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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

BANKERS INSURANCE COMPANY,

Defendant and Appellant.

B256391 (consolidated with B256392,
B256394 and B256397)

(Los Angeles County
Super. Ct. Nos. SJ3883, SJ3884,
SJ3885, SJ1584)

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

Brad Petersen for Defendant and Appellant.

Ruben Baeza, Jr., Assistant County Counsel, Brian Chu, Principal Deputy County
Counsel, and Lindsay Yoshiyama, Deputy County Counsel, for Plaintiff and Respondent.

Bankers Insurance Company (Bankers) appeals from the order denying its motions to vacate the summary judgments forfeiting bail in four cases involving criminal defendant Omar Hermenegildo. Bankers contends that the trial court should have granted the motions to vacate because the County of Los Angeles did not release Hermenegildo from custody after Bankers had posted bail. We affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

Over the course of about 11 years, Hermenegildo was charged with various crimes in four separate cases. Bail was set in each of the cases: \$26,000 in two of the cases; \$30,000 in the third case; and \$35,000 in the fourth case. On February 17, 2013, Bankers, as a surety, posted bail in the criminal matters in the four amounts, totaling \$117,000.

Based on the posting of bail, the Los Angeles County Sheriff's Department released Hermenegildo from custody at 5:53 p.m. on February 20, 2013. The sheriff's inmate report in each of the four cases identified the release agency as "USIM," "U.S. Immigration/Natural." A February 21, 2013 minute order indicated that Hermenegildo was "bonded out," and the court on that date scheduled a pretrial hearing for February 28, 2013. Hermenegildo failed to appear on February 28, 2013. The court issued a bench warrant and held it to March 6, 2013, the date on which it scheduled a further hearing. Hermenegildo did not appear on March 6, 2013. The minute order from that date indicated that "defendant has been deported." The court ordered bail forfeited. On March 7, 2013, the court mailed Bankers a bail forfeiture notice. Hermenegildo failed to appear in his three other matters, and the court ordered bail forfeited in those matters as well. On March 11, 2013, the court mailed Bankers a bail forfeiture notice in one of the other cases. It mailed bail forfeiture notices to Bankers in the two remaining cases on March 15, 2013.

Bankers did not move for relief from the forfeiture of bail in any of Hermenegildo's cases under the time period specified in Penal Code section 1305, nor did it ask to extend that time period. Pursuant to Penal Code section 1306, the court entered summary judgments against Bankers in the four cases.

Bankers filed motions to vacate the summary judgments and exonerate the bail in the four cases. The trial court denied the motions. According to the court, “from what was presented, there is no evidence that the state violated the contract. There was a contract entered . . . in particular shows that the sheriff[] released the defendant on the underlying criminal matters once the bond was posted. And so with respect to violating the terms of the contract the court has reviewed the records. I don’t see that which would put us in the position of whether [Bankers] filed a motion within the appearance period which, in reviewing each of the [four] cases, [Bankers] did not. . . . [T]here certainly is no evidence that has been presented that shows that the sheriff knew that upon the bond being posted and their releasing . . . the defendant that some other entity would then take actual possession of him so as far as the state’s end of the bargain the contract was fulfilled that the surety did not take action during the appearance period. . . . [S]ince the appearance period had expired by the time the surety did file this motion the court is without jurisdiction to grant any relief that [Bankers] would be seeking so for each [of] those matters . . . the motion” to set aside the summary judgment is denied. Bankers timely appealed in each of the matters.

DISCUSSION

1. *The Statutory Scheme Regarding Forfeiture of the Undertaking of Bail*

A court shall in open court declare forfeited the undertaking of bail if, without sufficient excuse, a defendant fails to appear for arraignment, trial, judgment or “[a]ny other occasion prior to the pronouncement of judgment if the defendant’s presence in court is lawfully required.” (Pen. Code, § 1305, subd. (a).) If the amount of the bond exceeds \$400, the clerk of the court shall, within 30 days of the forfeiture, mail notice of the forfeiture to the surety, execute a certificate of mailing of the forfeiture notice and place the certificate in the court’s file. (*Id.* at § 1305, subd. (b).)

A surety has 180 days, plus five days for mailing, to move the court to vacate the forfeiture in the case of a permanent disability by demonstrating that “(1) [t]he defendant is deceased or otherwise permanently unable to appear in the court due to illness, insanity, or detention by military or civil authorities[;] [¶] and (2) [t]he absence of the

defendant is without the connivance of the bail.” (Pen. Code, § 1305, subs. (b) & (d).) Within that same time period, a surety also may move to toll the 180-day period in the case of a temporary disability by demonstrating that “(1) [t]he defendant is temporarily disabled by reason of illness, insanity, or detention by military or civil authorities[;] [¶] (2) [b]ased upon the temporary disability, the defendant is unable to appear in court during the remainder of the 180-day period[;] [and] [¶] (3) [t]he absence of the defendant is without the connivance of the bail. [¶] The period of the tolling shall be extended for a reasonable period of time, at the discretion of the court, after the cessation of the disability to allow for the return of the defendant to the jurisdiction of the court.” (*Id.* at § 1305, subd. (e).) The surety may file a motion, based on good cause, for an order extending the 180-day period. (*Id.* at § 1305.4.)

“When any bond is forfeited and the period of time specified in Section 1305 has elapsed without the forfeiture having been set aside, the court which has declared the forfeiture shall enter a summary judgment against each bondsman named in the bond in the amount for which the bondsman is bound. The judgment shall be the amount of the bond plus costs” (Pen. Code, § 1306, subd. (a).)

2. *The Summary Judgments and the Denial of the Motions to Vacate*

As noted, the trial court declared a forfeiture of the bail posted by Bankers in each of the four criminal matters involving Hermenegildo. Bankers did not file a motion under section 1305, subdivision (d), arguing the forfeiture should be vacated based on his permanent disability, nor did it move under section 1305, subdivision (e), to extend the 180-day period based on temporary disability. Bankers thus did not follow the statutory procedure to vacate the forfeiture of bail. (See Pen. Code, § 1269b, subd. (h) [“If a defendant or arrested person so released fails to appear at the time and in the court so ordered upon his or her release from custody, Sections 1305 and 1306 apply”]; see also *People v. Stuyvesant Ins. Co.* (1963) 216 Cal.App.2d 380, 381-382 [“statutory scheme embodied in Penal Code sections 1305 and 1306 prescribes a particular procedure and sets up certain limitations”]; “since judgment against the bail is one taken by consent, the obligation assumed by the bail is absolute but for the defenses set forth in section 1305

of the Penal Code and even these must be asserted within the [180-day period] before the court loses jurisdiction”].)

Attempting to avoid these failures, Bankers argues that the trial court should have vacated the summary judgments because they were void. According to Bankers, Hermenegildo was not released from custody, as required by Penal Code section 1269b, subdivision (g)¹, but rather turned over to federal immigration authorities to be deported, and federal immigration authorities and the state are the same entity for purposes of determining whether the defendant was released from custody. We disagree. Initially, federal immigration authorities and the state are not the same entity. (See *People v. Accredited Surety & Casualty Co.* (2012) 209 Cal.App.4th 617, 621 [bail bond is contract in which “[t]he state and the surety agree that if the state will release the defendant from custody, the surety will guarantee that the defendant will appear personally at a specified time and place”].) Further, to accept Bankers’ position would allow a surety to ignore the statutory procedure to vacate the forfeiture of bail, which explicitly addresses a subsequent detention, and then obtain relief at a later time. Such a result would contravene the purpose of section 1305 and render its timing provisions a nullity.

In any case, even assuming Bankers were relieved of the time limits in Penal Code section 1305, it did not demonstrate grounds to vacate the summary judgments. One minute order stated that Hermenegildo had been deported. But no evidence indicated that he did not or could not return to the country. Bankers, therefore, failed to demonstrate that the forfeitures were improper or subject to exoneration. (See *County of Los Angeles v. Financial Casualty & Surety, Inc.* (2015) 236 Cal.App.4th 37, 47 [“if a bailee is deported and a surety seeks to vacate a forfeiture under section 1305, subdivision (a)(1) based on a permanent disability, it must show (1) a deportation, (2) the period of time the bailee is deemed inadmissible under federal law, and (3) that the period of inadmissibility

¹ Penal Code section 1269b, subdivision (g), provides, “Upon posting bail, the defendant or arrested person shall be discharged from custody as to the offense on which the bail is posted.”

would render prosecution improbable based on the totality of the circumstances, including the statute of limitations”].)

DISPOSITION

The order is affirmed. Respondent is entitled to recover its costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

JOHNSON, J.