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

COUNTY OF LOS ANGELES,

Plaintiff and Respondent,

v.

SENECA INSURANCE COMPANY,

Defendant and Appellant.

B152761

(Los Angeles County
Super. Ct. No. BS070972)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert M. Martinez, Judge. Affirmed.

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

Steve Cooley, District Attorney, Brent Riggs and Fred Klink, Deputy District Attorneys, for Plaintiff and Respondent.

Seneca Insurance Company appeals from the summary judgment entered in favor of the County of Los Angeles for enforcement of forfeiture of a bail bond posted by Seneca on behalf of criminal defendant Seung Hyun Noh. Seneca contends that the bond was exonerated by operation of law when the trial court failed to remand Noh to custody following his guilty plea without stating reasons for permitting Noh to continue on bail as

purportedly required by Penal Code section 1166 (section 1166).¹ As we read section 1166, it is limited to situations where a verdict has been rendered and has no application to convictions by plea. Accordingly, we hold that the trial court did not err in failing to make findings under section 1166 and affirm the summary judgment against Seneca.

BACKGROUND

Seneca issued a bail bond to secure Noh's release pending the resolution of criminal charges against him in Los Angeles Superior Court case No. KA045412. On May 23, 2000, Noh pleaded guilty to receiving stolen property. Bail was allowed to stand, but no mention was made of the factors enumerated in section 1166. Noh failed to appear for his scheduled sentencing on June 21, 2000, and bail was declared forfeited. In November, Seneca moved to vacate the forfeiture and exonerate bond, arguing that the trial court had failed to comply with section 1166. On December 30, 2000, Seneca's motion was denied. Seneca appealed and secured a ruling reversing the trial court's order. (See *People v. Seneca Ins. Co.* (2002) 94 Cal.App.4th 1358 (*Seneca I*.) The Supreme Court later granted review. (Mar. 13, 2002, S104487.)

While the appeal in *Seneca I* was pending, Seneca filed a request to toll time to vacate forfeiture in the event of Noh's surrender or arrest. Defendant did not surrender or appear within the tolling period.

¹ Section 1166 provides: "If a general verdict is rendered against the defendant, or a special verdict is given, he or she must be remanded, if in custody, or if on bail he or she shall be committed to the proper officer of the county to await the judgment of the court upon the verdict, unless, upon considering the protection of the public, the seriousness of the offense charged and proven, the previous criminal record of the defendant, the probability of the defendant failing to appear for the judgment of the court upon the verdict, and public safety, the court concludes the evidence supports its decision to allow the defendant to remain out on bail. When committed, his or her bail is exonerated, or if money is deposited instead of bail it must be refunded to the defendant or to the person or persons found by the court to have deposited said money on behalf of said defendant."

On August 10, 2001, Los Angeles Superior Court case No. BS070972 was filed. In that case, the trial court granted a clerk's application for entry of judgment and summary judgment on forfeited bond based on Noh's failure to appear in case No. KA045412. Judgment was entered on August 14. On August 23, 2001, Seneca filed the notice from which the instant appeal has been taken. (*Seneca II*.)

DISCUSSION

Seneca contends that notwithstanding the express language of section 1166 referencing a conviction by verdict, the legislative history of the statute demonstrates that it should be interpreted to include convictions by plea. County argues that section 1166 means what it says and that it applies only to situations in which there has been a verdict. The issue will be decided by our Supreme Court. (See *People v. Ranger Ins. Co.* (2001) 93 Cal.App.4th 1286 (Second Dist., Div. Six), review granted Mar. 13, 2002, S103451 [holding that section 1166 does not include conviction by plea] (*Ranger*); *Seneca I, supra*, 94 Cal.App.4th 1358 (Second Dist., Div. Three), review granted Mar. 13, 2002, S104487 [disagreeing with *Ranger, supra*, and noting that *Ranger* did not examine pertinent legislative history]; *People v. Ranger Ins. Co.* (2002) 96 Cal.App.4th 818 (Sixth Dist.), review granted May 15, 2002, S105702 [disagreeing with *Seneca I* and noting that legislative history should not be considered where a statute is clear and unambiguous].)

Pending resolution by the Supreme Court, we find no ambiguity in the statute. We are also well aware that, at least in Los Angeles County Superior Court, the parties typically expect that a defendant will not be remanded to custody following a guilty plea. Finally, even assuming section 1166 does apply to a plea, the statute does not contain a requirement that specific findings be made on its enumerated factors, and there is no reason to presume that the trial court did not perform the official duty of considering these factors in determining whether or not to revoke bail. (Cf. *In re Podesto* (1976) 15 Cal.3d 921, 938 [trial court should state reasons for *denial* of bail on appeal].)

County argues that, because *Seneca I* presents the identical facts and identical issue as the appeal in *Seneca II* (i.e., whether the bond was exonerated as a matter of law on May 23, 2000, when Noh entered his guilty plea and bail was allowed to stand),

Seneca II should be dismissed. We recognize the anomaly presented by separate resolution of the two appeals, noting that *Seneca I* emanates from the criminal prosecution and *Seneca II* from the civil summary judgment. (We further recognize the irony of Seneca, by virtue of pursuing *Seneca II* following its success in *Seneca I*, now standing on the brink of snatching defeat from the jaws of victory.) But we see no reason to dismiss *Seneca II*. We expect that the Supreme Court will grant review in due course in this case and ultimately remand it with directions to conduct further proceedings in accordance with that court's resolution of the section 1166 issue. Until that time, we conclude that summary judgment was properly entered against Seneca here.

DISPOSITION

The judgment is affirmed.
NOT TO BE PUBLISHED.

MALLANO, J.

We concur:

SPENCER, P. J.

VOGEL (MIRIAM A.), J.