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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

<p>THE PEOPLE, Plaintiff and Respondent, v. EMILIO MORALES, Defendant; BAD BOYS BAIL BONDS, Real Party in Interest and Appellant.</p>	<p>B231430 (Los Angeles County Super. Ct. No. SJ3595)</p>
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APPEAL from an order and the judgment of the Superior Court of Los Angeles County. Alan Rubin, Commissioner, and Upinder S. Kalra, Judge, respectively. Affirmed.

Jefferson T. Stamp; Campeau Goodsell Smith and Gregory S. Charles for Real Party in Interest and Appellant.

John F. Krattli, Acting County Counsel, Ruben Baeza, Jr., Assistant County Counsel, and Melissa A. McCaverty, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for Defendant.

* * * * *

Bad Boys Bail Bonds (Bad Boys) appeals from the entry of summary judgment following the trial court's denial of its motion to extend the period in which the bail forfeiture could be set aside (Pen. Code, § 1305.4), contending it established good cause for an extension. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On March 16, 2010, Bad Boys posted a \$60,000 bond for Emilio Morales (defendant) in his criminal case for drug possession and sales (Health & Saf. Code, §§ 11351, 11352). On April 22, 2010, when defendant failed to appear in court, the trial court ordered his bail forfeited. The trial court issued a bench warrant for defendant, and notice of the bail forfeiture was mailed to Bad Boys. On October 8, 2010, Bad Boys timely moved under Penal Code section 1305.4¹ to extend the time for entry of summary judgment on the bail forfeiture by 180 days. That motion was granted, in part, and Bad Boys received a 60-day extension. In granting the motion, the trial court stated that “if there's no substantial progress in locating the defendant, there are to be no further continuances.”

In support of its first motion, Bad Boys's investigator, Christopher Charles, submitted a detailed declaration cataloguing his efforts to locate defendant. On May 26, 2010, Charles went to an Indiana Street address for the indemnitor, Rose Chairez. Although Chairez was not there, Charles spoke with Chairez's sister, Veronica, who told him defendant had fled to Mexico. According to Veronica, Chairez bailed defendant out as a favor to their cousin, Alejandra. Veronica told Charles she would have Chairez contact him.

On June 3, 2010, Charles confirmed that the addresses provided for defendant in the bail file (277 S. Lucas Avenue and 667 S. Carondelet Street) did not exist. Veronica called Charles and told him that defendant and her cousin resided near “8th and Burlington,” although she did not have a specific address. Charles surveilled the area but did not find defendant.

¹ All statutory citations are to the Penal Code unless otherwise noted.

Charles was able to gather more information about Chairez's friends and family after he reviewed the court case information, and discovered Aladdin Bail Bonds had bailed defendant out on the same case. Aladdin's bond was forfeited after Aladdin was unable to recover defendant. Aladdin's records disclosed a different address for Chairez, in Bell Gardens. On June 8, 2010, Charles interviewed Chairez's boyfriend, Enrique, at the Bell Gardens address. According to Enrique, Chairez was living at the Indiana Street home with her mother. When Charles went back to the Indiana Street house, Chairez's brothers said that Enrique had lied, and that Chairez lived at the Bell Gardens address. Chairez's family assured Charles they would have Chairez contact him. When Charles surveilled the Bell Gardens home, he did not see Chairez or defendant.

Charles went door to door in the Burlington Avenue area looking for defendant. None of the apartment managers he spoke with recognized defendant as a tenant from his booking photograph. The manager of 629 S. Burlington believed she had seen defendant at a local swap meet, but had not seen him in several weeks. There was no sign of defendant at the swap meet.

On June 23, 2010, Chairez's Bell Gardens neighbors informed Charles that Chairez and Enrique had been evicted. Chairez's mother did not know where her daughter was, and would not provide Charles with any information about Alejandra's mother, who was the sister of Chairez's mother.

On July 27, 2010, computer research revealed that Chairez's boyfriend was not named Enrique, but was named Justin Felix. Charles found a Maywood address for Felix, but there was no sign of Felix or Chairez there.

On August 4, 2010, Charles found Chairez at her mother's Indiana Street home. Chairez did not know where Alejandra and defendant were, but reported a last known address of "Burlington and Temple St." Alejandra's mother's last known address was "Lucas and 1st St." Chairez gave Charles her new address in the Hollenbeck area of Los Angeles. Chairez promised to contact Charles if she located Alejandra or had any useful information. Later surveillance of the Hollenbeck home revealed no sign of Felix,

Chairez, or defendant on August 5, 9, 10, 16, 18, 19, and 23, 2010, or September 15, 2010.

On August 10, 2010, Charles went to 171 S. Burlington, a previous address for defendant received from Aladdin. A maintenance worker at the apartment complex believed that defendant “look[ed] familiar as a tenant that resided at the location years prior.”

On August 31, 2010, Charles went to 207 S. Lucas, also a previous address for defendant. Occupants of the complex confirmed that defendant and Alejandra had lived there at the beginning of the year. A computer search of the address revealed that Alejandra’s last name was Huerta, and also revealed several previous addresses for defendant, including 621 S. Burlington. Veronica confirmed that Alejandra’s mother had lived at the Burlington address for several years.

On September 15, 2010, Charles found Chairez at her mother’s house on Indiana Street. She told him she had been trying, unsuccessfully, to contact Alejandra. Veronica was also attempting to contact Alejandra. Chairez promised to contact Charles with any information.

On December 22, 2010, Bad Boys moved again for a 180-day extension. In support of the motion, Charles submitted a declaration detailing his additional efforts to locate defendant.

On October 6, 2010, Charles went to 621 S. Burlington, but the apartment manager did not recall seeing defendant at the complex, and did not know Alejandra or her mother. On November 17, 2010, Charles again went to 667 S. Carondelet Avenue (the investigator had previously averred that 667 S. Carondelet *Street* was a nonexistent address), and interviewed the complex manager, who confirmed that defendant had previously resided in apartment 200 with a roommate, Jose Hernandez. Defendant told the manager he was returning to Guatemala. Charles knocked on apartment 200 and was told Hernandez was not there. He left his contact information, and Hernandez later contacted him and confirmed he had lived with defendant.

On December 9, 2010, Charles contacted both Chairez and her mother, who said that with the new information about defendant's whereabouts (presumably that he went to Guatemala) they may be able to convince Alejandra to cooperate.

In his declaration, the investigator averred that "if granted the remaining time, with the recent developments I am likely to obtain the necessary information that will establish the defendant's precise location, which will result in the return of the defendant to the custody of this court or document his whereabouts and intentions."

On January 21, 2011, the trial court denied the motion for a further extension. The court agreed with the People that there was not significant progress in locating the defendant, and concluded "[t]here doesn't appear to be nearly enough evidence [of a] reasonable likelihood of recapture." Summary judgment was entered on January 24, 2011.

DISCUSSION

"The object of bail and its forfeiture is to insure the attendance of the accused and his obedience to the orders and judgment of the court." (*People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653, 657.) "When a person for whom a bail bond has been posted fails without sufficient excuse to appear as required, the trial court must declare a forfeiture of the bond. [Citation.]" (*Ibid.*) Once a notice of forfeiture is mailed by the clerk, a surety has 180 days within which to obtain relief from forfeiture or exoneration of bail. (§ 1305, subd. (c); *People v. Ranger Ins. Co.* (2002) 99 Cal.App.4th 1229, 1232, disapproved in part on other grounds in *People v. American Contractors Indemnity Co.*, *supra*, 33 Cal.4th at p. 663, fn. 7.)

This 180-day period is often referred to as the "appearance" period." (*People v. American Contractors Indemnity Co.*, *supra*, 33 Cal.4th at p. 657.) Under section 1305.4, the surety may file a motion for an order extending the appearance period. (§§ 1305, subd. (i), 1305.4.) "In order to show good cause for an extension, the surety must demonstrate that it diligently attempted to locate and capture the defendant during the initial 180 days." [Citation.]" (*People v. Ranger Ins. Co.* (2007) 150 Cal.App.4th 638, 644.) The trial court must also consider whether there is a reasonable likelihood of

securing the attendance of the accused. (*People v. Accredited Surety & Casualty Co., Inc.* (2006) 137 Cal.App.4th 1349, 1358 (*Accredited*.) “If the forfeiture is not set aside by the end of the appearance period, the court is required to enter summary judgment against the surety.” (*People v. American Contractors Indemnity Co.*, at p. 657.)

We review the trial court’s denial of a motion to extend the appearance period under an abuse of discretion standard. (*People v. Ranger Ins. Co.* (2000) 81 Cal.App.4th 676, 679 (*Ranger*.) “[S]uch abuse occurs only where the court’s decision ““exceeds the bounds of reason, all circumstances being considered.”” (*Id.* at pp. 679-680.)

Bad Boys contends the trial court abused its discretion when it denied its request for an extension, because “the Bail Agent regularly collected information regarding the location of the defendant[] . . . [and] and stated that he could locate the defendant and return the defendant to custody if given additional time.” Also, for the first time in its reply brief, Bad Boys contends the trial court relied on the wrong legal standard in denying its motion. Bad Boys argues its second motion was denied simply because the surety had not made ““substantial progress”” in locating defendant. The failure to raise this issue in its opening brief constitutes a waiver of any error. (*Shade Foods, Inc. v. Innovative Products Sales & Marketing, Inc.* (2000) 78 Cal.App.4th 847, 894-895, fn. 10 [arguments raised by appellant for the first time in reply brief generally not considered, absent good reason for failing to present them earlier]; *Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 764 [issue raised for first time in reply brief generally not considered ““because such consideration would deprive the respondent of an opportunity to counter the argument””].)

In any event, the court employed the correct standard when it found there was no reasonable likelihood of capture if another extension was granted. Although it is clear the investigator was diligent in trying to locate defendant, there is no evidence the surety was likely to bring defendant into custody within another 180 days. The investigator simply stated his “belie[f]” he would successfully apprehend the defendant. However, other than information from the manager of defendant’s former apartment complex that defendant was returning to Guatemala, and some vague assurances by the indemnitor’s

family that they would try and ascertain his whereabouts (which seems doubtful, since the information they gave the investigator appears to have been evasive *misinformation*), there was no evidence that the investigator was any closer to locating defendant than when he began the search in May 2010, or that defendant's capture was reasonably likely.

None of the cases on which Bad Boys relies, *Accredited*, *Ranger*, and *People v. Alistair Ins. Co.* (2003) 115 Cal.App.4th 122 (*Alistair*),² compels a different conclusion. In *Accredited*, the Court of Appeal found an abuse of discretion in the denial of the surety's section 1305.4 motion because the investigator knew where the defendant resided at various times, with whom he associated, and what actions the defendant had taken, and the investigator received concrete and specific tips about the defendant's current whereabouts. (*Accredited, supra*, 137 Cal.App.4th at pp. 1352-1354, 1359.) The investigator here was able to discover only defendant's *previous* addresses, and received vague tips about his current location (Mexico and Guatemala). Twice, *Accredited's* surety was hot on the defendant's trail, and obtained the help of local police to capture the defendant. The *Accredited* investigator also hired a fugitive recovery specialist and California Patrol Agency to help him. (*Ibid.*) Here, defendant's trail had grown cold, and no comparable resources were employed to aid in his capture.

Similarly, in *Alistair*, the surety had found a new address for the defendant and obtained the help of local police. The conduct of the defendant's family members indicated that he was in the area and that the family members were in contact with him. (*Alistair, supra*, 115 Cal.App.4th at p. 128.) Consequently, the sureties in *Accredited* and *Alistair* demonstrated a reasonable likelihood of capture if given more time.

Bad Boys attempts to distinguish *Ranger*, where the court found no abuse of discretion in the denial of the surety's section 1305.4 motion. In *Ranger*, the only information provided by the investigator's declaration was that he "located a 'positive

² These cases all concerned motions seeking the *first* extension of the appearance period. In this case, Bad Boys had already received a 60-day extension, and accomplished little in that time period.

address on the above entitled matter in the city of Rosarritos, Baja California,’ and that [the accused] was a member of a band named ‘Fortaleza Nortena De Tijuana.’” (*Ranger, supra*, 81 Cal.App.4th at p. 678.) The Court of Appeal found that the declaration was deficient because it did not “state what efforts had been made, when they were made, or when [the investigator] received the file. Further, the declaration does not state how or by what process [the investigator] was able to locate [the accused]. Nor does [the investigator] explain what a ‘positive address’ was, how he was able to find it, how he knew it was a bona fide address for [the accused], and whether the address was still good.” (*Id.* at p. 682.) Although the declaration here was much more detailed than the one at issue in *Ranger*, it provided *no* information about defendant’s current whereabouts, whereas the investigator in *Ranger* claimed (though not convincingly) to have a current address for the accused.

Although we strictly construe the relevant statutory provisions in favor of the surety, it is the surety who bears the burden of establishing that it falls within the statutory requirements for relief. (*People v. Ranger Ins. Co.* (2006) 139 Cal.App.4th 1562, 1564.) As Bad Boys failed to carry its burden, the trial court did not abuse its discretion in denying the motion to extend the appearance period.

DISPOSITION

The judgment is affirmed. Respondent is awarded its costs on appeal.

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GRIMES, J.

WE CONCUR:

RUBIN, ACTING P. J.

FLIER, J.