

PNC Bank National Association v Luis Angel Salas  
Hearing Date:  
Application for Pretrial Writ of Possession

Case No. 23CV05017  
February 27, 2024

### **TENTATIVE RULING**

Plaintiff's application for a writ of possession as is GRANTED. The application is unopposed and meets the requirements of Code of Civil Procedure section 512.010. The court finds the fair market value of the trailers (together, \$90,000) is less than the amount owed; thus defendant has no interest in the property. Plaintiff's undertaking is accordingly waived pursuant to Code of Civil Procedure section 515.010 subdivision (b). The undertaking required by Defendant for redelivery or to stay delivery is \$90,000. (Code of Civil Procedure §515.020) Plaintiff shall prepare an amended Order for Writ of Possession After Hearing (Judicial Council Form CD-120) that includes defendant's undertaking and submit it to opposing party for approval as to form in accordance with California Rule of Court, rule 3.1312.

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On November 13, 2023, plaintiff PNC Bank successor to PNC Equipment Finance LLC (plaintiff or PNC) filed a complaint against defendant Luis A. Salas (defendant or Salas) for breach of a commercial finance agreement and delivery of collateral. According to the complaint, on December 14, 2020, PNC entered into a commercial finance agreement in which Salas (d/b/a JDL Salas Trucking) financed the purchase of three refrigerated trailers. A copy of the finance agreement is attached to the complaint, as well as evidence that plaintiff has a first priority lien on the trailers in question. The trailers were financed in the principal amount of \$211,556.00, with anticipated monthly payments of \$3908.59. Defendant defaulted on May 1, 2023. Plaintiff has elected accelerated the balance due under the contract of \$166,157.59, plus late charges of \$1,954.25, a site visit fee of \$500, and default interest accruing at a rate of 18% per annum. One of the trailers was declared a loss and Plaintiff received \$51,842.15 in insurance proceeds. With that credit, the unpaid principal balance now due, owing, and unpaid from defendant under Agreement is currently \$116,769.69, together with default interest of 18% per annum, and total costs and fees in a total according to proof at the time of trial.

On November 27, 2023, plaintiff filed an Application for Writ of Possession of the remaining two trailers. The application is supported by the declaration of Michael McGinley, Vice President, Litigation and Recovery for PNC Bank, National Association. This was accompanied by a memorandum of points and authorities in support and a notice of hearing. Proof of service was filed on February 14, 2024 indicating that all documents above (complaint and all writ of possession

documents) were timely and personally served on plaintiff on January 11, 2024. The complaint has not been answered and no opposition has been filed.

According to the declaration of Michael McGinley, who is familiar with defendant's account, plaintiff has demanded return of the collateral but defendant failed to comply. The fair market value for each remaining trailer is \$45,000.<sup>1</sup> The declarant indicates the vehicle is most likely located at where plaintiff resides – 4448 Fir Street, Guadalupe, CA 93434, the address indicated in the finance agreement.

To obtain a writ of possession, appellant must show it has the right to immediate possession of tangible personal property and that respondents were wrongfully withholding that property. (Code Civ. Proc., § 512.010; *Waffer Internat. Corp. v. Khorsandi* (1999) 69 Cal.App.4th 1261, 1271 [“Claim and delivery is a remedy by which a party with a superior right to a specific item of personal property (created, most commonly, by a contractual lien) may recover possession of that specific property before judgment” (italics added) ]; accord, *Simms v. NPCK Enterprises, Inc.* (2003) 109 Cal .App.4th 233, 241.) A writ of possession may issue only if the plaintiff has established the probable validity of the plaintiff's claim, i.e., that “it is more likely than not that the plaintiff will obtain a judgment against the defendant on that claim.” (Code Civ. Proc., §§ 511.090, 512.060, subd. (a)(1); *Simms, supra*, at p. 242.) Plaintiff has satisfied the relevant requirements.

No writ of possession can issue until plaintiff has filed an undertaking, running in favor of the defendant, if return of the property is ordered. (Code Civ. Proc. § 515.010, subd. (a).) The bond requirement does not apply, however, if the court finds defendant has no interest in the property. (Code Civ. Proc. § 515.010, subd. (b).) The court finds no undertaking is required as the fair market value of the trailers (together, \$90,000) is less than the amount owed. Defendant thus has no interest in the property. The court waives plaintiff's undertaking.

Defendant may defeat the writ of possession by filing an undertaking (before or after levy) in an amount equal to that required of plaintiff. Or if a bond was excused based on finding defendant has no interest in the property, in the amount specified by the court. (Code Civ. Proc. § 515.020, subd. (a).) The amount should be the fair market value of the collateral, or \$90,000 in order to prevent enforcement of the writ. Defendant's proposed order omits this finding. (Proposed Order, ¶ 5d.) Plaintiff is directed to submit to opposing party for approval as to form in accordance with California Rule of Court, rule 3.1312.

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<sup>1</sup> This is based on Michael McGinley's estimates, who attests he is qualified as follows: “Amongst my duties with Plaintiff, I am required to know that the market price for used Collateral and to keep in constant contact with equipment re-marketers.” (McGinley Decl. ¶ 20.)