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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

COUNTY OF LOS ANGELES, Plaintiff and Respondent, v. INTERNATIONAL FIDELITY INSURANCE COMPANY, Defendant and Appellant.	B243060 (Los Angeles Country Super. Ct. No. OSJ001432)

APPEAL from a judgment of the Superior Court of Los Angeles Country, Lia Martin, Judge. Affirmed.

John M. Rorabaugh for Defendant and Appellant.

Office of the County Counsel, Ruben Baeza, Jr., and Joanne Nielsen, for Plaintiff and Respondent.

In this bail bond forfeiture case, International Fidelity Insurance Company appeals from a summary judgment and an order denying its motion to set aside the judgment, discharge the forfeiture and exonerate the bond. We find proper notice of forfeiture was sent by the clerk of the court. We also conclude that, even if the recent amendment of Penal Code section 1305, subdivision (h)[1] can be applied retroactively, appellant has not shown that the prosecuting agency agreed to additional tolling of the 180-day period within which to vacate the forfeiture, as required by that provision. We affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

On June 3, 2008, appellant posted a $150,000 bond for the release of criminal defendant Javier Abdin. On Friday, June 6, 2008, Abdin failed to return to the afternoon session of his preliminary hearing. The court adjourned the proceedings and ordered the bond forfeited. The minute order for the hearing states: "Bond is ordered forfeited, when received."

The minute order for June 9, 2008 shows the case was called for further proceedings on that day, but the only individuals present were the judge and the court clerk. The minute order states: "The defendant fails to appear. . . . [¶] Bail ordered forfeited." It then clarifies: "As the bail bond was received by the court this date, the court now orders the bond forfeiture of 6/6/08 into full force and effect. . . . [¶] Bail bond received and filed after appearance date of 06/06/08." Notice of the forfeiture was printed and mailed on June 9, 2008, and June 9 was listed as the date of forfeiture.

The forfeiture period was to end on December 12, 2008. The court granted the bail agent's motion to extend that period to June 8, 2009. On June 4, 2009, the bail agent filed a motion to vacate the forfeiture and reinstate and exonerate the bond on the ground that Abdin had been found in Mexico, and the district attorney did not intend to extradite

[1] All statutory references are to the Penal Code.

him. Based on the People's in-court representation that they did in fact intend to seek Abdin's extradition, the court denied the motion.

On July 2, 2009, the court denied the bail agent's request to reopen her motion. The court gave the district attorney's office until September 30, 2009 to '"show progress"' on the extradition and stated it would exonerate the bond if Abdin had been extradited by then. Nevertheless, summary judgment on the bond was entered immediately. Appellant moved to set it aside because it was entered before the September 30 deadline the court had set for the progress report on the extradition. A different judge heard the motion and decided to set aside the summary judgment to allow appellant to seek clarification of the court's July 2 ruling.

Appellant moved for clarification and to exonerate the bond. At the December 2009 hearing, the People represented the extradition would take about six months. The parties agreed to continue the matter and toll the forfeiture period until June 7, 2010. At the June 2010 hearing, the People advised that Abdin had been detained by the bail agent in Mexico. The procedure to extradite him was governed by international law. It required obtaining various affidavits and sending an application to the Department of Justice and the Department of State for submission to the Mexican Embassy. The People had only managed to obtain an affidavit from the prosecutor. Appellant's attorney urged the court to conclude the delay indicated the district attorney had no intent to extradite Abdin and to either exonerate the bond or toll the forfeiture period for another six months. Troubled by the delay, the court said, '"Enough is enough,"' and proceeded to set aside the forfeiture, reinstate the bond, and exonerate it.

The People appealed. In *People v. International Fidelity Insurance Company*, (Nov. 16, 2011, No. B225994 [nonpub. opn.]) we held the exoneration was inconsistent with section 1305, subdivision (g), under which the bond could be exonerated only if "Abdin was returned to the court or the prosecutor elected not to extradite. Neither of those conditions was met." (See *People v. Seneca Ins. Co.* (2010) 189 Cal.App.4th 1075, 1082.) We reversed the order setting aside the forfeiture, reinstating the bond, and exonerating it. A remittitur issued in February 2012.

Summary judgment was entered against appellant in April 2012. Appellant moved to set it aside on the ground that the court had lost jurisdiction over the bond when it failed to mail notice of the June 6, 2008 forfeiture. On July 19, 2012, appellant filed a request for judicial notice of Senate Bill 989, which had just been signed into law. The bill added section 1305, subdivision (h), which allowed the court to toll the forfeiture period based on an agreement between the bond agent and the prosecuting agency.

At the hearing the following day, the court denied appellant's motion. It found that res judicata principles probably applied. In the alternative, it found the court had not lost jurisdiction over the bond and the new section 1305, subdivision (h) did not change the result. This timely appeal followed.

DISCUSSION

I

Appellant first argues the court lost jurisdiction over the bond because the clerk failed to mail notice of the June 6, 2008 forfeiture.[2] As we explain, we find the notice fully satisfied the strict requirements of section 1305, subdivision (b).

Defendant failed to appear for the afternoon session of his arraignment on Friday, June 6, 2008. The court noted his absence and stated: "[T]hese proceedings are adjourned. The bail is forfeited. Bench warrant is issued. No bail on the bench warrant." Apparently the bond had not yet been received by the court, because the minute order reflects a forfeiture order conditioned on receipt of the bond: "The bond is ordered forfeited, *when received.*" (Italics added.) The minutes from the next court day, Monday, June 9 state: "Bail ordered forfeited. As the bail bond was received by the court this date, the court *now* orders the bond forfeiture of 6/6/08 into full force and effect. The bench warrant is recalled and reissued after entry of bail bond into the system." (Italics added.)

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[2] Although we believe this issue could be resolved by application of res judicata, we find it more expedient to resolve it on the merits.

Reading these court minutes together, it is evident that the court-ordered forfeiture became effective upon receipt of the bail bond on June 9, 2008. The clerk mailed notice of forfeiture that same day. The notice accurately specifies June 9, 2008 as the date of forfeiture. This notice complies with the requirements of section 1305, subdivision (b).

County of Los Angeles v. Granite State Ins. Co. (2004) 121 Cal.App.4th 1, on which appellant relies, is distinguishable. In that case, on February 13, 2001, when the defendant failed to appear, the court ordered bail forfeited. Despite that order, the clerk prepared a minute order declaring that the court had found "good cause not to forfeit bail" and had ordered the warrant held to March 6, 2001. When the defendant failed to appear on March 6, the court noted it had held the bench warrant until that date, again issued a bench warrant, and "forfeited" bail. The clerk sent notice of bail forfeiture giving the forfeiture date as March 6, and making no reference to the February 13 declaration of forfeiture. On appeal, the court concluded that the trial court "unequivocally forfeited bail on February 13 (in spite of the contradictory minute order). We also conclude that the March 9 notice, which specifically limited itself to the March 6 'forfeiture,' failed to adequately advise the surety of the February 13 forfeiture." (121 Cal.App.4th at p. 3.)

In contrast, the June 9 minute order in our case specifically references the June 6 order of forfeiture and notes that the sole condition precluding completion of the forfeiture, receipt of the bond, had been met. There was only one forfeiture, which was "in full force and effect" as of June 9, 2001, when the bond was received. The notice properly reflects that.

II

Appellant also asks that we apply the new subdivision (h) of section 1305, added in 2012 (Stats. 2012, ch. 129, § 1 (SB 989).)

Section 1305 generally provides that after bond is forfeited, if a defendant appears within 180 days of the date of the forfeiture, the court shall order the forfeiture vacated and the bond exonerated. Subdivision (g) addresses the situation where a defendant is beyond the jurisdiction of the state: "In all cases of forfeiture where a defendant is not in

custody and is beyond the jurisdiction of the state, is temporarily detained, by the bail agent, in the presence of a local law enforcement officer of the jurisdiction in which the defendant is located, and is positively identified by that law enforcement officer as the wanted defendant in an affidavit signed under penalty of perjury, and the prosecuting agency elects not to seek extradition after being informed of the location of the defendant, the court shall vacate the forfeiture and exonerate the bond on terms that are just and do not exceed the terms imposed in similar situations with respect to other forms of pretrial release." In simple terms, this subdivision requires the court to vacate the forfeiture and exonerate the bond where the prosecuting agency decides not to seek extradition of a defendant who is beyond the jurisdiction of the state.

New subdivision (h) provides: "In cases arising under subdivision (g), if the bail agent and the prosecuting agency agree that additional time is needed to return the defendant to the jurisdiction of the court, and the prosecuting agency agrees to the tolling of the 180-day period, the court may, on the basis of the agreement, toll the 180-day period within which to vacate the forfeiture. The court may order tolling for up to the length of time agreed upon by the parties."

Appellant argues that the amendment should apply to this case under *People v. Durbin* (1966) 64 Cal.2d 474, which holds that a statute involving the "elimination of the power of forfeiture" or the "repeal of a civil penalty or forforfeiture" applies retroactively if the judgment is not final. (*Id*. at p. 478.) We need not decide that question in this case because there is no factual basis for applying the amended statute.

Subdivision (h) is applicable "[i]n cases arising under subdivision (g)," and subdivision (g) applies to cases where "the prosecuting agency elects not to seek extradition after being informed of the location of the defendant[.]" In this case, the prosecuting agency is pursuing extradition.

In addition, subdivision (h) authorizes the court to toll the 180-day period if the bail agent and the prosecuting agency agree to the tolling. Appellant presented no evidence of such agreement to the trial court, nor does it do so on appeal. As the trial

court observed, “I don’t find for our purposes of today that Penal Code section 1305, subdivision (h), would change anything.”

DISPOSITION

The judgment is affirmed. Respondent to have its costs on appeal.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

MANELLA, J.