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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FIVE

**THE PEOPLE,**  
**Plaintiff and Respondent,**  
**v.**  
**BANKERS INSURANCE COMPANY,**  
**Defendant and Appellant.**

**A131444**

**(City & County of San Francisco  
Super. Ct. No. CPF-11-511063)**

Bankers Insurance Company (Bankers) appeals from an order of the trial court denying a motion to vacate a bail forfeiture, as well as the summary judgment entered against it following denial of the motion. (Pen. Code, § 1306.)<sup>1</sup> Bankers contends the trial court did not proceed as required by the bail forfeiture statutes (§ 1305 et seq.), and, therefore, lacked jurisdiction to declare a bail forfeiture and to enter summary judgment on that basis. We reject Bankers' contentions and affirm the order denying relief from the bail forfeiture. The appeal from the summary judgment is dismissed.

**FACTUAL AND PROCEDURAL BACKGROUND**

On February 16, 2008, Bankers posted a \$50,000 bail bond through its agent, Mackenzie Green Bail Bonds (bail agent), to guarantee the ordered appearances of Boon T. Ho (Ho), the defendant in a criminal case pending in the Superior Court of the City and County of San Francisco. Ho failed to appear for trial on November 12, 2008. The

<sup>1</sup> All further statutory references are to the Penal Code unless otherwise specified.

court continued trial, deemed the bond forfeited, and ordered a bench warrant issued, which it stayed until December 10, 2008. Ho appeared on December 10, 2008, and the trial court reinstated bail at a hearing the next day.

Trial was continued to July 17, 2009. On July 14, 2009, Deputy Public Defender Matthew Rosen (Rosen) filed a motion to continue trial. Ho failed to appear on the trial date, and Rosen informed the court, “[Ho] had to leave the country. He’s a resident of Singapore. He called me yesterday or the day before yesterday. He had an illness, but he does plan to come back to the United States where he has been living . . . for several years.” According to Rosen, Ho said he was planning to return to the United States in September 2009. The following exchange ensued:

“The Court: What caused him to leave the country? I need a reasonable cause.

“Rosen: [H]e said it was an illness. I know he has some serious illnesses.

“The Court: Is it an illness, his personal illness or family’s?

“Rosen: His personal illness.”

The court vacated the trial date and issued a bench warrant, which it stayed until September 2, 2009. The court stated, “I expect some sort of documentation as to why he wasn’t here today. The bail is forfeit. But the forfeiture is stayed to September 2nd. Bail set to \$100,000 and stayed.”

On September 2, 2009, Deputy Public Defender Robert Dunlap appeared for Rosen, indicating Ho had been injured in Singapore and was still there. At Dunlap’s request, the court continued the hearing to December 2, 2009, and permanently stayed the bench warrant stating, “We’d better get some sort of documentation . . . [¶] . . . I want to see some documentation.”

On December 2, 2009, Dunlap stated, “I believe Mr. Rosen submitted paperwork from the Singapore hospital . . . [and] he’s asking for just one week further stay.” The court granted the request. At a December 9, 2009 hearing, Dunlap indicated Rosen anticipated getting paperwork from the hospital on December 15, and requested a further stay. The court stated, “Since July 17th when I put it over the last time was for proof. So

at least they're telling me they have a date. Put it over to the 21st. Bench warrant stayed, but I want to see proof."

At the December 21, 2009 hearing, another Deputy Public Defender Kwixuan Maloof (Maloof) appeared for Rosen, stating, "I've read Mr. Rosen's note. Apparently the defendant was in the hospital in Singapore. Mr. Rosen contacted the defendant letting him know that we needed the doctor's note to prove that he's in the hospital and paperwork regarding his medical condition. [¶] The last time Mr. Rosen tried to contact the client, which was on December 15th, there was no answer." At Maloof's request, the court continued the matter stating, "[L]ast chance. And he posted the [\$50,000] bail which is going to get forfeited. Last chance."

At a January 11, 2010 hearing before a different judge, Maloof stated, "[Ho] is unable to travel due to an injury he suffered in Singapore. He was in the Singapore hospital." Maloof said Rosen had telephone contact with Ho on December 15. The court agreed to a brief continuance, noting, "Judge Haines is going to want some more information."

At a hearing on February 1, 2010, Maloof indicated, "I received [a fax] [from] Singapore General Hospital dated January 31, 2010 from Dr. Foo Lin . . . , stating that Mr. Ho is currently undergoing treatment for a right ankle injury. He's expected to be in surgery to remove the internal fixation (phonetic) following the previous open reduction procedure. Apparently he has pins." Maloof said the email did not indicate the date of the surgery, but that "the plates are going to be removed and he's expected to continue treatment for another three months from today . . . ." Maloof asked for a three-month continuance. Instead, the trial court granted a continuance for three weeks to obtain additional information, including whether Ho was able to travel and whether he would lose the benefits of his surgery if he came to California and ended up in custody.

The minutes for the hearing on February 22, 2010, indicate that the court declared bail forfeited and ordered the issuance of a bench warrant, finding Ho had “neglected to appear” and had presented “no sufficient excuse for such nonappearance . . .”<sup>2</sup>

On March 18, 2010, the clerk mailed Bankers and the bail agent notice of the forfeiture, stating the contractual obligation to pay the bond would “become absolute” on September 19, 2010, unless the court set aside the forfeiture before that date.

On September 17, 2010, the bail agent filed a motion to vacate the forfeiture and exonerate bail “on the grounds of Penal Code [section] 1305 and that the court lost jurisdiction over the bond.” The People failed to file an opposition or appear on the date initially set for hearing on the motion. Indicating it would like to hear from the city attorney, the court continued the hearing. Shortly thereafter, the People filed an opposition to the motion.

At a hearing on February 1, 2011, the trial court denied the motion. The next day, at the People’s request, the court entered summary judgment against Bankers in the amount of \$50,000. Bankers filed a timely notice of appeal from the trial court’s denial order and the summary judgment.

## DISCUSSION

### I. The Motion to Vacate the Forfeiture<sup>3</sup>

#### A. Relevant Legal Principles

“ ‘Section 1305[, subdivision (a)] provides the jurisdictional prerequisites before a court can order forfeiture of bail. These requirements are (1) the defendant must fail to appear for arraignment, trial, judgment, execution of judgment, or when his presence is otherwise lawfully required; and (2) the failure to appear must be without sufficient excuse. [Citation.]’ [Citation.]” (*People v. National Automobile & Casualty Ins. Co.* (2004) 121 Cal.App.4th 1441, 1447 (*National*).) Section 1305, subdivision (b) in turn

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<sup>2</sup> The record does not include a reporter’s transcript for this hearing.

<sup>3</sup> “An order denying a motion to set aside a forfeiture is appealable. [Citations.]” (*People v. Ranger Ins. Co.* (1996) 51 Cal.App.4th 1379, 1382.)

provides that when the amount of the bond exceeds \$400, the clerk “shall, within 30 days of the forfeiture, mail notice of the forfeiture to the surety;” and if it fails to do so within 30 days after the entry of the forfeiture, that the surety “shall be released of all obligations under the bond.” (§ 1305, subd. (b).)

Section 1305.1 “ ‘creates a limited exception to the general rule that a failure to appear requires the court to order forfeiture of the bail with prompt notice to the surety. [Citation.]’ ” (*National, supra*, 121 Cal.App.4th at p. 1450.) “If the defendant fails to appear . . . when his or her appearance is lawfully required, but the court has reason to believe that sufficient excuse may exist for the failure to appear, the court may continue the case for a period it deems reasonable to enable the defendant to appear without ordering a forfeiture of bail or issuing a bench warrant.” (§ 1305.1.)

“ ‘Because each case presents its own unique set of circumstances the issue whether the showing of excuse is sufficient is decided on a case-by-case basis. The determination whether an excuse is sufficient is a matter within the trial court’s sound discretion.’ ” (*People v. Harco National Ins. Co.* (2005) 135 Cal.App.4th 931, 934, quoting *People v. Ranger Ins. Co.* (2003) 108 Cal.App.4th 945, 952.) We review the order denying the motion for relief from the forfeiture for abuse of discretion. (*People v. Wilcox* (1960) 53 Cal.2d 651, 656.)

We conduct independent review of these statutory provisions (*International Longshoremen’s & Warehousemen’s Union v. Los Angeles Export Terminal, Inc.* (1999) 69 Cal.App.4th 287, 293), in light of the general rules governing the interpretation of bail bond statutes. As the law disfavors forfeitures, including forfeiture of bail, we strictly construe sections 1305 and 1306 to avoid the harsh results of a forfeiture. (*National, supra*, 121 Cal.App.4th at p. 1448.) “ ‘[W]here a statute requires a court to exercise its jurisdiction in a particular manner, follow a particular procedure, or subject to certain limitations, an act beyond those limits is in excess of its jurisdiction.’ [Citations.]” (*People v. Surety Ins. Co.* (1973) 30 Cal.App.3d 75, 79; accord, *National*, at p. 1448.)

Bankers contends the trial court lacked jurisdiction to declare a bail forfeiture on February 22, 2010, for several reasons, none of which has merit.

## B. The Court's July 2009 Order Did Not Require Notice of Forfeiture

First, Bankers contends the trial court was required to give notice of forfeiture within 30 days of July 17, 2009, and that its failure to do so exonerates bail as a matter of law. We disagree. We do not construe section 1305 to require notice of an order of forfeiture that has not been given effect. (See Black's Law Dictionary (6th ed. 1990) p. 1413 ["To 'stay' an order . . . means to hold it in abeyance, or refrain from enforcing it"].) Indeed, under section 1305, subdivision (b), a surety is released from its obligations under the bond if the clerk fails to mail notice "within 30 days after the *entry* of the forfeiture." (§ 1305, subd. (b), italics added.) Bankers provides no analysis or authority demonstrating that the trial court's July 17, 2009 order, which declared a bail forfeiture, but simultaneously stayed that order, constitutes "entry of the forfeiture."

"Although it is often said that section 1305 must be strictly construed 'in favor of the surety' [citation], the gravamen of the rule is that the forfeiture statutes are to be strictly construed to avoid forfeiture [citation]." (*People v. Indiana Lumbermens Mutual Ins. Co.* (2011) 194 Cal.App.4th 45, 51, italics omitted (*Indiana Lumbermens*).) To hold that the notice period commenced on July 17, 2009, even though no forfeiture order was in effect at that time would, in the words of *Indiana Lumbermens*, turn the "requirement of strict construction on its head in order to avoid the subsequent forfeiture" on February 22, 2011. "The statutory scheme cannot be manipulated in that manner, to require forfeiture when it is not strictly called for in order to avoid forfeiture when, on a later occasion, it is strictly called for." (*Ibid.*)<sup>4</sup>

The court's analysis in *National* lends further support to our conclusion that section 1305 does not require notice of forfeiture in these circumstances. In that case, the

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<sup>4</sup> Bankers argues, for the first time on appeal, that there is "no such thing as 'staying' a declaration of forfeiture," but fails to provide analysis and legal authority to demonstrate the trial court lacked authority to stay its forfeiture order. This theory is inconsistent with the arguments asserted on its behalf in the trial court, in any event. In its brief below, the bail agent took the position that the court had stayed the forfeiture until February 22, 2010 and later argued, "[Y]ou stayed both the bench warrant and the bail forfeiture to September 2nd . . . ." At the February 2011 hearing, the bail agent conceded it was appropriate to stay the July 17, 2009 forfeiture order.

defendant failed to appear at a hearing, and the trial court “ordered the defendant’s posted bond . . . forfeited; stayed ‘any further action to that forfeiture until’ the next hearing; took ‘under submission’ a bench warrant; and continued the matter . . . .” (*National, supra*, 121 Cal.App.4th at pp. 1445, 1449.) The reviewing court deemed the court’s forfeiture order void because the defendant was not required to appear at the hearing (*id.* at pp. 1449-1450), but noted, “Even if the defendant’s appearance was required . . . — which, we repeat, the record clearly shows it was not—the trial court expressly stayed and continued the matter, taking any action on the forfeiture ‘under submission’ until the next scheduled hearing . . . , in order to retain jurisdiction and insure ‘the appearance of all parties . . .’ at the next scheduled hearing . . . . In so doing, the trial court effectively *excused* the defendant’s nonappearance . . . based on its knowledge—from the representations of counsel and the waivers allowed by the court at the [previous] hearing—that the defendant had a sufficient excuse therefor.” (*Id.* at p. 1450, see § 1305.1.) The same analysis leads us to conclude here that the trial court effectively excused Ho’s nonappearance on July 17, 2009, pending further documentation, and that no forfeiture occurred at that time, requiring notice under section 1305.<sup>5</sup>

### C. No Declaration of Forfeiture Was Required Before February 22, 2010

Alternatively, Bankers contends that the trial court erred in continuing the case repeatedly over several months without declaring a forfeiture because “the limited exception to the general rule does not apply.” Specifically, Bankers maintains that section 1305.1 only “contemplates one continuance” and, therefore, that the trial court was required to declare a forfeiture when Ho failed to appear or provide documentation of an excuse “at the first continued date,” September 2, 2009. Bankers presents no legal

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<sup>5</sup> Bankers maintains the record demonstrates that the trial court “did not believe that sufficient excuse may exist . . .” for Ho’s nonappearance because it unequivocally declared a bail forfeiture and stayed only the bench warrant. These contentions are not supported by the record. Indeed, the trial court later stated, “The Public Defender was telling me that the man had a medical thing in Singapore somewhere, and that he would be unavailable. And . . . that’s why I initially issued a bench warrant, stayed it, and forfeited the bail, but stayed the forfeiture to see whether or not there was good cause for him not to appear.”

authority for this proposition, and the language of section 1305.1 indicates, in any case, that forfeiture is appropriate at the first continued hearing date only if the defendant is “without sufficient excuse[.]” (§ 1305.1 [“If, after the court has made the order [continuing the case for a reasonable period], the defendant, without sufficient excuse, fails to appear on or before the continuance date set by the court, the bail shall be forfeited . . .”]; see *People v. United Bonding Ins. Co.* (1971) 5 Cal.3d 898, 906 [“How soon a declaration of forfeiture must follow a bailee’s failure to appear without the court having exceeded its jurisdiction, is a matter which will depend upon the circumstances in the individual case”].)

Noting the trial court’s repeated requests for documentation of Ho’s excuse, Bankers maintains, “It is clear from the record that the trial judge did not believe that sufficient excuse might exist” on September 2, 2009, or at the subsequent hearings. Again, the record belies this assertion.<sup>6</sup> Section 1305.1 does not require conclusive proof of a sufficient excuse before the trial court may continue the case—only a reason to believe one “may exist,” and we presume that the trial court concluded the representations of defense counsel met this standard, pending further documentation. (§ 1305.1; *People v. Ranger Ins. Co.* (1994) 31 Cal.App.4th 13, 19 [“ ‘In most situations involving a section 1305, subdivision (b) determination the only reasons before the trial court are the evidence or representations furnished by defendant’s counsel. The cases demonstrate that the courts have cooperated with defense counsels’ requests and have liberally relied on their representations’ ”]; accord, *National, supra*, 121 Cal.App.4th at p. 1451.) The trial judge is in the best position to assess counsel’s credibility and the reasonableness of counsel’s explanation. Bankers has not shown the trial court abused its discretion in finding counsel’s explanation sufficient. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 [the exercise of the trial court’s discretion will be disturbed only for

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<sup>6</sup> At the February 2011 hearing on the motion to vacate the forfeiture, the trial judge stated, “I believe that there was good cause not to issue the warrant and forfeit the bail. When they tell you that their client is in the hospital, that is generally good enough for me. We have to dot our i’s and cross the t’s.”

clear abuse]; *People v. International Fidelity Ins. Co.* (2007) 151 Cal.App.4th 1056, 1061 [“whether the explanation for the defendant’s absence warrants giving the defendant another opportunity to make the appearance” is a matter for the trial court’s discretion].)

Bankers contends, in any event, that section 1305.1 only allows a trial court to continue the case “for a period it deems reasonable,” and it was unreasonable to continue the case without a declaration of forfeiture because Ho did not appear or provide documentation of an illness that prevented his appearance. We disagree. At the September 2, 2009 hearing, defense counsel indicated that Ho had been injured in Singapore, and requested a three-month continuance. We are unable to conclude that the trial court acted unreasonably in granting a three-month continuance in these circumstances to allow Ho to either appear or provide documentation of an excuse for his failure to do so. Likewise, Bankers has not shown the brief continuances in December 2009, and January 2010, were unreasonable, in light of defense counsel’s representations that Ho was “in the hospital in Singapore” and Rosen was attempting to obtain paperwork regarding his injury from that hospital. Finally, in light of defense counsel’s representation on February 1, 2010, that he had received medical documentation of Ho’s injury indicating Ho required surgery and three months of additional treatment, we do not find it unreasonable for the trial court to grant a three-week continuance to allow defense counsel to obtain additional information regarding the impact of this injury on Ho’s ability to appear for trial.

In so holding, we reject Bankers’ contention that the exception under section 1305.1 may not be applied for the purpose of giving defense counsel “multiple chances” to provide proof of an excuse.<sup>7</sup> Once the trial court has reason to believe that a sufficient

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<sup>7</sup> At the February 2011 hearing, the trial court stated, “Mr. Rosen changed jobs in the Public Defender’s Office, and so he was not the attorney who was in court most of the time. One of the reasons I remember that was being put over was the Public Defender . . . was making representations they would have to have Mr. Rosen who knew something about the case and who knew all the contact information, he was going to try to verify it. [¶] . . . There was a period of time when he was not available, and that is the reason why I was being so patient in continuing it because I was trying to give everybody a fair

excuse may exist, it may continue the matter for a period it deems reasonable. Nothing in section 1305.1 precludes the trial court from considering the availability of defense counsel and other circumstances making it difficult to obtain documentation of an excuse in determining what is reasonable.<sup>8</sup> Indeed, in continuing the matter multiple times to confirm Ho's excuse for nonappearance and to determine when he would reasonably be able to appear for trial, the trial court acted in accordance with the policies disfavoring forfeitures and underlying the section 1305.1 exception. (See *County of Los Angeles v. Ranger Ins. Co.* (1996) 48 Cal.App.4th 992, 996 [concluding the trial court acted reasonably, in its discretion, and in furtherance of the law disfavoring forfeitures in granting two trial continuances to enable verification of defendant's death certificate, which later proved to be fraudulent]; *People v. Surety Ins. Co.* (1976) 55 Cal.App.3d 197, 202 ["If bail forfeiture is required immediately upon the first nonappearance of a defendant, no matter how valid his reason for nonappearance be, such defendant would be subjected not only to having his bail forfeited but the additional penalty of possibly being required to pay another premium for its reinstatement"].)

D. The Court's February 22, 2010 Declaration of Forfeiture Was Proper

Finally, Bankers contends "The trial court had no jurisdiction to declare forfeiture on February 22, 2010" because it never made a specific order requiring Ho's appearance on that date. (See *People v. Classified Ins. Corp.* (1985) 164 Cal.App.3d 341, 345 ["Only when a defendant fails to appear on a date ordered by the court (or otherwise required by law . . .) do the provisions of section 1305 require that a forfeiture be declared . . ."].) (Italics omitted.) Bankers correctly notes that there is no order of the trial court specifically requiring Ho to appear on February 22, 2010, but this argument fails nonetheless. Section 1305, subdivision (a)(4) provides for bail forfeiture when a

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chance to get the information." The trial court also indicated, "[T]his went on way too long . . . because I listened to the Public Defender, just giving one more last chance, the person is overseas."

<sup>8</sup> Bankers does not dispute that Ho was in Singapore. The bail agent stated in the trial court, "I spoke with [Ho] in Singapore on a couple of different issues."

defendant fails to appear for trial and “[a]ny other occasion prior to the pronouncement of judgment if the defendant’s presence in court is lawfully required.” In this case, the initial continuance of the “cause” arose from Ho’s failure to appear for trial, on July 17, 2009. The minutes for the hearings on and after September 2009 indicate that the case was on calendar for “proceedings regarding bench warrant” and that the “case is continued for hearing on same.” Bankers fails to provide authority and analysis establishing that Ho’s presence was not required at these proceedings, and therefore has not met its burden on appeal to demonstrate error. (See *Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852 [“When an appellant . . . asserts [a point] but fails to support it with reasoned argument and citations to authority, we treat the point as waived”].) We observe, in any event, that section 1305.1 plainly contemplates that the defendant will appear “on or before the continuance date set by the court” unless he has a sufficient excuse. Thus, Ho’s presence on February 22, 2010, appears to have been required by law.

We hold, accordingly, that the trial court did not err in denying the motion to vacate the forfeiture and exonerate bail.

## II. The Summary Judgment

The summary judgment is not appealable. A summary judgment against a surety is a consent judgment which is appealable only to the extent it is not entered in compliance with the consent given. (*People v. Wilshire Ins. Co.* (1975) 46 Cal.App.3d 216, 219; accord, *People v. Ranger Ins. Co.*, *supra*, 51 Cal.App.4th at p. 1383.) The consent language in the bond at issue in this case is identical to that in *Wilshire*, in which the court found it “implicit . . . that the judgment be entered pursuant to the terms of the consent, which by its terms requires compliance with the jurisdictional prescriptions contained in Penal Code sections 1305 and 1306.” (*Wilshire*, at p. 219.) As we conclude the trial court proceeded in accordance with section 1305, and Bankers does not contend on appeal that the trial court failed to comply with section 1306, the summary judgment comports with the consent in the bond, and is therefore not appealable.

**DISPOSITION**

The order denying the motion to vacate the bail forfeiture and exonerate bail is affirmed, and Bankers' appeal from the summary judgment is dismissed. Respondent shall recover costs on appeal.

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Jones, P.J.

We concur:

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Needham, J.

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Bruiniers, J.