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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

BAD BOYS BAIL BONDS,

Defendant and Appellant.

H036881

(Santa Clara County

Super. Ct. No. EE705810)

Bad Boys Bail Bonds (Bad Boys) appeals from the denial of its motion to vacate forfeiture and exonerate a \$200,000 bail bond and from the resulting summary judgment.

Bad Boys contends that the superior court lost jurisdiction when the defendant in the underlying criminal case Ardalan Farsheedi failed to appear and the court failed to make a record regarding a continuance motion that occurred on December 5, 2007. Alternatively, Bad Boys contends that since the court failed to "make a proper declaration of forfeiture," the superior court lost jurisdiction over the bond on December 17, 2007. For reasons that follow, we agree with Bad Boys that the superior court did not make a proper declaration of forfeiture on December 17. Accordingly, we reverse the summary judgment order.

### *Appealability*

"An order denying a motion to set aside a forfeiture is appealable." (*People v. Ranger Ins. Co.* (1996) 51 Cal.App.4th 1379, 1382.) Some courts have recognized that both the order on a motion to vacate the forfeiture and the ensuing judgment are appealable. (*County of Orange v. Lexington Nat. Ins. Corp.* (2006) 140 Cal.App.4th 1488, 1490, fn. 1.) However, the California Supreme Court has concluded that the judgment is not generally appealable because it is one entered by consent, by the terms of the bond contract. (*People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653, 663-664.) Nevertheless, when judgment is not entered according to the consent in the bond, such a judgment is appealable. (*Ibid.*; *People v. Wilshire Ins. Co.* (1975) 46 Cal.App.3d 216, 219-220.)<sup>1</sup>

### *Background*

In general, the facts are not in dispute. On May 29, 2007, Bad Boys acting as the bail agent for the North River Insurance Company (the surety) posted bail bond number T20050014465 in the sum of \$200,000 providing for the release of the defendant in the criminal case *People v. Ardalan Mendoza Farsheedi*.

Farsheedi appeared for arraignment on October 29, 2007, and entered a plea of not guilty, but did not waive time. The court set the matter on the master trial calendar for

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<sup>1</sup> The clause in the bond pursuant to which the summary judgment was entered states: "If the forfeiture of this bond be ordered by the Court, judgment may be summarily made and entered forthwith against the said THE NORTH RIVER INSURANCE COMPANY, a New Jersey Corporation, for the amount of its undertaking herein, as provided by Section 1305 and 1306 of the Penal Code." "Though a summary judgment against a surety is a consent judgment which is normally not appealable [citations], it is implicit in the consent phrase above quoted from the bond that the judgment be entered pursuant to the terms of the consent, which by its terms requires compliance with the jurisdictional prescriptions contained in Penal Code sections 1305 and 1306." (*People v. Wilshire Ins. Co.*, *supra*, 46 Cal.App.3d at p. 219.)

December 17 and told counsel to file any motions by November 15 for hearing on December 7.

Before December 7, it appears that Farsheedi's counsel filed a motion to continue the trial date. At a hearing held on December 5, 2007, the court called the matter. Farsheedi's counsel announced his appearance for the record and told the court that his client was not present. When the court asked counsel where Farsheedi was, counsel replied "I don't know. I don't anticipate him arriving." The court asked counsel to approach the bench and a discussion was held off the record. Thereafter, the court granted a continuance as to a codefendant upon his waiver of his speedy trial rights. Then, the court ordered, "On Mr. Farsheedi. He's ordered to be here December 18th at . . . 8:30. We will show that as a motion to continue. If he doesn't appear, I'll issue a no-bail warrant. If he does appear, we'll hopefully secure time waiver and hopefully get him to agree to a - - " The prosecutor interrupted the court to point out that the date should be December 17. Accordingly, the court ordered Farsheedi to appear on December 17 at 8:30. The minute order from the December 5 hearing indicates that the defendant "did not know to be present."

On December 17 the case was called and Farsheedi's counsel told the court that "There's an indication that the defendant might not be here." The court signified that was its understanding and stated, "Bail be forfeited. No bail warrant. I'll stay it till the end of the calendar in case he shows up, but we don't think he will." No further proceedings in this matter took place on that day. The minute order from the hearing indicates that Farsheedi was not present and the court forfeited the bond and ordered that a bench warrant issue.

On November 8, 2010, the court entered summary judgment on the bond and filed the notice of entry of judgment the same day.

On November 24, 2010, Bad Boys filed a motion to set aside the summary judgment, vacate forfeiture and exonerate the bond based on lack of jurisdiction by the

superior court. Similar to this appeal, Bad Boys contended that the superior court lost jurisdiction over the bond when it failed to make a proper declaration of forfeiture on the record in open court; and the superior court lost jurisdiction over the bond on December 5, 2007 when it failed to create an adequate record supporting the continuance to December 17, 2007. The superior court denied the motion to set aside the summary judgment.

This appeal was filed on April 22, 2011.

#### *Standard of Review*

"The determination of a motion to set aside an order of forfeiture is entirely within the discretion of the trial court, not to be disturbed on appeal unless a patent abuse appears on the record. [Citations.]' [Citation.]' "The burden is on the party complaining to establish an abuse of discretion, and unless a clear case of abuse is shown and unless there has been a miscarriage of justice a reviewing court will not substitute its opinion and thereby divest the trial court of its discretionary power." [Citations.]' [Citation.]" (*County of Los Angeles v. Nobel Ins. Co.* (2000) 84 Cal.App.4th 939, 944-945.)

#### *Discussion*

Bad Boys argues that the trial court had lost jurisdiction to order forfeiture of the bail bond on December 17, 2007, because, in essence the court failed to timely declare forfeiture on December 5, 2007, when Farsheedi failed to appear without sufficient excuse.

As this court has explained before, "[t]he forfeiture or exoneration of bail is entirely a statutory procedure, and forfeiture proceedings are governed entirely by the special statutes applicable thereto. [Citation.] Sections 1305 through 130[8] govern bail forfeiture. [Citation.] Because the law abhors forfeitures, these statutes are to be strictly

construed in favor of the surety. [Citation.]" (*People v. Ranger Ins. Co.* (1998) 66 Cal.App.4th 1549, 1552.)<sup>2</sup>

Furthermore, the sections governing bail forfeiture " 'must be strictly followed or the court acts without or in excess of its jurisdiction. . . . [Citation.]' " (*People v. Topa Ins. Co.* (1995) 32 Cal.App.4th 296, 300.) Consequently, courts reviewing the application of bail bond statutes must apply a standard that protects the surety, and more importantly the individual citizens who pledge their property to the surety on behalf of persons seeking release from custody. (*People v. National Auto. & Cas. Ins. Co.* (2002) 98 Cal.App.4th 277, 287.)

In *People v. American Contractors Indemnity Co.*, *supra*, 33 Cal.4th 653, the California Supreme Court summarized the relevant bail bond procedures: "When a person for whom a bail bond has been posted fails without sufficient excuse to appear as required, the trial court must declare a forfeiture of the bond. (§ 1305, subd. (a).) The 185 [day period] after the date the clerk of the court mails a notice of forfeiture (180 days plus five days for mailing) to the appropriate parties is known as the appearance period. (§ 1305, subd. (b).) During this time, the surety on the bond is entitled to move to have the forfeiture vacated and the bond exonerated on certain grounds, such as an appearance in court by the accused. (§ 1305, subd. (c)(1).) The trial court may also toll the appearance period under certain circumstances, or extend the period by no more than 180 days from the date the trial court orders the extension, provided that the surety files its motion before the original 185-day appearance period expires and demonstrates good cause for the extension. (§§ 1305, subds. (e), (i), 1305.4.) [¶] After the appearance period expires, the trial court has 90 days to enter summary judgment on the bond. (§ 1306, subds. (a), (c).) If summary judgment is not entered within the statutory 90-day period, the bond is exonerated. (§ 1306, subd. (c).)" (*Id.* at p. 658, fns. omitted.)

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<sup>2</sup> All undesignated section references are to the Penal Code.

"Effective January 1, 1999, the law regarding the procedures a trial court must follow for bail forfeiture includes the requirement that '[a] court shall in open court declare forfeited the undertaking of bail . . . if, without sufficient excuse, a defendant fails to appear . . . .' [Citation.]" (*People v. Ranger Ins. Co.* (1999) 76 Cal.App.4th 326, 329.)

"According to the Assembly Committee on Public Safety, the rationale for the 1999 bail forfeiture amendment, which was introduced as part of Assembly Bill No. 2083 in 1998, was to give bail agents 'notice of the forfeiture at the time, rather than when the notice is sent' and to thereby give the bail agents the ability 'to immediately pursue the fugitive.'" (*People v. Ranger Ins. Co., supra*, 76 Cal.App.4th at p. 330.) Thus, the 1999 amendment imposes an additional procedure to establish bail bond forfeiture.

"[S]ections 1305 and 1306 prescribe[] a particular procedure and set[] up certain limitations. . . . All directions to the court as to its duties are mandatory. [Citations.]" (*People v. Stuyvesant Ins. Co.* (1963) 216 Cal.App.2d 380, 381-382.) An act beyond those limits exceeds the court's jurisdiction. (*People v. Surety Ins. Co.* (1973) 30 Cal.App.3d 75, 79.) Once a trial court acts extrajudicially, it no longer has jurisdiction to make subsequent orders in the matter. (*People v. Wilshire Ins. Co., supra*, 46 Cal.App.3d at p. 221.)

Bad Boys argues that since forfeiture must be declared if a defendant fails to appear when his or her presence is lawfully required and in this case because a continuance motion was filed that required that Farsheedi waive time, the court was required to declare forfeiture on December 5 unless Farsheedi had an excuse.<sup>3</sup> Bad Boys

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<sup>3</sup> This argument rests on the faulty premise that Farsheedi was personally required to waive time. "If the defendant is represented by counsel, counsel has the authority to waive defendant's statutory right to a speedy trial, at least in the absence of evidence showing incompetence of counsel. (*People v. Wright* (1990) 52 Cal.3d 367, 389.)" (*People v. Harrison* (2005) 35 Cal.4th 208, 225.) However, Farsheedi was legally required to be in court pursuant to Superior Court of Santa Clara County, Local Criminal Rules, rule 3 (C) for the motion to continue the trial date.

contends that here the superior court did not make a record of the evidence supporting its conclusion that a sufficient excuse existed. As Bad Boys points out, while the clerk's minutes state Farsheedi "did not know to be present," nothing in the reporter's transcript of the December 5 hearing supports this statement.

Section 1305, subdivision (a), provides that the court shall "declare forfeited the undertaking of bail or the money or property deposited as bail if, without sufficient excuse, a defendant fails to appear" at a court hearing he or she is lawfully required to attend.

Section 1305.1 specifies: "If the defendant fails to appear . . . but the court has *reason to believe* that sufficient excuse *may exist* for the failure to appear, the court may 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." (Italics added.) "What constitutes a sufficient excuse generally rests within the sound discretion of the trial judge[.]" (*People v. United Bonding Ins. Co.* (1971) 5 Cal.3d 898, 906-907 (*United Bonding*)).

In *United Bonding, supra*, 5 Cal.3d 898, our Supreme Court was called upon to consider whether there is a jurisdictional although not express time limit within which an order of forfeiture must be made after a bailee's default. (*Id.* at p. 904.) The Supreme Court held that former section 1305 required that a court must declare a forfeiture of bail immediately on the day the defendant fails to appear if the failure to appear is without sufficient excuse. (*Id.* at p. 906.) The court concluded, "the court's failure to declare a forfeiture upon a nonappearance without sufficient excuse, either where no excuse is offered or where the finding of an excuse constitutes an abuse of discretion, deprives the court of jurisdiction to later declare a forfeiture." (*Id.* at p. 907.)

In *United Bonding* the court held that "[c]ourt minutes which fail to disclose that the court has expressly excused a nonappearance on a record which is silent as to a defendant's reasons therefor, will require a reviewing court to conclude that a

nonappearance was without sufficient excuse and that the right to declare a forfeiture not having been exercised was foreclosed. An excused nonappearance, accordingly, should be expressly reflected in the minutes." (*United Bonding, supra*, 5 Cal.3d at p. 907.)

However, when the Supreme Court decided *United Bonding*, it made no reference to the 1969 amendment that added subdivision (b) to section 1305 (now section 1305.1). Nevertheless, the court used language remarkably similar to that of the amendment when it held that the "failure to so declare an immediate forfeiture upon the nonappearance of a defendant bailee can be justified only where there is some rational basis for a belief at the time of his nonappearance that there exists sufficient excuse therefor." (*United Bonding, supra*, 5 Cal.3d at p. 906.) As one court has observed, "The Supreme Court's language and reasoning on this issue [immediate forfeiture] in *United Bonding* appear equally applicable to an interpretation of the language added to the statute in 1969, as it would be impossible for a trial court, in the exercise of sound judicial discretion, to have 'reason to believe that sufficient excuse may exist' for a nonappearance if there were not some basis in *fact* for such a conclusion. [Citation.] There could be no good faith 'belief' to support a delay in ordering forfeiture that was not grounded in 'some rational basis.'" (*People v. United Bonding Ins. Co., supra*, 5 Cal.3d at p. 906.)" (*People v. Surety Ins. Co.* (1985) 165 Cal.App.3d 22, 27 (*Surety Ins. Co.*) In *Surety Ins. Co., supra*, 165 Cal.App.3d 22, the court held that the "test is not mere *possibility* of sufficient excuse, but some rational basis for belief of sufficient excuse." (*Id.* at p. 28.)

A 1969 amendment to section 1305 abolished the requirement that the existence of an excuse must be set forth in the minutes. Decisions made subsequent to *United Bonding* have held that the entire record of the hearing where the defendant failed to appear may be considered, and the excuse no longer need be expressly set out in the minutes. (See, e.g., *People v. Amwest Surety Ins. Co.* (1997) 56 Cal.App.4th 915, 922; *People v. National Automobile & Cas. Ins. Co.* (1977) 75 Cal.App.3d 302, 306; *People v. Surety Ins. Co.* (1976) 55 Cal.App.3d 197, 201; *People v. Wilshire Ins. Co.* (1975) 53

Cal.App.3d 256, 258-261.) Thus, the reviewing court may look to the reporter's transcript, as well as the minutes, to supply a sufficient record of sufficient excuse. The court may rely on "evidence or representations furnished by defendant's counsel." (*People v. National Automobile & Cas. Ins. Co.* (1977) 75 Cal.App.3d 302, 306.)

Certainly, here the clerk's minutes supply a record of a sufficient excuse—the defendant did not know that he was supposed to be present. Nevertheless, Bad Boys appears to be arguing that because the information regarding the excuse was gathered at sidebar, there is an insufficient record to justify the continuance. Respectfully, we disagree.

The record shows that defendant was present at his arraignment and had been informed by the court that his next court date was on the master trial calendar on December 17, 2007. He did not appear at the December 5 hearing, which was a hearing on his motion for a continuance of that trial date. The minute order from that hearing indicates that he did not know that he had to be present. The "evidence" to support that conclusion could have come from two different places.

On the one hand, it may be that during the sidebar conference defense counsel told the court that he had not informed the defendant that he needed to be present for the hearing on his motion to continue.

On the other hand, the court, knowing that it had ordered defendant to be present on December 17, concluded that the defendant was unaware that he needed to be present at the December 5 hearing. Based on these facts alone, the superior court rationally could have concluded that defendant had a sufficient excuse for not appearing on December 5.

Although there is no evidence showing the defendant had an actual and valid excuse, the test is not whether it has been conclusively demonstrated that he had one, only that the court has reason to believe that sufficient excuse may exist. (*People v.*

*Ranger Ins. Co.* (2003) 108 Cal.App.4th 945, 953 (*Ranger*).<sup>4</sup> The fact that Farsheedi appeared for his arraignment and the court ordered him to be present in court for his next appearance on December 17, provided the court with a rational basis for finding that a sufficient excuse may have existed for Farsheedi's failure to appear on December 5—that is he did not know he needed to be present.

Under section 1305.1, the court had authority and discretion to continue the case for a reasonable time to enable Farsheedi to appear without ordering a forfeiture of the bail bond because sufficient excuse may have existed for his nonappearance. Since there was a rational basis for the court to believe sufficient excuse may have existed, the trial court complied with the bail bond statutes. Accordingly, the court did not lose jurisdiction to later declare a forfeiture of bail when Farsheedi did not appear at the December 17 hearing.

Alternatively, Bad Boys contends that on December 17 the superior court "ignored the pending motion [to continue] and called the matter for trial." From this premise, Bad Boys concludes that the December 17 forfeiture was erroneous.

Bad Boys argues that since the December 5 motion to continue was on the calendar at the same time as the matter had been placed on the master trial calendar, the court had to hear the motion to continue before the case could be called for trial. As Farsheedi's presence was not required until the motion to continue was denied, and there is nothing to support the conclusion that the court ruled on the motion, the court erroneously ordered forfeiture.

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<sup>4</sup> In *Ranger, supra*, 108 Cal.App.4th 945, the court concluded that the trial court's finding of good cause was sufficiently supported by the record when a defendant who previously had made every appearance failed to appear. (*Id.* at p. 953.) His attorney asked to trail the case and issue and hold a bench warrant so he could continue to try to contact the defendant. (*Id.* at p. 949.) The trial court agreed because the defendant "hasn't missed in the past. There is no reason to think otherwise yet." (*Ibid.*) When the defendant failed to appear at the next hearing, the trial court issued the warrant, forfeited the bail, and later denied the surety's motion to vacate the forfeiture. (*Id.* at p. 953.)

Initially, we point out that Bad Boys is taking two diametrically opposed positions. In the previous argument, Bad Boys argued that Farsheedi was required to be present at the December 5 hearing because he had to waive time in order for the continuance motion to be granted; here, however, Bad Boys is arguing that he did not need to be present until after the motion to continue was denied.

More importantly, however, this argument was never raised in the superior court. It is axiomatic that arguments not asserted below are forfeited and will not be considered for the first time on appeal. (*Ochoa v. Pacific Gas & Electric Co.* (1998) 61 Cal.App.4th 1480, 1488, fn. 3].) An argument or theory will generally not be considered if it is raised for the first time on appeal. (*Martinez v. Scott Specialty Gases, Inc.* (2000) 83 Cal.App.4th 1236, 1250.)<sup>5</sup>

Bad Boys contends that since the superior court failed to make a proper declaration of forfeiture at the December 17 hearing, the superior court lost jurisdiction over the bond.

As Bad Boys points out, when the superior court called the case and determined that Farsheedi was not present the court stated "Bail be forfeited. No bail warrant. I'll stay it till the end of the calendar in case he shows up, but we don't think he will." The reporter's transcript of the hearing shows that no further proceedings were conducted on the case on that day.<sup>6</sup>

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<sup>5</sup> In its reply brief Bad Boys contends, without citation to authority, that the issue turns on undisputed facts and may be considered on appeal. We point out that with regard to this issue the facts are disputed. Respondent maintains that the superior court did consider and did rule on the motion to continue. However, respondent's citation to the December 17 minute order where MTC is circled as evidence to support this assertion is unavailing; MTC stands for Master Trial Calendar.

<sup>6</sup> The record shows that the court reporter who was present at the December 17 hearing has declared under penalty of perjury that after the initial proceedings he recorded in the Farsheedi matter, no other proceedings occurred in the case in open court. He attests that he was the court reporter for Department 24 for all the matters heard on the calendar on December 17, 2007.

Bad Boys argues that since the court included a stay of forfeiture, the declaration was equivocal and indeterminate; and the order staying the bail forfeiture was a continuance as the order was not immediately effective. Bad Boys asserts that when or if the stay expired cannot be determined by the record and because the superior court failed to state when the forfeiture became effective it lost jurisdiction over the bond.

As noted *ante*, section 1305 provides in part: "(a) A 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 any of the following: [¶] (1) Arraignment. [¶] (2) Trial. [¶] (3) Judgment. [¶] (4) Any other occasion prior to the pronouncement of judgment if the defendant's presence in court is lawfully required."

As this court explained in *People v. Ranger Ins. Co.* (1992) 6 Cal.App.4th 1301, 1304, "A defendant's presence is 'lawfully required' when there is 'a specific court order commanding his [or her] appearance at a date and time certain' [citation], or when a defendant has notice because he or she is present when the date and time for a mandatory appearance are set, even though the court did not specifically order his or her personal presence [citation]." In Santa Clara County a "defendant must be present each time his/her matter is called in court, including when matters are submitted, unless a written [977] waiver is on file." (Super. Ct. Santa Clara County, Local Criminal Rules, rule 3 (C).) However, a "written waiver of appearance shall not relieve a defendant from appearing at the Master Trial Calendar (MTC), Felony Advanced Resolution hearing (FAR), motions per Penal Code § 1050, or Narcotics Case Review (NCR)." (*Ibid.*) As far as Farsheedi knew, from the last time he was in court, he was required to be at the December 17 hearing on the Master Trial Calendar.

Undoubtedly here, the reporter's transcript shows that the superior court declared that bail was forfeited in open court. However, the court thereafter stayed that order until the end of the calendar. As noted the permanent minutes indicate that bail was forfeited

and that a bench warrant was to issue. There is no mention of a stay of the order in the permanent minutes.

We find no statutory authorization for staying a forfeiture order. If a court has "reason to believe that sufficient excuse may exist for the failure to appear," the statutory procedure is to "continue the case for a period [the court] deems reasonable to enable the defendant to appear without ordering a forfeiture of bail or issuing a bench warrant. [¶] If, after the court has made the order, the defendant, without sufficient excuse, fails to appear on or before the continuance date set by the court, the bail shall be forfeited and a warrant for the defendant's arrest may be ordered issued." (§ 1305.1.)

Continuing a matter and staying an order are distinct legal acts having different effects. The Legislature has made no provision for a stay of a forfeiture order. Nothing in the statutes describes such a stay. When interpreting a statute "we may neither insert language which has been omitted nor ignore language which has been inserted. [Citation.] The language must be construed in the context of the statutory framework as a whole, keeping in mind the policies and purposes of the statute . . . ." (*People v. Amwest Surety Ins. Co.*, *supra*, 56 Cal.App.4th at p. 920.) In light of the detailed provisions governing bail forfeitures and the strict construction we must apply to these provisions, we conclude that the Legislature did not intend that bail could be ordered forfeited and then the order thereafter stayed, even for a short amount of time. (See *People v. Frontier Pacific Ins. Co.* (1998) 63 Cal.App.4th 889.)

To put it another way, while the court had authority under section 1305.1 to withhold a declaration of forfeiture if it believed sufficient excuse may have existed for Farsheedi's nonappearance, there is no provision that authorizes it to declare forfeiture and then attempt to "stay it till the end of the calendar." If it declares forfeiture, it is conclusive evidence that the court did not have reason to believe that a sufficient excuse for Farsheedi's nonappearance may have existed. The statutes do not authorize a court to

do both, declare forfeiture under section 1305 and then stay the order under section 1305.1. Such action is the epitome of confusion.

Mindful that because of the harsh results of a forfeiture, technical violations of the bail statutes are not tolerated and will defeat the court's jurisdiction to order a forfeiture (*People v. National Auto. & Cas. Ins. Co.* (2002) 98 Cal.App.4th 277, 287, 290, (*National Automobile*); *People v. American Contractors Indemnity Co.* (2001) 91 Cal.App.4th 799, 805–810; see *People v. Frontier Pacific Ins. Co.* (2000) 83 Cal.App.4th 1289, 1294; *Surety Ins. Co., supra*, 165 Cal.App.3d 22, 28–30), we turn now to the remedy in this case.

The statutory requirements " 'are considered inviolable and do not depend on whether or not a party has suffered prejudice.' " (*National Automobile, supra*, 98 Cal.App.4th at p. 291, fn. 33; *People v. American Contractors Indemnity Co., supra*, 91 Cal.App.4th at p. 810.)

The forfeiture declaration in "open court" requirement was enacted in 1998 as an amendment to the existing bail statute. (*People v. Allegheny Casualty Co.* (2007) 41 Cal.4th 704, 709 (*Allegheny* ).) The amendment's overall purpose was to " ' "make the return of fleeing defendants swifter and easier" ' " by providing "actual and immediate notice of bail forfeiture for the benefit of any surety or bail agent in attendance at the public court session, so that prompt efforts might be undertaken to locate the absent defendant." (*Id.* at p. 711.)

"When this amendment was proposed, legislative opponents argued that bail agents are promptly notified through court minutes and that requiring a trial judge to orally declare a forfeiture would be ' " ' wasteful and inefficient' " ' and would 'significantly and unnecessarily burden the system,' particularly because bail agents only rarely attend court proceedings. [Citation.] But legislative analysts 'rejected those criticisms, reasoning: ". . . [the declaration-in-open-court] requirement places an insignificant burden on the court as it only requires the court to state [in open court,] 'bail

is forfeited.' " ' [Citation.] The bill was then passed as written. [Citation.] In reviewing this legislative history, the California Supreme Court [in *Allegheny*] noted that 'the declaration-in-open-court requirement was just that—and nothing more. The amendment . . . "only requires the court to openly order forfeiture of the bail" by "stat[ing] 'bail is forfeited.'" [Citations.]' " (*People v. Bankers Ins. Co.* (2009) 171 Cal.App.4th 1529, 1533.)

In this case, the superior court's statement was ambiguous when it ordered bail forfeiture and then stayed the order. Since, "the purpose of the statutory requirement is to provide notice to those in attendance *and* to impose this notice requirement through a method that is easy to implement and enforce, the court's statement should be sufficiently clear that those who are present are not required to make inferences as to what is being said. An ambiguous statement by a trial court does not meet this requirement." (*People v. Bankers Ins. Co.*, *supra*, 171 Cal.App.4th at pp. 1534-1535.)

Respondent argues "it is obvious that Farsheedi was merely given the opportunity to arrive in court before the last matter to be heard on that day's calendar would be concluded. When Farsheedi did not show up, the forfeiture was effected. The minutes of December 17, 2007 also clearly reflect that bail was forfeited . . . . There is nothing indefinite, equivocal or indeterminate about the Superior Court's forfeiture declaration as reflected in the transcript and the minutes. The Superior Court's declaration fully complies with the requirements of the law. (*People v. Allegheny Cas. Co.* [*supra*,] 41 Cal.4th at p. 706 (noting that the 'statute does not require that a reporter's transcript, or the minutes, reflect the circumstance that the declaration occurred in open court.)) Bad Boys' argument is simply a desperate attempt to manufacture confusion in the face of a clear record."

In *National Automobile*, *supra*, 98 Cal.App.4th 277, when the defendant failed to appear, the trial judge stated that "[b]ail status is revoked" and that a warrant would be issued and held for nine days. (*Id.* at pp. 280–281, italics omitted.) During a recess, the

judge told the court clerk that the bail was forfeited and directed the clerk to enter a forfeiture on the minutes. (*Id.* at p. 281.) The reviewing court reversed the lower court's denial of the surety's motion to vacate, concluding the trial court did not declare the forfeiture in open court. (*Id.* at pp. 282–291.) In so holding, the court rejected the People's argument that the trial judge's statement that " 'bail is revoked' " must have meant a forfeiture because the only issue before the court was the fact of defendant's nonappearance, which necessarily requires a forfeiture, not a revocation. (*Id.* at p. 285.) The court reasoned that "[r]evocation of bail and forfeiture of bail have distinct legal meanings" (*ibid.*), and refused to accept the People's argument that "it is obvious the trial court intended to declare a forfeiture because it 'clarified [its] ruling during a recess.' " (*Id.* at p. 286.) The court stated that "to accept the People's argument would be to ignore the statutory language prescribing the procedure for declaring bail forfeitures. It asks us to hold a trial court's silent intention . . . satisfies the requirements of section 1305, subdivision (a) mandating bail forfeitures be declared in open court. No rule of statutory interpretation of which we are aware would permit this construction." (*Ibid.*)

Although the facts of *National Automobile* are not strictly analogous to this case, the logic of *National Automobile* leads us to conclude that the court's statements in this case were similarly imprecise.

A stay postpones or halts a court's "proceeding . . . or the like" at a particular point. (Black's Law Dict. (9th ed. 2009) p. 1548, col. 1.) In *People v. Santana* (1986) 182 Cal.App.3d 185, a case involving the stay of a sentence, the court concluded that "[a] stay is a temporary suspension of a procedure in a case until the happening of a defined contingency." (*Id.* at p. 190.)

The effect of the stay order here was to halt the court's proceeding on the issue of bail forfeiture until the happening of a defined contingency—the nonappearance of Farsheedi. Based on respondent's logic, this would make the stayed forfeiture order self-executing. Given the detailed procedures that a court must follow in order for a forfeiture

to occur, we do not believe that the Legislature would sanction self-executing forfeiture orders.

As to respondent's contention that what happened here fully complied with the requirements of the law, we note that since the superior court stayed the order of forfeiture we could presume that at the end of the calendar when Farsheedi failed to appear the court declared a forfeiture in open court. As the *Allegheny* court explained, "It is presumed that official duty has been regularly performed." (*Allegheny, supra*, 41 Cal.4th at p. 715.)

The precise issue before the *Allegheny* court was whether the court's oral declaration must appear in a reporter's transcript. The court held a reporter's transcript was not required: "[S]ection 1305(a) demands only what it expressly requires—that the declaration be made in open court—and not that a reporter's transcript, or the minutes, further reflect that the declaration occurred in open court." (*Allegheny, supra*, 41 Cal.4th at p. 714.) The court in *Allegheny* was faced with a situation in which there was no reporter's transcript, because no court reporter was present at the forfeiture of bail proceeding. (*Id.* at p. 707.) The clerk's minutes reflected bail had been declared forfeited, but not that the declaration had been made in open court. (*Ibid.*) The court noted nothing in the record demonstrated the declaration had been made in open court, but nothing indicated it had not been made in open court. (*Id.* at p. 714.) In that specific context, the court held the clerk's minutes could suffice to show the bail forfeiture and need not expressly reflect that the declaration of forfeiture occurred in open court. (*Id.* at p. 706.)

However, the *Allegheny* court specifically distinguished itself from cases in which a court reporter is present at the forfeiture proceedings, those proceedings are transcribed and reveal a failure to declare the forfeiture in open court. (*Allegheny, supra*, 41 Cal.4th at p. 713, fn. 4.) The opinion makes it plain that if a court reporter is present, such a declaration in open court would be reflected in the reporter's transcript, stating, "[o]f

course, if a court reporter is present in the courtroom, these proceedings also eventually may be transcribed and the court's compliance (or lack of it) with the declaration-in-open-court requirement will be evident on the face of the transcript." (*Id.* at p. 714, fn. 5.)

Our case is distinguishable from *Allegheny*. We do not have a record silent on the issue of whether the declaration was made in open court. We have a record in conflict on that issue, with a reporter's transcript that indicates that bail forfeiture was stayed until the end of the calendar and at the end of the calendar the court did not lift the stay and thereafter in open court declare the bail forfeited and clerk's minutes that show only that bail was forfeited. In effect, by staying the forfeiture order the superior court was saying that bail would be forfeited at a specified time in the future (at the end of the calendar) if Farsheedi did not appear. Thus, the initial declaration of forfeiture was equivocal.

As the court in *Goodcell v. Graham* (9th Cir. 1929) 35 F.2d 586, explained: "The word 'stay,' in its varying forms, has numerous definitions, and is applied to somewhat widely different acts and things, with, however, the general underlying idea of the stoppage or suspension of movement. . . . [¶] In the Standard dictionary (1913), 'stay,' used as a verb, is defined as follows: . . . [¶] 'To put off until a future time; postpone; hinder; suspend; as, to stay judgment.' " (*Id.* at p. 587.) We construe the stay order as an order that a decision on Farsheedi's bail bond forfeiture be *suspended*, i.e. *put off to a future time; postponed*. As such, when Farsheedi failed to appear at the end of the calendar, the court was required to declare the bond forfeited in open court. Section 1305 required the court to declare the bond forfeited on the record while court was in session. (*National Automobile, supra*, 98 Cal.App.4th at p. 283.) The record reflects the court did not so do. "Once the trial court failed to declare the bond forfeited in open court, the bond was exonerated by operation of law and the ensuing summary judgment was void."

(*People v. Bankers Ins. Co.* (2010) 182 Cal.App.4th 582, 588.)<sup>7</sup> Since the trial court failed to fulfill its statutory obligation, it lost "jurisdiction to later attempt to forfeit the bail by simply noting it in the minutes." (*National Automobile, supra*, 98 Cal.App.4th at p. 290.)

*Disposition*

The order denying the motion to vacate forfeiture and exonerate bond, and the order entering summary judgment on the bond are reversed. The cause is remanded to the trial court with directions to vacate the forfeiture and exonerate the bond. Bad Boys shall recover its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

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ELIA, J.

WE CONCUR:

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RUSHING, P. J.

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PREMO, J.

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<sup>7</sup> In view of this conclusion, we need not consider a final argument advanced by Bad Boys that the court lost jurisdiction over the bond when it failed to declare forfeiture within a reasonable time after Farsheedi failed to appear on December 5, 2007.