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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

LINDA SIMMONS,

Plaintiff and Appellant,

v.

JULIUS SENTIRMAY et al.,

Defendants and
Respondents.

B263765

(Los Angeles County
Super. Ct. No. BC484814)

APPEAL from an order of the Superior Court of
Los Angeles County, John J. Kralik, Judge. Affirmed.

Campbell & Farahani, Frances M. Campbell; Venskus &
Associates, Sabrina D. Venskus for Plaintiff and Appellant.

Turner Aubert & Friedman and Matthew C. Wolf for
Defendants and Respondents.

Linda Simmons appeals from a postjudgment order denying her motion for attorney fees following a jury verdict in her favor. Simmons contends the trial court erred by refusing to award attorney fees pursuant to Civil Code section 1947.10 (section 1947.10) based on the court's finding that her landlords, Julius and Vivian Sentirmay, had not acted with fraudulent intent when evicting her from her rent controlled apartment. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. Evictions for Landlord Occupancy

The Los Angeles Rent Stabilization Ordinance, like other local rent control laws, limits the grounds on which a landlord may recover possession of a covered residential rental unit. (L.A. Mun. Code, § 151.09(A); see, e.g., Santa Monica City Charter, art. XVIII, § 1806.) One permissible ground is that the unit will be used as the primary place of residence for the landlord or his her spouse, parents, grandparents, children or grandchildren. (L.A. Mun. Code, § 151.09(A)(8)(a) & (b).) Any such eviction must be conducted "in good faith." (*Ibid.*)

Although state law neither authorizes nor prohibits the adoption of local rent control ordinances, beginning in 1986 the Legislature enacted modest limitations on several of the harsher provisions of local laws. (See Stats. 1986, ch. 1199, §§ 1, 2, pp. 4249-4252.) In 1989 Senate Bill No. 912 (1989-1990 Reg. Sess.) added section 1947.10 and made several other changes to the Civil Code to further limit the penalties that could be imposed on residential property owners whose violations of local rent regulations were not committed in bad faith. (See Legis.

Counsel's Dig. Sen. Bill No. 912 (1989-1990 Reg. Sess.) 3 Stats. 1989.) Addressing the ability of an owner to evict a tenant based on the intention of the owner or a member of the owner's immediate family to occupy the tenant's unit as authorized by various local rent stabilization codes, section 1947.10, subdivision (a), provides the owner or family member must "maintain residence in the unit for at least six continuous months." If a court subsequently determines that the eviction was based on fraud by the owner or the owner's immediate relative to not fulfill this six-month requirement, the court may award treble damages measured by the cost of relocating the tenant from his or her existing unit back into the previous unit and the amount of any increase in rent the tenant has paid or, if the tenant decides not to move back, by treble the amount of one month's rent paid by the tenant for the unit from which he or she was evicted and treble the amount of any costs incurred in relocating to a different unit. Finally, section 1947.10, subdivision (a), provides, "The prevailing party shall be awarded attorney's fees and court costs."¹

¹ The full text of section 1947.10 provides, "(a) After July 1, 1990, in any city, county, or city and county which administers a system of controls on the price at which residential rental units may be offered for rent or lease and which requires the registration of rents, any owner who evicts a tenant based upon the owner's or the owner's immediate relative's intention to occupy the tenant's unit, shall be required to maintain residence in the unit for at least six continuous months. If a court determines that the eviction was based upon fraud by the owner or the owner's immediate relative to not fulfill this six-month requirement, a court may order the owner to pay treble the cost of relocating the tenant from his or her existing unit back into the

2. Simmons's First Amended Complaint

From 1979 to 2003 Simmons occupied a rent controlled apartment in Van Nuys. In 2002 the Sentirmays purchased the building in which she lived. The Sentirmays served a 60-day notice of termination of tenancy on Simmons in July 2003 that stated they were evicting Simmons because their son, Scott Sentirmay, and his wife would be moving into her apartment. In response, Simmons moved out of the apartment in August 2003. The Sentirmays paid Simmons the relocation fee required by the Los Angeles Rent Stabilization Ordinance.

In July 2011 Simmons learned Scott had never moved into the apartment. Simmons filed a complaint in May 2012 and a first amended complaint on December 4, 2012 alleging four causes of action against the Sentirmays: wrongful eviction in violation of Los Angeles Municipal Code section 151.09(A)(8); deceit (intentional misrepresentation); deceit (negligent misrepresentation); and violation of section 1947.10. Simmons alleged the Sentirmays had violated Los Angeles Municipal Code section 151.09(A)(8) and section 1947.10, subdivision (a), and made intentional or negligent misrepresentations by evicting her

previous unit and may order the owner to pay treble the amount of any increase in rent which the tenant has paid. If the tenant decides not to relocate back into the previous unit, the court may order the owner to pay treble the amount of one month's rent paid by the tenant for the unit from which he or she was evicted and treble the amount of any costs incurred in relocating to a different unit. The prevailing party shall be awarded attorney's fees and court costs. [¶] (b) The remedy provided by this section shall not be construed to prohibit any other remedies available to [any] party affected by this section."

based on the false assertion Scott would move into the apartment.

3. The Jury Trial and Verdict

A nine-day jury trial on Simmons's claims was held in September 2014. The Sentirmays testified they evicted Simmons believing their son and daughter-in-law would move into the apartment. However, before they could move in, a family feud erupted; and Scott declined to occupy the apartment.

During the trial the court engaged in extensive colloquy with the parties regarding the jury instructions and special verdict form. Ultimately the jury was instructed on the elements for intentional misrepresentation, violation of Los Angeles Municipal Code section 151.09(A)(8) and violation of section 1947.10, subdivision (a). However, the parties agreed the issue of fraud under section 1947.10 would be tried to the court.²

The jury returned a verdict in favor of Simmons, finding, among other things: (i) the Sentirmays evicted Simmons based on

² In her amended trial brief Simmons described section 1947.10 as providing tort remedies to a tenant based on the court's express finding of fraud: "Section 1947.10, however, provides additional remedies which the Court may impose post trial if it determines that the failure to comply with Section 1947.10(a) was based upon fraud. . . . [I]t is clear that this section of the statute involves a post-trial ruling by the Court on whether the Defendants committed fraud in violating Section 1947.10." Similarly, in colloquy with the court, Simmons's counsel confirmed that it was the court's role to determine whether there was fraud after the jury returned its verdict: "The Court: . . . [¶] . . . [¶] . . . But you were telling me at the conclusion of this action you were going to ask me to determine whether there was fraud." "Ms. Venskus: Right."

the representation Scott intended to occupy the apartment; (ii) Scott failed to occupy the apartment for six continuous months; (iii) the Sentirmays evicted Simmons in bad faith; and (iv) Simmons's reliance on the misrepresentation regarding Scott's occupancy was a substantial factor in causing her harm. The jury awarded Simmons \$155,000 in general damages and \$45,000 in punitive damages.

Following the jury verdict Simmons's counsel requested the court award an additional \$2,250 in damages, treble the amount of one month's rent paid by Simmons for the apartment from which she was evicted, as authorized, within the court's discretion, by section 1947.10, subdivision (a), after a court has found the eviction was based on fraud. The court declined to award the statutory damages, stating, "I am not going to make a finding of fraud, because even if I did, one way or the other, I wouldn't award it as damages, because I think that the Plaintiff has already been adequately compensated. These are damages that are meant to be punitive. The jury has already awarded the maximum amount that it felt was appropriate as a punishment. It would be punishing the same thing twice. On that ground I'm going to use my discretion not to do it."

4. Simmons's Motion for Attorney Fees

Following trial Simmons moved for an award of attorney fees pursuant to section 1947.10, subdivision (a), as the "prevailing party." Simmons argued she was the prevailing party in light of the jury's findings and verdict with its substantial award of compensatory and punitive damages, and requested \$983,661 in attorney fees. The Sentirmays opposed the amount of fees requested but did not contest Simmons's right to recover fees as the prevailing party under section 1947.10.

During argument on the motion the court questioned whether Simmons was the prevailing party within the meaning of section 1947.10 since the court had declined to find fraud and had denied the request for treble damages under the statute. The court allowed the parties to file supplemental briefs on this issue.

In her supplemental brief Simmons argued she was the prevailing party under section 1947.10 because the jury had found in her favor on the elements of the statutory violation: She had been evicted based on the representation Scott and his wife would live in the apartment; they had failed to occupy it for six continuous months; and the representation was knowingly false when made. The jury had also awarded damages to Simmons that, based on the wording of the special verdict form, may have been for the section 1947.10 violation as well as for the other causes of action. Accordingly, Simmons argued she was entitled to an award of attorney fees regardless of the trial court's denial of her request for additional statutory damages. In response the Sentirmays argued a plaintiff is the prevailing party under section 1947.10 only if a court finds fraud and awards statutory damages.

The trial court denied Simmons's motion, stating: "[A] technical violation of [section 1947.10] was proven—in fact not really contested. The relative in question, Scott Sentirmay, did not live in the apartment for six continuous months. Yet before any relief can be granted under the statute, the Court must make an additional finding, 'that the eviction was based upon fraud by the owner or the owner's immediate relative to not fulfill this six month requirement.'" In other words, the court interpreted section 1947.10 as not "authoriz[ing] an award of general

damages; it authorizes only certain damages and then only . . . after a finding by the Court of fraud.” Because it had declined to find fraud and had not awarded damages under the statute, the court stated Simmons had not recovered any monetary relief specifically for the statutory violation.³ Accordingly, the court found there was no basis on which to find Simmons was the prevailing party on her claim the Sentirmays violated section 1947.10 and denied Simmons’s request for attorney fees.

DISCUSSION

1. *A Finding of Fraud Is Required for a Tenant To Be a “Prevailing Party” under Section 1947.10*

a. *Standard of review and principles of statutory construction*

Although an order granting or denying an award of attorney fees is ordinarily reviewed for abuse of discretion (*Concepcion v. Amscan Holdings, Inc.* (2014) 223 Cal.App.4th 1309, 1319), independent or de novo review is warranted when, as here, the “determination of whether the criteria for an award of attorney fees . . . have been satisfied amounts to statutory construction and a question of law.” (*Connerly v. State Personnel Bd.* (2006) 37 Cal.4th 1169, 1175; accord, *Ellis Law Group, LLP v. Nevada City Sugar Loaf Properties, LLC* (2014) 230 Cal.App.4th 244, 253.) When the ruling on a party’s

³ The court stated, to the extent the jury awarded damages under section 1947.10, “then the instructions, and the jury verdict, are in error. Because there were independent grounds on which the jury could have awarded these damages, the jury verdict appears proper despite this error.”

entitlement to fees requires resolution of a disputed factual issue, we review the trial court’s finding for substantial evidence, resolving all conflicts in favor of the order and indulging in all legitimate and reasonable inferences to uphold the trial court’s finding. (*Carpenter & Zuckerman LLP v. Cohen* (2011) 195 Cal.App.4th 373, 378, *Heppler v. J.M. Peters Co.* (1999) 73 Cal.App.4th 1265, 1290.)

In construing the meaning of section 1947.10 we rely on well established and familiar principles of statutory interpretation: “Our primary task in interpreting a statute is to determine the Legislature’s intent, giving effect to the law’s purpose. [Citation.] We consider first the words of a statute, as the most reliable indicator of legislative intent. [Citation.] ““Words must be construed in context, and statutes must be harmonized, both internally and with each other, to the extent possible.’ [Citation.] Interpretations that lead to absurd results or render words surplusage are to be avoided.”” (*Tuolumne Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029, 1037; accord, *In re D.B.* (2014) 58 Cal.4th 941, 945-946 [“we ‘will not give statutory language a literal meaning if doing so would result in absurd consequences that the Legislature could not have intended’”].)

To the extent the statutory language is ambiguous, “we may resort to extrinsic sources, including the ostensible objects to be achieved and the legislative history.” (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272; see *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103-1105.) “If the statutory language permits more than one reasonable interpretation, courts may consider other aids, such as the statute’s purpose, legislative history, and public policy.”

(*Coalition of Concerned Communities, Inc. v. City of Los Angeles* (2004) 34 Cal.4th 733, 737; accord, *Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4th 381, 388.) Additionally, courts must endeavor to construe an ambiguous statute in a manner that avoids any doubt concerning its validity. (*Steen v. Appellate Division of Superior Court* (2014) 59 Cal.4th 1045, 1054; *Young v. Haines* (1986) 41 Cal.3d 883, 898.)

b. *Simmons was not the prevailing party under Section 1947.10 because the trial court did not find fraud*

Simmons contends a tenant who has proved a violation of section 1947.10, subdivision (a)'s six-month occupancy requirement is properly considered the prevailing party for purposes of an award of attorney fees under the statute. The plain language of the section, as well as its legislative history, mandate the contrary result: A finding of fraud by the landlord or the landlord's relative with respect to the intention to occupy the tenant's unit is necessary for the tenant to be deemed the prevailing party in an action for violation of section 1947.10.⁴

⁴ Presumably because she had urged the trial court to decide the question, Simmons does not contend on appeal that the court was required to find the Sentirmays had acted with fraudulent intent based on the jury's findings of bad faith and intentional misrepresentation. Accordingly, we need not decide whether we agree with *Hoopes v. Dolan* (2008) 168 Cal.App.4th 146 that, when legal issues are tried first to a jury in a mixed trial of legal and equitable issues, the trial court must follow the jury's factual determinations on common issues of fact. (*Id.* at pp. 158-160.) Nor need we decide, even if *Hoopes v. Dolan* is correct, whether that general principle is applicable to the posttrial fraud determination under section 1947.10 in light of the Legislature's

The first sentence of section 1947.10 establishes a clear, objective requirement for a landlord to lawfully evict a tenant from a rent-stabilized unit based on owner or relative occupancy: The new occupant must reside in the unit for at least six months. However, the statute creates no remedy simply for violating this limitation. No civil action is authorized, and no damages or civil penalties prescribed based solely on a finding the owner or family member failed to occupy the unit for the minimum period. Instead, section 1947.10, subdivision (b), preserves the tenant's right to pursue other remedies that may exist for the wrongful eviction. On the other hand, section 1947.10, subdivision (a), provides for court intervention and specifies the remedy (treble damages) when there was a fraudulent intent not to fulfill the occupancy requirement. That is, the behavior the statute is intended to deter is the tortious eviction of a tenant; and it contemplates litigation by the tenant only in instances of fraud by the landlord.

It follows from this common sense interpretation of the statutory language that a tenant cannot be the prevailing party under the statute simply by proving the landlord or relative did not occupy the property. A finding of fraud must be made for the tenant to recover her attorney fees. Because the trial court declined to find the Sentirmays had acted with fraudulent intent, Simmons was not entitled to an award of attorney fees under the statute.⁵

specific direction that the court determine if the eviction was based on fraud by the owner or the owner's immediate relative to not fulfill the six-month residence requirement.

⁵ As discussed, the trial court denied Simmons's motion for attorney fees, at least in part, because the court had previously

This plain language interpretation is reinforced by the section's legislative history and statutory context.⁶ As discussed, section 1947.10 was enacted in 1989 as part of Senate Bill No. 912, which was intended to moderate some of the harsher provisions in the rent control law adopted by the City of Berkeley. (See Legis. Counsel's Dig. Sen. Bill No. 912 (1989-1990 Reg. Sess.) 3 Stats. 1989.) Section 1947.7, originally enacted in 1986, was amended to provide (as it continues to provide today), "The Legislature finds and declares that the operation of local rent stabilization programs can be complex and that disputes often arise with regard to standards of compliance with the regulatory processes of those programs. Therefore, it is the intent of the Legislature to limit the imposition of penalties and sanctions against an owner of residential rental units where that person has attempted in good faith to fully comply with the regulatory

declined to award her additional damages under section 1947.10. That is not the relevant inquiry. Whether or not a trial court has exercised its discretion to award treble damages pursuant to section 1947.10, the prerequisite for an award of attorney fees is simply a finding of fraud by the landlord. That is, a trial court could find the landlord acted fraudulently, decline to award statutory treble damages, but still find the tenant was the prevailing party and award attorney fees.

⁶ Courts may properly "look to legislative history to confirm our plain-meaning construction of statutory language." (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1046; *Kulshrestha v. First Union Commercial Corp.* (2004) 33 Cal.4th 601, 613, fn. 7 ["courts may always test their construction of disputed statutory language against extrinsic aids bearing the drafters' intent"]; see also *Goodman v. Lozano* (2010) 47 Cal.4th 1327, 1335 [although the meaning of words in a statute "is plain, it is helpful to look at [the statute's] legislative history"].)

processes.” (*Ibid.*; § 1947.7, subd. (a).) This express legislative intent to protect landlords acting in good faith is reasonably applied to section 1947.10 as well. (See *Tuolumne Jobs & Small Business Alliance v. Superior Court*, *supra*, 59 Cal.4th at p. 1037 [““[w]ords must be construed in context, and statutes must be harmonized, both internally and with each other, to the extent possible””].) To implement this stated intent, we must interpret section 1947.10 as providing tenants with recourse against a landlord acting fraudulently, but not against a landlord who acted in good faith.

Further contextual support for our interpretation is found in section 1947.11, which was also added to the Civil Code by Senate Bill No. 912. Section 1947.11 provides a landlord who “charges rent to a tenant in excess of the certified lawful rent ceiling shall refund the excess rent to the tenant upon demand. If the owner refuses to refund the excess rent and if a court determines that the owner willfully or intentionally charged the tenant rent in excess of the certified rent ceiling, the court shall award the tenant a judgment for the excess amount of rent and may treble that amount. The prevailing party shall be awarded attorney’s fees and court costs.” This language, in contrast to section 1947.10, explicitly provides a remedy to the tenant when the landlord has not acted willfully or intentionally and provides a remedy of treble that amount when the owner has acted willfully or intentionally. Had the Legislature intended section 1947.10 to authorize a remedy for a landlord’s nonfraudulent conduct, it could have included language doing so, as it did in section 1947.11. We decline to infer the availability of a statutory remedy for nonfraudulent conduct when the Legislature omitted one. (See *Wasatch Property Management v.*

Degrade (2005) 35 Cal.4th 1111, 1118 [““[w]hen the Legislature has carefully employed a term in one place and has excluded it in another, it should not be implied where excluded””].)

Although a tenant cannot be considered the prevailing party under section 1947.10 absent a finding the landlord acted fraudulently, our ruling does not deprive a tenant of remedies for a landlord’s nonfraudulent conduct. As discussed, section 1947.10, subdivision (b), explicitly provides the treble damage award authorized in subdivision (a) “shall not be construed to prohibit any other remedies available to [any] party affected by this section.” Thus, a tenant may bring claims against a property owner, as Simmons did here, based on negligent misrepresentation, violation of a local ordinance or any other applicable tort or statutory violation.⁷

⁷ In 2009 the Los Angeles City Council amended the Rent Stabilization Ordinance to add section 151.30, which states: “If a landlord acts in bad faith in recovering possession of a rental unit pursuant to the provisions of Subdivision 8. of Subsection A. of Section 151.09, the landlord shall be liable to any tenant who was displaced from the property for three times the amount of actual damages, exemplary damages, equitable relief, and attorneys’ fees.” While this ordinance was not in effect at the time Simmons was evicted, it would apply to a tenant evicted in bad faith based on owner occupancy after 2009. Because it may be easier to prove bad faith than fraud (cf. *Hunter v. Up-Right, Inc.* (1993) 6 Cal.4th 1174, 1188 [“[w]hereas the breach of the covenant of good faith and fair dealing may involve acts of deliberate deception, a defendant crosses the boundary of mere bad faith and commits fraud when he induces a plaintiff to reasonably rely on these deceptions to his detriment, and damages result”]), this local ordinance may provide more protection than section 1947.10.

DISPOSITION

The March 10, 2015 order denying Simmons's request for attorney fees is affirmed. The Sentirmays are to recover their costs on appeal.

PERLUSS, P. J.

We concur:

SEGAL, J.

SMALL, J.*

* Judge of the Los Angeles County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.