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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

THE NORTH RIVER INS. CO.,

Defendant and Appellant.

BAD BOYS BAIL BONDS,

Real Party in Interest and
Appellant.

B262287

(Los Angeles County
Super. Ct. Nos. SJ4014 and
LA073048-01)

APPEAL from a judgment of the Superior Court of Los Angeles County, David R. Fields, Judge. Reversed and remanded with directions.

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

Jefferson T. Stamp for Defendant and Appellant The North River Insurance Company and Real Party in Interest and Appellant Bad Boys Bail Bonds.

The North River Insurance Company (the Surety) and Bad Boys Bail Bonds (the Bail Agent) (sometimes collectively referred to as the Surety) appeal a summary judgment entered on a forfeited bail bond.

Because the summary judgment was entered prematurely while the Surety's motion for relief was pending, the judgment is reversed and the matter is remanded for consideration of the Surety's motion to toll and/or extend the appearance period.

FACTUAL AND PROCEDURAL BACKGROUND

On May 13, 2013, the Surety, acting through the Bail Agent, posted a \$100,000 bail bond for the release of criminal defendant Newton Mukasa (Mukasa), who had been charged with one count of rape. (Pen. Code, § 261, subd. (a)(2).)¹

On October 24, 2013, during jury deliberations, Mukasa failed to appear and the bail was declared forfeited. The trial court mailed a bail forfeiture notice on October 25, 2013, which specified that April 28, 2014 would be the 185th day, i.e., the last day to obtain relief from forfeiture.²

On April 23, 2014, the Bail Agent filed a motion to extend the 180-day appearance period on the subject bond for an additional 180 days.³ On May 16, 2014, the trial court granted

¹ All unspecified statutory references are to the Penal Code.

² Following service of notice of forfeiture, a surety has 180 days, plus five days for service by mail, within which to obtain relief from the forfeiture on certain statutory grounds (§ 1305, subs. (b)–(e).) (*People v. United States Fire Ins. Co.* (2015) 242 Cal.App.4th 991, 999.)

³ Pursuant to section 1305.4, the trial court has discretion to extend the initial 180-day appearance period by an additional 180

the motion and allowed an additional six months to locate Mukasa. It continued the matter to November 17, 2014 for a motion to vacate the bond forfeiture.

On November 17, 2014, the Bail Agent filed another motion, seeking an order tolling and/or extending the 180-day appearance period. (§ 1305, subd. (e) & subd. (h), § 1305.4.) The supporting papers indicated that Mukasa had been taken into custody in Uganda for extradition to the United States.

On December 29, 2014, the matter came on for hearing and was continued to April 28, 2015, “for further motions in this matter. The court order[ed] that both parties submit motions on their positions within 30 days of the next court date. [¶] The court [found] that the time constraints on the defendant’s 185 day obligation have lapsed. The court state[d] that [it] may revisit the issue if [it] receives legal papers for the next court date.”

However, on January 27, 2015, three months before the date of the next scheduled hearing, the trial court entered summary judgment on the forfeited bond, pursuant to a clerk’s application for entry of judgment and summary judgment against surety on forfeited bond. The judgment ordered the Surety to pay \$100,000 plus \$435 in court costs, as well as interest thereon until paid.

On February 26, 2015, the Surety and the Bail Agent filed a timely notice of appeal.⁴

days. (*People v. Accredited Surety & Casualty Co., Inc.* (2006) 137 Cal.App.4th 1349, 1357-1358.)

⁴ Although a summary judgment in a bail bond proceeding is a consent judgment and ordinarily not appealable (*People v. International Fidelity Ins. Co.* (2007) 151 Cal.App.4th 1056, 1059), where the summary judgment was not entered in

CONTENTIONS

The Surety contends: the summary judgment entered on January 27, 2015 was entered prematurely, in violation of section 1306, subdivision (a); and the trial court lost jurisdiction when it refused to grant the Bail Agent's request for tolling in accordance with section 1305, subdivision (e).

DISCUSSION

1. *Entry of summary judgment during the pendency of the Surety's motion for relief was premature.*

The People properly concede that the January 27, 2015 summary judgment was prematurely entered by the trial court while the Surety's motion for relief was pending.

"Where a summary judgment is prematurely entered under the bail forfeiture statutes (§ 1305 et seq.), the judgment is *voidable* (not void) and the surety may . . . move to have it set aside in the trial court by a timely motion or challenge it by direct appeal. (*People v. American Contractors Indemnity Co.*, *supra*, 33 Cal.4th at pp. 663-664.) The most obvious example of such prematurity is where the summary judgment was entered against the surety before the exoneration period expired. (*Id.* at pp. 657-665 [summary judgment entered on 185th day, the last day of exoneration period, was premature and therefore voidable].) Less obvious, but of particular importance in the present case, is that a summary judgment may be premature if it

accordance with the consent given in the undertaking, the judgment is appealable. (*People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653, 663-664.) Here, as discussed below, the trial court prematurely entered summary judgment during the pendency of the Bail Agent's motion for relief. Therefore, the summary judgment is appealable.

was entered while a timely motion for relief was pending under the bail forfeiture statutes. (*People v. Aegis* [*Security Ins. Co.* (2005)] 130 Cal.App.4th [1071,] 1075; *People v. Granite State Insurance Co.* (2003)] 114 Cal.App.4th [758,] 764-765.)” (*People v. United States Fire Ins. Co.*, *supra*, 242 Cal.App.4th at p. 1001.)

Accordingly, this court accepts the People’s concession that the summary judgment should be reversed on the ground it was entered prematurely.

2. *There is no merit to Surety’s contention that trial court lost jurisdiction by refusing to grant the Bail Agent’s request for tolling.*

The Surety’s remaining contention is that the trial court lost jurisdiction when it refused to grant the Bail Agent’s request for tolling in accordance with the statutory mandate of section 1305, subdivision (e).

Section 1305 provides at subdivision (e): “In the case of a temporary disability, the court *shall* order the tolling of the 180-day period provided in this section during the period of temporary disability, provided that it appears to the satisfaction of the court that the following conditions are met: [¶] (1) The defendant is temporarily disabled by reason of illness, insanity, *or detention by military or civil authorities.* [¶] (2) Based upon the temporary disability, the defendant is unable to appear in court during the remainder of the 180-day period. (3) The 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.” (Italics added.)

Here, at the December 29, 2014 hearing, the trial court observed: “There’s a pretty good indication that someone has taken [Mukasa] into custody at some point. And that what they’re saying is – seems to be pretty legitimate.” The trial court continued the matter to April 28, 2015, in order to obtain additional briefing with respect to, inter alia, whether Mukasa was subject to extradition from Uganda to the United States.

The Surety contends the Bail Agent was entitled to tolling under section 1305, subdivision (e), once it was established that Mukasa was in custody in Uganda. The argument is unpersuasive because section 1305, subdivision (e), provides for tolling based on a *temporary* disability (compare section 1305, subd. (d) [pertaining to permanent disability]), but the circumstances of Mukasa’s detention in Uganda and the potential for extradition are unclear. In ruling on the matter, the trial court did not deny the Surety’s request for tolling. Rather, it simply continued the matter to April 28, 2015, for additional briefing with respect to extradition and related issues. On remand, the trial court will have the opportunity to address whether tolling for a temporary disability is warranted.

DISPOSITION

The summary judgment is reversed and the matter is remanded for consideration of the Surety's motion to toll and/or extend the appearance period. The parties shall bear their respective costs on appeal.

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EDMON, P. J.

We concur:

ALDRICH, J.

STRATTON, J.*

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