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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

COUNTY OF LOS ANGELES,

Plaintiff and Appellant,

v.

THE NORTH RIVER INSURANCE  
COMPANY et al.,

Defendants and Respondents.

B231791

(Los Angeles County  
Super. Ct. No. SJ3563)

APPEAL from an order of the Superior Court of Los Angeles County.

Karla Kerlin, Judge. Reversed.

Andrea Sheridan Ordin, County Counsel, Ruben Baeza, Jr., Assistant County Counsel, and Joanne Nielsen, Deputy County Counsel, for Plaintiff and Appellant.

Jefferson T. Stamp for Defendants and Respondents.

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The County of Los Angeles (County) appeals the order granting the motion by respondents Bad Boys Bail Bonds and The North River Insurance Company (collectively Bad Boys) to set aside summary judgment on a forfeited bail bond and exonerate that bond. We reverse.

## FACTS

Bad Boys posted a bond for William Goffrey Morgan (Morgan). On June 3, 2009, Morgan did not appear for arraignment and the bond was forfeited. Bad Boys was notified and informed of the right to move to vacate the forfeiture pursuant to Penal Code section 1305.<sup>1</sup> Section 1305, subdivisions (c) and (i) permitted Bad Boys to file a motion within 180 days of the forfeiture and have that motion heard within 30 days of the expiration of the 180-day period. Notwithstanding section 1305, Bad Boys had the option of filing a motion pursuant to section 1305.4 for an order extending the 180-day period for no more than another 180 days past the original expiration date. (*People v. Taylor Billingslea Bail Bonds* (1999) 74 Cal.App.4th 1193, 1199 (*Taylor Billingslea*).)<sup>2</sup>

The statutory appearance period was set to expire in early December 2009. Before it expired, Bad Boys filed a timely motion to extend the 180-day period. That motion was granted on December 21, 2009, and the period was extended to March 22, 2010. A second motion to extend the time period was filed on March 16, 2010, and calendared for April 15, 2010. Relief was once again granted, and the time was extended to July 13, 2010.<sup>3</sup>

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

<sup>2</sup> Under *Taylor Billingslea*, a surety cannot ask for and receive extensions totaling 180 days and then, at the end of 180 days, request a further extension. Allowing extensions beyond 180 days “would violate the policy and spirit of the statutory framework.” (*Taylor Billingslea, supra*, 74 Cal.App.4th at p. 1199.)

<sup>3</sup> July 13, 2010, is more than 180 days after the initial 180-day period ended. The parties do not discuss whether the trial court’s extension of the appearance period to July 13, 2010, was permissible. Bad Boys, in its respondent’s brief, states: “The parties do not dispute that the appearance period was properly extended to July 13, 2010.”

On July 13, 2010, Bad Boys filed a motion to vacate the forfeiture. The motion was heard August 6, 2010, and denied. Unsolicited, the trial court offered to extend the appearance period 90 days to November 4, 2010, so Bad Boys could locate Morgan. Bad Boys accepted the offer. The minute order stated: “Summary judgment is to issue on November 4, 2010.”

The trial court entered summary judgment on November 9, 2010, and sent notice. Within a month, the trial court issued an order to show cause regarding lack of payment. Soon after, Bad Boys delivered payment and filed a motion to set aside the summary judgment. It argued that the bond had been exonerated by operation of law under section 1306, subdivision (c) because summary judgment was not entered within 90 days of when it could have first been entered. The trial court granted the motion on the grounds that it exceeded its jurisdiction by granting summary judgment. According to the trial court, the first day for entering summary judgment was August 7, 2010, and the time for entering summary judgment had therefore expired on November 5, 2010.

This timely appeal followed.

### **STANDARD OF REVIEW**

This appeal requires us to interpret statutes and apply the doctrine of estoppel to undisputed facts. Our review is de novo. (*People v. The North River Ins. Co.* (2011) 200 Cal.App.4th 712, 717; *State Comp. Ins. Fund v. Workers’ Comp. Appeals Bd.* (2012) 204 Cal.App.4th 766, 771.)

### **DISCUSSION**

A motion to vacate must be filed within the 180-day time period. (§ 1305, subd. (i).) Based on two motions to extend the time under section 1305.4, the period was extended from early December 2009 to July 13, 2010. Thus, July 13, 2010, was the last day Bad Boys could file a motion. It did so. And, as allowed by section 1305, subdivision (i), the motion was heard within 30 days. When the motion was denied on August 6, 2010, summary judgment could have been entered within a 90-day window

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Accordingly, for purposes of this appeal, we accept these extensions as either lawful or not subject to challenge.

(§ 1306, subd. (c))<sup>4</sup> ending on November 4, 2010. (*People v. Granite State Insurance Co.* (2003) 114 Cal.App.4th 758, 770.) When the trial court failed to enter summary judgment on November 4, 2010, the right to enter summary judgment expired and the bond was exonerated. Thus, the summary judgment entered on November 9, 2010, was not permitted by section 1306, subdivision (c). This raises the issue of whether the trial court lacked jurisdiction to enter summary judgment and, if so, whether the summary judgment was properly set aside.

When applied narrowly, lack of jurisdiction is understood to mean the “‘entire absence of power to hear or determine the case, an absence of authority over the subject matter or the parties.’ [Citation.]” (*People v. National Automobile & Casualty Ins. Co.* (2000) 82 Cal.App.4th 120, 125 (*National Automobile*)). But the concept of lack of jurisdiction “‘is also applied more broadly ‘to a case where, though the court has jurisdiction over the subject matter and the parties in the fundamental sense, it has no “jurisdiction” (or power) to act except in a particular manner, or to give certain kinds of relief, or to act without the occurrence of certain procedural prerequisites.’ [Citation.] ‘Speaking generally, any acts which exceed the defined power of a court in any instance, whether that power be defined by constitutional provision, express statutory declaration, or rules developed by the courts and followed under the doctrine of *stare decisis*, are in excess of jurisdiction . . . .’ [Citation.]” (*Ibid.*)

The difference in the two species of lack of jurisdiction “has significant consequences. For instance, subject matter jurisdiction cannot be conferred by consent, waiver, or estoppel. [Citation.] By contrast, when ‘the court has jurisdiction of the subject, a party who seeks or consents to action beyond the court’s power as defined by statute or decisional rule may be estopped to complain of the ensuing action in excess of jurisdiction.’ [Citation.] ‘A litigant who has stipulated to a procedure in excess of

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<sup>4</sup> Section 1306, subdivision (c) provides: “If, because of the failure of any court to promptly perform the duties enjoined upon it pursuant to this section, summary judgment is not entered within 90 days after the date upon which it may first be entered, the right to do so expires and the bail is exonerated.”

jurisdiction may be estopped to question it when “[t]o hold otherwise would permit the parties to trifle with the courts.” [Citations.]” (*National Automobile, supra*, 82 Cal.App.4th at pp. 125–126.)

The trial court had jurisdiction over the cause. But it did not have the power to extend the appearance period to November 4, 2010, and thereby push the deadline for summary judgment out 90 days to February 3, 2011. The County contends that Bad Boys’s consent and acquiescence to the unauthorized extension was sufficient to give rise to estoppel. Bad Boys, on the other hand, contends that a surety cannot be estopped from challenging the tardiness of summary judgment unless it affirmatively asked the trial court for an unauthorized extension.

To resolve the issue, we turn to the relevant case law.

The guiding principal is that when a party consents to action beyond the trial court’s power, the applicability of the estoppel doctrine “depends on the importance of the irregularity not only to the parties but to the functioning of the courts and in some instances on other considerations of public policy. . . . [W]aiver of procedural requirements may not be permitted when the allowance of a deviation would lead to confusion in the processing of other cases by other litigants. [Citation.] Substantive rules based on public policy sometimes control the allowance or disallowance of estoppel.” (*In re Griffin* (1967) 67 Cal.2d 343, 348 (*Griffin*)). As discussed below, estoppel has been applied to bar sureties from attacking summary judgment orders that were entered in excess of the trial court’s jurisdiction. In other words, case law establishes that section 1306, subdivision (c) does not embody a procedure that is so sacrosanct to public policy or the processing of other litigants’ cases that estoppel is disallowed. We perceive no cause to depart from precedent.

The surety in *County of Los Angeles v. Ranger Ins. Co.* (1999) 70 Cal.App.4th 10, 18–19 (*Ranger*) asked the trial court to toll the appearance period so that it could have longer to file a motion to vacate forfeiture. The request was granted. When summary judgment was entered past the 90-day window provided in section 1306, subdivision (c), the surety challenged the order based on lack of jurisdiction. The court affirmed and

stated: “We will not permit [the surety] to ‘trifle with the courts.’ The upshot of [the surety’s] request for, and receipt of, a tolling will be that [the surety] will find no relief in this court. Unlike the public policy against banishing criminal defendants, there is no public policy against the forfeiture of bail bonds.” (*Ranger, supra*, 70 Cal.App.4th at p. 19.)

In *People v. Bankers Ins. Co.* (2010) 182 Cal.App.4th 1377 (*Bankers*), the surety asked for an extension of the appearance period that resulted in an extension beyond the authority of the trial court to grant under sections 1305 and 1305.4. As a consequence, summary judgment was entered more than 90 days after the date upon which it could have first been entered. But the surety was estopped from challenging summary judgment. (*Bankers, supra*, at pp. 1385–1386.) The court stated: “We do not intend by this opinion to create a broad estoppel rule applicable to any misstep made by the surety. We recognize that the statutory provisions are replete with technicalities, and the trial courts must be vigilant in following the statutory strictures. In the circumstances here, however, the surety’s affirmative conduct makes it appropriate to estop it from challenging the trial court’s erroneous extension of the appearance period. To rule otherwise on this record would create a wholly unacceptable precedent, encouraging sureties to request multiple extensions from busy judges and, when their requests are honored and they nevertheless cannot produce the defendant, claim that they were wrong to have asked for further time and the judge should not have listened to their entreaties. To permit the surety to have it both ways—to obtain more time to avoid forfeiture of the bond, and then to have the bond exonerated because the judge gave them more time—would be to allow an intolerable manipulation of the trial courts. This we cannot and will not condone.” (*Id.* at p. 1386.)

Here, the factual footing is different from *Bankers* and *Ranger*. Bad Boys did not ask for an unauthorized extension of the appearance period. But in our view, this distinction is immaterial for purposes of applying estoppel. The trial court stated: “So at this point, I am denying the motion to exonerate bail, but I’m happy to give you some time to go find Mr. Morgan.” Counsel for Bad Boys replied: “I would accept the court’s

offer. Do you have a date in mind?” The trial court asked if counsel wanted 90 days. Counsel stated: “Yes, your Honor.” The record establishes that Bad Boys affirmatively consented to the unauthorized extension of the appearance period. Bad Boys should not be permitted to manipulate or trifle with the trial court by challenging the extension’s validity.

To defend its position, Bad Boys cites *Jordan v. City of Sacramento* (2007) 148 Cal.App.4th 1487 (*Jordan*). This citation, however, offers no guidance. The case simply states that “where the material facts are known to both parties and the pertinent provisions of law are equally accessible to them, a party’s inaccurate statement of the law or failure to remind the other party about a statute of limitations cannot give rise to an estoppel. Some cases assert that this simply amounts to a ‘mutual mistake of law’ and others remark that the estoppel elements of ignorance and *reasonable* reliance are absent. [Citations.]” (*Id.* at p. 1496.) Here, Bad Boys manipulated the trial court rather than the other party, so *Jordan* cannot be applied.

There is no refuge for Bad Boys in *People v. Stuyvesant Ins. Co.* (1968) 261 Cal.App.2d 773 (*Stuyvesant*) or *County of Los Angeles v. American Bankers Ins. Co.* (1996) 44 Cal.App.4th 792 (*American Bankers*) either.

In *Stuyvesant*, the surety moved to vacate forfeiture. The district attorney’s office represented that it would withdraw its opposition to the motion if the surety was instrumental in returning the defendant to the jurisdiction of the court. The motion was subsequently denied and the surety appealed. It argued that the district attorney’s representation “estops the state from invoking the forfeiture provisions of the Penal Code.” (*Stuyvesant, supra*, 261 Cal.App.2d at p. 783.) The court disagreed. It noted that the trial court lacked subject matter jurisdiction to vacate the forfeiture and that the surety did not otherwise establish the elements of equitable estoppel. Like *Jordan*, *Stuyvesant* did not involve a surety that manipulated the trial court.

At issue in *American Bankers* was whether an untimely motion to vacate the forfeiture extended the time for the trial court to enter summary judgment. The court answered no. (*American Bankers, supra*, 44 Cal.App.4th at p. 797.) Summary judgment

against the surety was reversed and the court ordered the bond exonerated. With good reason, estoppel was not argued or discussed. The surety did not acquiesce or consent to an unauthorized extension of the appearance period. *American Bankers* cannot be read to support the disallowance of estoppel when, as here, the surety consented to and obtained the benefit of an unauthorized extension.

**DISPOSITION**

The order vacating summary judgment and exonerating the bond are reversed. The County shall recover its costs on appeal.

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\_\_\_\_\_, J.  
ASHMANN-GERST

We concur:

\_\_\_\_\_, P. J.  
BOREN

\_\_\_\_\_, J.  
CHAVEZ