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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

COUNTY OF LOS ANGELES,

Plaintiff and Respondent,

v.

INTERNATIONAL FIDELITY
INSURANCE COMPANY,

Defendant and Appellant.

B228739

(Los Angeles County
Super. Ct. No. SJ3553)

APPEAL from a judgment of the Superior Court of Los Angeles County. Terry A. Bork, Judge. Affirmed.

Nunez & Bernstein and E. Alan Nunez for Defendant and Appellant.

Ruben Baeza, Jr., Assistant County Counsel, and Liliana Campos, Associate County Counsel for Plaintiff and Respondent.

International Fidelity Insurance Co. (appellant) appeals from a summary judgment in favor of the County of Los Angeles (the County) entered on a forfeiture of a bail bond. Appellant argues that the trial court improperly denied its motion to vacate forfeiture and exonerate the bond. We affirm.

CONTENTIONS

Appellant argues that the bail bond was rendered void by the imposition of conditions on the defendant's release and that multiple amendments of the original complaint increased the risk to appellant and invalidated the bail bond.

BACKGROUND

On April 26, 2008, appellant issued bail bond No. IS50K-18681 for the release of Rogelio Hernandez (Hernandez) from custody. When the bond was posted, the charge alleged against Hernandez was a violation of Penal Code section 245, subdivision (a)(2), assault with a firearm. When the complaint was filed on April 29, 2008, the prosecutor added charges for violations of Health & Safety Code section 11370.1, subdivision (a), possession of a controlled substance with a firearm, and Penal Code section 12021, subdivision (a)(1), possession of a firearm by a felon.

When Hernandez appeared in court for arraignment on May 16, 2008, the district attorney requested that bail be increased to the scheduled amount of \$135,000. The court denied the request and released Hernandez on the \$50,000 bond already posted. In releasing Hernandez, the court imposed the following conditions on Hernandez:

“[Do] not harass, molest or annoy victim Jason Montes and stay away from said victim at least 100 yards.

“Do not own, use or possess any dangerous or deadly weapons, including any firearms, knives or other weapons.

“Obey all laws and orders of the court.

“Submit person and property to a search at any time of the day or night by any law enforcement officer or probation officer with or without a warrant or probable cause.

“Do not use or possess any narcotics, dangerous or restricted drugs or associated paraphernalia, except with a valid prescription and stay away from places where users or sellers congregate. Do not associate with drug users or sellers unless attending a drug treatment program.”

On June 3, 2008, the complaint was amended to change count 3 to a violation of Penal Code section 12025, subdivision (a)(1) instead of section 12021, subdivision (a)(1). On June 24, 2008, the felony complaint was again amended to add two additional charges of violating section 12021, subdivisions (a)(1) and (c)(1).

At the preliminary hearing on June 24, 2008, Hernandez was held to answer on all five counts charged against him, and the matter was continued to July 8, 2008, for felony arraignment.

Hernandez failed to appear in court as ordered on July 8, 2008, and bail was declared forfeited. Notice of forfeiture was mailed to the surety and bail agent on July 8, 2008 and July 16, 2008. On July 1, 2009, the trial court granted an extension of the period for exoneration to August 25, 2009.

On March 16, 2010, appellant filed a motion to vacate forfeiture and exonerate bail. On April 12, 2010, the motion was heard and denied.

On October 14, 2010, a summary judgment was ordered on the forfeiture. On November 9, 2010, appellant filed its notice of appeal.

DISCUSSION

I. Standard of review

We normally review an order denying a motion to vacate the forfeiture of a bail bond for abuse of discretion. (*People v. Bankers Ins. Co.* (2010) 181 Cal.App.4th 1, 5.) However, where the issue is one of statutory construction or contract interpretation, and the evidence is not in dispute, the de novo standard of review applies. (*People v. American Bankers Ins. Co.* (1992) 4 Cal.App.4th 348, 350.) In this case, we review the trial court’s order de novo because there is no extrinsic evidence to consider in interpreting the contract. (*People v. International Fidelity Ins. Co.* (2010) 185 Cal.App.4th 1391, 1395.)

II. Imposition of conditions on bail

Appellant first argues that the bail bond was rendered void by the imposition of conditions on bail. Appellant contends that the imposition of such conditions was an impermissible unilateral change to the bail contract which was unauthorized by statute and rendered the bail contract invalid.

In support of its argument, appellant cites California Supreme Court authority describing the contractual nature of a bail bond. (See *People v. McReynolds* (1894) 102 Cal. 308, 311-312 [liability of sureties on bail bond ceases when defendant taken into custody by the sheriff]; *County of San Luis Obispo v. Ryal* (1917) 175 Cal. 34, 36 (*Ryal*) [sureties “have a right to declare in their bond the terms and conditions upon which they shall be bound and to stand on the precise terms of that contract”].)¹ Appellant also cites the United States Supreme Court case *Reese v. United States* (1869) 76 U.S. 13, 21 (*Reese*). In *Reese*, a stipulation between the government and the defendant permitted the defendant to leave the country. The Supreme Court determined that, because the stipulation was made without the knowledge or assent of the sureties, the sureties were released from bail. The *Reese* court emphasized that the sureties’ power of arrest may only be exercised within the territory of the United States, and that “there is an implied covenant on the part of the principal with his sureties, when he is admitted to bail, that he will not depart out of this territory without their assent.” (*Id.* at p. 22.) The stipulation permitting the defendant to return to Mexico was made “without the concurrence or even knowledge of the sureties, whose risks were thus greatly increased.” (*Ibid.*)

While we agree that the nature of a bail bond is contractual, we do not find these cases helpful in analyzing the issue before us.

¹ In *Ryal*, the language of the bond indicated that, in the event that the principal failed to perform his obligations, the principal -- not the sureties -- would pay the sum of two thousand dollars. (*Ryal, supra*, 175 Cal. at pp. 36-37.) The court concluded that “The language of the bond is clear. It is plain the sureties agreed that their principal would pay but they did not agree thereunder to pay anything themselves.” (*Id.* at p. 37.) The court refused to rewrite the contract to impose liability on the part of the sureties.

Appellant also relies on *People v. Surety Ins. Co.* (1983) 139 Cal.App.3d 848, 854, which involved the requirement of notice for transfer of bail, and *In re York* (1995) 9 Cal.4th 1133, which involved the question of whether an individual released on his or her own recognizance prior to judgment may be required to submit to random drug testing and warrantless search and seizure.

None of the cases cited by appellant involves the question of whether the imposition of certain conditions on a defendant's release on bail should be considered an impermissible unilateral amendment to the bail bond contract.

We find that the court's imposition of conditions on the defendant's release was not an amendment to the bail contract. "A bail bond is in the nature of a contract between the government and the surety, in which the surety acts as a guarantor of the defendant's appearance under risk of forfeiture of the bond. [Citation.]" (*People v. Amwest Surety Ins. Co.* (1991) 229 Cal.App.3d 351, 356.) The surety's obligation is defined by its contract. Here, appellant's contract guaranteed the defendant's appearance "in the above-named court on the date set forth to answer any charge in any accusatory pleading based upon the acts supporting the charge filed against [him] and all duly authorized amendments thereof, in whatever court it may be prosecuted." The contract guaranteed that the defendant would make himself "amenable," or answerable, to the orders and processes of the court, but did not guarantee compliance with any such orders. In other words, the contract limited the surety's obligation to ensuring the defendant's appearance during the proceedings. The court's conditions of release, imposed directly on the defendant, were simply outside the scope of that contract.

People v. Doe (1959) 172 Cal.App.2d Supp. 812, is instructive. There, the surety provided a bail bond of \$250 on behalf of a defendant arrested on a morals charge. The court explained the purpose of a bail bond as follows: "(1) it permits release of a defendant from incarceration; (2) it delivers the custody of the defendant to the bail bondsmen; (3) it guarantees the personal appearance of the defendant for trial, and in execution of any judgment. [Citation.]" (*Id.* at p. 813.) In *Doe*, the defendant appeared as required and was committed to jail for 30 days, followed by release pursuant to an

order for probation. A second obligation of her release was that she pays a fine of \$250, in five monthly installments. When she did not pay the fine, the court summarily ordered that she be rearrested on a bench warrant, and directed forfeiture of her bail. (*Id.* at p. 814.) The trial court refused to set aside forfeiture of the bail, and the surety appealed. The Court of Appeal reversed, explaining: “The guaranty that defendant will hold herself amenable to the orders of the court relates solely to her appearance when required. A bail bondsman does not undertake by the statutory bond to guarantee the payment of any fine assessed against the defendant [citation].” (*Id.* at p. 815.)

Similarly, here, appellant’s bond related solely to the defendant’s appearance in court, and did not guarantee his compliance with any conditions of release. The conditions imposed by the court were outside of the bail bond contract and did not constitute impermissible unilateral changes to the bail contract.²

III. Amendments to charges after bail bond posted

Appellant next argues that multiple amendments to the complaint increased the risk to the surety and invalidated the bail bond. In support of this argument, appellant cites *People v. Resolute Ins. Co.* (1975) 50 Cal.App.3d 433 (*Resolute*).³ *Resolute* involved a defendant who was arrested on a narcotics violation. Bail was posted by a group of sureties. A few weeks later a grand jury indicted the defendant on approximately the same charges, plus a conspiracy charge. The original complaint was dismissed, and the bail was ordered transferred to the indictment. However, the clerk did not notify the bail bondsmen of the transfer as expressly required by Penal Code section

² Appellant also points out that Penal Code section 1318 authorizes the imposition of reasonable conditions on a person released on his own recognizance, but no similar statutory authority permits the imposition of such conditions on a person released from custody on bail. We decline to address the question of the court’s authority to impose such conditions, as it is irrelevant to the issue of whether the trial court properly denied appellant’s motion to vacate forfeiture of bail.

³ We will not consider the out-of-state cases cited by appellant, as appellant has made no argument that the law in the various foreign jurisdictions is comparable to that of California or that these cases should be considered persuasive on this issue for any other reason.

1303. (*Id.* at p. 435.) Ultimately the defendant failed to appear for jury trial and the bail was ordered forfeited. The surety appealed, and the Court of Appeal reversed, finding that the court's failure to comply with the specific provisions of Penal Code section 1303 exonerated the sureties and left the court without jurisdiction to forfeit the bail or enter summary judgment against them. (*Id.* at pp. 436-437.)

Resolute concerned the transfer of bail pursuant to Penal Code section 1303, not amendment of a complaint. We therefore find it inapplicable.⁴

People v. International Fidelity Ins. Co. (2010) 185 Cal.App.4th 1391 (*International Fidelity*), is on point. In *International Fidelity*, the defendant was charged in a felony complaint with attempted murder, second degree robbery, and aggravated assault against victim Quach. (*Id.* at pp. 1393-1394). International Fidelity issued a bond for the defendant's release. Two months later, the district attorney filed an amended felony complaint, charging the defendant with committing second degree robbery against a second victim, Nguyen, and using a deadly weapon in doing so. Several months later, the district attorney filed an information, which added another count of second degree robbery committed by the defendant on the same date against a third victim, Tran, and alleged that the defendant used a deadly weapon in commission of that crime as well. Finally, two months later, a first amended information was filed charging the defendant with two separate counts of attempted premeditated murder of Quach, three counts of second degree robbery against Quach, Nguyen, and Tran, and two counts of aggravated assault against Quach. International Fidelity was never given notice of the amendments. (*Id.* at p. 1394.)

At the time the first amended information was filed, the district attorney moved to increase bail, but the motion was denied. The defendant later failed to appear at trial, and bail was forfeited. International Fidelity appealed the denial of its motion to vacate forfeiture and exonerate bail. (*International Fidelity, supra*, 185 Cal.App.4th at p. 1395.)

⁴ *People v. Surety Ins. Co.* (1983) 139 Cal.App.3d 848, also involved the transfer of bail without notice to the surety as required by Penal Code section 1303, and is inapplicable to this matter for the same reason.

In reviewing International Fidelity’s appeal, the Court of Appeal focused on the language of the contract, which guaranteed that the defendant “will appear in the above-named court on the date set forth to answer any charge in any accusatory pleading based upon the acts supporting the complaint filed against him/her and all duly authorized amendments thereof, in whatever court it may be prosecuted.” (*International Fidelity, supra*, 185 Cal.App.4th at p. 1395, italics omitted.) The Court of Appeal held that: “the language in the bond obligated International Fidelity to guarantee [the defendant’s] appearance on any charge in the amended information, as long as that charge was based upon the acts supporting the original complaint. The charges in the first amended information, although they increased [the defendant’s] potential incarceration, were based on the same acts supporting the original complaint.” (*Id.* at p. 1396.)

In the matter before us, the bond contains identical language to that found in the bond at issue in *International Fidelity*. That language obligates appellant to guarantee Hernandez’s appearance on “any charge in any accusatory pleading,” as long as that charge was “based upon the acts supporting the [original] charge filed against him.” The charges added after the original filing fell within the scope of this broad language.

The original criminal information alleged that Hernandez, on or about April 24, 2008, committed acts supporting a felony charge of assault with a firearm under Penal Code section 245, subdivision (a)(2). Shortly thereafter, the information was amended to add violations of Health and Safety Code section 11370.1, subdivision (a), and Penal Code section 12021, subdivision (a)(1). Approximately one month later, the charge under section 12021, subdivision (a)(1) was amended to a violation of section 12025, subdivision (a)(1). A few weeks later, the district attorney was allowed an additional amendment for violations of section 12021, subdivisions (a)(1) and (c)(1).

Appellant makes no argument that these amendments were not “based upon the acts supporting the [original] charge filed against [the defendant].” Appellant was required to insure Hernandez’s appearance in any court “to answer any charge in any accusatory pleading based upon the acts supporting the charge,” and, most significantly, “all duly authorized amendments thereof.” Under the express language of the bail

contract, appellant was obligated to insure Hernandez’s appearance even after the duly authorized amendments to the complaint were made.

In addition, as noted in *People v. Bankers Ins. Co.*, *supra*, 181 Cal.App.4th at page 6, appellant “was free to monitor the case and determine what charges ultimately were made,” and was “free to surrender [Hernandez] pursuant to Penal Code section 1300 if it believed the bond was inadequate to cover the flight risk presented by the complaint.” Appellant chose not to take these measures.

In sum, we find that the amendments to the complaint were within the scope of the language of the bail contract. The bond was not void or invalid for any reason, and the trial court properly denied appellant’s motion to vacate forfeiture.

DISPOSITION

The judgment is affirmed.

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_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.
ASHMANN-GERST