

County of San Luis Obispo v. The Bail Hotline Bail Bonds (x2) 17LC-0960 and 17LC-0961

Re: Motion to Set Aside Summary Judgment on Bond Forfeiture

Date: February 15, 2018

Michalyn Vallely (“Defendant”) is charged with violations of the Health and Safety Code.¹ On April 3, 2017, American Surety Company (the “Surety”) posted bond for Defendant’s release from custody. On April 26, 2017, Defendant failed to appear and the Court ordered the bond forfeited. A Notice of Forfeiture was filed and mailed on May 9, 2017. The Notice advised that the forfeiture would become absolute on November 10, 2017.²

In December 2017, the Court entered Summary Judgment, pursuant to Penal Code section 1306.³ The Notice of Entry of Judgment on Forfeited Bond and Summary Judgment on Bond Forfeiture was mailed on December 12, 2017.

The Surety now seeks to set aside the summary judgments under section 1305(c)(2).

That section states in relevant part: “If, within the county where the case is located, the defendant is surrendered to custody by the bail or is arrested in the underlying case within the 180-day period, and is subsequently released from custody prior to an appearance in court, the court shall, on its own motion, direct the order of forfeiture to be vacated and the bond exonerated. ...”

Here, the Surety states Defendant was arrested in San Luis Obispo County on August 7, 2017, and then released without appearing on these cases. The County opposes the motion stating Defendant was actually arrested in Monterey County, and thereafter cited and released with notice to appear in the San Luis Obispo County Superior Court on September 5, 2017. On that date, Defendant once again failed to appear. The County argues that because Defendant was arrested outside of San Luis Obispo County, the Surety was required to file a motion for relief from forfeiture under section 1305(c)(3).

That section states: “If, outside the county where the case is located, the defendant is surrendered to custody by the bail or is arrested in the underlying case within the 180-day

¹ Specifically, Health and Safety Code sections 11550(a) [under the influence of a controlled substance] and 11364(a) [possession of drug paraphernalia].

² That date is based on the 180-day forfeiture period set forth in Penal Code section 1305, which is extended by five days if the Notice of Forfeiture is mailed. The 180 days runs from the date of forfeiture or the date of mailing of the Notice of Forfeiture if mailing is required under section 1305(b).

³ All statutory references are to the Penal Code unless otherwise indicated.

period, the court shall vacate the forfeiture and exonerate the bail.”

Unlike subsection 1305(c)(2) which states the court shall exonerate the bond “on its own motion,” subsection 1305(c)(3) does not require or imply that the court vacate a forfeiture on its own motion or automatically exonerate the bail. Instead, it is incumbent on the surety to bring a motion for relief before the expiration of the 180-day period. (*People v. Indiana Lumbermens Mut. Ins. Co.* (2010) 49 Cal.4th 301, 310.)⁴

The Surety failed to file the motion within the required deadline. The motions to set aside the summary judgments are therefore denied.

⁴ However, if good cause is shown, a motion under section 1305(c)(3) may be filed within 20 days of the mailing of the notice of entry of judgment. (§ 1305.6(b).) As noted above, notice of entry of judgment was mailed on December 12, 2017. The Surety’s motions to set aside were filed within 20 days of that mailing, on December 28, 2017. Regardless, the Surety has not filed a reply to the County’s opposition, and thus, has not made any showing of good cause to extend the deadline to file a motion under section 1305(c)(3).

The Surety could have also filed a motion under section 1305.4 to extend the 180-day period, but did not do so in this case.