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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

FINANCIAL CASUALTY & SURETY,
INC. et al.,

Defendants and Appellants.

E053761

(Super.Ct.Nos. RIC1107968 &
RIF114973)

OPINION

APPEAL from the Superior Court of Riverside County. Richard Todd Fields, Becky Dugan, and Edward D. Webster, Judges.* Affirmed.

Harold Rubinfeld for Defendants and Appellants.

Pamela J. Walls, County Counsel, and Patricia Munroe, Deputy County Counsel, for Plaintiff and Respondent.

Financial Casualty & Surety, Inc. (Surety), posted a \$50,000 bail bond for the

* Judge Fields denied the motion to vacate forfeiture. Judge Dugan signed the summary judgment on bail forfeiture. Judge Webster heard the postjudgment motion to vacate the summary judgment.

release of Josue Neftaly Reyes, a defendant facing criminal charges. Reyes failed to appear on the date set for hearing on his Penal Code section 995 motion, and bail was forfeited. The surety obtained a six-month extension to produce the defendant. During that period, an investigator for the district attorney's office asked the surety to "back off" its investigation of the defendant's whereabouts because the FBI was looking for the defendant. This resulted in a hiatus of the search efforts between July and September of 2010, during the extension period. Because of this hiatus, the Surety sought and was granted an additional extension for another six months. When the Surety did not produce the defendant at the end of this period, summary judgment was entered.¹ The Surety appeals.

On appeal, the Surety argues that the order denying the motion to vacate the bail forfeiture should be reversed due to interference by the People with its ability to perform under the bail bond contract. We affirm.

BACKGROUND

Criminal proceedings were filed against Josue Neftaly Reyes on August 8, 2008. The Surety posted a bail bond in the amount of \$50,000 on October 31, 2008. Defendant was ordered to return on any and all future hearing dates. On April 9, 2010, the defendant failed to appear at a scheduled hearing on his motion pursuant to Penal Code section 995 to dismiss enhancement allegations added after the court had rejected his

¹ After notice of the entry of summary judgment was sent to an incorrect address, the Surety made a motion to vacate the summary judgment, arguing it was void because the notice was not timely mailed. The ruling from that proceeding is not the subject of this appeal.

guilty plea. A bench warrant was issued for the defendant's arrest and his bail was forfeited. A notice of the forfeiture was served on the Surety pursuant to Penal Code section 1305 on April 9, 2010.

On October 15, 2010, the court conducted a hearing on the Surety's motion to extend the bail forfeiture expiration date. The basis for the request was that search efforts for the defendant had been interrupted because a district attorney's investigator indicated that the United States Marshall was taking the case. Although the district attorney had refused to provide a formal written request for the Surety to stop its investigative efforts, the Surety's investigator, was requested to "back off" by an investigator for the district attorney. Due to the interruption of search efforts between July 2010 and September 2010, the court granted a six-month extension to the Surety pursuant to Penal Code section 1305.4, to allow the Surety an opportunity to locate the defendant and produce him in court. The Surety was given until April 5, 2011, to obtain the defendant's appearance. The defendant did not make an appearance in court during the allotted time.

On March 25, 2011, the Surety filed a motion to vacate the forfeiture. The Surety argued it should be relieved of liability under the bond because the People had substantially interfered with its ability to perform under the bail bond contract by asking the Surety's investigator to "back off" between July and September of 2010. On April 8, 2011, the court denied the motion.

On April 19, 2011, the court entered summary judgment on the bail bond forfeiture. On June 2, 2011, the Surety appealed from the summary judgment.²

DISCUSSION

The Surety argues that the bail bond forfeiture should have been vacated and its financial obligations under the bond exonerated due to the actions of the People which interfered with its performance of the bail bond contract. We disagree.

The purpose of posting bail is to insure the defendant will make his appearances in court and obey the court's orders and judgment. (*County of Los Angeles v. Ranger Ins. Co.* (1999) 70 Cal.App.4th 10, 16.) Forfeiture of a bail bond is not to be viewed as a means of revenue for the government or a punishment of the surety. (*Ibid.*; *People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653, 657; *People v. Wilcox* (1960) 53 Cal.2d 651, 657.) Because the law disfavors forfeitures, Penal Code sections 1305 and 1306 must be strictly construed in favor of the surety to avoid a forfeiture of the bond. (*County of Los Angeles*, at p. 16.) Nevertheless, it is the burden of the surety to show that its excuse falls within the provisions of the statute. (*People v. Amwest Surety Ins. Co.* (1991) 229 Cal.App.3d 351, 355; see also *People v. American Surety Ins. Co.* (2001) 88 Cal.App.4th 762, 768.)

Penal Code section 1305, subdivision (a), requires a court to declare forfeited the undertaking of bail or the money or property deposited as bail if, without sufficient excuse, a defendant fails to appear for (1) arraignment, (2) trial, (3) judgment, (4) any

² The notice of appeal incorrectly states that the appeal is from a court trial.

other occasion prior to the pronouncement of judgment, if the defendant's presence in court is lawfully required, or (5) to surrender himself or herself in execution of the judgment after appeal. Regarding subparagraph (4), there is no requirement that a court specifically command a defendant's appearance at a date and time certain. (*People v. Sacramento Bail Bonds* (1989) 210 Cal.App.3d 118, 122.) Where the defendant has neglected to appear on an occasion when his presence was lawfully required, the trial court properly forfeits his bail and denies the surety's motion to vacate the forfeiture. (*Id.* at p. 123; see also *People v. Ranger Ins. Co.* (2005) 135 Cal.App.4th 820, 825.)

Forfeiture of bail may be exonerated if the defendant appears either voluntarily or in custody after surrender or arrest in court within 180 days of the date of forfeiture or within 180 days of mailing of the notice of forfeiture. (Pen. Code, § 1305, subd. (c)(1), (2).) Forfeiture of bail may also be vacated or exonerated where the defendant is (1) deceased or permanently unable to appear in court due to illness, insanity, or detention by the military or civil authorities (Pen. Code, § 1305, subd. (d)); (2) the defendant is in custody beyond the jurisdiction of the court that ordered bail forfeited and the prosecuting agency elects not to seek extradition (Pen. Code, § 1305, subd. (f)); or the defendant is beyond the jurisdiction of the state, is temporarily detained by the bail agent and has been positively identified, but the prosecuting agency elects not to extradite. (Pen. Code, § 1305, subd. (g).) Penal Code section 1305, subdivision (f), a surety is entitled to exoneration of bail only when the defendant is arrested by a foreign government *and* the prosecuting agency declines to seek extradition. (*People v. Ranger Ins. Co.* (1998) 61 Cal.App.4th 812, 818.)

The key issue is whether the surety's obligations have been performed to entitle it to an order exonerating bail. (*People v. Safety National Casualty Corp.* (2007) 150 Cal.App.4th 11, 15, citing *People v. Wilshire Ins. Co.* (1977) 67 Cal.App.3d 521, 535.) There is no liability on the part of a surety under its bail bond if the defendant's nonappearance at court is not one covered by the bond's provisions. (*Safety National*, at p. 16.) However, where there is a breach of the obligation, the bail should be enforced. (*Wilshire Ins.*, at pp. 535-536.)

In order to satisfy Penal Code section 1305, the government must have acted to prevent the surety from fulfilling its contractual duty to produce the defendant in court. (*County of Los Angeles v. Ranger Ins. Co.* (1996) 48 Cal.App.4th 992, 997, citing *People v. Meyers* (1932) 215 Cal. 115, 119.) As provided by the statute, this occurs when a defendant is in custody in another jurisdiction and the prosecuting agency elects not to extradite. In other words, the surety must be prevented from performance of its obligations by actions of the government. Where the defendant has not been placed in custody, the surety is not relieved of responsibility on its bond. (*People v. United Bonding Ins. Co.* (1969) 274 Cal.App.2d 898, 903.)

Here, the bail bond contract obligated the Surety to insure the defendant's appearance in court. The defendant absconded. This was not an action by the government. The defendant's failure to appear was not attributable to his arrest or detention in another jurisdiction coupled with the prosecuting agency's failure to seek extradition. As such, nothing prevented the Surety from locating the defendant and securing his presence in court.

Exoneration of bail was not required pursuant to Penal Code section 1305, subdivisions (f) or (g). The fact that a district attorney's investigator asked the bail agent to "back off" between July and September of 2010 was only sufficient to justify an extension of time, which the court granted in October 2010. That informal hiatus did not affect the Surety's ability to pursue its investigation and produce the defendant during the next six months.

At oral argument, the surety argued that the provisions for exoneration of bail pursuant to section 1305 should be interpreted using principles of equity, citing *People v. Far West Ins. Co.* (2001) 93 Cal.App.4th 791, 796, as opposed to the four corners of the statute. We cannot interpret the statute in a manner which does injury to the plain meaning of its provisions. In *People v. Far West Ins. Co.*, *supra*, the fugitive defendant was apprehended and held in custody in another state but was released as a result of errors committed solely by officials of the demanding county government and the surety had done all that was required of it under the terms of the bond. (*Id.* at p. 798.) In essence, the surety had fully complied with the four corners of the statute in that case.

Here, the defendant was never apprehended by any governmental agency or authority, from California or another state, so no governmental action prevented the surety from locating the defendant and turning him over to the prosecuting agency. The defendant skipped bail and is still a fugitive, not subject to any foreign governmental authority. The surety failed to show that its excuse fell within the exonerating provisions of section 1305. There was no error.

DISPOSITION

The judgment is affirmed. The People are awarded costs on appeal.

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RAMIREZ
P.J.

We concur:

RICHLI
J.

MILLER
J.