

**CERTIFIED FOR PUBLICATION**

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

AMERICAN CONTRACTORS  
INDEMNITY COMPANY,

Defendant and Appellant.

E031426

(Super.Ct.No. 99NF2727)

O P I N I O N

APPEAL from the Superior Court of Orange County. Richard W. Stanford, Jr.,  
Judge. Affirmed.

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

Benjamin P. de Mayo, County Counsel, and Wendy J. Phillips, Deputy County  
Counsel, for Plaintiff and Respondent.

1. Introduction

American Contractors Indemnity Company (ACIC), surety on a bail bond, appeals from an order denying its motion to set aside a summary judgment on the bond. By its motion, ACIC sought to discharge the forfeiture of the bond and exonerate the bond.

ACIC contends that the summary judgment was void because it was entered before the expiration of the 185-day period for discharging the forfeiture of the bond. (Pen. Code, §§ 1305, subd. (i), 1305.4 & 1306, subds. (a) & (c).)<sup>1</sup>

Respondent concedes that the summary judgment was prematurely entered, but argues that the summary judgment was not void, only voidable, and that ACIC is estopped from collaterally attacking the summary judgment. We agree with respondent and affirm.

## 2. Sections 1305 and 1306

The trial court may order a defendant's bail bond forfeited if the defendant fails to appear in court as lawfully required. (§ 1305, subd. (a).) Within 185 days after the date the clerk of court mails a notice of forfeiture, the surety on the bond is entitled to have the forfeiture vacated and the bond exonerated, provided that the defendant appears in court within the 185-day period (the appearance period). (§ 1305, subds. (b) & (c).)

The trial court may extend the appearance period by no more than 180 days from the date the trial court orders the extension, provided that the surety files its motion before the original 185-day appearance period expires, and provided further that the surety shows good cause for the extension. (§§ 1305, subd. (i) & 1305.4.)

After the appearance period expires, the trial court has 90 days to enter summary judgment on the bond. Summary judgment may not be entered before the appearance period expires, nor more than 90 days thereafter. If summary judgment is not entered

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

within the 90-day period following the expiration of the appearance period, the bond is exonerated. (§ 1306, subds. (a) & (c).)

### 3. Facts and Procedural History

On September 19, 1999, ACIC issued a \$50,000 bail bond to secure the release of Juan P. Garcia (Garcia), a criminal defendant. On August 7, 2000, Garcia failed to appear for trial, and the bail bond was ordered forfeited. (§ 1305, subd. (a).) On August 17, 2000, the clerk of court mailed notice of forfeiture to ACIC and its bail agent. (§ 1305, subd. (b).)

February 15, 2001, was the 185th day after the notice of forfeiture was mailed. (§ 1305, subd. (b).) On the same date, the trial court entered summary judgment against ACIC on the bail bond. (§ 1306, subd. (a).) The summary judgment was therefore premature because it was entered before the appearance period expired.

On February 14, 2001, one day before the summary judgment was entered, ACIC filed a timely motion to extend the appearance period. (§§ 1305, subd. (i) & 1305.4.) On March 5, 2001, the trial court ordered the appearance period extended to October 5, 2001, or about 210 days after March 5, 2001.

On January 7, 2002, 94 days after October 5, 2001, ACIC filed a motion to set aside the summary judgment, discharge the forfeiture, and exonerate the bond. It argued that the summary judgment was void, because the trial court lacked jurisdiction to enter it until October 6, 2001, at the earliest. (§ 1306, subd. (a).)

Assuming that the summary judgment was void or had never been entered, the last day the trial court could have entered summary judgment was January 3, 2002, 90 days after October 6, 2001, and four days *before* ACIC filed its motion. (§ 1306, subd. (c).) The trial court denied the motion on January 29, 2002. Garcia did not appear in court on or before October 5, 2001, or at any time thereafter.

#### 4. Discussion

“‘An order denying a motion to set aside a forfeiture is appealable.’ [Citations.] The resolution of a motion to set aside a bail forfeiture is within the trial court’s discretion and should not be disturbed on appeal unless an abuse of discretion appears in the record. [Citation.]” (*People v. Legion Ins. Co.* (2002) 102 Cal.App.4th 1192, 1195 (*Legion Ins.*))

“The following general rule must be applied whenever courts are called upon to construe the laws governing bail bonds: “‘The law traditionally disfavors forfeitures and this disfavor extends to forfeiture of bail. [Citations.] Thus . . . sections 1305 and 1306 dealing with forfeiture of bail bonds must be strictly construed in favor of the surety to avoid the harsh results of a forfeiture.” [¶] The standard of review, therefore, compels us to protect the surety . . . .” (*People v. American Contractors Indemnity Co.* (2001) 91 Cal.App.4th 799, 805.)

Sections 1305 and 1306 have been held to be “jurisdictional prescriptions.” (*County of Los Angeles v. Ranger Ins. Co.* (1999) 70 Cal.App.4th 10, 16 (*Ranger Ins.*)). “[S]ections 1305 and 1306 must be strictly followed or the court acts in *excess of its*

*jurisdiction.* [Citation.]” (*People v. International Fidelity Ins. Co.* (2001) 92 Cal.App.4th 470, 473, italics added.)

ACIC argues that the trial court lacked jurisdiction to enter the summary judgment until October 6, 2001, at the earliest, and that the February 15, 2001, summary judgment was therefore void. We disagree.

“Just as ‘jurisdiction’ has different meanings [citation], a ‘lack of jurisdiction’ can take different forms and have different consequences. ‘Lack of jurisdiction in its most fundamental or strict sense means an entire absence of power to hear or determine the case, an absence of authority over the subject matter or the parties.’ [Citation.]” (*People v. National Automobile & Casualty Ins. Co.* (2000) 82 Cal.App.4th 120, 125 (*National Automobile*), quoting *Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 287 (*Abelleira*).)

“‘But in its ordinary usage the phrase “lack of jurisdiction” is not limited to these fundamental situations.’ [Citation.] It is also applied more broadly ‘to a case where, though the court has jurisdiction over the subject matter and the parties in the fundamental sense, it has no “jurisdiction” (or power) to act except in a particular manner, or to give certain kinds of relief, or to act without the occurrence of certain procedural prerequisites.’ [Citation.]” (*National Automobile, supra*, 82 Cal.App.4th at p. 125, quoting *Abelleira, supra*, 17 Cal.2d at p. 288.)

“Speaking generally, any acts which exceed the defined power of a court in any instance, whether that power be defined by constitutional provision, express statutory

declaration, or rules developed by the courts and followed under the doctrine of *stare decisis*, are in *excess of jurisdiction . . .*” (*Abelleira, supra*, 17 Cal.2d at p. 291, latter italics added.) More specifically, “when a statute authorizes prescribed procedure, and the court acts contrary to the authority thus conferred, it has exceeded its jurisdiction . . . .” (*Id.* at p. 290, quoting *Rodman v. Superior Court* (1939) 13 Cal.2d 262, 270.) “Action ‘in excess of jurisdiction’ by a court that has jurisdiction in the ‘fundamental sense’ . . . is not void, *but only voidable.*” (*Conservatorship of O’Connor* (1996) 48 Cal.App.4th 1076, 1088, citing *Pacific Mut. Life Ins. Co. v. McConnell* (1955) 44 Cal.2d 715, 725-726.)

Here, the trial court had jurisdiction in the “fundamental sense” over the parties and the subject matter of the bail bond. The error ACIC complains of -- the premature entry of summary judgment in violation of section 1306, subdivision (a) -- is an act in excess of the trial court’s jurisdiction.

Accordingly, the premature entry of summary judgment is not void, but voidable. Further, ACIC’s collateral attack on the summary judgment is barred by the doctrines of estoppel and disfavor of collateral attack.<sup>2</sup>

“[A] party may, by its conduct, be estopped from contesting an action in excess of jurisdiction.” (*Law Offices of Stanley J. Bell v. Shine, Browne & Diamond* (1995) 36

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<sup>2</sup> “A motion to vacate or set aside the judgment, if made after the statutory time has elapsed for direct attack by motion, or if made on grounds or procedure not authorized by the statutes governing direct attack, is a collateral attack.” (8 Witkin, Cal. Procedure (4th ed. 1997) Attack on Judgment in Trial Court, § 8, p. 516.)

Cal.App.4th 1011, 1022 (*Bell*.) This is particularly so where “[t]o hold otherwise would permit the parties to trifle with the courts.” (*National Automobile, supra*, 82 Cal.App.4th at p. 126.)

“The ‘estoppel’ principle is particularly compelling where, as here, what is involved is a collateral attack.” (*Bell, supra*, 36 Cal.App.4th at p. 1024.) “[W]hen a direct avenue of attack (such as appeal) is available, collateral attack on a judgment ‘in excess of jurisdiction’ is seldom, if ever, allowed.” (*Id.* at p. 1023.) It is not allowed “unless exceptional circumstances precluded an earlier and more appropriate attack.”<sup>3</sup> (*Id.* at p. 1024, quoting what is now 2 Witkin, Cal. Procedure, *supra*, Jurisdiction, § 323, pp. 899-900.)

Here, the February 15, 2001, summary judgment was appealable. (*County of Los Angeles v. Surety Ins. Co.* (1985) 164 Cal.App.3d 1221, 1224 [summary judgment entered after bail bond forfeiture is appealable, where surety claims summary judgment not entered with surety’s consent, i.e., in accordance with sections 1305 and 1306].) But rather than directly appeal the summary judgment as entered in violation of sections 1305

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<sup>3</sup> “‘If there is jurisdiction of the subject matter and the parties, one who complains of the act is usually before the court. He has an opportunity to object, or to have the judgment or order reviewed by the usual methods of direct attack, such as new trial or appeal. He may also in many situations use the extraordinary writs of prohibition, mandamus or certiorari to directly attack and prevent or annul the unauthorized act. In brief, there are adequate methods of direct attack on such judgments, and there is almost a presumption of negligence on the part of the aggrieved party who fails to seek these normal remedies and later raises the objection by collateral attack.’” (*Bell, supra*, 36 Cal.App.4th at p. 1024, quoting what is now 2 Witkin, Cal. Procedure (4th ed. 1996) Jurisdiction, § 323, pp. 899-900.)

and 1306, ACIC waited nearly a year, until January 7, 2002, to attack it on the same ground. Nothing prevented ACIC from attacking the summary judgment earlier, either in the trial court or on a direct appeal. Without question, ACIC had notice of the summary judgment shortly after it was entered.

ACIC's January 7, 2002, motion to set aside the summary judgment was filed 94 days after October 6, 2001. And in its January 7, 2002, motion, ACIC noted that October 6, 2001, was the *earliest date* the trial court had jurisdiction to enter summary judgment. (§ 1306.) It follows that the *latest date* the trial court could have entered summary judgment was January 3, 2002, or 90 days after October 6, 2001,<sup>4</sup> and four days *before* ACIC filed its January 7, 2002, motion.

Thus, ACIC waited to attack the summary judgment until it could argue that the trial court no longer had jurisdiction to enter summary judgment on the bond. The only discernible reason for ACIC's delayed attack is that it wished to "trifle with the courts." (*National Automobile, supra*, 82 Cal.App.4th at p. 126.) Accordingly, the trial court properly denied ACIC's January 7, 2002, motion.<sup>5</sup>

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<sup>4</sup> The trial court exceeded its jurisdiction by extending the appearance period by more than 180 days. (§§ 1305, subd. (i) & 1305.4.) This does not change our analysis regarding the premature entry of summary judgment on the bond, however.

<sup>5</sup> Respondent argues that the trial court did not have jurisdiction to set aside the forfeiture and exonerate the bond after October 5, 2001, when the appearance period expired. Therefore, respondent argues, the trial court was without jurisdiction to grant ACIC's January 7, 2002, motion to set aside the summary judgment, discharge the forfeiture, and exonerate the bond. A surety must seek relief from forfeiture before the appearance period expires. (§§ 1305, subds. (c)-(e) & 1306, subd. (a).) It does not

[footnote continued on next page]



Two recent cases have held that a summary judgment is void if entered before the appearance period expires. These are *People v. Ranger Ins. Co.* (2002) 99 Cal.App.4th 1229, 1235, and *People v. International Fidelity Ins. Co.*, *supra*, 92 Cal.App.4th at page 475. We disagree with these cases. In our view, their holdings derive from confusion in the case law between voidable actions in excess of a court’s jurisdiction, and void actions which are based on lack of subject matter jurisdiction. (See, e.g., *Pacific Mut. Life Ins. Co. v. McConnell*, *supra*, 44 Cal.2d at pp. 725-726; *Albelleira*, *supra*, 17 Cal.2d at pp. 287-291.)

It has been observed that “[f]ailure to follow the jurisdictional prescriptions in sections 1305 and 1306 renders a summary judgment on the bail bond void. [Citations.]” (*Ranger Ins.*, *supra*, 70 Cal.App.4th at p. 16.) But we have also recognized that acts in excess of a trial court’s jurisdiction are not to be equated with a lack of subject matter jurisdiction (*National Automobile*, *supra*, 82 Cal.App.4th at pp. 125-126), or jurisdiction in the fundamental sense.<sup>6</sup>

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*[footnote continued from previous page]*

follow, however, that the surety may not challenge a voidable, prematurely-entered summary judgment, after the appearance period expires.

<sup>6</sup> The present case is distinguishable from *People v. Topa Ins. Co.* (1995) 32 Cal.App.4th 296, 301 (*Topa Ins.*). There, the trial court entered summary judgment on a bail bond about one month *after* the 90-day period prescribed in section 1306, subdivision (c), had expired. The *Topa Ins.* court held that the summary judgment was void, because bail had been exonerated on the 91st day following the expiration of the appearance period, and there was “simply no basis for any extension of this time period in statute or case law.” (*Id.* at pp. 301, 303.) Here, however, summary judgment was

*[footnote continued on next page]*

As we have also noted, “There are times when there are good reasons for form to triumph over substance, but this is not one of them.” (*People v. American Bankers Ins. Co.* (1991) 227 Cal.App.3d 1289, 1296.) This observation is particularly applicable here.

5. Disposition

The order denying ACIC’s January 7, 2002, motion to set aside the February 15, 2001, summary judgment, discharge the forfeiture, and exonerate the bond is affirmed. Respondent shall recover its costs on appeal.

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/s/ King  
J.

We concur:

/s/ Richli  
Acting P.J.

/s/ Gaut  
J.

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*[footnote continued from previous page]*  
entered prematurely, before the expiration of the appearance period, and before bail was exonerated.