

SUPREME COURT OF CALIFORNIA

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SUPREME COURT
FILED

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Deputy

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES,
Plaintiff and ~~Petitioner~~, RESP

v.

INDIANA LUMBERMENS MUTUAL INSURANCE COMPANY,
Defendant and ~~Respondent~~. APL

After a Decision by the Court of Appeal,
Second Appellate District, Division Three
Case No. B208691 (L.A. Sup.Ct. No. SJ0969)

PETITION FOR REVIEW

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TABLE OF CONTENTS

	<u>Page</u>
I. ISSUE PRESENTED	1
II. WHY REVIEW SHOULD BE GRANTED	2
III. STATEMENT OF THE CASE.....	4
IV. DISCUSSION: THE SECOND APPELLATE DISTRICT'S OPINION IN <i>RANGER</i> IS AT COMPLETE ODDS WITH THE OPINION OF THE THIRD APPELLATE DISTRICT IN <i>LEXINGTON</i>	8
V. CONCLUSION	15

TABLE OF AUTHORITIES

Page

CASES

People v. Lexington National Ins. Co.
(2007) 158 Cal.App.4th 370 4, 7, 12, 13

People v. Ranger Ins. Co.
(2006) 141 Cal.App.4th 867 passim

STATUTES

Health and Safety Code, section 11351 6

Penal Code section 1305..... 1, 15

Vehicle Code sections 14601.1 5

I. ISSUE PRESENTED

Penal Code section 1305, subdivisions (c)(1) and (c)(2),¹ as applicable, expressly mandate a trial court on its own motion to vacate a bail bond forfeiture if the defendant is surrendered to or arrested in the court which ordered the forfeiture, or is surrendered or arrested in the same county in the underlying case within 185 days of the forfeiture order.² If the trial court fails to so act, the bail surety's obligations on the bond are immediately vacated. Subdivision (c)(3), however, does *not* have a similar requirement for the trial court to order the forfeiture vacated on its own motion if a defendant is arrested on the underlying charge(s) outside of the county where the forfeiture order was entered within the 185-day appearance period. Nor is there an expression of immediate extinguishment of the surety's obligation if such an arrest occurs.

The concise issue is whether a trial court is compelled under subdivision (c)(3) to vacate a bail forfeiture order after the expiration of the 185-day appearance period without the surety first making a motion to set aside the forfeiture within the 185-day period and in the same fashion as

¹ All further statutory references are to the *Penal Code* unless otherwise specified. Unless otherwise specified, subdivisions refer to subdivision (c) of *Penal Code* section 1305.

² If the service of the bail forfeiture order is made by mail, the 180-day appearance period specified under section 1305, subdivision (c) is extended by five days. (§ 1305, subd. (b); *People v. Ranger Ins. Co.* (2000) 77 Cal.App.4th 813, 819.)

subdivisions (c)(1) and (c)(2). Because two appellate districts answer this question in the affirmative and in the negative in published cases, Plaintiff and Petitioner, COUNTY OF LOS ANGELES, urges the Supreme Court to grant review to settle an important issue of law and establish uniformity of decision among the various judicial districts of this State.

II. WHY REVIEW SHOULD BE GRANTED

Consider the following fact pattern. A criminal defendant is arrested, bails out of jail on a bond issued by a surety and is required to appear in court for arraignment. However, the defendant fails to appear as required, the bail is ordered forfeited and a bench warrant is issued for his arrest. Three months pass and the defendant is arrested again, but on charges unrelated to the original charges and outside of the county where his bail was ordered forfeited. The defendant is also held in the out-of-county jail on the bench warrant, but the bail surety does nothing to search for the defendant. In the interim between the defendant's arrest out-of-county and the expiration of the 180-day appearance period following bail forfeiture, he is released and is never to be heard from again.

If the defendant's initial arrest was the basis for a murder charge, should his release from the out of county jail be cause for alarm? Any person – lo, any court – would be so alarmed. While the present case does not involve a murder charge, but only traffic violations, should the principle

objective of bail bonds, which is to insure the attendance of the accused, be compromised? Of course not. But the above fact pattern merely points out the widespread effect that the opinion of the Second Appellate District has on the bail bond industry and society at large.

The bail statutes establish the rules by which the courts must follow to avoid the harsh results of forfeiture. More importantly, however, they serve as a blueprint for bail sureties to follow to ensure the appearance of defendants at required court hearings and obedience to courts' orders – all regardless of the amount of the bail bond or the severity of the charges against the defendant. And it is this Supreme Court which establishes the rule of law which the lower courts and bail sureties must follow to ensure such appearances by the defendant. Where, as here, the appellate courts are split and provide two different interpretations of the same statute, which lead to opposite results, the Supreme Court's duty as the final arbiter of statutory construction in this state is compelled.

The Supreme Court may order review of a Court of Appeal decision when such is necessary to secure uniformity of decision or to settle an important question of law. (*Rules of Ct., R. 8.500, subd. (b)(1).*) In this case concerning the interpretation of subdivision (c)(3), there are two competing and conflicting lines of appellate cases in different appellate districts. The Supreme Court's grant of review will not only resolve the conflict between these two lines of statutory interpretation, but will have a

significant effect on how the bail industry approaches its obligation to locate and return a criminal defendant to custody and on the lower courts' enforcement of that obligation through the application of section 1305.

The Second Appellate District in *People v. Ranger Ins. Co.* (hereinafter, *Ranger*) (2006) 141 Cal.App.4th 867 held that a motion to vacate a bail forfeiture under section 1305, subdivision (c)(3) may be filed at any time, even beyond the expiration of the 185-day appearance period. In stark contrast, the Third Appellate District in *People v. Lexington National Ins. Co.* (hereinafter, *Lexington*) (2007) 158 Cal.App.4th 370, held the opposite – that the surety must file a timely motion to set aside a bail forfeiture under the grounds set forth under subdivision (c)(3).

Here, the fact pattern is identical those in *Ranger* and *Lexington*. It has been over three years since *Ranger* and almost two years since *Lexington* which gives rise to the present case. That this conflict will continue in the future and affect the bail industry as a whole and the way in which the lower courts will apply subdivision (c)(3) compels this Court to grant review. This issue is now ripe for consideration, inasmuch as this Court has allowed *Ranger* and *Lexington* to continue the conflict.

III. STATEMENT OF THE CASE

The facts of this case are undisputed. By criminal complaint filed on January 18, 2005, Robert Laimbeer was charged in Los Angeles Superior

Court with violating *Vehicle Code* sections 14601.1, subdivision (a) (driving with a suspended drivers license) and 16028, subdivision (a) (no proof of vehicle insurance). (CT, p. 1.) Though Laimbeer was initially released from custody on his own recognizance (“OR status”), his OR status was revoked because of repetitive failures to appear in court without a sufficient excuse and a bench warrant was issued for his arrest. (CT, p. 1.)

Subsequently, Laimbeer was arrested on the outstanding warrant and on March 17, 2007 LUMBERMENS issued a bail bond through its agent in the amount of \$35,000 for Laimbeer’s release. (CT, pp. 2-3.) The bail bond stated, in pertinent part:

“[LUMBERMAN] hereby undertakes that the above named defendant will appear in the above-named court on the date above set forth to answer any charge in any accusatory pleading ... and if convicted, will appear for pronouncement of judgment or grant of probation, or if he/she fails to perform either of these conditions, that [LUMBERMENS] will pay to the people of the State of California, the sum of [\$35,000]. [¶] If the forfeiture of this bond be ordered by the Court, judgment may be summarily made and entered forthwith against [LUMBERMENS] for the amount of its undertaking herein, as provided by Sections 1305 and 1306 of the California Penal Code.” (CT, p. 4.)

Following his release, Laimbeer was required to appear in Los Angeles Superior Court for arraignment on the charges on April 18, 2007.

(CT, p. 4.) However, Laimbeer failed to appear in court on that date and without a sufficient excuse. (CT, p. 3.) The court, therefore, ordered the bail forfeited (CT, p. 2) and a bail forfeiture notice was duly mail served to LUMBERMENS and its agent on the same date (CT, p. 15).

The 185-day appearance period within which LUMBERMENS or its agent was to either surrender Laimbeer to custody, or file a motion to toll or extend the time for such appearance (§§ 1305, subd. (g), 1305.4) or set aside the forfeiture order (§ 1305, subd. (i)), was October 21, 2007.³ (CT, p. 15.)

On July 16, 2007, almost three months after bail was ordered forfeited, Laimbeer was arrested in San Bernardino County on narcotics-related charges, i.e., *Health and Safety Code*, section 11351. (CT, p. 17.) He was additionally held on the outstanding bench warrant previously issued by the Los Angeles Superior Court for his failure to appear at the April 18, 2007 arraignment. (CT, p. 19.) On or about September 5, 2007, Laimbeer was transferred to state prison from San Bernardino Sheriff's Department custody. (CT, p. 19.) The record fails to reflect any attempt by LUMBERMENS or its agent to make a motion to either set aside the bail forfeiture order or to toll or extend the time for surrender or appearance.

³ The 185th day following mailed service of the bail forfeiture notice was Sunday, October 20, 2007. (See *Code Civ. Proc.*, § 12a.)

Furthermore, the record fails to reflect any attempt by LUMBERMENS or its agent to locate Laimbeer during the 185-day appearance period.

On December 4, 2007, summary judgment was entered on the forfeited bond. (CT, p. 7.) On January 2, 2008, LUMBERMENS filed a motion to vacate summary judgment, vacate forfeiture and exonerate bond under the authority of section 1305, subdivision (c)(3). (CT, pp. 8-24.) LUMBERMENS contended that, because Laimbeer was arrested on the underlying case within the 185-day period, a motion to set aside the summary judgment and the bail forfeiture could be filed at any time, even after the expiration of the 185-day period. (CT, 11:1-12:2.) It cited and relied on *Ranger, supra*, 136 Cal.App.4th 135, a decision rendered in the Second Appellate District.

In opposition, COUNTY contended that the court did not have jurisdiction to do anything other than enter summary judgment once the 185-day period had expired without the bail forfeiture order being set aside. (CT, 26:22-30:13.) COUNTY cited and relied on *Lexington, supra*, 158 Cal.App.4th 370, a decision rendered in the Third Appellate District subsequent to *Ranger*. (CT, 28:8-29:17.) COUNTY argued that *Ranger* and *Lexington* directly conflicted with each other and that the trial court was free to choose to follow either of the decision, even if the position adopted conflicted with its own district. (CT, 29:18-23.)

On May 23, 2008, the trial court denied LUMBERMENS' motion. (CT, p. 43.) On June 13, 2008, LUMBERMENS filed a Notice of Appeal from the order denying its motion to vacate the summary judgment and forfeiture. (CT, p. 44.)

On July 21, 2009, Division Three of the Second Appellate District reversed the trial court's order. (Opinion 1.) Significantly, the Court of Appeal recognized that there was a split of appellate authority with respect to the time by which a surety must file a motion to vacate forfeiture and exonerate bond if the criminal defendant is arrested outside of the county in which the underlying case is filed. (Opinion 1, pp. 5-8.) Indeed, the Court of Appeal stated:

“The conflict which has arisen in this area indicates section 1305 is not a model of clarity. The disagreement between Ranger and Lexington demonstrates an ambiguity in the statute with respect to the timing for filing a motion to vacate a forfeiture....” (Opinion 1, p. 8.)

This Petition for Review timely follows.

**IV. DISCUSSION: THE SECOND APPELLATE DISTRICT'S
OPINION IN *RANGER* IS AT COMPLETE ODDS WITH THE
OPINION OF THE THIRD APPELLATE DISTRICT IN
*LEXINGTON***

The present case has the following fact pattern: bail forfeiture is ordered, the defendant is arrested outside of the county where the underlying case is located, the 185-day period passes without the forfeiture having been set aside, and the surety files a motion after the expiration of the 185-day period to set aside the judgment and the bail forfeiture order.

The most impressive testimonial in favor of Supreme Court review should come from the Court of Appeal. And in this case it has. The Second Appellate District here admits that, not only is there an ambiguity in section 1305, subdivision (c)(3), but there is a split in decision between the Second Appellate District and the Third Appellate District on how it should be interpreted. Subdivision (c) of section 1305 states in relevant part:

(1) 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 the case in which the forfeiture was entered, direct the order of forfeiture to be vacated and the bond exonerated. If the court fails to so act on

its own motion, then the surety's or depositor's obligations under the bond shall be immediately vacated and the bond exonerated....

(2) 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. If the court fails to so act on its own motion, then the surety's or depositor's obligations under the bond shall be immediately vacated and the bond exonerated....

(3) 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 period, the court shall vacate the forfeiture and exonerate the bail.”
(Emphasis added.)

Subdivision (c)(1) clearly and unambiguously states that if the defendant appears voluntarily, or is arrested or surrendered by the surety to the court that ordered the bail forfeiture within the 185-day period, the court must order the forfeiture vacated on its own motion. Subdivision (c)(2), in nearly identical terms, requires the court on its own motion to order forfeiture vacated if the defendant is arrested or surrendered by the surety within the 180-day period and is subsequently released from custody before an appearance in court. Subdivision (c)(3) *does not*, however, have a similar provision for the vacating of forfeiture to subdivisions (c)(1) or (c)(2).

In *Ranger, supra*, 141 Cal.App.4th 867, the criminal defendant was arrested in Ventura County on drug-related charges. He was subsequently released on a bail bond issued by the surety. The defendant failed to appear at a court hearing and the trial court ordered the bail forfeited. A day later, the defendant was arrested in Santa Barbara County and held in a Santa Barbara County jail on the Ventura case. Although the defendant remained in custody, the surety did not move to exonerate the bond. After the expiration of the 185-day appearance period, summary judgment was entered on the forfeited bond. Approximately one week later, however, the surety moved to set aside the summary judgment, contending that subdivision (c)(3) required the court to exonerate the bond on its own motion. (*Ranger, supra*, 141 Cal.App.4th at p. 869.)

The Second Appellate District in *Ranger* court reversed the trial court's denial of the surety's motion. In what can be considered a brief opinion, the Court of Appeal disagreed with the surety that the requirement in subdivisions (c)(1) and (c)(2) that the court act on its own motion or that the automatic exoneration is required is implied in subdivision (c)(3). (*Ranger, supra*, 141 Cal.App.4th at p. 870.) Nevertheless, it held that subdivision (c)(3) neither expressly required the surety to file a motion to vacate forfeiture within the 185-day period: "What is significant here is that the defendant was in custody within 180 days of the notice of forfeiture.... [We can find no cases] where under these circumstances the court loses

jurisdiction when the surety does not move to vacate the forfeiture within 180 days." (*Id.* at p. 871.)

A year and one-half later, the same fact pattern emerged in the Third Appellate District in *Lexington, supra*, 158 Cal.App.4th 370. There, the defendant had been released on a bail bond while being prosecuted in Yolo County and he subsequently failed to appear for sentencing. The trial court issued a bench warrant for his arrest and ordered the bail forfeited. Two days before the 185th day following the forfeiture order, the defendant was arrested in Sutter County and a hold was placed on him for the Yolo County case. The surety then moved to set aside the forfeiture order after the 185th day passed, under the authority of subdivision (c)(3). The trial court denied the motion and summary judgment was entered against the surety on the forfeited bond. (*Id.*, at p. 372.)

In a lengthier opinion, the *Lexington* court declined to follow *Ranger* and held that subdivision (c)(3) required the surety to file a timely motion to vacate forfeiture. Noting that "[c]ourts have consistently interpreted section 1305 as requiring that a surety move to have the forfeiture vacated within the 180-day period and have found that a court is without jurisdiction to vacate a forfeiture if a motion to vacate is not made within that period," (*Id.*, at p. 373), it stated that *Ranger* is at odds with the plain language of section 1305 (*Id.*, at p. 374). While *Ranger* admitted that such motions are required to be filed by the surety under subdivision (i), the

Second Appellate District nevertheless held motions under subdivision (c)(3) were exempt from subdivision (i) requirements. (*Id.*) The *Lexington* court strongly disagreed, stating that "subdivision (i)'s reference to 'motions' generally strongly suggests that the Legislature intended that all motions to vacate the forfeiture ... be filed within the statutory period." (*Id.*, at p. 375.) Such an intent was also evidenced in section 1306, subdivision (a), which required the entry of a summary judgment following the expiration of the 185-day period, indicated the Legislature's intent to have motions filed before the expiration of the 185-day period. (*Id.*)

Neither *Ranger* nor *Lexington* involved any dispute of fact – both solely involved a matter of law requiring the interpretation of a statute. (See *Lexington, supra*, 158 Cal.App.4th at p. 374, n. 4.) This case is no different.

Division Three of the Second Appellate District recognized "a similar fact situation" between *Ranger* and *Lexington*. (Opinion 1, p. 7.) As with the those two cases, the Division Three recognized that "subdivision (c)(3), does not require a motion to exonerate bail be brought within 180 days. [Citations.]" (Opinion 1, p. 7.) It also recognized that the conflict that has arisen between *Ranger* and *Lexington* "demonstrates an ambiguity in the statute with respect to the timing for filing a motion to vacate a forfeiture if the defendant is surrendered to custody or arrested outside the county in which the case is located." (Opinion, p. 8.)

Nevertheless, Division Three decided that it would follow Division Six's lead in *Ranger*. It supported its opinion solely on three principles which have been oft referenced in bail bond cases: the view that the law traditionally disfavors forfeitures, that forfeiture would amount to an improper windfall for Plaintiff, and that section 1305 must be strictly construed in favor of the surety. (Opinion, p. 8.)

While merely mentioned in a footnote, it is significant that Division Three observed that this Supreme Court denied a petition for review in *Ranger* and denied a request for depublication in *Lexington* and that the conflict will ultimately have to be resolved by either this Court or the Legislature. (Opinion, p. 9, n. 6.) Plaintiff urges that the time is ripe to have this Court resolve this conflict after more than three years of uncertainty in the law.

As Plaintiff began this Petition, it emphasized a particular fact pattern that was similar to *Ranger* and *Lexington*: a bail forfeiture, an arrest or hold of the defendant out-of-county on the underlying charge within the 185-day period, expiration of the 185-day appearance period without the surety moving to set aside the forfeiture order, and a motion to vacate bail forfeiture filed after the 185-day appearance period expired. While the fact pattern has not changed in three years, and will not change if this Court does not grant review, the specific details (such as the underlying criminal charges) may change for future cases. And change they may to implicate

more serious charges than those levied against Laimbeer. The trial courts and bail sureties are entitled to know from this Court how subdivision (c)(3) should be interpreted. Plaintiff, therefore, respectfully submits that the grant of review is warranted and compelled by the completely contradicting interpretations between the appellate districts of section 1305, subdivision (c)(3).

V. CONCLUSION

Because the Second Appellate District and the Third Appellate District have contradictory and competing interpretations of Penal Code section 1305, subdivision (c)(3), Plaintiff and Petitioner COUNTY OF LOS ANGELES submit that this Supreme Court should grant review of the decision of the Second Appellate District to reverse the trial court's denial of the Defendant's motion to set aside summary judgment and to vacate the bail forfeiture order.

DATED: August 31, 2009

Respectfully submitted,

OFFICE OF THE COUNTY COUNSEL

By 
BRIAN T. CHU
Principal Deputy County Counsel

Attorneys for Plaintiff and Petitioner,
COUNTY OF LOS ANGELES

CERTIFICATE OF WORD COUNT PURSUANT TO RULE 8.360

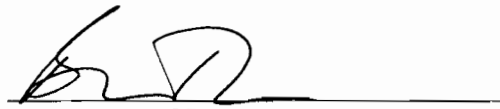
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DATED: August 31, 2009

Respectfully submitted,

OFFICE OF THE COUNTY COUNSEL

By

A handwritten signature in black ink, appearing to read "B. T. Chu", is written over a horizontal line.

BRIAN T. CHU

Principal Deputy County Counsel

Attorneys for Plaintiff and Petitioner,
COUNTY OF LOS ANGELES

OPINION

CERTIFIED FOR PUBLICATION
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

COUNTY OF LOS ANGELES,

Plaintiff and Respondent,

v.

INDIANA LUMBERMENS MUTUAL
INSURANCE COMPANY,

Defendant and Appellant.

B208691

(Los Angeles County
Super. Ct. No. SJ0969)

COURT OF APPEAL - SECOND DIS

FILED

JUL 21 2009

JOSEPH A. LANE

Clerk

Deputy Clerk

APPEAL from an order of the Superior Court of Los Angeles County,
Richard S. Kemalyan, Judge. Reversed with directions.

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

Two Jinn, Inc., Peter A. Botz, Robert Tomlin and Toni L. Martinson for Indiana
Lumbermens Mutual Insurance Company as Amicus Curiae on behalf of Defendant and
Appellant.

Raymond G. Fortner, Jr., County Counsel, Jason C. Carnevale, Deputy County
Counsel, for Plaintiff and Respondent.

Defendant and appellant Indiana Lumbermens Mutual Insurance Company (the Surety) appeals a postjudgment order denying its motion to vacate summary judgment and forfeiture and exonerate bond.

The defendant, one Laimbeer, failed to appear and bail was forfeited. Some three months later, Laimbeer was surrendered to custody in the underlying case, *outside the county* where the case is located. (Pen. Code, § 1305, subd. (c)(3).)¹ Under these circumstances, the Surety was not required to file a motion to vacate the forfeiture and exonerate the bond within the 180-day period. (*People v. Ranger Ins. Co.* (2006) 141 Cal.App.4th 867, 870-871 (*Ranger*); contra *People v. Lexington National Ins. Co.* (2007) 158 Cal.App.4th 370, 374-375 (*Lexington*)). Presented with a split of authority, we follow the *Ranger* decision rather than *Lexington* because the *Ranger* interpretation is supported by the language of the statute and avoids a forfeiture. We hold it was sufficient that Laimbeer was surrendered to custody, *outside the county*, in the underlying case within the 180-day period. (§ 1305, subd. (c)(3).)

We further conclude the Surety's postjudgment motion to vacate was timely because the summary judgment was void and therefore was subject to attack at any time. The summary judgment was not entered in accordance with the consent to judgment given by the Surety – the Surety did not consent to entry of summary judgment on the forfeited bond in the event the defendant were surrendered to custody within the 180-day period. (§ 1305, subd. (c)(3).)

Accordingly, the order is reversed with directions.

FACTUAL AND PROCEDURAL BACKGROUND

On March 17, 2007, the Surety's agent, The Bail Hotline Bail Bonds, posted bail in the amount of \$35,000 for the release of Laimbeer from custody on charges pending in the superior court in Los Angeles County (the County).

¹ All statutory references are to the Penal Code, unless otherwise specified.

On April 18, 2007, Laimbeer failed to appear. The trial court ordered the bail forfeited and issued a bench warrant. Notice of forfeiture was mailed on the same date. The notice indicated the Surety may, “within 185 days from the date of the mailing of this notice surrender the defendant to the court or to custody or appear in court to make a motion to set aside the forfeiture of bail/bond.”²

On July 16, 2007, about three months after Laimbeer failed to appear, he was arrested by the Surety’s agent and surrendered to the County of San Bernardino Sheriff’s Department. He was subsequently incarcerated at the California Correctional Institution in Tehachapi.

On December 4, 2007, summary judgment was entered on the forfeited bond pursuant to the clerk’s application. Notice of entry of judgment was served the same day.

On January 2, 2008, the Surety filed a motion to vacate April 18, 2007 forfeiture and the December 4, 2007 summary judgment, and to exonerate the bond. The Surety contended Laimbeer’s arrest in the underlying case within the 180-day period of section 1305 entitled the Surety to relief from the summary judgment and the forfeiture. The Surety relied on *Ranger, supra*, 141 Cal.App.4th 867, a decision by Division Six of the Second Appellate District, for the proposition that when a defendant whose bail was forfeited is arrested *outside of the county* where the case is located within the 180-day period of section 1305, a surety has no time constraints to bring a motion to vacate the forfeiture. Here, Laimbeer was arrested and taken into custody in San Bernardino County some three months after the subject bail bond forfeiture. Therefore, the Surety was entitled to relief from the summary judgment and forfeiture, irrespective of the date the Surety filed its motion to vacate the forfeiture.

² If service of the bail forfeiture order is made by mail, the 180-day period is extended by five days. (§ 1305, subd. (b); *People v. Ranger Ins. Co.* (2000) 77 Cal.App.4th 813, 818-819.)

The County filed opposition papers, contending the trial court lacked jurisdiction to vacate the forfeiture. The County acknowledged the *Ranger* decision (*Ranger, supra*, 141 Cal.App.4th 867) but argued the trial court should follow *Lexington, supra*, 158 Cal.App.4th 370, from the Third Appellate District, which disagreed with *Ranger*. *Lexington* held a motion to exonerate a bond pursuant to section 1305, subdivision (c)(3) is not exempt from the requirement that a surety file a motion to exonerate the bond within 185 days of the mailing of the notice of forfeiture. (*Lexington, supra*, 158 Cal.App.4th at pp. 374-375.)

On May 23, 2008, the matter came on for hearing. The trial court opined “both the *Ranger* . . . and the *Lexington* analyses are well reasoned The court simply feels that there are clearer reasons under the *Lexington* decision.”

On June 13, 2008, the Surety filed a timely notice of appeal from the order denying its motion to vacate the summary judgment.³

CONTENTIONS

The Surety contends: a surety is not required to file a motion to vacate the forfeiture before the expiration of the exoneration period when the defendant is arrested outside the county in the underlying case.

DISCUSSION

1. *General principles relating to the bail bond statutes.*

“Certain fixed legal principles guide us in the construction of bail statutes. The law traditionally disfavors forfeitures and this disfavor extends to forfeiture of bail. *People v. United Bonding Ins. Co.* (1971) 5 Cal.3d 898, 906 [98 Cal.Rptr. 57, 489 P.2d 1385].) Thus, sections 1305 and 1306 must be strictly construed in favor of the surety to avoid the harsh results of a forfeiture. (*People v. Surety Ins. Co.* (1982) 136 Cal.App.3d 556, 561 [186 Cal.Rptr. 385].)” (*People v. Surety Ins. Co.* (1985) 165 Cal.App.3d 22, 26; accord *County of Los Angeles v. Ranger Ins. Co.* (1999) 70 Cal.App.4th 10, 16.)

³ The order denying the motion to vacate the judgment is appealable as an order after judgment. (Code Civ. Proc., § 904.1, subd. (a)(2).)

We are also guided by the principle that “[t]he object of bail and its forfeiture is to insure the attendance of the accused and his obedience to the orders and judgment of the court. In matters of this kind there should be no element of revenue to the state nor punishment of the surety. [Citation.]” (*People v. Wilcox* (1960) 53 Cal.2d 651, 656-657; accord *People v. Ranger Ins. Co.* (2002) 99 Cal.App.4th 1229, 1234; *People v. Alistar Ins. Co.* (2003) 115 Cal.App.4th 122, 129.)

2. *Split of authority exists with respect to time to file a motion to vacate forfeiture and exonerate bond if defendant is surrendered or arrested outside the county; the Ranger view properly avoids a forfeiture and recognizes the purpose of bail is to guarantee a defendant’s presence.*

a. *Statutory scheme.*

With respect to vacation of forfeiture and exoneration of bond, section 1305 states in relevant part at subdivision (c):

“(c)(1) 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 the case in which the forfeiture was entered, direct the order of forfeiture to be vacated and the bond exonerated. . . .

“(2) 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. . . .

“(3) 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 period, the court shall vacate the forfeiture and exonerate the bail.” (§ 1305, subd. (c), italics added.)

b. *The Ranger decision.*

In *Ranger, supra*, 141 Cal.App.4th 867, on November 3, 2003, the defendant failed to appear in Ventura County and the court declared the bond forfeited. The next day, the defendant was arrested in Santa Barbara County and held in the county jail on the Ventura County case. Even though the defendant remained in custody, the surety therein did not move to exonerate the bond. On June 30, 2004, more than 185 days after notice of forfeiture, the court entered summary judgment on the bond. On July 8, 2004, the surety unsuccessfully moved to vacate summary judgment and exonerate the bond. (*Id.* at p. 869.)

Ranger reversed, explaining: “Section 1305, subdivision (c)(3), does not require that a motion to exonerate the bail be brought within 180 days. And the Legislative Counsel’s Digest, at the very least, evidences no intent that bail should be forfeited when the surety makes its motion to exonerate the bail beyond the 180 days. *What is significant here is that the defendant was in custody within 180 days of the notice of forfeiture.* In fact, it was within one day. Moreover, defendant was arrested and in custody on the case in which his bail was forfeited. The county has cited no cases, and we have found none, where under these circumstances the court loses jurisdiction when the surety does not move to vacate the forfeiture within 180 days. [¶] Bail insures the accused’s attendance at court proceedings. The surety is guarantor of defendant’s presence. *When defendant is in custody for the case in which bail is set, that guarantee is met.* That is what happened here. Defendant ‘showed up,’ albeit not voluntarily. That is 100 percent success for the surety. *The county does not gain a windfall.*” (*Ranger, supra*, 141 Cal.App.4th at p. 871, italics added.) *Ranger* concluded that under the circumstances presented, “the surety has no time constraints in which to move to exonerate the bond.” (*Id.* at p. 869.)

c. *The Lexington decision.*

Lexington, supra, 158 Cal.App.4th 370, involved a similar fact situation.

Defendant failed to appear in Yolo County and bail was forfeited. The 185th day from the date of mailing of notice of forfeiture was December 23, 2005. On or before December 21, 2005, the defendant was arrested in Sutter County and a hold was placed on him in the Yolo County case. On December 27, 2005, after the expiration of the 185-day period, the surety filed a motion to vacate the forfeiture and exonerate the bond, on the ground the defendant was in the custody of the Sutter County Sheriff in the underlying Yolo County case on December 21, 2005. The trial court denied the motion as untimely. (*Id.* at p. 372.)

The *Lexington* court affirmed. It declined to follow *Ranger*, finding “its holding is at odds with the plain language of section 1305.” (*Lexington, supra*, 158 Cal.App.4th at p. 374.) *Lexington* stated: “[S]ection 1305, subdivision (c)(3) provides: ‘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 period, the court shall vacate the forfeiture and exonerate the bail.’ *The Ranger court is correct that ‘Section 1305, subdivision (c)(3), does not require that a motion to exonerate the bail be brought within 180 days.’* (*Ranger, supra*, 141 Cal.App.4th at p. 871.)^[4] However, such a requirement is found in section 1305, subdivision (i), which provides that, ‘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.’ ” (*Lexington, supra*, 158 Cal.App.4th at p. 374, italics added.)⁵

⁴ We agree with both *Ranger* and *Lexington* that section 1305, subdivision (c)(3), does not require a motion to exonerate bail be brought within 180 days. (*Ranger, supra*, 141 Cal.App.4th at p. 871; *Lexington, supra*, 158 Cal.App.4th at p. 374.)

⁵ Subdivision (i) of section 1305 states: “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. The motion may be made by the surety insurer, the bail agent, the surety, or the depositor of money or property, any of whom may appear in person or through an attorney. The court, in its

Lexington concluded: “Thus, although defendant was in custody in the underlying case within the statutory period, we cannot ignore the plain language of the statute. If the Legislature finds the failure to vacate the forfeiture and exonerate the bond unjust in such cases, it can amend the statute.” (*Lexington, supra*, 158 Cal.App.4th at p. 375, fn. omitted.)

d. *Principles governing construction of bail statutes lead us to conclude the Ranger decision sets forth the better view.*

The conflict which has arisen in this area indicates section 1305 is not a model of clarity. The disagreement between *Ranger* and *Lexington* demonstrates an ambiguity in the statute with respect to the timing for filing a motion to vacate a forfeiture if the defendant is surrendered to custody or arrested outside the county in which the case is located.

Our resolution of the issue is facilitated by basic principles governing bail statutes. To reiterate, the law traditionally disfavors forfeitures and this disfavor extends to forfeiture of bail. (*People v. United Bonding Ins. Co., supra*, 5 Cal.3d at p. 906.) Therefore, section 1305 must be strictly construed in favor of the surety to avoid the harsh results of a forfeiture. (*County of Los Angeles v. Ranger Ins. Co, supra*, 70 Cal.App.4th at p. 16.) Accordingly, given a choice between *Lexington*’s interpretation of section 1305, which would compel a forfeiture herein, and *Ranger*’s interpretation of the statute, which would avoid one, our choice is clear.

Further, in this case, as in *Ranger* and *Lexington*, the defendant was in custody in the underlying case within the 185-day period, albeit in a different county. (*Ranger, supra*, 141 Cal.App.4th at p. 869; *Lexington, supra*, 158 Cal.App.4th at pp. 372, 375, fn. 6.) The delay merely related to the Surety’s filing of a motion to vacate the forfeiture and exonerate the bond. A forfeiture under these circumstances, in which the purpose of bail has been served, would amount to an improper windfall for the County. (*People v. Wilcox, supra*, 53 Cal.2d at p. 657; *Ranger, supra*, 141 Cal.App.4th at p. 871.)

discretion, may require that the moving party provide 10 days prior notice to the applicable prosecuting agency, as a condition precedent to granting the motion.”

For these reasons, we align ourselves with the analysis set forth in *Ranger*.⁶ We conclude the Surety was not required to file a motion to vacate forfeiture and exonerate bond within the 180-day period. (§ 1305, subd. (c)(3).) It was sufficient that Laimbeer had been surrendered to custody in the underlying case outside the county within the 180-day period. (*Ibid.*)

The remaining issue is the timeliness of the Surety's postjudgment motion to vacate the summary judgment.

e. Because Laimbeer was surrendered to custody within 180 days, the trial court lacked jurisdiction to enter summary judgment on the forfeited bond; the summary judgment was void and therefore was subject to attack at any time.

The record reflects that on December 4, 2007, the court entered summary judgment on the forfeited bond. That same day, the clerk served notice of entry of judgment on the Surety and its agent. Twenty-nine days later, on January 2, 2008, the Surety filed its motion to vacate the summary judgment, as well as to vacate the forfeiture and exonerate the bond.⁷

In seeking relief from the judgment, the Surety contended the postjudgment motion to vacate was timely because the summary judgment was void and could be attacked at any time. The contention has merit.

The procedures set forth in the bail statutes, "sections 1305 and 1306 are jurisdictional directives and acts taken by the court outside of those directives are in

⁶ We note the Supreme Court denied a petition for review in *Ranger, supra*, 141 Cal.App.4th at page 871, and denied a request for depublication in *Lexington, supra*, 158 Cal.App.4th 370. In any event, this conflict ultimately will have to be resolved either by the Supreme Court or by the Legislature.

⁷ In an ordinary case, a motion to vacate a judgment must be filed within 15 days of mailing of notice of entry of judgment by the clerk. (Code Civ. Proc., § 663a.) In *Ranger, supra*, 141 Cal.App.4th at page 869, the surety made a motion to vacate the summary judgment a mere eight days after entry of summary judgment on the bond. Therefore, *Ranger* was not called upon to address whether the surety was required to bring its motion to vacate within 15 days of notice of entry of judgment.

excess of the court's jurisdiction and void." (*People v. International Fidelity Ins. Co.* (2007) 151 Cal.App.4th 1056, 1060.) Although the bail bond itself authorizes the entry of summary judgment, the summary judgment is void if it is not entered pursuant to the terms of the consent contained in the bond, which requires compliance with the jurisdictional prescriptions contained in sections 1305 and 1306. (*County of Los Angeles v. American Bankers Ins. Co.* (1996) 44 Cal.App.4th 792, 795.)⁸

Here, the trial court lacked jurisdiction on December 4, 2007 to enter summary judgment on the bail forfeiture because Laimbeer had been surrendered to the County of San Bernardino Sheriff's Department on July 16, 2007, about three months after the court ordered the bail forfeited for Laimbeer's failure to appear. Under these circumstances, Laimbeer having been surrendered to custody outside the county within the 180-day period, the trial court had a mandatory duty to vacate the forfeiture and exonerate the bond. (§ 1305, subd. (c)(3) [the court "shall" vacate the forfeiture and exonerate the bond].)

On July 16, 2007, once Laimbeer was surrendered to custody, the Surety had fulfilled its obligation under the bail contract. Thus, the December 4, 2007 summary judgment was not entered in accordance with the consent to judgment given by the Surety – the Surety did not consent to entry of summary judgment on the forfeited bond in the event the defendant were surrendered to custody within the 180-day period. (§ 1305, subd. (c)(3).)

Because the summary judgment was void, it was subject to attack at any time. Therefore, the Surety was entitled to a grant of its postjudgment motion to vacate the summary judgment, irrespective of the time limitations set forth in Code of Civil Procedure section 663a.

⁸ In the instant case, the bail bond states in relevant part: "If the forfeiture of this bond be ordered by the Court, judgment may be summarily made and entered forthwith against the INDIANA LUMBERMENS MUTUAL INSURANCE COMPANY, an Indiana Corporation, for the amount of its undertakings herein, *as provided by Sections 1305 and 1306 of the California Penal Code.*" (Italics added.)

DISPOSITION

The order is reversed with directions to grant the motion to vacate the summary judgment and to vacate the forfeiture and exonerate the bond. The Surety shall recover its costs on appeal.

CERTIFIED FOR PUBLICATION

KLEIN, P. J.

We concur:

CROSKEY, J.

ALDRICH, J.

DECLARATION OF SERVICE
Case No. B209366

STATE OF CALIFORNIA, County of Los Angeles:

I am employed in the County of Los Angeles, State of California, over the age of eighteen years and not a party to the within action. My business address is 648 Kenneth Hahn Hall of Administration, 500 West Temple Street, Los Angeles, California 90012-2713.

That on August 31, 2009, I served the attached

PETITION FOR REVIEW

upon Interested Party(ies) by placing the original a true copy thereof enclosed in a sealed envelope addressed as follows as stated on the attached mailing list:

(BY MAIL) by sealing and placing the envelope for collection and mailing on the date and at the place shown above following our ordinary business practices. I am readily familiar with this office's practice of collection and processing correspondence for mailing. Under that practice the correspondence would be deposited with the United States Postal Service that same day with postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 31, 2009, at Los Angeles, California.

Jennifer Moon

Type or Print Name of Declarant
and, for personal service by a Messenger Service,
include the name of the Messenger Service



Signature

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