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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff and Respondent,

v.

FINANCIAL CASUALTY &
SURETY, INC.,

Defendant and Appellant.

B279546

(Los Angeles County
Super. Ct. No. OSJ1892)

APPEAL from a judgment of the Superior Court of the
County of Los Angeles, Kerry R. Bensinger, Judge. Affirmed.

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

Law Office of John Rorabaugh, John M. Rorabaugh and
Crystal L. Rorabaugh for Defendant and Appellant.

I. INTRODUCTION

Defendant Financial Casualty & Surety, Inc., appeals from the entry of summary judgment on a bail bond forfeiture under Penal Code section 1306.¹ We affirm.

II. BACKGROUND

Yuhui Tang was charged with one count of violating Health and Safety Code section 11378 and one count of violating Health and Safety Code section 11359. On March 23, 2015, defendant, through its agent The Bail Hotline Bail Bonds (the bail agent), posted a \$30,000 appearance bond for Tang. On June 30, 2015, when Tang failed to appear as ordered for jury trial, the court issued a bench warrant for Tang and ordered the bond forfeited. On July 2, 2015, the trial court mailed the notice of bond forfeiture to the bail agent. Pursuant to section 1305, the time limit to have the bond forfeiture vacated if Tang were subsequently to appear in court or be apprehended was 180 days, plus 5 days for mailing the notice of forfeiture; this 185-day period (known as the appearance period) was set to expire on January 3, 2016.²

¹ Further statutory references are to the Penal Code, unless otherwise indicated.

² Section 1305, subdivision (c)(1) provides in pertinent part, “If the defendant appears either voluntarily or in custody after surrender or arrest in court within 180 days of the date of forfeiture or within 180 days of the date of mailing of the notice if the notice is required under subdivision (b), the court shall, on its own motion at the time the defendant first appears in court on

On December 30, 2015, the bail agent filed a timely motion to extend the appearance period pursuant to section 1305.4, which provides for an extension of up to 180 days. The bail agent requested a full 180-day extension, to be measured from the date the trial court were to grant the extension. On February 5, 2016, the trial court heard and granted the bail agent's motion for an extension. In so doing, the trial ordered the appearance period to be extended by 180 days, calculating the last day to be July 1, 2016. Notably, July 1 was 180 days from the January 3, 2016, expiration date of the 185-day period, but only 147 days from the date the trial court granted the extension.

On June 29, 2016, the bail agent filed a second motion to extend the appearance period, seeking an extension to 180 days from the February 5, 2016, date the trial court granted the first extension, i.e., an extension until August 3, 2016. To demonstrate good cause for the second extension request, the bail agent submitted a declaration by its fugitive recovery

the case in which the forfeiture was entered, direct the order of forfeiture to be vacated and the bond exonerated.” Section 1305, subdivision (b)(1) provides in pertinent part: “If the amount of the bond or money or property deposited exceeds four hundred dollars (\$400), the clerk of the court shall, within 30 days of the forfeiture, mail notice of the forfeiture to the surety or the depositor of money posted instead of bail. At the same time, the court shall mail a copy of the forfeiture notice to the bail agent whose name appears on the bond If the notice of forfeiture is required to be mailed pursuant to this section, the 180-day period provided for in this section shall be extended by a period of five days to allow for the mailing.” This 185-day period under section 1305, subdivision (b)(1) is referred to as the appearance period. (*People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653, 657.)

investigator Louis Norfolk. Norfolk averred that he had taken several steps to locate Tang between February 17, 2016 and June 21, 2016. Norfolk reviewed a prior declaration by a recovery investigator in support of the first extension motion. He searched the Los Angeles County Superior Court's Web site to determine if Tang had made any appearances. Norfolk ran Tang's information through multiple credit data base companies to locate any new addresses beyond the ones discovered by the previous investigators, finding none. He conducted surveillance of 500 S. 3rd Street in Alhambra, California, the same action taken by a previous recovery investigator as good cause for the first extension. Norfolk went to an apartment building located at 7117 Rosemead Boulevard³ and showed Tang's picture to two individuals who claimed to live at the apartment complex. Neither individual could say that Tang lived there. Norfolk had requested that the Internet leads department for the bail agent place Tang on their Facebook page. Norfolk went to 500 S. 3rd Street on three other occasions and did not locate Tang. Norfolk also contacted again the same individuals that were mentioned by, and had been previously contacted by, the prior investigators. These attempts were unsuccessful. Finally, Norfolk declared that he planned on conducting more surveillance at 500 S. 3rd Street, contacting residents there, and asking the Internet leads department to repost Tang on Facebook.

On July 22, 2016, the trial court denied the second extension motion, ruling that "the time has run" because a surety

³ Prior recovery investigators had declared they went to an apartment located at 7171 Rosemead Boulevard in San Gabriel, California. It is unclear if this address was meant to be the same.

is “only entitled to an additional 180 days from the expiration of the 185 days.” The trial court also ruled in the alternative that the Norfolk declaration failed to provide good cause to grant a further extension because it did not demonstrate there is a reasonable likelihood of recapturing Tang.

Accordingly, on July 26, 2016, the trial court entered summary judgment against defendant in the amount of \$30,000, plus \$370 in costs. Defendant subsequently appealed.

III. DISCUSSION

A. The Bail Bond Statutes

A “bail bond is a contract between the surety and the government whereby the surety acts as a guarantor of the defendant’s appearance in court under the risk of forfeiture of the bond.” (*People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653, 657 (*American Contractors*)). When the surety breaches the contract by failing to secure the defendant’s appearance, the bond generally must be enforced. (*Id.* at pp. 657-658.) The purpose of bail and of its forfeiture, however, is to ensure the accused’s attendance and obedience to the criminal court, not to raise revenue or to punish the surety. (*Id.* at p. 657.)

“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 days 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).)” (*American Contractors, supra*, 33 Cal.4th at p. 658, fn. omitted.)

“In 1996, the Legislature added section 1305.4, allowing for an extension of the appearance period. (Stats. 1996, ch. 354, § 1, p. 2452.) Under section 1305.4, as it currently reads, the surety may move for an order extending the initial appearance period as follows: ‘The motion shall include a declaration or affidavit that states the reasons showing good cause to extend that period. The court, upon a hearing and a showing of good cause, may order the period extended to a time not exceeding 180 days from its order. A motion may be filed and calendared as provided in subdivision (j) of Section 1305.’ The referenced subdivision provides, in relevant part: ‘A motion filed in a timely manner within the 180-day period may be heard within 30 days of the expiration of the 180-day period. The court may extend the 30-day period upon a showing of good cause.’ (§ 1305, subd. (j).)” (*People v. Financial Casualty & Surety, Inc.* (2016) 2 Cal.5th 35, 42.)

B. Denial of the Motion for a Second Extension

Defendant appeals from the denial of the motion for a second extension and subsequent entry of summary judgment. Specifically, defendant argues the trial court erred in declining to grant a second extension of 33 days to afford it the maximum 180-day extension under section 1305.4 to locate and produce Tang in order to avoid forfeiture of the bond. Although an order denying an extension under section 1305.4 is generally not appealable, we may treat that denial as an appeal from the subsequently entered summary judgment. (*People v. Seneca Ins. Co.* (2004) 116 Cal.App.4th 75, 79-80.)

We apply de novo review to the trial court's interpretation of the statutory scheme for bail. (*County of Los Angeles v. Allegheny Casualty Co.* (2017) 13 Cal.App.5th 580, 584.) We review an order denying an extension under section 1305.4 for an abuse of discretion. (*People v. Financial Casualty & Surety, Inc.*, *supra*, 2 Cal.5th at p. 47.)

Defendant contends the trial court erred in its calculation of the 180-day extension period under section 1305.4, by measuring the extension time from the expiration of the original 185-day period (January 3, 2016) instead of the date the extension was granted (February 5, 2016). The People agree with defendant's contention, as do we.

"Section 1305.4 provides that the trial court, on a motion to extend the initial appearance period, 'may order the period extended to a time not exceeding *180 days from its order*.' (Italics added.) This language plainly measures the allowable period of extension from the date of the trial court's extension order, not from the end date of the initial appearance period." (*People v. Financial Casualty & Surety, Inc.*, *supra*, 2 Cal.5th at p. 43.) Moreover, where a party obtained an extension of less than the 180-day maximum permitted by section 1305.4, that party may file an additional motion seeking an extension consisting of any remaining days up to the 180-day limit. (*Id.* at pp. 46-47; *People v. Financial Casualty & Surety, Inc.* (2017) 10 Cal.App.5th 369, 385-386 ["When a court initially grants an extension for less than 180 days, it may grant a second extension as long as that extension does not go beyond the 180 days from the date of its first extension order"].)

Accordingly, we conclude the trial court erred when it denied the motion for an extension on the ground that "time has

run,” which was based on the erroneous belief the surety was only entitled to a 180-day extension measured from the expiration of the initial 185-day appearance period. We, nonetheless, affirm the denial of the motion because a trial court’s order will be affirmed on any correct theory. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 981.) Here, the trial court alternatively ruled that there was no good cause to grant a second extension, and we find no abuse of discretion in so ruling.

“Good cause” for an extension under section 1305.4 “turns on the surety’s diligence in tracking down the defendant as well as whether there is ‘a reasonable likelihood [that] the extension will result in the defendant’s apprehension.’” (*People v. Financial Casualty & Surety, Inc., supra*, 2 Cal.5th at pp. 47-50.)” (*People v. Financial Casualty & Surety, Inc., supra*, 10 Cal.App.5th at p. 377.) “[A] trial court considering the likelihood of apprehension as a factor in the determination does not attempt to foresee the future but rather assesses, on the basis of the affidavits or declarations detailing the investigation to that point, how close the surety’s efforts have brought it to finding the defendant and bringing him or her into custody and what further steps the investigators intend to take during the requested extension.” (*People v. Financial Casualty & Surety, Inc., supra*, 2 Cal.5th at p. 49.)

The trial court considered Norfolk’s declaration in support of the second extension motion and found it did not demonstrate a reasonable likelihood that an extension would result in Tang’s apprehension. Based on Norfolk’s declaration, he was unsuccessful on numerous attempts to locate Tang. Norfolk had conducted surveillance on 500 S. 3rd Street on multiple occasions and did not locate Tang. Norfolk called the same contacts that

prior recovery investigators had contacted and was unsuccessful. Norfolk also failed to explain how posting Tang's information on Facebook a second time would lead to a reasonable likelihood of Tang's apprehension. Based on Norfolk's declaration, there were no other steps that he would take, which had not been done already, that would lead to a reasonable likelihood of apprehending Tang if a 33-day extension was granted. The trial court therefore did not abuse its discretion by denying the second extension motion.

On appeal, defendant appears not to contest the trial court's finding of no good cause at the time it denied the second extension motion. Instead, defendant contends that finding was "irrelevant," arguing the trial court had "already found good cause to grant the full 180-day period" when it granted the first motion for an extension on February 5, 2016. This argument misconstrues the trial court's findings and order on February 5, 2016. The trial court did not grant a 180-day extension irrespective of when that 180-day period would begin. Rather, the trial court granted a 180-day extension until July 1, 2016, with the understanding—albeit mistaken—that the 180-day extension began at the end of the original 185-day period on January 3, 2016. Given the trial court's understanding of the extension it granted, its finding of good cause necessarily supported an extension only to July 1, 2016, and no further. Indeed, the trial court reaffirmed this understanding of its February 5, 2016, order and findings when it denied the second extension motion and reiterated its belief that no extension would or could be granted beyond July 1, 2016, and proceeded to address whether there was good cause to support an extension beyond that date in the event one were available to the surety.

Finally, because the trial court did not abuse its discretion by denying the second extension, we hold the trial court did not err by entering summary judgment. “If the forfeiture is not vacated, the trial court must then enter summary judgment against the surety for ‘the amount of the bond plus costs.’” (*People v. Financial Casualty & Surety, Inc., supra*, 10 Cal.App.5th at p. 378.) The appearance period elapsed on July 1, 2016. Summary judgment was properly entered within 90 days on July 26, 2016. (See § 1306, subds. (a), (c); *American Contractors, supra*, 33 Cal.4th at p. 658.)

IV. DISPOSITION

The entry of summary judgment is affirmed. The People are awarded costs on appeal.

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KIN, J.*

We concur:

BAKER, Acting P. J.

MOOR, J.

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