Alliant Credit Union v. Burrell 24CV03024
Hearing Date: February 25, 2025
Four Motions on Calendar/CMC

PROPOSED TENTATIVE

A) Procedural Background

This case has had a detailed procedural history to say the least.

On May 30, 2024, plaintiff Alliant Credit Union (hereafter, plaintiff) filed a complaint against defendant Daniel Burrell, Sr. (hereafter, defendant) for 1) claim and delivery of personal property, as a predicate for a request for a pretrial writ of possession; 2) breach of contract; 3) money due on contract; and 4) three causes of action in common count (money lent and paid, open book account, and account stated). This lawsuit involves breach of a financing agreement following defendant's purchase of a new truck. Plaintiff filed the following documents contemporaneously with the complaint: 1) an application for a pretrial writ of possession after hearing, on standard Judicial Council form CD-100, including a declaration from Stanley Chism; a copy of the "Loan and Security Agreements and Disclosure Statements" between the parties; a copy of the Certificate of Title; and a valuation from J.D. Power concerning the type of vehicle at issue; 2) a notice of hearing on the pretrial writ of possession, scheduling the original hearing for October 29, 2024; 3) a memorandum of points and authorities; and 4) a proposed order. According to the proof of service filed by plaintiff, all documents listed above were personally served on defendant, along with the summons and complaint, on August 17, 2024.

On July 31, 2024, defendant, in propria persona, filed a "Motion to Quash Application for Writ of Possession," which included defendant's declaration and a memorandum of points and authorities, also scheduled to be heard on October 29, 2024. This is in essence an opposition to plaintiff's request for a pretrial writ of possession. Although there is no proof of service, on October 8, 2024, plaintiff filed a reply.

On September 16, 2024, defendant filed an answer to the above-mentioned complaint.

On October 1, 2024, defendant, again in propria persona, filed a "Notice of Motion and Motions for Sanctions," scheduled for November 19, 2024. It is a one-page document, alleging sanctions are appropriate because plaintiff failed to timely serve and has otherwise produced "fraudulent proof of service documentation," asking for $20,000 in sanctions. There is no indication in Odyssey that defendant served this motion on plaintiff, as no proof of service has been filed.

On this same date defendant filed an amended answer.

Also on October 1, 2024, again in propria persona, defendant filed a "Motion to Dismiss for Lack of Jurisdiction Due to Binding Arbitration," along with defendant's declaration.

In an order signed on October 25, 2024, this court agreed to continue all matters, including the pretrial writ of possession, as well as the CMC, to December 3, 2024.

On November 27, 2024, plaintiff filed a motion to consolidate this case (Case No. 24CV05626) with *Burrell Sr. v. Alliant Credit Union*, Case No. 24CV05626, currently assigned to Judge Kelly. Alliant answered on December 2, 2024. No notice of related case has been submitted.

On December 3, 2045, per defendant's request, the motions for sanctions were ordered off calendar. The court also denied defendant's motion to dismiss for lack of jurisdiction due to binding arbitration without prejudice. The court continued the following motions and a CMC hearing to February 11, 2025: plaintiff's writ of possession and defendant's motion to quash plaintiff's application for writ of possession.

On January 14, 2025, defendant filed a motion to compel arbitration and to stay proceedings, scheduled for February 11, 2025. No opposition has been filed as of this writing.

On January 23, 2025, the court continued the CMC hearing, the motion to compel arbitration, the request for a pretrial writ of possession and the motion to quash the pretrial writ of possession.

On January 27, 2025, plaintiff Daniel Burrell Sr. filed a request for dismissal without prejudice of the entire action in Case No. 24CV05626.

Through this procedural mist, there are yjr following matters on calendar for February 25, 2025: 1) plaintiff's request for a pretrial writ of possession (along with defendant's opposition, styled a motion to quash); 2) defendant's motion to consolidate the present case with Case No. 24CV05626; and 3) defendant's new motion to compel arbitration and stay the pending matter.

The court will first address plaintiff's motion to consolidate; it will then address defendant's new motion to compel arbitration and request to stay the matter. The court will then address the merits of plaintiff's request for a pretrial writ of possession and defendant's de facto opposition to it. The court will conclude with a summary of its conclusions.

B) Alliant's Motion to Consolidate

As noted above, defendant filed a motion to consolidate the present case with *Burrell v. Alliant Credit Union*, Case No. Case No. 24CV05626, assigned to Judge Kelly.

As of this writing there is nothing to consolidate. On January 27, 2025, Mr. Burrell, Sr. voluntarily dismissed Case No. 24CV05626 in its entirety without prejudice. The motion to consolidate is moot, and should be withdrawn or taken off calendar. If neither is done, the motion is denied.

C) Defendant's Motion to Compel Arbitration and Stay Current Proceedings

As noted above, on January 14, 2025, defendant filed a motion to compel arbitration, which apparently was a result of this court's decision to deny without prejudice defendant's original "motion to dismiss for lack of jurisdiction due to a binding arbitration." In this new motion, defendant makes the following contentions. The loan and security agreement at issue in this matter (based on the specific sale of the 2021 Ford F-350, which acts as the predicate for plaintiff's suit) was signed on April 11, 2022, and which itself contains no arbitration agreement. Nevertheless, plaintiff contends that on December 2, 2020 (i.e., before the sale of the vehicle was contemplated and effectuated), he entered into "an agreement with Plaintiff," which contained a "clear and unequivocal arbitration provision." Defendant has attached to his motion a document dated February 2023 and titled "Alliant Account Agreement and Disclosures," which expressly covers "share or other accounts you have with Alliant." Plaintiff Alliant is a credit union; defendant apparently had share accounts with Alliant, and also separately obtained financing for the purchase of the truck at issue in this action through Alliant Credit Union. With this in mind, defendant points to page 12 of the agreement, which requires arbitration of disputes arising or involving the accounts at issue in the "Alliant Account Agreement and Disclosures."

Code of Civil Procedure section 1281.2 provides that a court "shall order the petitioner and the respondent to arbitrate a controversy if it determines that an agreement to arbitrate the controversy exists, unless it determines that (a) the right to compel arbitration has been waived by the petitioner . . . ." This provision applies whether the arbitration is governed by the Federal Arbitration Act (FAA) or the California Arbitration Act (CAA). (*Rosenthal* v. *Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413.) More precisely, even when an arbitration agreement is governed by the FAA, as is the case here, the moving party (i.e., the party seeking to compel arbitration) must comply with Code of Civil Procedure section 1281.2. (*Ibid.*) This statutory provision requires the moving party to show two things. First, plaintiff must show by a preponderance of evidence that the parties signed an arbitration agreement. Second, the moving party must also show by a preponderance of evidence that the dispute at issue in the lawsuit *is covered by the arbitration agreement*. (See, e.g., *Jones v. Jacobson*

(2011) 195 Cal.App.4th 1, 15 [petitioner bears the burden of proving by a preponderance of evidence the existence of a valid arbitration agreement and that the dispute falls within the scope of the arbitration clause]; see also *Yeh v. Superior Court of Contra Costa County* (2023) 95 Cal.App.5th 264, 270 [same, citing *Jones* favorably].) In determining whether to grant or deny a motion to compel arbitration, the court examines the agreement itself and the complaint filed by the party refusing arbitration. (*Rice v. Downs* (2016) 248 Cal.App.4th 175, 185.) It is settled that interpreting a written document to determine whether it covers a dispute is a question of law when the parties do not offer conflicting extrinsic evidence regarding the document's meaning. (*Jones, supra*, at p. 12.)

The facts are undisputed, so the court makes the necessary determinations below as a question of law, not fact. The court determines that defendant has met his burden to show there is an arbitration agreement between the two parties. Defendant, however, has failed to meet his burden to show that the dispute at issue – a breach of the loan and security agreement and plaintiff's request for a pretrial writ of possession – is part of and thus covered by arbitration agreement at issue, for the following reasons.

Preliminarily, the court observes that defendant has submitted a document entitled "Account Agreement and disclosures" *dated February 2023*, while in the body of his motion defendant references an "Account Agreement and Disclosure" from December 2020. It is the moving party's burden to present all relevant documents that govern the time frame at issue, and there is no indication that the February 2023 documents governs.

Second, and even if the court assumes arguendo that the language in the February 2023 "Account Agreement and Disclosures" covers the appropriate time frame, plaintiff still has failed to show that the dispute at issue in this action is covered by the arbitration agreement. The court admittedly finds the relevant language in the "Account Agreement and Disclosures" to be ambiguous, for at times it references "any one or more share or other accounts you have with Alliant." Nevertheless, any ambiguity in a contract must emanate from the language used in the contract, and not from a party's subjective perception of the terms. Here, it appears the language in the agreement upon which defendant relies – the term "other accounts" -- must be buoyed, moored or interpreted by reference to the term "share accounts" – meaning the arbitration agreement only governs those accounts that are similarly situated to a "share account," and not every type of account that exists between the parties. The account at issue in this matter for financing is not a "share account." Indeed, under the *noscitur a sociis* rule of construction, which applies to contracts, a word takes its meaning from the company it keeps. (See, e.g., *Blue Shield of California Life & Health Ins. Co. v. Superior Court* (2011) 192 Cal.App.4th 727, 740 [under the doctrine of *noscitur a sociis*, courts will adopt a restrictive meaning of a listed term if acceptance of a broader meaning would make other items in the list would make them otherwise markedly dissimilar to the other terms in the list]; 2 Witkin,

Summary of California Law (11th ed. 2025), Insurance, §65 [describing noscitur a sociis a general contracts doctrine]; Miller and Starr California Real Estate 4th ed. 2025), § 28.15 [same].) Here, the terms "other accounts" are contained in the same clause and not set apart for disparate treatment. (*Texas Commerce Bank v. Garamendi* (1992) 11 Cal.App.4th 460, 473.) Defendant's reliance a broad interpretation of "other accounts" would make the other terms in the clause either redundant – or at least markedly dissimilar to what is considered a "share account." And it would be anomalous to read the language contained in the "Accounts Agreement and Disclosures" booklet to cover the type of transaction here when that transaction (and the account at issue) is markedly dissimilar to a "share account," particularly when the financing at issue was not even contemplated let alone consummated. (See, e.g., *Eisen v. Tavangarian* (2019) 36 Cal.App.5th 626, 545 [doctrine of *noscitur a sociis* applied to give a more restrictive meaning to the word "structure" in a contract based on surrounding words].) These points are bolstered by other language of the February 2023 "Account Agreement and Disclosure" booklet itself. As relevant for our purposes, the "Account Agreement and Disclosure" lists a number of accounts offered – individual party accounts, business accounts, accounts in the name of a trust, organization, accounts, joint owner accounts, beneficiary accounts, just to name a few. Not one of these accounts involve a financing agreement at issue here.

Further, and perhaps most notably, the "Account Agreement and Disclosure" agreement expressly states that it "covers both our rights and responsibilities concerning accounts Alliant Credit Union ('Alliant') offers. ***Your account type(s) and ownership features are designated on your Membership Enrollment Agreement***. By signing a Membership Enrollment Agreement, each of you, jointly and severally, agree to the terms and conditions in this Account Agreement and Disclosures Booklet, the Membership Enrollment Agreement, the Funds Availability Policy Disclosure, the Truth-In-Savings Disclosure, Fee Schedule, Privacy Notice, Remote Electronic Deposit Services Agreement, and any amendments to these documents from time that collectively govern you Membership and Accounts." Defendant fails to provide *any* of these agreements, which are incorporated into the "Account Agreement and Disclosure" booklet, and which expressly identifies the types of accounts governed by the arbitration agreement. If any one of these documents expressly identified the financing agreement at issue here, the court would agree that defendant can insist on arbitration. But defendant has failed to include those document agreements here. The court can only surmise that these documents do not include or mention the type of dispute at issue in this lawsuit.

Accordingly, the court denies defendant's motion to compel arbitration.

D) Pretrial Writ of Possession and Defendant's Motion to Quash (In Reality an Opposition)

The statutory requirements for obtaining the desired provisional remedy – a pretrial writ of possession – must be satisfied before the writ can issue. (*Wooley v. Embassy Suites, Inc* (1991) 227 Cal.app.3d 1520, 1528; see also *California Retail Portfolio Fund GMBH & Co., supra*, 193 Cal.App.4th at p. 856.) A secured party wishing to repossess by judicial action can bring an action in replevin or proceed under the statutory successor to replevin, an action of claim and delivery, which plaintiff has done. (*Simms v. NPCK Enterprises, Inc*. (2003) 109 Cal.App.4th 233, 241.) California has a detailed claim and delivery law. (Code Civ. Proc., § 511.01, et seq.) Plaintiff must follow statutory guidelines and establish a prima facie claim. As a prerequisite to application for a pretrial writ of possession, plaintiff must file a complaint containing a cause of action for claim of delivery. The complaint must allege plaintiff's right to immediate possession; defendant is unlawfully detaining the property after a demand from plaintiff; and a description of the property with particularity. (Code Civ. Proc., § 512.010, subd. (a).)

If these requirements are satisfied, plaintiff may file a request for pretrial writ of possession (authorizing possession), which requires a hearing on noticed motion. This requires plaintiff to establish the same elements as above (right to immediate possession, defendant is unlawfully detaining the property after demand, and description of the property), and that it is more probable than not that plaintiff will ultimately obtain a judgment for personal possession of the property, as well as provide an appropriate undertaking of at least twice the amount of defendant's interest in the property (unless and exception applies, meaning the court can waive any undertaking if it finds defendant has no interest in the property). (Code of Civ. Proc., § 515.010, subd. (b).) Pursuant to Code of Civil Procedure section 516.020, the Judicial Council has approved a series of forms to implement this law, which is used as a checklist. If the forms are used, plaintiff must present facts showing why a pretrial writ of possession is appropriate, through detailed evidentiary attestations/declarations. The Judicial Council has adopted mandatory form CD-100, which was utilized by plaintiff here.

On CD-form 100, which was verified under penalty of perjury, an employee of Alliant, plaintiff alleges the following required items:

1) Plaintiff indicates it (Alliant) has filed a complaint against defendant with a claim and delivery cause of action for possession of a 2021 Ford F-350 motor vehicle, with VIN 1FT8W3BT0MEE10297; the original lien amount was $78,015.01;
2) Plaintiff requests a pretrial writ of possession after a noticed hearing (Code Civ. Proc., § 512.010); there is no ex parte request or a request for a temporary restraining order.
3) Plaintiff claims the basis for its claim and right based on the attached declaration from Stanley Chism, Alliant's employee, who had day-to-day responsibility for defendant's accounts. Also attached to his declaration is a copy of the Loan and Security Agreements between the parties, which involved the sale of the truck; defendant financed the purchase

of the truck for $78,015.01, which included 83 payments at $1,083.03, with a final payment of $1,082.67 (Code Civ. Proc., § 512.010(b)(1) [if right to possession is based upon written instrument, a copy of the instrument must be attached to application]). Mr. Chism has also attached a State of California Certificate of Title, indicating Alliant has a perfected lien hold interest in the truck. According to the Loan and Security Agreements, upon default, plaintiff has the right of immediate possession of the truck. And also according to Mr. Chism's declaration, defendant failed to make payments on August 15, 2023, and has refused to surrender of the vehicle. There is currently due, owing, and unpaid on the contract the sum of $66,775.60, "together with other charges as provided . . ." Also attached to Mr. Chism's declaration is a fair market valuation of the truck with JD POWER/Kelly Blue Book for the model truck at issue (2021 Ford F350 Super Duty), with 18,000 miles, valued at $60,607, and ranging from $48,550 (rough condition) to $52,150 (clean condition).

4) Plaintiff describes the truck at issue;
5) Plaintiff makes a showing that the claimed property is wrongfully detained by defendant, how the defendant came into possession of the vehicle, and according to plaintiff's best knowledge, information and belief, the reasons for defendant's detention. Plaintiff has cited to the same evidence recounted in Item 3 in support.
6) To plaintiff's best knowledge, information and belief, the truck is located at defendant's residence, which is located at 921 Tarragon Ct., Lompoc, CA 93436, the same address defendant lived at when the Loan and Security Agreements were signed.
7) Plaintiff has presented facts showing probable cause to believe the truck is located at the private place noted in Item 6. Plaintiff relies on the same facts recounted in Item 3. There appears to be probable cause to believe the truck is at the address listed in Item 6, as it was the defendant's address at the time of the purchase, and is the address he has listed on his submissions with the court.
8) Plaintiff contends the claimed property has not been taken for a tax, assessment, or fine pursuant to statute and has not been seized under an execution against the plaintiff's property; and
9) Plaintiff acknowledges this action is subject to the Rees-Levering Motor Vehicle Sale and Finance Act.

Plaintiff filed a Notice of Application for Writ of Possession and Hearing, on mandatory form CD-110, originally for October 29, 2024, but continued to December 3, 2024. Plaintiff personally served defendant with all documents on August 17, 2024.

Plaintiff has demonstrated the probable validity of its claims (that it is more likely than not that plaintiff will obtain judgment); demonstrated defendant's default); has demonstrated its right to immediate possession of the truck; has demonstrated defendant is wrongfully withholding its return despite requests to return it; and has shown all other requirements in order

to secure a pretrial writ of possession. All appropriate documents have been submitted and all required attestations have been made.

Defendant in his "Motion & Motion to Quash Application for Writ of Possession After Hearing," which is really an opposition to plaintiff's request, claims that plaintiff is not entitled to pretrial writ of possession, based on the identical claims advanced in earlier motions filed with the court, and which have been denied, as follows: 1) the arbitration agreement precludes this court from issuing a provision remedy, such as a pretrial writ of possession; and 2) service of the complaint (and thus all other documents) was untimely. Because those arguments were without merit and have been rejected by the court previously, they are without merit here. The court finds that plaintiff has made an adequate showing regarding it request for a pretrial writ of possession.

This leaves one remaining issue – the undertaking. Generally, no writ of possession can issue until plaintiff files an undertaking, running in favor of the defendant, if return of the property is ordered. (Code Civ. Proc., 515.010, subd. (a).) The undertaking requirement does not apply, however, if the court finds defendant has no interest in the property. (Code Civ. Proc., § 515.020, subd. (b).) The court finds no undertaking by plaintiff is required as the fair market value of the truck (no more than $60,607) is less than amount defendant owes ($66,775.60).

That being said, defendant can defeat the writ of possession by filing an undertaking (before or after the 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, the court can order an amount specified by the court. (Code Civ. Proc., § 515.020, subd. (a).) The amount should be the fair market value of the truck, or $60,607, in order to prevent enforcement of the writ. The court directs plaintiff to provide a proposed order, which should include an acknowledgement that defendant can stop the pretrial writ of possession if he posts an undertaking/bond of $60,607 before the writ of possession is secured.

E) Summary of Court's Conclusions

- Defendant's motion to consolidate this case with a case pending before Judge Kelly is now moot. If the motion is not withdrawn, it is denied.
- The court denies defendant's motion to compel arbitration, as he has not met his burden to show that the dispute at issue is covered by the arbitration agreement submitted, as required pursuant to Code of Civil Procedure section 1281.2.
- The court grants defendant's application for a pretrial writ of possession, as all statutory requirements have been met. The court rejects defendant's opposition arguments, as they simply mirror the claims made in earlier motions rejected by this court on the merits. The court finds that while plaintiff is not required to

submit an undertaking (as defendant has no interest in the truck), defendant can provide an undertaking of $60,607 to stop the levy of the truck if that undertaking is provided before execution of the writ of possession.

- Plaintiff is directed to provide a proposed order to the court pursuant to California Rules of Court, rule 3.1312, for signature, detailing the court's rulings.