

APR 24 2019

Sherri R. Carter, Executive Officer/Clerk  
By Claudia Esquivel, Deputy

APPELLATE DIVISION OF THE SUPERIOR COURT  
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

PANAGIOTIS, LLC,  
Plaintiff and Respondent,  
v.  
JOSE ALEX MARTINEZ and ERIKA CASTRO,  
Defendants and Appellants.

No. BV 032842  
Long Beach Trial Court  
No. 17STUD03256

**OPINION**

Defendants and appellants Jose Alex Martinez and Erika Castro prevailed in a failure to pay rent unlawful detainer action filed against them by plaintiff and respondent Panagiotis, LLC. On a later date, defendants filed a motion seeking \$31,750 in attorney fees pursuant to Civil Code sections 1717 and 1942.4, Code of Civil Procedure section 1174.21, and California Rules of Court, rule 3.1702.

The trial court found defendants were entitled to attorney fees in the amount of \$500 pursuant to the written rental agreement that governed their tenancy. In this timely appeal, defendants raise numerous issues, including that the trial court used the wrong standard in determining they were not entitled to additional attorney fees under Code of Civil Procedure section 1174.21. As explained below, we find meritorious defendants' contention that the court used the incorrect standard. Accordingly, we reverse and remand for a new hearing consistent with this opinion and without the necessity of reaching defendants' remaining contentions.



1 August 29, 2012 substandard order from the city, (2) a notice of abatement proceedings, and  
2 (3) three separate Los Angeles Department of Building and Safety (LADBS) documents  
3 concerning code enforcement and certificate information for the property.

4 Castro's Declaration

5 In her declaration, Castro described the premises as having three addresses—657, 657½,  
6 and 657¼—with each residence occupied by a different family. Castro described unit 657 as  
7 connected to unit 657½ by a shared wall and roof. The remaining unit, 657¼, was a garage that  
8 was located behind defendants' unit. In regard to the conditions that existed with her unit,  
9 Castro declared defendants "have experienced serious issues with poor conditions in and  
10 around our unit, including but not limited [to] defective electrical wiring, plumbing backing up  
11 and leaking, improper weatherproofing, lack of hot water from the defective/insufficient water  
12 heater serving all 3 units on the property, and other sanitation issues" and "[t]he problems with  
13 the electrical, plumbing, heating had been severe and difficult to live with, affecting  
14 [defendants'] ability to use electronics, flush waste away, and have proper heating." On  
15 August 15, 2012, and after the owner failed to correct numerous habitability violations, the  
16 LADBS cited the owner for substandard housing and issued a Substandard Order. Lastly,  
17 Castro declared that she did not cause or contribute to any of the aforementioned conditions.

18 The Substandard Order

19 The Order identified the premises as 657 N. Wilton Place and stated that the premises  
20 were substandard based on the following violations: (1) the garage converted to a habitable  
21 space without the required permits or approval; (2) unapproved use of the single family  
22 dwelling as a multiunit; (3) the structure was being used, occupied or its existing occupancy  
23 classification had changed without the issuance of a valid certificate of occupancy; (4) building  
24 plans, permits and inspections were required; (5) construction work was performed and  
25 concealed without the required inspections; and (6) plumbing work was done without the  
26 required permits and approvals.

27 The notice ordered plaintiff to: discontinue the use of the garage as a dwelling and  
28 restore the garage to its originally permitted use as a garage; discontinue using the single family

1 dwelling as a multiunit building; discontinue the use of the maid's room as a rental unit; obtain  
2 approved plans and permits for change of use of the single family dwelling to a multiunit use;  
3 expose all work concealed without the required inspections; obtain all required inspections,  
4 including a final inspection; obtain all required building permits; obtain permit for carport; and  
5 obtain an approved plumbing permit for the relocation of the water heater in the rear of the  
6 main dwelling and related piping.

7 The Three LADBS Documents Concerning Certification

8 The first and second documents concern defendants' unit 657, and the third document  
9 concerns 657½. There is no date on the first document and it states "No Certificate of  
10 Occupancy Information was found for this Address."

11 The second document likewise contains no certificate of occupancy information.  
12 However, there are three dated entries under the Code Enforcement Information section. The  
13 entries are separated by the date received, the problem description and the status.<sup>5</sup>

14 *Plaintiff's Opposition to Defendants' Motion for Attorney Fees*

15 In its opposition to the motion, plaintiff argued that defendants failed to prove that it was  
16 in violation of Civil Code section 1942.2, thus precluding an award of attorney fees under Code  
17 of Civil Procedure section 1174.21. Specifically, the opposition stated that defendants resided  
18 in the main dwelling and not in the garage or maid's rooms, the notice reference to the water  
19 heater did not indicate it was not functioning or that it was dangerous, and the case was closed  
20 on October 9, 2017. Plaintiff attached to its motion a declaration from George Panoussis.

21 Panoussis's Declaration

22 Panoussis was plaintiff's president, which had owned 657 N. Wilton Place for  
23 approximately 10 years. The premises consist of three units—the main dwelling occupied by  
24 defendants, a separate garage, and a maid's quarters. The substandard order did not "cite any  
25 problems with the habitability of the defendants' residence," and "[n]o government order has

26 <sup>5</sup>The three entries are as follows:

27	5/14/2012	Building or Property Converted to Another Use	Closed
28	6/4/2012	Building or Property Converted to Another Use	Under Investigation
	10/9/2017	Building or Property Converted to Another Use	Closed

1 been issued finding any problems with the defendants' unit." According to Panoussis: "there is  
2 no active investigation or citation by any government agency regarding the safety or  
3 habitability of the defendants' unit"; he is "unaware of any government order still outstanding  
4 or outstanding as of the date of the service of the 3 day notice to pay rent or quit"; and "[n]o  
5 one notified [him] or [his] company regarding defective conditions in the defendants' unit prior  
6 to service of the 3 day notice to pay rent or quit."

7 *Defendants' Reply to Plaintiff's Opposition*

8 Defendants' reply argued that they met their burden of proving the criteria for attorney  
9 fees set forth in Civil Code section 1942.4, subdivision (a)(1), the address listed on the  
10 Substandard Order was for defendants' unit, and the June 4, 2012 investigation listed on the  
11 second page of the LADBS documents was still active. The reply was supported by a  
12 declaration from defendants' attorney of record concerning his use of the LADBS website, and  
13 a document from the LADBS website.

14 *Motion Hearing and Ruling*

15 A hearing was held on defendants' motion and the court issued a written statement of  
16 ruling. After referencing Castro's declaration and portions of the trial testimony of Castro,  
17 Panoussis, and Sal Marroquin,<sup>6</sup> the trial court made the following findings: defendants' unit is  
18 adjacent to a maid's quarters and proximate to a detached converted garage; permits were not  
19 issued for the occupancy of the maid's quarters or the garage; the reference to defendants' unit  
20 in the substandard order is limited to the lack of a permit for the relocation of the water heater;  
21 the violations cited in the substandard order were not "convincingly relevant to the issue of  
22 substantial habitability"; "[o]verall, the evidence has established that the premises are in a  
23 dilapidated condition"; and Castro's testimony that plaintiff's remedial work is like "Mickey  
24 Mouse work" was credible.

25 As relevant here, the court found that defendants failed to establish by a preponderance  
26 of the evidence "that the run down condition of the premises has [*sic*] constitutes a substantial

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27 <sup>6</sup>Marroquin is a contractor who has done remedial repair work on the premises, including the  
28 replacement of the water heater.

1 breach of the landlord’s duty to maintain the property in a habitable condition.” The court  
2 awarded defendant \$500 pursuant to the attorney fees clause of the rental agreement, and  
3 nothing under Code of Civil Procedure section 1174.21.

4 DISCUSSION

5 Under Code of Civil Procedure section 1174.21,<sup>7</sup> a landlord who is liable for a violation  
6 of Civil Code section 1942.4 and who institutes a failure to pay rent unlawful detainer action  
7 against a tenant is responsible for the tenant’s reasonable attorney fees and costs. The tenant  
8 seeking the attorney fees bears the burden of proving the landlord’s liability under Civil Code  
9 section 1942.4,<sup>8</sup> and to meet its burden, the tenant must prove the specified elements of the  
10 statute.<sup>9</sup> (*Active Properties, LLC v. Cabrera* (2016) 6 Cal.App.5th Supp. 6, 12-13.) The tenant  
11 may seek the attorney fees via a noticed motion following the unlawful detainer trial. (*Id.* at  
12 p. 15.) “An order granting or denying attorney fees is generally reviewed under an abuse of  
13 discretion standard, though determination of whether the criteria for an award have been met is  
14 a question of law which is reviewed de novo. [Citation.]” (*Gillotti v. Stewart* (2017) 11  
15 Cal.App.5th 875, 905.) “Under some circumstances, this may be a mixed question of law and

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16  
17 <sup>7</sup>Code of Civil Procedure section 1174.21 provides as follows: “A landlord who institutes an  
18 unlawful detainer proceeding based upon a tenant’s nonpayment of rent, and who is liable for a  
19 violation of Section 1942.4 of the Civil Code, shall be liable to the tenant or lessee for reasonable  
20 attorneys’ fees and costs of the suit, in an amount to be fixed by the court.”

21 <sup>8</sup>All unspecified statutory references are to the Civil Code.

22 <sup>9</sup>Section 1942.4 provides as follows: “(a) A landlord of a dwelling may not demand rent, collect  
23 rent, issue a notice of a rent increase, or issue a three-day notice to pay rent or quit pursuant to  
24 subdivision (2) of Section 1161 of the Code of Civil Procedure, if all of the following conditions exist  
25 prior to the landlord’s demand or notice: [¶] (1) The dwelling substantially lacks any of the affirmative  
26 standard characteristics listed in Section 1941.1 or violates Section 17920.10 of the Health and Safety  
27 Code, or is deemed and declared substandard as set forth in Section 17920.3 of the Health and Safety  
28 Code because conditions listed in that section exist to an extent that endangers the life, limb, health,  
property, safety, or welfare of the public or the occupants of the dwelling. [¶] (2) A public officer or  
employee who is responsible for the enforcement of any housing law, after inspecting the premises, has  
notified the landlord or the landlord’s agent in writing of his or her obligations to abate the nuisance or  
repair the substandard conditions. [¶] (3) The conditions have existed and have not been abated  
35 days beyond the date of the service of the notice specified in paragraph (2) and the delay is without  
good cause. . . . [¶] (4) The conditions were not caused by an act or omission of the tenant or a lessee in  
violation of Section 1929 or 1941.2.”

1 fact and, if factual questions predominate, may warrant a deferential standard of review.

2 [Citation.]” (*Connerly v. State Personnel Bd.* (2006) 37 Cal.4th 1169, 1175.)

3 In order to prevail under the statutory scheme, the defendants were required to prove that  
4 at the time plaintiff instituted the unlawful detainer action, a qualifying condition existed on the  
5 property, the landlord received written notice of the condition from a specified government  
6 official, the condition remained 35 days after service of the notice from the government official,  
7 and the conditions were not caused by defendants. (Code Civ. Proc., § 1174.21; § 1942.4,  
8 subd. (a).)

9 The threshold issue in this appeal is whether defendants sustained their burden of  
10 proof as to the existence of a qualifying condition or conditions on the property.

11 Section 1942.4, subdivision (a)(1), provides three alternative ways to prove the presence of a  
12 qualifying condition or conditions. “[T]he Legislature’s use of the disjunctive ‘or’ ‘indicates an  
13 intent to designate alternative ways of satisfying the statutory requirements. [Citations.]’  
14 [Citations.]” (*Nieto v. Blue Shield of California Life & Health Insurance Co.* (2010) 181  
15 Cal.App.4th 60, 82.)

16 Section 1942.4, subdivision (a)(1), cites section 1941.1 and Health and Safety Code  
17 sections 17920.3 and 17920.10 to define a qualifying condition. We can eliminate Health and  
18 Safety Code section 17920.10 because it relates to lead hazards, a condition not listed in the  
19 Substandard Order and not at issue here. The remaining statutory references are, however,  
20 applicable.

21 Subdivision (a)(1) of section 1942.4 relies only on the seven standard affirmative  
22 characteristics listed in section 1941.1 ([“[t]he dwelling substantially lacks any of the  
23 affirmative standard characteristics *listed* in Section 1941.1”], italics added), and not the text  
24 found in subdivision (a) of section 1941.1. Whereas a tenant relying on Health and Safety  
25 Code section 17920.3 as a basis for attorney fees under section 1942.4 is required to prove that  
26 the premises were “deemed and declared substandard . . . because conditions listed in  
27 [section 17920.3] exist to an extent that endangers the life, limb, health, property, safety, or  
28 welfare of the public or the occupants of the dwelling.” (§ 1942.4, subd. (a)(1).) Thus, under

1 the clear and unambiguous language of section 1942.4, a tenant's burden in seeking to prove  
2 the existence of a qualifying condition or conditions in order to obtain attorney fees under Code  
3 of Civil Procedure section 1174.21 depends on which alternative theory the tenant is relying on.

4 Under the first alternative, the tenant is required to prove the existence of one or more of  
5 the affirmative conditions enumerated in section 1941.1. Whereas when proceeding under the  
6 Health and Safety Code section 17020.3 alternative, the tenant is required to prove that the  
7 qualifying condition existed to the extent that it "endangered the life, limb, health, property,  
8 safety and welfare of the public or the occupants of the dwelling." (§ 1942.4, subd. (a)(1);  
9 Health & Saf. Code, § 17920.3.) The mere existence of a qualifying condition is insufficient,  
10 however, for a tenant to meet his or her burden of proof. This is because subdivision (a)(1)  
11 must be considered along with subdivision (a)(2), which requires that the landlord receive  
12 notice of the condition in writing from a housing law enforcement official after inspecting the  
13 property. (§ 1942.4.) A fundamental rule of statutory construction is that we "view the statute  
14 as a whole and consider its statutory language in the context of the entire statute and the scheme  
15 of which it is a part. [Citation.]" (*Azusa Land Partners v. Department of Industrial Relations*  
16 (2010) 191 Cal.App.4th 1, 36.)

17 Here, the trial court abused its discretion by using a standard that was not contemplated  
18 by the statutory scheme. The court failed to determine whether based on the Substandard Order  
19 a qualifying condition or conditions existed either under section 1941.1 or section 1942.4 and  
20 Health and Safety Code section 17920.3. Instead, the court found that the premises were  
21 "dilapidated" and "run down," but there was no breach by plaintiff of his duty to maintain the  
22 premises in a habitable condition. In essence, the court appeared to have used a habitability  
23 standard based on the trial testimony. A tenant's burden in a motion for attorney fees under  
24 Code of Civil Procedure section 1174.21 is not the same burden the tenant has in proving the  
25 landlord breached the warranty of habitability. In addition, the complained-of condition or  
26 conditions must appear in the notice to the landlord. Because the court did not use the correct  
27 standard, it did not reach the remaining contested questions of whether plaintiff was notified of

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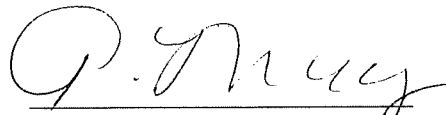


1 the condition or conditions and whether the condition or conditions existed or remained  
2 unabated for 35 days after the date plaintiff was served with notice of the condition.


3 “A trial court abuses its discretion when it applies the wrong legal standards applicable  
4 to the issue at hand. [Citations.]” (*Paterno v. State of California* (1999) 74 Cal.App.4th 68,  
5 85.) That is what occurred here and it resulted in a miscarriage of justice. (Cal. Const., art. 6,  
6 § 13.) The court’s mistake resulted in its measuring the Substandard Order against the standard  
7 for determining a breach of the warranty of habitability rather than the standards enunciated in  
8 section 1942.4 and Health and Safety Code section 17920.3. Simply stated, the trial court  
9 failed to resolve the conflicts in the evidence and to make the necessary findings under the  
10 correct legal standard and in that way determine if defendants sustained their burden of  
11 entitlement to attorney fees under Code of Civil Procedure section 1174.21.

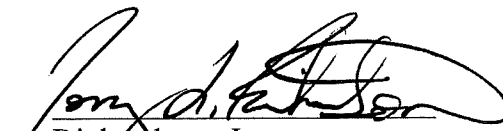
12 DISPOSITION

13 The order denying defendants’ Code of Civil Procedure section 1174.21 motion for  
14 attorney fees is reversed, and the case is remanded for proceedings consistent with this opinion.

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16   
17 P. McKay, P. J.

18 We concur:

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21 \_\_\_\_\_  
22 Kumar, J.

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25 \_\_\_\_\_  
26 Richardson, J.



C E R T I F I C A T E O F T R A N S M I T T A L

L.A. Superior Court Central

Appellate

PANAGIOTIS LLC  VS.  MARTINEZ, CASTRO	BV032842
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| <input type="checkbox"/> Order Dismissing Appeal   | <input type="checkbox"/> Remittitur                            |
| <input type="checkbox"/> Notice Fixing Brief Dates | <input type="checkbox"/> Notice Setting Cause for Hearing      |

has been transmitted to above named parties () and trial court appeal clerk.

Dated: APR 24 2019

By , Deputy Judge

