

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

FINANCIAL CASUALTY & SURETY,  
INC.,

Defendant and Appellant.

D061015

(Super. Ct. No. SCS239399)

APPEAL from an order of the Superior Court of San Diego County, Timothy R. Walsh, Judge. Affirmed.

This is an appeal by a surety, Financial Casualty & Surety, Inc. (Financial), from an order denying its motion to set aside the forfeiture of a bail bond. The appeal is based on Financial's argument that since the criminal complaint filed against the criminal defendant had allegations greater than the "charges" for which he had been arrested, Financial should be relieved from its obligations under the bond. This appeal is arguably frivolous. Financial has not provided a record of the criminal proceedings and to the

extent there is any information about the chronology of the events in the underlying criminal case, Financial misrepresents that chronology. Further, Financial does not claim any statutory basis for vacating the bond forfeiture and bases its common law argument on a single 1869 United States Supreme Court case that has no applicability to this case. Perhaps worse, the appellant's brief does not cite any, directly applicable California authority, all of which finds the same argument to be without merit. The County has not raised the issue of frivolous appeal, thus we will not discuss sanctions. That does not, however, change our view this appeal is wholly without merit.

#### STATEMENT OF THE CASE

On June 6, 2010, Financial issued a bail bond in the amount of \$25,000 to guarantee the appearance of Victor Resendiz (Resendiz) in a criminal case, for which he had been arrested. On June 15, 2010, a criminal complaint was filed. Resendiz was arraigned on the complaint and made all required court appearances until November 15, 2010, when he failed to appear. The court ordered his bail forfeited.

Financial requested and was granted an extension of the 180-day period to set aside the forfeiture, however, it was not able to surrender Resendiz.

On September 20, 2011, Financial moved to vacate the forfeiture on the ground that the "increase" in the charges without notice to the surety voided the bail agreement. The trial court denied the motion. Financial filed a timely notice of appeal.

#### DISCUSSION

As we have noted, Financial does not raise any statutory grounds for vacating the bond forfeiture in this case. Its argument is that when the complaint was filed, it not only

alleged the "charged offense" but also added allegations of a prison prior conviction. It then goes on to argue that the added allegations materially increased the risk of failure to appear without their knowledge and thus materially changed the terms of the contract. The appellant's brief argues the allegations changed the risk of imprisonment from 10 years to 20 years. There is absolutely nothing in the record to support that factual assertion. The record is devoid of information about the underlying criminal case, save for a few, undisputed assertions by the prosecutor in the trial court. Even those statements do not support the claim of "doubling" the potential punishment. In fact, the only reference in the record is the prosecutor's statement that a prior conviction and "first prison prior" was alleged. Prison priors in California are defined in Penal Code section 667.5, subdivision (b). If convicted, and sentenced to prison, and if the trial court did not strike the prior, it would add one year. It would not double the sentence.

Financial also argues that when the complaint was filed with the additional allegations, Resendiz fled. Financial's brief contends: "Apparently upon being told new charges were going to be added, the defendant failed to appear on November 15, 2010." That statement is false. The bond was issued on June 6, 2010. Resendiz was arraigned on the complaint (with the "added" allegations") on June 15, 2010, and made all of his court appearances until November 15, 2010. Thus the contention the "added" allegations frightened Resendiz into failing to appear has absolutely no basis in this record.

We turn next to the language of the bond that Financial issued in the criminal case. The bond provides in relevant part:

"Now, FINANCIAL CASUALTY & SURETY, INC., a Texas Corporation, hereby undertakes that the above-named defendant will appear in the above-named court on the date above, set forth *to answer any charge in any accusatory pleading based upon the acts supporting the complaint filed against him/her and as duly authorized amendments thereof*, in whatever court may be filed and prosecuted, and will at all times hold him/herself amenable to the orders and process of the court, and if convicted, will appear for pronouncement of judgment or grant of probation, or if he/she fails to perform either of these conditions, that the FINANCIAL CASUALTY & SURETY, INC., a Texas corporation, will pay to the people of the State of California the sum of TWENTY FIVE THOUSAND dollars (\$25,000.00) subject to applicable legal provisions." (Italics added.)

Under the emphasized language of the bond, it clearly requires the defendant to respond to "any charge in any accusatory pleading" that might be filed. It does not, on its face, limit its scope to the charges on which Resendiz was booked into jail.

We turn next to the legal analysis of Financial's claim.

#### A. *Standard of Review*

As Division Three of this court observed: "Although we normally review an order denying a motion to vacate the forfeiture of a bail bond for abuse of discretion [citation], where the issue is one of statutory construction or contract interpretation, and the evidence is not in dispute, the de novo standard of review applies [citation]. We review the trial court's order in this case de novo because there is no extrinsic evidence to consider in interpreting the contract." (*People v. International Fidelity Ins. Co.* (2010) 185 Cal.App.4th 1391, 1395.)

## *B. Analysis*

Financial argues that the addition of alleged prior convictions to the complaint made the charges different than those for which Resendiz was arrested and for which the bond was issued. Based on that difference, Financial continues to argue the circumstances underlying the bond had changed without its concurrence and thus it should have been relieved from the bond obligation.

Financial cites only one case in support of its "common law" argument to vacate the forfeiture, that is *Reese v. U.S.* (1869) 76 U.S. 13. In that case the trial court continued the criminal trial to an undetermined time. The court also allowed the defendant to leave the country, which could deprive the surety of the ability to surrender the defendant. Under those circumstances, the Supreme Court concluded the trial court had so changed the circumstances of the contract that the surety could no longer be held to it. *Reese* has nothing to do with this case.

On the other hand, there are a number of cases in California which have rejected the argument Financial now presents. The court in *People v. International Fidelity Ins.*, *supra*, 185 Cal.App.4th at pages 1396 to 1398, rejected a claim that variance between the pleadings and the charges at the time of arrest do not change the obligation of the surety in a bond which requires the defendant to answer any charge in any accusatory pleading. The court there recognized, as have other courts, that the surety can check the status of the pleadings in the underlying criminal case and surrender the defendant if it believes the risks have unreasonably increased by amendments to the charges. (*People v. Bankers Ins. Co.* (2010) 181 Cal.App.4th 1, 5.)

Among the cases rejecting Financial's position are those cited by the respondent: *People v. Accredited Surety and Casualty Co.* (2004) 125 Cal.App.4th 1, 10 and *County of Los Angeles v. American Contractors Indemnity Co.* (2011) 198 Cal.App.4th 175, 179-180. Unfortunately, Financial did not even acknowledge the existence of relevant California case law, let alone discuss it.

We are satisfied that the bond contract in this case fully anticipated that accusatory pleadings would be filed and that the defendant had to respond to any such pleadings. The notion that any variance from the charges that existed at the time of the issuance of the bond would make the bond void, would render no assurance to the courts that the bonding companies would stand behind their contract to insure the attendance of the defendants. Amendments of criminal charges are very common and bail bond companies are fully aware of such changes. As has been observed, they can easily access the court's records to determine if they believe the charges are sufficiently different than those which existed at the issuance of the bond and surrender the defendant if necessary. In the present case the record does not demonstrate that there was an amendment to the complaint, and it shows the defendant appeared in court over a five-month period before he absconded. There is no basis in this record to support Financial's request to vacate the forfeiture.

DISPOSITION

The trial court's order denying Financial's motion to vacate the bail bond forfeiture is affirmed. The County is entitled to its costs on appeal.

HUFFMAN, Acting P. J.

WE CONCUR:

McDONALD, J.

O'ROURKE, J.