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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

COUNTY OF LOS ANGELES,

Plaintiff and Respondent,

v.

INDIANA LUMBERMENS MUTUAL  
INSURANCE COMPANY,

Defendant and Appellant.

B252486

(Los Angeles County  
Super. Ct. No. SJ003851)

APPEAL from an order of the Superior Court of Los Angeles County, Lia Martin,  
Judge. Reversed with directions.

E. Alan Nunez for Defendant and Appellant.

Mark J. Saladino, County Counsel, Mary C. Wickham, Interim County Counsel,  
and Brian T. Chu, Principal Deputy County Counsel, for Plaintiff and Respondent.

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## INTRODUCTION

Indiana Lumbermens Mutual Insurance Company (Indiana) appeals from the order denying its postjudgment motion to set aside the summary judgment, discharge forfeiture and exonerate bail. Indiana contends that the trial court failed to declare bail forfeited in open court as required by Penal Code section 1305<sup>1</sup> and therefore lost jurisdiction over the bond. We agree and reverse with directions.

## BACKGROUND

On April 28, 2011, Montana Bail Bond Inc. (Montana), on behalf of its surety, Indiana, posted a \$30,000 bail bond (No. US100784755) for the release of criminal defendant Paulo Fagundez. On the morning of May 7, 2012, when the proceedings commenced at 9:15 a.m. and Judge Monica Bachner called the case for trial, Fagundez was not in the courtroom despite having been ordered to appear.

At that hearing, Deputy District Attorney (DDA) Kennes Ma represented the People, and Michelle Mabugat represented Fagundez, appearing specially for Fagundez's counsel of record, David Welch.

After the case was called, the following transpired:

“Ms. Mabugat: . . . We are right now having an issue as to locating Mr. Fagundez, whether he's in the courtroom or not.

“The Court: Well, he's not in the courtroom.

“Ms. Mabugat: Inside the courtroom, that's correct, your Honor. Our office is currently trying to contact him as we speak, and they're trying to get back to me ASAP on his whereabouts.

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

“The Court: Well, I ordered him back. For one thing, I would prefer to call this at either 12:00 or 1:30. I don’t want him to show up and then—at this point there’s no good cause for me to do anything other than—there’s no information as to his whereabouts. I can wait and call it again at 1:30, if both of you can be here at 1:30, while my jurors are coming in. Are you available at 1:30?”

“[DDA] Ma: I am.

“Ms. Mabugat: I am going to ask Mr. Welch if he’s available at 1:30.

“The Court: Well, I’m trying to accommodate Mr. Fagundez, so—

“Ms. Mabugat: Absolutely.

“The Court: —Are you available at 1:30?”

“Ms. Mabugat: I’m not available at 1:30, but his attorney of record, Mr. Welch, might be available at 1:30.

“[DDA] Ma: How about the court gives him until noon? I’ll come here at noon, and if he’s not here, I would ask the court to issue a bench warrant.

“The Court: Well, someone has to—can you be here at noon?”

“Ms. Mabugat: I mean, if I would have to choose between noon and 1:30, 1:30 would be more—would be more ideal.

“The Court: Okay. We’re wasting time for nothing. Okay. We are in recess. I’m not doing anything right now. We’re off the record.”

The reporter’s transcript of the morning proceedings concluded by indicating that “[a] discussion was held off the record” and that “[n]o other proceedings for this case were reported.”

The trial court’s minutes of May 7, 2012 stated that “defendant having failed to appear this a.m., on defense request the court will allow defense counsel additional time to secure presence of the defendant and order this matter rescheduled for hearing at 1:30 p.m.” The minutes further reflect that the court later ordered the bail bond forfeited, issued a bench warrant and set bail at \$250,000.

Notice of forfeiture was mailed to Indiana and Montana on May 8, 2012, advising them they had an exoneration period of 185 days, or until November 9, 2012, to surrender

the defendant to the court or to custody or to appear in court to make a motion to set aside the forfeiture.

On November 5, 2012, pursuant to section 1305.4, Montana filed a motion to extend the exoneration period. On November 21, the trial court granted the motion and extended the time to May 7, 2013.

On May 6, 2013, Montana filed a motion to vacate forfeiture and exonerate bail bond.<sup>2</sup> On May 30, the trial court denied the motion.

On June 10, 2013, summary judgment against Indiana on the forfeited bond was entered. Notice of entry of judgment and demand for payment was served on Indiana by mail the same day. Indiana did not appeal from the summary judgment.

On June 28, 2013, Indiana filed a notice of motion and motion to set aside the summary judgment, discharge the forfeiture and exonerate bail. Indiana made the motion “on the grounds that the court lacked jurisdiction to enter a summary judgment, and [Code of Civil Procedure section] 473.”<sup>3</sup> Indiana argued that the trial court failed to declare a forfeiture of bail in open court on May 7, 2012 and therefore lost jurisdiction over the bond. Hearing on the motion was set for August 16, 2013.

On August 5, 2013, the parties filed a stipulation continuing the hearing on the motion from August 16 to September 20. On August 12, the trial court issued an order continuing the matter as stipulated.

On September 20, 2013, the trial court (Judge Lia Martin) heard and denied Indiana’s motion to set aside the summary judgment, discharge the forfeiture and exonerate bail in open court on May 7. Notice of the court’s ruling was mailed the same day.

This appeal by Indiana followed.

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<sup>2</sup> This motion is not in the appellate record.

<sup>3</sup> Code of Civil Procedure section 473, subdivision (d), provides in relevant part: “The court may, . . . on motion of either party . . . , set aside any void judgment or order.”

## DISCUSSION

### A. *Appealability*

As a threshold matter, we address the assertion by the County of Los Angeles (County) that Indiana’s appeal must be dismissed because it is untimely. The County is mistaken. Indiana is not appealing from the summary judgment. Instead, Indiana is appealing the denial of its postjudgment motion to set aside the summary judgment as void pursuant to Code of Civil Procedure section 473.

In its notice of appeal filed on November 4, 2013, Indiana gave notice that it was “appeal[ing] from the order of September 9, 2013 [*sic*] denying its motion to set aside summary judgment, discharge forfeiture and exonerate bail entered into the courts minutes on September 20, 2013, notice of entry of which was mailed September 20, 2013.” This postjudgment order is appealable. (*People v. Accredited Surety Casualty Co.* (2014) 230 Cal.App.4th 548, 554 [“[a]n order denying a motion to set aside summary judgment on a bail bond forfeiture is an appealable order”]; *People v. International Fidelity Ins. Co.* (2012) 204 Cal.App.4th 588, 592 [“[a]n order denying a motion to vacate summary judgment on a bail bond forfeiture is an appealable order and is a proper vehicle for considering a jurisdictional attack on the summary judgment”]; *People v. Bankers Ins. Co.* (2010) 181 Cal.App.4th 1, 5, fn. 4. [same].)

Under California Rules of Court, rule 8.104, Indiana had 60 days from September 20, 2013, the date of the mailing of notice of entry of judgment, i.e., until November 19, 2013, to file its notice of appeal. Therefore, its notice of appeal filed on November 4, 2013 was timely.<sup>4</sup>

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<sup>4</sup> The County’s reliance on California Rules of Court, rule 8.108(c)(1) is misplaced. That rule would extend the time for filing a notice of appeal from the underlying summary judgment.

## **B. Standard of Review**

A trial court's decision on a motion to set aside summary judgment and discharge forfeiture is ordinarily reviewed for an abuse of discretion. (*People v. Legion Ins. Co.* (2002) 102 Cal.App.4th 1192, 1195.) However, “[w]hen the facts are undisputed and only legal issues are involved, appellate courts conduct an independent review. [¶] In this case, the facts are undisputed, the question presently is purely one of law, and we will conduct an independent review.” (*People v. International Fidelity Ins. Co., supra*, 204 Cal.App.4th at p. 592.)

## **C. Overview of Law Pertaining to Bail Forfeiture**

“The forfeiture or exoneration of bail is entirely a statutory procedure, and forfeiture proceedings are governed entirely by the special statutes applicable thereto. [Citation.] . . .’ [Citation.] Because the law disfavors forfeitures, the bail statutes must be construed strictly to avoid forfeiture, and the procedures set forth therein must be “precisely followed or the court loses jurisdiction and its actions are void.” [Citations.]” (*People v. International Fidelity Ins. Co.* (2012) 212 Cal.App.4th 1556, 1561; accord, *People v. Allegheny Casualty Co.* (2007) 41 Cal.4th 704, 714; *People v. Accredited Surety Casualty Co., supra*, 230 Cal.App.4th at pp. 555-556; *People v. Ranger Ins. Co.* (2000) 77 Cal.App.4th 813, 816.)

Section 1305 provides that the trial court “shall in open court declare forfeited the undertaking of bail or the money or property deposited as bail if, without sufficient excuse, a defendant fails to appear” for arraignment, trial, judgment or any other occasion where his presence in court is lawfully required. (§ 1305, subd. (a).) If the court fails to declare a forfeiture in open court, it loses jurisdiction over the bond, and the bond is exonerated by operation of law. (*People v. Amwest Surety Ins. Co.* (2004) 125 Cal.App.4th 547, 550, 554.)

Once notice of forfeiture is mailed by the clerk of the court, the surety has 185 days in which to produce the criminal defendant in court and move to set aside the

forfeiture. (§ 1305, subs. (b), (c)(1)<sup>5</sup>; *County of Los Angeles v. Williamsburg National Ins. Co.* (2015) 235 Cal.App.4th 944, 950; *People v. Fairmont Specialty Group* (2009) 173 Cal.App.4th 146, 150, fn. 3.) This 185-day period is known as the appearance or exoneration period. (*People v. Bankers Ins. Co.* (2010) 182 Cal.App.4th 1377, 1380.) Upon a showing of good cause, the trial court may extend the appearance or exoneration period “to a time not exceeding 180 days from its order.” (§ 1305.4; *County of Los Angeles v. Williamsburg National Ins. Co.*, *supra*, 235 Cal.App.4th at p. 950.) “[T]he exoneration period can only be extended an additional 180 days once.” (*People v. Granite State Insurance Co.* (2003) 114 Cal.App.4th 758, 768.)

If the exoneration period expires without the forfeiture being exonerated, the trial court must enter summary judgment against the surety in the amount of the bond plus costs within 90 days. If it fails to do so, the bond is exonerated. (§ 1306, subs. (a) & (c); *County of Los Angeles v. Williamsburg National Ins. Co.*, *supra*, 235 Cal.App.4th at pp. 950-951.)

#### ***D. The Trial Court Lost Jurisdiction Over the Bond By Failing To Declare the Bond Forfeited on the Morning of May 7, 2012***

As previously noted, the bail forfeiture statute requires the trial court to declare the bond forfeited in open court if the defendant fails to appear when required to appear. (§ 1305, subd. (a).) “If a trial court fails to declare a forfeiture in open court, it ‘no longer retain[s] “statutory control and jurisdiction over the bond” [citation]’ and the bond is exonerated by operation of law. [Citation.] When there is no forfeiture of the bond, there

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<sup>5</sup> The trial court must vacate the order of forfeiture and exonerate the bond if within 180 days of the date of mailing the notice of forfeiture, the defendant appears voluntarily or in custody. (§ 1305, subd. (c)(1).) “If the notice of forfeiture is required to be mailed pursuant to this section, the 180-day period provided for in this section shall be extended by a period of five days to allow for the mailing.” (§ 1305, subd. (b).) The surety, therefore, has 185 days to locate the defendant and bring him to court. (*People v. Accredited Surety & Casualty Co., Inc.* (2012) 203 Cal.App.4th 1490, 1495, fn. 3; accord, *People v. Accredited Surety Casualty Co.*, *supra*, 230 Cal.App.4th at p. 551, fn. 2.)

is no 185-day exoneration period and no bond upon which the court can enter a summary judgment. [Citation.] The court’s ‘failure to declare a forfeiture in open court . . . result[s] in the court’s loss of jurisdiction over the bail bond.’ [Citation.] This loss of fundamental jurisdiction renders the [summary] judgment entered void and subject to collateral attack at any time. [Citation.]” (*People v. Bankers Ins. Co.* (2010) 182 Cal.App.4th 582, 586; accord, *People v. International Fidelity Ins. Co.*, *supra*, 204 Cal.App.4th at p. 595; *People v. Amwest Surety Ins. Co.*, *supra*, 125 Cal.App.4th at p. 549.)

Indiana contends that the trial court was required to declare bail forfeited in open court immediately on the morning of May 7, 2012 when Fagundez first failed to appear without excuse. Indiana maintains that “[t]here is nothing in the statutory scheme that authorizes a court to ‘accommodate’ a defendant; if he fails to appear without sufficient excuse, bail must be declared forfeited immediately, in open court while it is in session.” We agree.

Section 1305.1 allows the trial court to “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” if the “court has reason to believe that sufficient excuse may exist for the failure to appear.” “If the court has no information that a sufficient excuse may exist so as to justify a continuance pursuant to section 1305.1, the court must declare a forfeiture. If the court fails to do so, it loses jurisdiction and the bond is exonerated by operation of law. [Citations.] The court does not have jurisdiction to declare a forfeiture later. [Citation.]” (*People v. Indiana Lumbermens Mutual Ins. Co.* (2011) 194 Cal.App.4th 45, 49.)

*People v. Surety Ins. Co.* (1985) 165 Cal.App.3d 22, relied upon by Indiana, is instructive. In *Surety Ins. Co.*, the defendant who had been released on bond failed to appear for sentencing. Her counsel, whose secretary sent a letter to the court in advance of the hearing asking for a continuance based on counsel’s father’s death, also did not appear. Based on the letter, the court continued the hearing but did not order the bond

forfeited. (*Id.* at p. 25.) Later, when the defendant failed to appear, the court ordered the bond forfeited. (*Id.* at p. 25-26.)

On appeal from the summary judgment, the surety argued the trial court was without authority to continue the matter without ordering a forfeiture. The surety argued the trial court did not have any factual basis to believe that sufficient excuse for the defendant's failure to appear existed. Without such facts, the court was required to order forfeiture of the bond, and its failure to do so resulted in a loss of its jurisdiction to order the forfeiture at some future hearing. (*People v. Surety Ins. Co.*, *supra*, 165 Cal.App.3d at pp. 24-25.)

The appellate court agreed. It stated, "in the instant case the letter to the court from counsel's secretary made no representation or suggestion of any reason why the defendant would be absent or that there had been any contact with the defendant. The court's own language at the . . . hearing establishes the court was unaware of *any* basis for the defendant's absence that might constitute sufficient excuse. The minute order of the same date reflects only that defense counsel was unable to appear that day. Section [1305.1<sup>6</sup>], does not provide authority for a reasonable continuance under such circumstances; the forfeiture should have been ordered immediately and the surety and its agent notified forthwith . . . . The subsequent order of forfeiture and summary judgment entered thereon was without jurisdiction and therefore a nullity." (*People v. Surety Ins. Co.*, *supra*, 165 Cal.App.3d at p. 30.)

Here, on the morning of May 7, 2012, the trial court called Fagundez's case for trial. Fagundez, however, was not in the court room, and his attorney did not know where he was. While Mabugat informed the court that her office was attempting to locate Fagundez, she was unable to offer any facts or any explanation as to why Fagundez was not present. The court stated, "at this point there's no good cause for me to do anything other than—there's no information as to his whereabouts." Because the court had no

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<sup>6</sup> The court referenced former section 1305, subdivision (b), which is substantially similar to section 1305.1.

basis for believing that the defendant had a sufficient excuse for failing to appear as ordered, it had no justification for rescheduling or continuing the matter pursuant to section 1305.1.

Under these circumstances, the court was required to declare bail forfeited in open court on the morning of May 7, 2012. Neither the trial court's stated preference to call the matter in the afternoon nor its kindness in accommodating the defendant by giving Mabugat more time to locate him justified its decision to delay in declaring forfeiture of the bond.

It bears repeating that the law abhors forfeitures. (*People v. Indiana Lumbermens Mutual Ins. Co.* (2010) 190 Cal.App.4th 823, 830.) As such, bail statutes must be "strictly construed in favor of the surety" to avoid forfeiture. (*Ibid.*) In addition, courts must strictly abide by the statutes. A court that fails to do so "acts without or in excess of its jurisdiction." (*Ibid.*) Because the trial court failed to order forfeiture of the bond when the defendant failed to appear without sufficient excuse when the matter was called for trial, it lost jurisdiction over the bond, which was exonerated by operation of law. As such, all actions thereafter taken by the court on the bond were void and of no effect.

## DISPOSITION

The order is reversed. The matter is remanded to the superior court with directions to enter a new order granting Indiana's motion to set aside the summary judgment, discharge the forfeiture and exonerate bail. Indiana is awarded its costs on appeal.

BECKLOFF, J.\*

We concur:

PERLUSS, P. J.

ZELON, J.

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