

TENTATIVE RULING

The application for writ of possession is granted along with the request for a turnover order. No bond is required of plaintiff. If defendant wishes to defeat the writ of possession and turnover order, he may do so by posting a bond in the amount of \$333,531.36.

The court directs plaintiff to submit a proposed order consistent with this ruling.

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](#).)

On October 9, 2025, plaintiff BMO Bank N.A. f/k/a BMO Harris Bank N.A., filed a complaint against defendants Luis Ernesto Santos Camacho, an individual, aka Luis E. Santos aka Luis Camacho dba L J Santos Transport (collectively, defendant) for breach of contract and delivery of collateral. According to the complaint, on April 19, 2024, defendant entered into a contract for a loan of \$238,077.39, in connection with the acquisition of 2025 Peterbuilt (389 Series) commercial vehicle, to be paid in 72 monthly installments of \$4,564.05 starting on June 1, 2024. The contract granted plaintiff first priority security interest in the vehicle. Defendant defaulted on this agreement on June 1, 2025, leaving a principal balance of \$209,185.23.

On July 29, 2024, defendant entered into a contract for \$116,343.00 in connection with the acquisition of a Utility Refrigerated Van and a Thermo King S700 refrigeration unit, to be paid in 74 installments of \$2,202.64 starting on October 1, 2024. The contract granted plaintiff first priority security interest in the vehicles. Defendant defaulted on this agreement on June 1, 2025, leaving a principal balance of \$108,655.17.

On October 28, 2025, plaintiff filed an Application for Writ of Possession of vehicles and refrigeration unit. The application is supported by the declaration of Whitney Oliver, as one of the duly authorized custodians of records of BMO with custody of and control over plaintiff's books and records pertaining to its transactions with defendant. This was accompanied by a memorandum of points and authorities in support and a notice of hearing. Proofs of service were filed on November 25, 2025, indicating that the summons and complaint as well as the application for writ of possession and related documents were served by personal

service on November 19, 2024. Service is timely. Opposition is due on December 22, 2025. (Code Civ. Proc., § 1005.)

A writ of possession may act as a prejudgment remedy and permits plaintiff, who has an ownership or possessory interest in the property, to obtain possession, when, for example, defendant has possession but has breached a lease or purchase agreement. Application for the writ must accompany or follow a complaint for replevin or its statutory successor, claim and delivery. (*Simms v. NPCK Enterprises* (2003) 109 Cal.App.4th 233, 241.) The writ application must demonstrate the basis for defendant's wrongful detention, the manner of acquisition, a particular description where the personal property is currently located, a showing of probable cause that the personal property is presently located at that specific location, and a statement that the property has not been taken for a tax, assessment or fine, or that the property is exempt from such seizure. (Code Civ. Proc. §§ 512.010 (b),(c), 512.090.) If, after proper service and an adversarial hearing (Code Civ. Proc. § 512.020 [noticed hearing]) at which plaintiff demonstrates the probable validity of its right of possession (i.e., it is more likely than not that plaintiff will obtain judgment), and after plaintiff posts an undertaking (unless the court finds defendant has no interest in the property), the writ will issue. (Code Civ. Proc. § 512.040 [writ does not bear on the ultimate merits of claim raised in complaint].) At the hearing the court can rely on affidavits and pleadings in making its determination. (Code Civ. Proc. § 512.050.)

Plaintiff has satisfied the relevant requirements. Service was made at least 16 court days before the hearing. An application for a pretrial writ of possession was filed with the complaint for claim and delivery. Plaintiff has filed the mandatory Judicial Council forms (CD-100 [application], CD-110 [notice of application], and plaintiff states the vehicles and equipment have not been taken for a tax, assessment, or fine, and has not been seized under an execution against the plaintiff's property. Plaintiff will more likely than not prevail on the possession cause of action. (See, e.g., *RCA Serv. Co. v. Superior Court* (1982) 137 Cal.App.3d 1, 3.) Plaintiff has provided a description of the vehicle and where it is likely to be located based on a probable cause showing. That is sufficient.

To obtain a writ of possession, plaintiff must post a bond of twice the value of defendant's interest in the property—i.e., market value, less amounts of liens or balances due under conditional sales contracts or security agreements. (Code Civ. Proc. § 515.010, subd. (a).) If the court finds that defendant has no interest in the property, no undertaking is required. (Code Civ. Proc. § 515.010, subd. (b).) Here, no undertaking is required. The present value of the vehicles and equipment is at most \$142,513.00, based on the evaluation presented. (Oliver Decl., ¶ 39.) According to the complaint and application, defendant owes a principal sum of \$317,840.40, plus accrued interest. Defendant thus has no interest in the property. The court should waive 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 vehicle and equipment, or \$333,531.36, which includes accrued interest, in order to prevent enforcement of the writ.

Plaintiff has also requested a turnover order pursuant to Code Civ. Proc. § 512.070. A turnover order is a mandatory injunction directing defendant to surrender the chattel to the plaintiff, which is enforceable by contempt. (See *Pillsbury, Madison & Sutro v. Schectman* (1997) 55 Cal.App.4th 1279, 1282 [trial court issued preliminary injunction directing defendant to turn over documents on plaintiff's application for a writ of possession].) This injunctive relief is attendant to the writ of possession and does not require separate notice. (*Id.*) The court grants the request for the turnover order.

In summary, the application for writ of possession is granted along with the request for a turnover order. No bond is required of plaintiff. If defendant wishes to defeat the writ of possession and turnover order, he may do so by posting a bond in the amount of \$333,531.36.

The court directs plaintiff to submit a proposed order consistent with this ruling.

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.](#))