

S230213

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES,
Plaintiff-Appellant,

v.

FINANCIAL CASUALTY & SURETY, INC.,
Defendant-Respondent.

SUPREME COURT
FILED

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After a Decision by the Court of Appeal
Second Appellate District, Division Four
Case No. B257660 (LASC No. SJ3898)

REPLY BRIEF ON THE MERITS

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INTRODUCTION

Respondent Financial makes three arguments in its Answer Brief. The first two arguments are irrelevant because they present hypothetical situations. The third argument is meritless because it misconstrues the relationship between Penal Codes §1269b and §1305.¹ Defendant Chavezgarcia was required to appear at the time and place stated on the bond, and Financial has not presented anything to indicate otherwise.

ARGUMENT

Financial's first argument is irrelevant; it argues that a defendant's presence in court is not lawfully required for purposes of forfeiting bail where no complaint has been filed. (Answer Brief on the Merits "ABM" 9.) In this case, the complaint had been filed (and Chavezgarcia was arraigned), on November 29, 2012, and the bond required her to appear on January 3, 2013. (CT 1-2; 4.) Financial's discussion of forfeiture law when no complaint has been filed has no bearing on the issue before this Court.

Financial's reliance on *People v. Ranger Insurance Co.* (2006) 145 Cal.App.4th 23 is misplaced. (ABM 9-10.) In *Ranger*, if the defendant had failed to appear on the date set by the jailor, forfeiture would have been proper. It was because the defendant was notified by letter by the police department to appear on a different date, that the later forfeiture was void.

¹ All statutory references are to the Penal Code.

(*Id.* at 25-26.) In *Ranger*, the bond was exonerated by operation of law when no complaint was filed within 15 days of the date originally set for arraignment. (*Id.* at 27.) Because the complaint in Chavezgarcia's case had been filed, *Ranger* is not helpful to the issue here.

Financial's reliance on *County of Los Angeles v. Fairmont Specialty Group* (2008) 164 Cal.App.4th 1018, is likewise misplaced. (ABM 10-11.) In *Fairmont*, the surety argued that the court lost jurisdiction over the bond because it had not declared a forfeiture on the date set by the jailor. The *Fairmont* Court explained that the trial court could not have declared a forfeiture on the date on the bond – even though the defendant did not appear – because no complaint had been filed. And the trial court could not know – until 15 days had passed – whether a complaint would be filed or if bail would be exonerated by operation of law. (*Id.* 1024-1026.) *Fairmont* is distinguishable on the facts, and it is not relevant here.

People v. American Surety Insurance Co. (2009) 178 Cal.App.4th 1437, found that a letter from the prosecutor directing a defendant to appear (after the date set by the jailor) was not equivalent to a court order. (*Id.* at 1440.) It found the trial court lacked jurisdiction to forfeit bail because there had not been an order for the defendant to appear on the later date. (*Id.* at 1441.) *American Surety* is factually distinct; it does not support Financial's argument that the date set by jailor pursuant to §1269 is ineffective to require the defendant's appearance.

Financial's second argument is also irrelevant; it argues §1269b does not require a defendant's presence at hearings that are in conflict with, or superseded by, a court order. (ABM 12.) In this case, the date appearing on the bond was the same date that had previously been set by the court (and for which Chavezgarcia had arguably been ordered back). (CT 4 and 92.) Financial's discussion of conflicting dates between bonds and court orders has no significance here.

People v. National Automobile and Casualty Insurance Company (1977) 77 Cal.App.3d Supp 7, explains that if there is a conflict between the date shown on the bond and the date ordered by the court, the date ordered by the court controls. Chavezgarcia was present in court for arraignment on November 29, 2012, and the court set a pre-trial date of January 3, 2013. (CT 91-92.) When Chavezgarcia was released from custody, the bond ordered her to appear on January 3, 2013. (CT 4.) Here, the jailor used the same date that had already been set by the trial court. This Court need not consider what the outcome should be if the jailor had used a different date. (*Hunt v. Superior Court* (1999) 21 Cal.4th 984, 998 (explaining that the ripeness doctrine prevents courts from considering hypothetical situations).)

Financial's reliance on *People v. American Contractors Indemnity Co.* (2001) 91 Cal.App.4th 977 is perplexing. The legal issues addressed in *American Contractors* were notice requirements and date calculations. (*Id.*

at 801.) Financial's argument regarding *American Contractors* – whether one event "would have" occurred had some other event occurred – does not support its position. (ABM 13-14.)

Moreover, Financial basically concedes that the County's position is meritorious: "Penal Code section 1269b will generally require a defendant to appear on the date set by the jailor, but if that date is either in conflict with or superseded by a court order, the court order should prevail and the trial court should not be bound by a conflicting or superseding date set by the jailor." (ABM 14 (emphasis added).) Here, the date set by the jailor was not in conflict with, nor superseded by, a court order. On the facts here, Chavezgarca was "lawfully required" to appear on the date shown on her bond.

Financial's third argument is that the legislative history "confirms" that §1269b is "limited by" the provisions of §1305. (ABM 15.) Financial misconstrues the County's argument about the legislative history. The County pointed out that earlier versions of the statute used specific language saying the court could forfeit bail if the defendant failed to appear at the time and date set by the jailor. (Opening Brief on the Merits 8-9.) The statute no longer uses language saying the court can forfeit bail; rather, §1269b, subdivision (h) now says that sections 1305 and 1306 apply if the defendant fails to appear. The statute's meaning did not change because the explicit words were replaced by a statutory reference, and Financial

presents nothing to show that the Legislature intended to change the meaning when it amended the language.

Financial argues:

The plain language of these amendments demonstrates that the legislature [sic] intended the power of the court to forfeit bail to be limited by Penal Code section 1305, and not controlled necessarily by the date set by the release of the defendant by the jailer under Penal Code section 1269b."

(ABM 15.) It should go without saying that the power of the court to forfeit bail is limited by §1305. But Financial seems to confuse the authority of the two statutes at issue. There is no support for Financial's argument that §1269b "only requires the defendant to appear personally at those hearings covered by Penal Code section 1305 subdivision (a). (ABM 7.) Section 1305 governs the forfeiture of bail – it specifies when the court must forfeit bail if a defendant fails to appear. Section 1305 does not govern when a defendant must appear. Section 1269b governs bail-related subjects, one of which is “notice of appearance of prisoner.” Another is “forfeiture,” which explicitly states §1305 applies (*i.e.*, bail forfeiture), if the defendant fails to appear as ordered by the jailor. Each governs an important component of criminal procedure, and neither is "limited by" the other.

Section 1269b authorizes forfeiture of bail if a defendant fails to appear on the date shown on the bond. Section 1305 requires a court to

forfeit bail if the defendant fails to appear, without sufficient excuse, when her presence in court is lawfully required. Chavezgarcia's presence was lawfully required because the date shown on her bond was the same date ordered by the court. Chavezgarcia failed to appear, without sufficient excuse, on the date stated on the bond. When she failed to appear, the trial court forfeited bail. The forfeiture was proper.

CONCLUSION

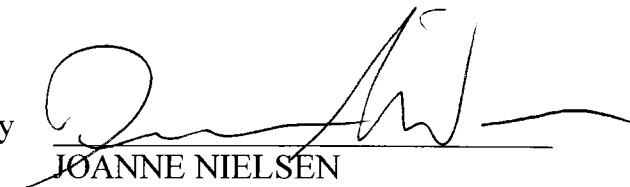
The County respectfully asks this Court to reverse the opinion of the Court of Appeal.²

DATED: May 9, 2016

Respectfully submitted,

MARY C. WICKHAM
County Counsel

By



JOANNE NIELSEN
Principal Deputy County Counsel

Attorneys for County of Los Angeles

² Regardless of how this Court resolves the issue on review, the Opinion below must be reversed because Chavezgarcia, who was charged with a felony, was required to be present on January 3, 2013, pursuant to §977, subdivision (b)(1). (*People v. Safety National Casualty Corporation* (2016) 62 Cal.4th 703.)

CERTIFICATE OF WORD COUNT PURSUANT TO RULE 8.204(c)

The text of this document consists of 2,081 words as counted by the Microsoft Office Word 2010 program used to generate this document.

DATED: May 9, 2016

Respectfully submitted,

MARY C. WICKHAM
County Counsel

By

A handwritten signature in black ink, appearing to read 'Joanne Nielsen', is written over a horizontal line.

JOANNE NIELSEN
Principal Deputy County Counsel

Attorneys for County of Los Angeles

DECLARATION OF SERVICE

B257660/SJ3898

STATE OF CALIFORNIA, County of Los Angeles:

I am employed in the County of Los Angeles, State of California, over the age of eighteen years and not a party to the within action. My business address is 648 Kenneth Hahn Hall of Administration, 500 West Temple Street, Los Angeles, California 90012-2713.

That on May 9, 2016, I served the attached

REPLY BRIEF ON THE MERITS

upon Interested Party(ies) by placing the original a true copy thereof enclosed in a sealed envelope addressed as follows as stated on the attached mailing list:

(BY OVERNIGHT DELIVERY) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons on the service list. I placed the envelope or package for collection and overnight delivery at an office or regularly utilized drop box of the overnight delivery carrier.

(BY MAIL) By sealing and placing the envelope for collection and mailing on the date and at the place shown above following our ordinary business practices. I am readily familiar with this office's practice of collection and processing correspondence for mailing. Under that practice the correspondence would be deposited with the United States Postal Service that same day with postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 9, 2016, at Los Angeles, California.

Anna Pacheco

Type or Print Name of Declarant
and, for personal service by a Messenger Service,
include the name of the Messenger Service



Signature

Service List

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