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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  
INSURANCE COMPANY et. al.,

Defendants and Appellants.

B271633

(Los Angeles County  
Super. Ct. Nos. SJ4131/NA095439)

APPEAL from an order of the Superior Court of Los Angeles County, Kerry Bensinger, Judge. Affirmed.

Jefferson T. Stamp for Defendants and Appellants.

Marcy C. Wickham, County Counsel, Ruben Baeza, Jr., Assistant County Counsel, and Jessica C. Rivas, Deputy County Counsel, for Plaintiff and Respondent.

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## INTRODUCTION

Two summary judgments were entered on the same bail bond issued by North River Insurance Company and Bad Boys Bail Bonds (together North River or the surety) for Michael Peterson, a criminal defendant. (Pen. Code, §§ 1305-1308.)<sup>1</sup> In its appeal, North River challenges the denial of its motion to set aside the second summary judgment, vacate the forfeiture, and exonerate the bond. The surety contends that the court never set aside the first summary judgment and hence the second summary judgment was void. We apply estoppel principles and affirm the order.

## FACTUAL AND PROCEDURAL BACKGROUND

### 1. *North River issues the bond*

On April 17, 2013, North River posted a \$100,000 bail bond for Peterson. On March 3, 2014, the criminal court in Long Beach (the Long Beach court) declared bail forfeited because Peterson, charged with two counts of burglary, failed to appear in court. Notice of forfeiture was mailed on March 4, 2014, with the result that the appearance period was set to expire on September 5, 2014. (§ 1305, subd. (b)(1).)

### 2. *The two extensions of the appearance period*

On September 5, 2014, North River moved the Long Beach court to extend the appearance period. (§ 1305.4.) On September 29, 2014, the court granted the motion and extended the period to March 5, 2015, just 24 days short of March 29, 2015, the maximum 180 days to which North River was entitled.

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<sup>1</sup> All further statutory references are to the Penal Code, unless otherwise noted.

On March 6, 2015, North River moved the Long Beach court for a second 180-day extension (the second extension). The motion was *untimely* filed one day after the already-extended appearance period had elapsed. (§ 1305, subd. (j).)

3. *The first summary judgment*

Meanwhile, Peterson did not return to custody by March 5, 2015, and so on March 16, 2015, Department 54 of the Criminal Court in Downtown Los Angeles (Department 54), which is the court that handles all of the bail summary judgments and post-summary judgment orders to show cause, entered summary judgment on the bail bond and mailed notice to North River that same day (the first summary judgment).

Back in the Long Beach court on April 3, 2015 on the second extension motion, the surety clarified that it wanted an extension of *180 days*. North River asked for this time notwithstanding its motion was untimely filed and the total amount of appearance time to which it was entitled had already ended on March 29, 2015. The court granted the surety's second extension motion, purporting to extend the appearance period to September 30, 2015.

4. *Department 54 mistakenly believes the first summary judgment was premature.*

On April 17, 2015, at the hearing in Department 54 on the order to show cause re summary judgment (§ 1308), the court noted that because of a clerical error and inadvertence, the second extension motion “filed on March 06, 2015 . . . was not entered into TCIS at the time the [first] summary judgment was issued.” The following occurred at the April 17, 2015 hearing: “THE COURT: Looks like this one summary judgment

had been entered prematurely. *So the court has entered the notes that the time is now extended until September 30th, 2015.* Any -- [¶] MR. STAMP [counsel for North River]: *Yes. That's my understanding, too.* Thank you for addressing it. [¶] THE COURT: Any other questions on this? [¶] MR. STAMP: *No.*" (Italics added.) There is no indication that North River disabused Department 54 of the mistaken belief that the second extension motion was timely and lawful.

#### *5. The second summary judgment*

Peterson did not return to custody by the end of the second extension period and so Department 54 entered the second summary judgment on October 1, 2015 (the second summary judgment). The court denied North River's ensuing motion to set aside the second summary judgment, vacate the forfeiture, and exonerate the bond. North River timely appealed.

### **DISCUSSION**

North River contends that the trial court never set aside the first summary judgment with the result that the second summary judgment was void but the period for enforcing the first summary judgment had already expired. We conclude North River is estopped to challenge the order denying its motion to vacate the forfeiture and exonerate the bail bond because the surety consented to and benefitted from both the second extension of the appearance period, entered in excess of the Long Beach court's authority, and Department 54's confusion over the validity of the first summary judgment.

### 1. *Estoppel*

Estoppel is a well-settled principle of jurisprudence and has been repeatedly applied in the bail bond context. In *County of Los Angeles v. Ranger Ins. Co.* (1999) 70 Cal.App.4th 10 (*Ranger*), the surety requested that the trial court toll the statutory time period in which to have the forfeiture on its bail bond vacated. It then challenged the entry of summary judgment arguing that the court lacked jurisdiction to enter it for failure to do so in a timely manner. (*Id.* at p. 18.) A different panel of this division held in *Ranger* that the surety was estopped to challenge the court's authority to toll the appearance period that had been done at the surety's request. (*Id.* at pp. 17-18.) The *Ranger* court quoted the Supreme Court that: "[w]hen, as here, the court has jurisdiction of the subject, a party who seeks or consents to action beyond the court's power as defined by statute or decisional rule may be estopped to complain of the ensuing action in excess of jurisdiction. [Citations.] . . . A litigant who has stipulated to a procedure in excess of jurisdiction may be estopped to question it when 'To hold otherwise would permit the parties to trifle with the courts.' [Citation.]' [Citation.]" (*Id.* at p. 18, quoting from *In re Griffin* (1967) 67 Cal.2d 343, 347-348; accord *People v. Frontier Pacific Ins. Co.* (2000) 83 Cal.App.4th 1289, 1294.)

2. *North River is estopped to challenge the validity of the second extension motion and the order setting aside the first summary judgment.*

The surety's second extension motion was untimely. A motion to extend the appearance period is timely when filed "*within* the 180-day period." (§ 1305, subd. (j), italics added.) The appearance period here elapsed on March 5, 2015, but North River's second motion to extend was not filed until March 6, 2015.

As the motion was untimely, the Long Beach court had no authority to grant the second extension motion. Yet, North River accepted the benefits of, and hence consented to, the invalid extension that it asked for. (*In re Griffin, supra*, 67 Cal.2d at pp. 347–348.)

Even if North River was unaware that its motion was filed a day late, the second extension was invalid for another, independent reason. The appearance period can only be extended 180 days. (*People v. Granite State Insurance Co.* (2003) 114 Cal.App.4th 758, 768.) “[T]he total allowable extension is [still] limited to 180 days from the date of the first extension order, regardless of how many individual extensions the court orders.” (*People v. Financial Casualty & Surety, Inc.* (2016) 2 Cal.5th 35, 46, fn. 2.) The total appearance time to which North River was entitled in this case ended on March 29, 2015. North River knew on March 6, 2015 when it moved for the second extension that it was entitled only to 23 more days. Nonetheless, North River *asked* the Long Beach court for an additional *180 days* and accepted time to which it was not entitled.

After having asked the Long Beach court for and obtained the second extension in excess of the court’s jurisdiction, North River did not disabuse Department 54 of the mistaken belief that the first summary judgment was rendered premature by pendency of the second extension motion in Long Beach. “[S]ummary judgment may be premature if it was entered while a *timely* motion for certain relief was pending under the bail forfeiture statutes. [Citations.]” (*People v. United States Fire Ins. Co.* (2015) 242 Cal.App.4th 991, 1001, italics added.) Although the first summary judgment, entered on March 16, 2015, was not premature because there was no timely pending

motion to extend the appearance period, North River, who was present at the hearing on April 17, 2015, confirmed that the summary judgment *was* premature. In this way, the surety benefitted from the additional, unauthorized second extension to September 30, 2015 only because it consented to Department 54's plan to set aside the first summary judgment and watched as the period for enforcing that summary judgment elapsed.

North River nonetheless contends that the first summary judgment was never properly vacated for two reasons. North River first argues that Department 54's set-aside order, although dated April 13, 2015, was actually entered into TCIS sometime in December 2015 but backdated to April 13, 2015. Hence, North River argues, the first summary judgment had already become final by the time Department 54 entered the set-aside order in December 2015. (*County of Los Angeles v. Williamsburg National Ins. Co.* (2015) 235 Cal.App.4th 944, 951, fn. 5 [bail summary judgment becomes final 60 days after the clerk mails notice of entry of judgment].) The argument is a red herring because "when there is a conflict between the reporter's transcript and the clerk's transcript, we adopt the version due more credence under the circumstances." (*People v. Holzmann* (2018) 18 Cal.App.5th 1241, 1243-1244, fn. 1.) Clearly, the oral comments made by Department 54 in open court on April 17, 2015, in the presence of North River's counsel, that it "has entered the notes that the time is now extended until September 30th, 2015" are entitled to more credence than the written version, which is confusingly written and entered at an indeterminable time. Everyone – North River, the County, and the trial court – proceeded as if the first summary judgment had been set aside.

Turning to North River's second reason why the first summary judgment was never set aside, it cites *People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653 (*ACIC*), to argue that a summary judgment entered in excess of the court's jurisdiction was voidable, not void, meaning that Department 54 had no power to vacate it sua sponte, and North River never moved to set it aside. In *ACIC*, the trial court entered summary judgment prematurely. The surety did not appeal. After the judgment became final, the surety collaterally attacked it by moving to set it aside and exonerate the bail, arguing that the summary judgment was void because it was premature. The Supreme Court held that the premature summary judgment of a bail bond was voidable, not void, because the trial court had fundamental jurisdiction over the subject matter and the parties at the time it entered summary judgment. (*Id.* at p. 663.) The erroneous summary judgment was subject to correction by appeal or a timely motion to vacate, and so there was no basis to set aside the judgment by collateral attack. (*Id.* at p. 667.) The Supreme Court declined to address the surety's argument that it was not estopped to attack the summary judgment because it " 'had no duty to speak regarding the [trial] court's improvident action.' " (*Id.* at p. 665.) The Supreme Court stated, "Whatever the merits of such a waiting game if the judgment is void, it fails if the judgment is, as we have concluded, voidable. In particular, here we need not rely on estoppel principles" because the Supreme Court relied on the rule that collateral attack on a voidable but final judgment is not available absent unusual circumstances. (*Ibid.*)



Unlike *ACIC* where the surety sought to set aside the summary judgment, here North River seeks to maintain the first summary judgment's validity. However, after asking for and garnering an additional six months, to which it was never entitled to bring Peterson into custody, North River took advantage of Department 54's confusion about whether the first summary judgment could be and had been set aside by agreeing that the court was correct to vacate that judgment, and then by waiting as the period for its enforcement ran out. Even assuming North River may not have been obligated to move the court to vacate the first summary judgment, the surety trifled with Department 54 (*Ranger, supra*, 70 Cal.App.4th at p. 19) by inducing the court to act in excess of its authority to set aside the first summary judgment and then claiming that the court had no authority to do so. "Having been handed the favor, [North River] now seeks to bite the hand from which the favor was obtained." (*Ibid.*) North River is estopped to argue that Department 54 never properly set aside the first summary judgment. (*Id.* at pp. 18-19.)

Accordingly, the second summary judgment, which was timely entered, was not void with the result that the trial court properly denied North River's motion to set it aside, vacate the forfeiture, and exonerate the bail bond.

**DISPOSITION**

The order appealed from is affirmed.

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KALRA, J.\*

We concur:

LAVIN, Acting P. J.

EGERTON, J.

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