2000) 81 Cal.App.4th 616 (*Plaza Freeway*).) Accordingly, the court rendered judgment in Morrissey's favor.

The trial court entered judgment on April 23, 2010, consistent with its tentative decision. This appeal followed. (See Code Civ. Proc., § 904.1, subd. (a)(1).)

DISCUSSION

A. *Introduction*

Estoppel certificates are a unique feature of commercial real estate transactions and specifically transactions encompassing a leasehold interest. Such a transaction "typically include[s] as a closing condition the delivery of estoppel certificates . . . from tenants[]. The obligation to deliver the estoppel certificates is typically created in [the lease] instruments and then tested when the applicable property is transferred or financed." (Opar, John L., *Estoppel Certificates: Handle With Care* (Sept. 19, 2005) 234 N.Y.L.J 9.)

Estoppel certificates are "critical to landlords because they affect their ability to sell commercial real property and to secure financing. Estoppel certificates inform prospective buyers and lenders of the lessees' understanding of a lease agreement. By providing independent verification of the presence or absence of any side deals, estoppel certificates prevent unwelcome post-transaction surprises that might adversely affect the building's income stream, such as: Has the tenant prepaid any rent? Does the tenant have any known or suspected claims for lease violations? What is the tenant's understanding of provisions in the lease? [H]as the landlord made all the requested improvements?" [Citations.] (*Robert T. Miner, M.D., Inc. v. Tustin Ave. Investors* (2004) 116 Cal.App.4th 264, 273 (*Miner*).)

"The facts recited in a written instrument are conclusively presumed to be true as between the parties thereto, or their successors in interest . . . ." (Evid. Code, § 622.)

This conclusive presumption applies to estoppel certificates. (*Plaza Freeway, supra,* 81 Cal.App.4th at p. 626.) While the presumption is usually applied to contracts, its application to estoppel certificates—treating them as a binding confirmation of a lease agreement—constitutes a "minimal" departure from the contract requirement, but significantly impacts the reliability of commercial real estate transactions, revealing the "present intent and understanding of the parties to a commercial lease agreement." (*Ibid.*) Because an estoppel certificate is designed to bind the signatory to the statements made therein, and estop that party from making a contrary claim later, the Court of Appeal in *Plaza Freeway* deemed it to be "exactly" the type of document to which it was appropriate to apply the conclusive presumption of Evidence Code section 622.[2] (*Plaza Freeway, supra,* 81 Cal.App.4th at p. 626.) Thus, that court held that even when an estoppel certificate contains an *erroneous* recitation of lease terms, the facts contained in the certificate are conclusively presumed to be true under Evidence Code section 622. (*Plaza Freeway, supra,* 81 Cal.App.4th at p. 628.)

The issue here is the effect of the factual statement in Telepacific's estoppel certificate that *"[a]n additional $8,048 is paid monthly by the tenant for reimbursements of tenant improvements*." (Italics added.) The trial court concluded that "the most reasonable inference to be drawn" from this language was that the reimbursement payments "would continue to the end of the Lease," and, as this statement was conclusively binding, it precluded Telepacific's recovery of the reimbursement payments it continued to make after April 2006 through the end of the lease in 2007.

Telepacific challenges this determination.

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[2] The court explained further that, due to almost universal use of estoppel certificates in commercial real estate transactions, and the reliance upon them by buyers and lenders to ascertain the tenant's understanding of the lease agreement, the application of Evidence Code section 622 to estoppel certificates "would promote certainty and reliability in commercial transactions," whereas "[a] contrary conclusion would defeat the purpose" underlying their widespread use. (*Plaza Freeway, supra,* 81 Cal.App.4th at pp. 628−629.)

B. ***Standards of Review***

An estoppel certificate is a written "instrument" within the meaning of Evidence Code section 622, and courts interpreting such instruments have routinely looked to rules governing the construction of contracts. (See, e.g., *Cohen v. Five Brooks Stable* (2008) 159 Cal.App.4th 1476, 1483−1484 [release]; *Zabrucky v. McAdams* (2005) 129 Cal.App.4th 618, 622 [deed].) When, as here, the estoppel certificate verifies that the lease is in full force and effect, the court applies these general rules of construction to the lease and the estoppel certificate together. (See *Miner, supra,*116 Cal.App.4th at p. 271; see also Greenwald et al., Cal. Practice Guide: Real Property Transactions (The Rutter Group 2010) ¶ 7.292.5, p. 7-75.)

The basic goal of contract interpretation is to give effect to the parties' mutual intent at the time of contracting. (Civ. Code, § 1636.) In the case of a written contract, mutual intent is to be determined from the writing alone, if possible. (*Miner, supra,* 116 Cal.App.4th at p. 271; see Civ. Code, § 1639.) A written contract should be read as a whole so as to give effect to every part if reasonably practicable. (Civ. Code, § 1641.) Extrinsic evidence is admissible to interpret the instrument, but not to give it a meaning to which it is not reasonably susceptible. (*Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, 865; see Code Civ. Proc., § 1856, subd. (g).) A contract should be interpreted in a way that is "reasonable and fair," and not so as to "lead to unfair or absurd results." (*California National Bank v. Woodbridge Plaza LLC* (2008) 164 Cal.App.4th 137, 143 (*Woodbridge*).)

"We review a trial court's construction of a lease de novo as long as there was no conflicting extrinsic evidence admitted to assist in determining the meaning of the language. [Citation.] If a lease provision is ambiguous, parol evidence may be admitted as to the parties' intentions if the language is reasonably susceptible to a suggested interpretation. [Citation.] If there is conflicting evidence necessitating a determination of credibility, we use the substantial evidence test. [Citation.]" (*Woodbridge, supra,* 164 Cal.App.4th at p. 142; see also *DVD Copy Control Assn., Inc. v. Kaleidescape, Inc.* (2009) 176 Cal.App.4th 697, 713.)

C. *The Language of the Estoppel Certificate*

Telepacific contends the trial court's interpretation construction of the critical language was contrary to the plain language of the certificate. In its view, the fact that reimbursement payments were "specifically identified" and not "lumped together with the rental payments" indicated an understanding that the reimbursement payments were treated differently than the monthly rent payments. Thus, Telepacific urges it "cannot be inferred" from the language of the certificate that reimbursement payments were to continue to the end of the lease. Rather, the logical inference is that payments would continue only until the agreed reimbursement was paid off.

We do not agree that the language of the estoppel certificate precludes the interpretation given to it by the trial court. As we have noted, the language of the estoppel certificate must be considered together with the lease. (*Miner, supra*, 116 Cal.App.4th at p. 271; see Civ. Code, § 1641.) The lease itself does not refer to reimbursement payments, whereas the lease amendment provided that the reimbursement of $300,000 was to be "amortized in the full amount plus interest compounded at the rate of eight percent (8%) per annum over the seventy-two (72) month period commencing with the first day of the month immediately following completion of [the improvement work]." Telepacific *itself* presented extrinsic evidence as to the meaning of this language in its case-in-chief. Everbach conceded the language was unclear when he testified that Cushman, the representative of the LLC, sought an amendment to the lease amendment in November 2002 in order "to deal with the ambiguity that existed." According to Everbach, Cushman "thought that the intent of the amendment was to amortize the $300,000 over the remaining life of the lease." This interpretation seems reasonable because approximately 72 months remained in the life of the 84-month lease when Telepacific and the Friars entered into the lease amendment in May 2001. The amortized repayment was not to commence until the work was completed—that is, at some point after May 2001 when there would be *less* than 72 months remaining in the life of the lease. Yet, it is more reasonable to infer that the parties intended to have the reimbursement payments completed by the end of the lease, than it is to infer an intent to

make repayments for 72 months even though it would require Telepacific to make some of the repayments after the lease had terminated and it had vacated the leased premises.

More importantly, Telepacific presented extrinsic evidence that it *accepted* Cushman's interpretation, and began to make repayments in accordance with the schedule Cushman had proposed. Thus, it seems clear that Telepacific's intent, when it entered into the lease amendment, was to repay the $300,000 in amortized payments commencing when the tenant improvements were completed and ending with the termination of the lease in June or July 2007. Everbach testified that Cushman, after expressing his interpretation of the intent underlying the lease amendment, additionally "suggested that only 43 months remained in the initial term of the lease," although as we have noted, the remaining life of the lease was closer to 57 months at that time. The fact that Telepacific management accepted this "suggestion" without making any independent verification did not alter its general *intent* to begin repayment in November 2002 and complete repayment over the remaining life of the lease.

The estoppel certificate, executed by Telepacific in March 2003, verified that the remaining life of the lease continued until June 1, 2007. It further assured the prospective buyer, among other things, that the sum of $8,048 was being "paid monthly . . . for reimbursements of tenant improvements" and that these payments were "additional" to the "minimum monthly rental" it was paying. As the trial court noted, this language did not set out the balance due for reimbursement as of March 2003, and it did not specify any date after which reimbursement would be complete and payments would cease. Telepacific had an opportunity to review and revise the estoppel certificate. It could have revised the certificate to state the reimbursement balance unpaid at that time, the date reimbursement payments were to cease, or both. Indeed, had it done so it would no doubt have discovered as early as March 2003 the error it made in November 2002 when it assumed the remaining life of the lease was 43 rather than 57 months. Telepacific did not do this, however, and after reviewing the documents its general counsel and controller signed a certificate verifying only that additional reimbursement payments in the amount of $8,048 were being "paid monthly."

We conclude that the most reasonable interpretation of the estoppel certificate language, when viewed together with the lease amendment and the extrinsic evidence Telepacific presented to explain that amendment, is precisely that given to it by the trial court—that reimbursement was to be "paid monthly" in the amount of $8,048, and that these monthly payments would continue until the end of the lease, which the certificate verified was June 2007.

This interpretation is consistent with Telepacific's intent when it executed the certificate in March 2003. At that time, its intent was evidently the same as it had been when it entered into the lease amendment in May 2001, as shown by the extrinsic evidence presented by Telepacific—that is, to complete reimbursement payments with monthly payments amortized over a period beginning when the improvements were completed and ending with the termination of the lease.

Nor are we persuaded that this interpretation is contrary to the plain language of the estoppel certificate to the extent the certificate specifies reimbursement payments separate from the monthly rent. Again, if the reimbursement payments were to be "paid monthly" under a schedule different from the rental payments, Telepacific could have said so in the certificate. Indeed, Telepacific had a duty to disclose to Morrissey its present intent and understanding of the lease. (*Miner, supra,* 116 Cal.App.4th at p. 273.) Hence, it should have disclosed the unwritten understanding it had reached with Cushman in November 2002. Further, Telepacific's suggestion—that the certificate evidenced an understanding that reimbursement payments were to be treated differently from rent because they were not "lumped together" with the recital concerning rental payments—overlooks Everbach's testimony. He stated that he spoke with Morrissey "off and on for the next three or four years" after her purchase of the building in May 2003, and that "sometime during [this] period" she "began to request more information about the identification of the amounts of rent and [the reimbursement payments]." In other words, she requested that these be "broken out." Morrissey herself testified she was receiving monthly checks "in one lump sum and . . . had asked them what they were allocating to what." In other words, Telepacific's initial payments to Morrissey *did*

"lump together" the reimbursement payment with the rent payment. Telepacific's action in making lump payments until directed otherwise is consistent with its intent in 2001 to complete reimbursement during the remaining term of the lease. It is not consistent with Telepacific's position on appeal, that the only logical interpretation of the estoppel certificate language is that repayments "paid monthly" were to last only until the reimbursement was completed even if that occurred before the end of the lease.

D. ***The Effect of Extrinsic Evidence***

Telepacific claims the extrinsic evidence did not provide any basis for the trial court to construe the estoppel certificate language as it did. Whereas it originally arrived at the monthly sum of $8,048 due to its "mistake in identifying the selected pay-off period," Telepacific and Morrissey's predecessor in interest never intended to "revise the basic purpose" of the reimbursement payments, which was to repay the $300,000 with interest. Telepacific insists Morrissey's understanding—that reimbursement payments were to continue during the full term of the lease—were not derived from any "input" from itself, as there was no evidence Telepacific ever communicated such a statement to Morrissey, her lender, or her agent. It simply was not "privy" to Morrissey's understanding, or that it played an important role in her decision to purchase the leased building. Telepacific also notes that the payments of $8,048 "obviously" did not adhere to the 72-month period referenced in the lease amendment, suggesting that Morrissey was at fault for failing to seek clarification about the repayment schedule. Telepacific urges there was no evidence that she or any of her representatives ever questioned the amount of the recoupable advance and the applicable rate of interest.

As to these points, we note, first, that the intent Telepacific had in May 2001 was not simply to repay the $300,000 with interest, but also to make such repayment—as we have determined from the lease amendment and Telepacific's extrinsic evidence—in monthly, amortized payments beginning when the tenant improvements were completed and ending with the termination of the lease. As for Morrissey's understanding, it is common knowledge that, as buyer, she would, and was entitled to, rely on the "input" Telepacific provided through the estoppel certificate itself, and that she had no duty to

undertake an investigation of facts that would prove it inaccurate. (See *Linden Partners v. Wilshire Linden Associates* (1998) 62 Cal.App.4th 508, 529−530.) As discussed above, the most reasonable interpretation of the certificate was that given to it by Morrissey, that the reimbursement payments of "8,048" were to continue monthly for the remaining life of the lease.

Telepacific further complains it was "kept entirely in the dark" as to why it had been asked to confirm its "additional $8,048 . . . paid monthly." The extrinsic evidence did not show Telepacific "understood, or had any reason to understand, that there was a hidden meaning in the language used in the estoppel certificate." On the other hand, Telepacific contends that its own understanding of the language conformed to the plain language and was fully plausible.

Again, Telepacific had an opportunity to review and revise the estoppel certificate. It presented extrinsic evidence to the effect that Everbach forwarded the draft certificate to the finance department, with instruments to review and "confirm the factual basis" for the statement made, and that the finance department thereafter said it was "accurate." As we have discussed, estoppel certificates are ubiquitous in commercial lease transactions, and buyers and lenders rely on the facts they typically contain, including information pertaining to amount and duration of rental income. (See *Plaza Freeway, supra*, 81 Cal.App.4th at p. 626.) Given the binding and conclusive nature of factual statements made in estoppel certificates, it is no great stretch to conclude that, if Telepacific were "in the dark" about the significance of the draft statement concerning the amount and "monthly" nature of its reimbursement payments, it should have sought enlightenment before it verified the statement without any attempt at revision.

E. *Conflict Between Estoppel Certificate and Lease*

Telepacific argues that the estoppel certificate language calling for reimbursement payments of $8,048 to be "paid monthly" was necessarily inconsistent with the lease amendment language requiring reimbursement of the advance of $300,000 through payments "amortized in the full amount plus interest compounded at the rate of eight percent (8%) per annum over the seventy-two (72) month period commencing with the

first day of the month immediately following completion of [the improvement work]." Citing three rules of contract interpretation, Telepacific takes the position that the trial court erred in failing to resolve the inconsistency in its favor.

First, Telepacific contends that, when it executed the estoppel certificate, it could not reasonably have intended to increase significantly its obligation under the lease amendment to repay the sum of $300,000 with interest. Thus, the trial court's interpretation violated the injunction that a contract be interpreted to give effect to the mutual intent of the parties. (See Civ. Code, § 1636.) Second, Telepacific urges that the court's interpretation effectively ignored the total amount of repayment stated in the lease amendment, hence, violating the rule that all clauses be given effect so far as practicable. (See Civ. Code, § 1641; see also Civ. Code, § 1652.) Third, Telepacific points to the rule that when the terms of a promise are ambiguous or uncertain, the promise must be interpreted in the sense that the promissor believed, at the time of making it, that the promisee understood it. (Civ. Code, § 1649.) Telepacific claims, in effect, that at the time it executed the estoppel certificate, it believed Morrissey understood its promise was to complete its repayment of the $300,000, with interest, at the rate of $8,048 a month.

These arguments, however, are not persuasive. Obviously Telepacific's overpayment was unintentional, but mistaken. Nevertheless, we have determined above that Telepacific's intent, when it executed the estoppel certificate, *was* still the same intent it had when it entered into the lease amendment—that is, to repay the sum of $300,000, with interest, with monthly amortized payments that were to commence when the improvement work was completed and were to end with the termination of the lease. To interpret the language of the estoppel certificate to require "monthly" reimbursement payments through the end of the lease, thus, was *not* inconsistent with the lease amendment language—as the latter was construed with the aid of Telepacific's extrinsic evidence. Nor do we find any extrinsic evidence showing that, at the time it executed the estoppel certificate, Telepacific believed that Morrissey had any understanding inconsistent with its *own* intent, which essentially was to make reimbursement payments through the end of the lease.

F. *Conclusion*

The action was on a fully executed contract, and not one in which, for example, Telepacific sought rescission after it first discovered its mistake in 2004. Our focus is on the effect of the estoppel certificate under the circumstances presented.

Two contrasting cases help to explain the result in this case. In *Plaza Freeway* the lease agreement did not clearly state when the lease was to terminate, whereas the termination date was recited clearly and explicitly, although erroneously, in an estoppel certificate subsequently executed by the tenant. (*Plaza Freeway, supra,* 81 Cal.App.4th at pp. 619, 628.) The Court of Appeal held that the tenant was bound by the clear, but incorrect, recitation in the certificate. (*Id.* at p. 629.) By contrast, in *Miner,* an option to renew was clearly stated in the lease, but was so unclearly stated in the subsequent estoppel certificate as to "create an ambiguity" about whether any option existed. (*Miner, supra,* 116 Cal.App.4th at pp. 271−272.) The reviewing court in that case, noting no extrinsic evidence had been presented to resolve the ambiguity, interpreted the certificate against the landlord, who had created the ambiguity, and held the ambiguous certificate did not eliminate the tenant's option rights. (*Id.* at p. 272.)

Here, Telepacific conceded that the language in the lease concerning the reimbursement schedule was unclear. The estoppel certificate, on the other hand, explicitly recited the lease's termination date and clearly stated that reimbursement payments of $8,048 were being "paid monthly." The certificate did not recite any other termination date applicable to reimbursement payments. The trial court's interpretation—that the certificate provided for reimbursement payments through the end of the lease, was not inconsistent with ambiguous language in the lease amendment—as that language was interpreted by extrinsic evidence presented by Telepacific. That is, the court's interpretation was consistent with Telepacific's understanding that it was to make monthly amortized reimbursement payments beginning upon completion of the improvement work and ending with the termination of the lease.

Telepacific's problem was that *amount* of the monthly reimbursement payments stated in the estoppel certificate was *erroneous*, because Telepacific had based its

calculation on an assumption about the number of months actually remaining in the lease. Telepacific never bothered to verify this assumption and discovered its mistake only after its execution of the estoppel certificate.

The circumstances are analogous to those in *Plaza Freeway*. We conclude that Telepacific was conclusively bound by its assurance to make "monthly" reimbursement payments through the end of the lease in the clearly stated, but incorrect amount of $8,048. (*Plaza Freeway, supra*, 81 Cal.App.4th at p. 628.)

DISPOSITION

The judgment is affirmed.

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Marchiano, P.J.

We concur:

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Dondero, J.

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Banke, J.