
Parties/Attorneys:

Plaintiff	Lexington National Ins. Corp.	Adam Sostrin Sostrin Law Offices
Defendant	County of Santa Barbara	No response

Tentative Ruling:

For the reasons stated below, the motion to vacate the summary judgment is denied.

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See Remote Appearance (Zoom) Information | Superior Court of California | County of Santa Barbara.)

MEMORANDUM

On June 12, 2024, the District Attorney filed a complaint against Bianca Forentina Ozon for theft. She was taken into custody and released pursuant to bail bond No. 2024DD006605 in the sum of \$25,000 issued by Lexington National Insurance Corporation through their agent Superior Bail Bonds. Defendant failed to appear for arraignment on June 26, 2024. The court ordered the bond forfeited, issued a warrant, and set bail at \$75,000 (Case No. 24CR04467, McGregor.)¹

Notice of Forfeiture of Bond was mailed on June 28, 2024. (Pen. Code,² § 1305, subd. (b)—clerk of the court shall, within 30 days of the forfeiture, mail notice of the forfeiture to the surety if amount of bond exceeds \$400.) The surety then had 180 days, plus five days because the notice is mailed, to either produce the accused in court and have the forfeiture set aside, or to demonstrate other circumstances requiring the court to vacate the forfeiture, or to file a motion to extend the appearance period. (See §§ 1305, subds. (c)–(d), (f)–(g); 1305.4.) The appearance period expired on December 30, 2024.

On December 31, 2024, the bail agent filed a motion to extend the appearance period. County opposed the motion on the basis that since the appearance period

¹In support of its motion, Lexington submits Exhibits A – L, which appear to be copies of pleadings submitted in Case No. 25CV04306. None of these exhibits are authenticated. The court on its own motion takes judicial notice of the court’s file in Case No. 24CR04467.

² All future references are to the Penal Code unless stated otherwise.

had lapsed on December 30, 2024, the motion was untimely and the court no longer had jurisdiction to extend the period. (Opposition filed 1/14/25.) On January 28, 2025, the court continued the motion to February 6, 2025, with direction to the bail agent to file a response by January 31, 2025. That response reported that the bail agent had sent a runner to file the motion on December 30, 2024, but she arrived after the Clerk's Office had closed and a security officer told her that there was a drop box, but it was meant only for civil filings. The runner returned on December 31, 2025, to file the motions. (Decls. of Guadalupe Vazquez and Daniela Vazquez filed in support of Supplemental Memorandum on January 31, 2025.) In a supplemental opposition, County argued it the surety's obligation to ensure the motion was timely filed and pointed out that the law requires that a drop box be provided whenever a clerk's office filing counter is closed at any time between 8:30 a.m. and 4:00 p.m. (Supplemental Opposition filed February 21, 2025.) Daniela Vazquez filed a supplemental declaration on March 4, 2025. On April 9, 2025, Judge McGregor took the motion under submission.

On June 30, 2025, the court issued an order denying the motion: "At issue is whether or not the late filing should be excused due to the factual circumstances surrounding the attempt to file the motion on the last day December 30, 2024." It found: "The Surety had ample time to file the motion, had numerous ways of ascertaining the court clerk's offices hours, could have utilized the dropbox despite the poor legal advice of a security guard and in any case could've filed the motion electronically." (June 30, 2025 Order Denying Motion.) The court denied thus denied the motion. (*Id.*) Summary judgment on bail forfeiture was filed on July 1, 2025. (Pen. Code, § 1306—"When any bond is forfeited and the period of time specified in Section 1305 has elapsed without the forfeiture having been set aside, the court which has declared the forfeiture shall enter a summary judgment against each bondsman named in the bond in the amount for which the bondsman is bound.") Notice of entry of summary judgment was filed and mailed on July 10, 2025.

On August 12, 2025, Lexington National Insurance Corporation filed a Motion to Vacate Summary Judgment. The motion was served on August 12, 2025, by email. There is no opposition.

Timeliness of Entry

Penal Code section 1306 subdivision (c) provides:

"If, because of the failure of any court to promptly perform the duties enjoined upon it pursuant to this section, summary judgment is not entered within 90 days after the date upon which it may first be entered, the right to do so expires and the bail is exonerated."

The 90-day period commences when ‘the period of time specified in Section 1305 has elapsed without the forfeiture having been set aside.’ (Pen. Code, § 1306, subd. (a).) In other words, the court enter summary judgment within 90 days after the appearance period has elapsed.

Here, Lexington argues that because its motion was determined to be untimely, the 90-day period commenced on December 30, 2025, and the court was thus required to act by March 31, 2025. Because the court did not act until after it considered the timeliness of its motion to toll the period, Lexington asserts that it lost jurisdiction to do so.

The court finds that Lexington is estopped from asserting this argument. “There is substantial authority for the proposition that a party who has invoked or consented to the exercise of jurisdiction beyond the court's authority may be precluded from challenging it afterward, even on a direct attack by appeal. (See *In re Griffin* (1967) 67 C.2d 343, 347, 62 C.R. 1, 431 P.2d 625, *infra*, § 350; *Whitlow v. Superior Court* (1948) 87 C.A.2d 175, 185, 196 P.2d 590 [one who invokes jurisdiction is estopped to seek prohibition]; *West Coast Const. Co. v. Oceano Sanitary Dist.* (1971) 17 C.A.3d 693, 699, 95 C.R. 169, quoting the text [time for hearing on preliminary injunction was set 1 day late; this was jurisdictional defect, but defendant-appellant participated in hearing and was estopped to challenge validity of preliminary injunction] . . .” (Witkin, *Cal. Procedure* (6th ed. 2025) Jurisdiction, § 349; see also *People v. Accredited Surety & Casualty Co., Inc.* (2013) 220 Cal.App.4th 1137, 1140 disapproved on another ground in *People v. Financial Casualty & Surety, Inc.* (2016) 2 Cal.5th 35, 46—surety estopped from challenging timeliness of entry of summary judgment because it acquiesced to “the scheduling error” that led to its late entry.) Lexington participated fully in the underlying proceeding, submitting a supplemental memorandum in support of its argument that its motion should be deemed timely as well as a supplemental exhibit in support of its argument, as well as appearing at several hearings in support of the motion. It cannot now argue that since the court allowed it the time to make those arguments and to reach a considered decision that the deadline for the period within which to enter judgment passed.

The court is not convinced that *People v. Granite State Insurance Co.* (2003) 114 Cal. App.4th 758 or any of the other cases cited by Lexington compel a different conclusion, as none are factually similar. In *Granite State*, the court held that when a motion to vacate forfeiture under Penal Code section 1305 is filed within the appearance period, the hearing on the motion can occur within 30 days following the appearance period and the hearing can be continued to an even later date upon a showing of good cause. (§ 1305, subd. (i).) Holding the hearing after the appearance period has expired extends the time to set aside the forfeiture: “Only when the court actually denies the motion does ‘the period of time specified in Section 1305’ elapse ‘without the forfeiture having been set aside’ (§ 1306, subd.

(a)) and the 90–day period for entering summary judgment begin to run. (§ 1306, subd. (c).)” (*Granite State, supra*, 114 Cal.App.4th at 768.)

In *County of Los Angeles v. American Bankers Ins. Co.* (1996) 44 Cal.App.4th 792, the motion to vacate the forfeiture and exonerate the bond was filed “three days late. [] Hence, no hearing on such motion should have been held on [] in the first place, and the court lacked jurisdiction to continue the motion. (*Id.* at 797.) Therefore, the failure to enter summary judgment 90 days after the 180–day period expired resulted in exoneration of the bond as a matter of law. (*Id.* at pp. 795–797.) However, there is no indication that the surety argued that its motion should, in fact, be deemed timely, thus distinguishing this case.

The court finds that Lexington is estopped from asserting its argument that the summary judgment was untimely.

Remaining Arguments

Lexington renews the argument it offered to Judge McGregor that the government unlawfully interfered with the bond when “[a] government security official prevented the bail agent from filing an extension motion on the last day of the period.” It also argues that this court should set aside the judgment pursuant to Code of Civil Procedure section 473, subdivision (b) on the basis that the judgment was taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Both arguments, though packaged differently, raise the same issue considered by Judge McGregor, who found the late filing should not be excused due to the factual circumstances presented. This court is not in a position to reconsider those arguments. A judge sitting in one department of the superior court is without power to reconsider, revise, or change a decision made by a judge sitting in another department of the superior court. (*Ford v. Superior Court* (1986) 188 Cal.App.3d 737, 741-742.)³

The motion is denied.

³ *People v. The North River Ins. Co.* (2011) 200 Cal.App.4th 712 does not suggest any differently, as there is no indication that issue that the attorney’s failure to appear at the motion to vacate forfeiture had been already decided before it was presented in the motion to vacate summary judgment.