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Pre-Judgment Writs of Possession: Effective claim and delivery of personal property

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A pre-judgment writ of possession can be an effective device to obtain possession of a debtor's personal property or to encourage the debtor to enter into a favorable settlement. This remedy's success, in large measure, depends upon the decisions made and procedures utilized by the attorney prior to or during the writ-of-possession process. The attorney may have to face many issues, including perfection of the security interest, bonding, collateral that is behind locked doors, and intervening third parties who claim a right of possession or a lien on the collateral.

There are three elements to a valid security interest: 1) the debtor must have some interest in the collateral; 2) the creditor must advance sums or provide consideration to the debtor; and 3) the debtor must execute a security agreement. While the security agreement does not have to be in any particular form, it must describe the collateral and set forth some type of granting language, and the debtor must sign the document.¹ Even a UCC-1 Financing Statement or a letter can act as a security agreement if they contain granting language.²

A creditor should have a perfected security interest in the

collateral as well as a security agreement to avoid problems with third parties claiming a security interest in the same collateral. A perfected security interest is not a prerequisite to claim and delivery as against the debtor. The customary method is to file a UCC-1 Financing Statement in the state where the borrower is domiciled. This is generally sufficient for most personal property, equipment and inventory.³ However, with some special types of collateral, different rules apply.

When the collateral is money or a certificate of deposit, a security interest is perfected by possession.⁴ A security interest in a deposit account maintained by the secured party is perfected by a signed security agreement.⁵ An interest in an insurance policy or deposit account not maintained by the creditor is perfected by actual notice to the insurer or organization.⁶ The interests in motor vehicles, boats or mobile homes that require registration with the state Department of Motor Vehicles are perfected by a notation of the lien on the title.⁷ A purchase money security

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interest lasts only 21 days, at which time the creditor must file a UCC-1 Financing Statement to perfect his interest.⁸

A creditor may not, however, perfect a non-possessory security interest in a retail liquor store's inventory consisting of beer, wine or liquor.⁹ Additionally, there are special rules for perfecting a security interest of a merchant who sells household goods,¹⁰ or a merchant who sells durable goods with a retail value of \$500 or less.¹¹ Of course, a creditor may not perfect an interest in real estate by filing a statement since real estate recordation laws apply,¹² nor can it perfect, by a filing, an interest in items such as motor vehicles, boats, travel trailers, motor homes or aircraft that are governed by state agencies unless the items are inventory. The interest in such items must be perfected in accordance with the applicable statute.¹³ A security interest in consumer goods is not perfected by a filing but by recordation in the debtor's county of residence.¹⁴

NATURE OF REMEDY

A pre-judgment application for a writ of possession is a provisional remedy sought by a creditor prior to obtaining a judgment for possession. Its purpose is to prevent the claimed property from becoming, during the pendency of the action, unavailable to levy or damaged or substantially impaired in value. It has the incidental benefit of providing great leverage to a creditor, particularly when the collateral is of such a nature that the debtor requires the collateral for the continued operation of its business.

There are major differences between a pre-judgment writ of possession and a judgment for possession in terms of the rights of secured creditors, bonds and the method by which the writs are levied. The differences include:

- A pre-judgment writ of possession requires the posting of a bond; a post-judgment writ does not.¹⁵
- The marshal levies on and stores property for 10 days in a pre-judgment writ of possession. In a post-judgment context, the creditor performs these functions with the assistance of the marshal and no 10-day waiting period is necessary.¹⁶
- In a pre-judgment writ, the marshal may break and enter a locked area, but in a post-judgment context this can only be done after a noticed motion and court order.¹⁷

APPLICATION REQUIREMENTS

The requirements for an application for a writ of possession are strictly governed by statute.¹⁸ The application forms are Judicial Council forms. A secured creditor must satisfy the following elements in order to obtain a pre-judgment writ of possession:

- The secured creditor must establish the existence of a right to possession *i.e.*, the granting of a security interest and the perfection of it if the remedy is sought against a competing creditor.¹⁹
- The secured creditor must show that the defendant is in possession of the collateral and that it is being wrongfully withheld.²⁰
- The secured creditor must describe with particularity the property sought, its location, and its value.²¹
- The creditor must establish the probable validity of the claim.²² "Probable validity" means it is more likely than not that the plaintiff will obtain a judgment against the defendant. Claims of offsets are irrelevant and should not affect probable validity.²³

These requirements usually are satisfied by filling out the application form and attaching a declaration of the secured creditor showing the nature of the contract or security interest, a default in the underlying terms of the contract and a description of the collateral, its location and value. The local rules should always be consulted for variances from these procedures. For example, Department 66 in the Central District now requires the filing of a separate statement.

Thereafter, the summons and complaint, notice of application and hearing, application and declarations must be served on any defendants against whom the writ is sought or who have appeared in the proceedings.²⁴ At the hearing, the court deter-

mines the right of possession and the debtor's interest in the property; if the writ of possession is granted, the court issues an order to that effect. The party seeking to obtain the writ usually is required to obtain and file a bond.

A writ of possession can be obtained *ex parte* based on the following special circumstances:

- The defendant feloniously took the property; or
- The property is a credit card; or
- The property was acquired in the ordinary course of business, is not necessary for the defendant's support and there is an immediate danger that the property will be transferred or concealed.²⁵

If the complaint is based on a security agreement, it can be filed in the county in which the contract was entered into or in which performance was to be accomplished.²⁶ The remedy is essentially a contractual one, since the right arises from a breach in a contract and as such is *ex contractu* as opposed to *ex delicto*. Thus, venue is determined on the basis of the contract rather than the location of the property. For items intended for personal, family or household purposes, venue is the county of residence of the debtor, either at the time of contract or at the time of the lawsuit.²⁷

TYPE OF PROPERTY

The type of property sought to be seized can often be a problem for the secured creditor.

Fixtures. Fixtures present a unique problem for creditors. The creditor will have priority over a landlord's right to the fixtures if the creditor has a purchase money security interest and makes a "fixture filing" within 10 days of the date on which the property becomes a fixture.²⁸ If the fixture is readily removable factory equipment, office machines or commercial appliances, the perfected security interest has priority over a landlord's interest even without a fixture filing.²⁹ If none of these rules applies, the creditor's security interest will be subordinate to the landlord's unless a "landlord's waiver" has been obtained or the tenant has the right to remove the equipment under state law or by virtue of the lease.³⁰ Since trade fixtures are removable under state law,³¹ the creditor can probably remove such items unless the lease provides otherwise.

If removal would cause damage to the premises, the landlord can refuse permission unless the creditor gives adequate security for the contemplated damage. The creditor is liable only for the damage, not the diminution in value of the real estate as a result of the removal.³²

Consumer Goods. If the personal property loan is made by a non-supervised financial institution,³³ the Unruh Act makes repossession difficult. If an election is made to pursue the security, there is no right to a deficiency judgment.³⁴

Vehicles, Mobile Homes and Boats. If the property is a vehicle, there are special problems. First, under the Rees-Levering Act, the creditor should be aware of special statutes that limit the creditor's rights in automobile contracts.³⁵ While the Rees-Levering Act does not apply to a supervised financial institution that makes loans directly to the debtor,³⁶ it does apply to institutions that acquire the contracts through assignment.³⁷ For example, the act requires strict financial disclosure,³⁸ may limit the rights of assignees who acquire the contracts with or without knowledge of violations of disclosures,³⁹ provides for a right of reinstatement,⁴⁰ allows a debtor to assert claims and defenses against the assigns of the contract in the same manner as he could against the seller,⁴¹ and prohibits deficiency judgments as to mobile homes.⁴² There are strict provisions for a notice of intent to sell⁴³ and venue requirements.⁴⁴ Secured creditors should be aware that the failure to follow these strict rules may subject the creditor to lawsuits for violations of this statute, although the liability cannot exceed the amount of the debt.⁴⁵

Second, self-help repossession generally precedes an action for claim and delivery on the vehicle. While a creditor generally has both a statutory and contractual right to repossess upon

default,⁴⁶ if repossession occurs without a default or with a possible waiver of default, a debtor may have a claim against the creditor for wrongful repossession. Moreover, if the creditor repossesses in a manner inconsistent with the law, the debtor may also have a claim against the creditor. Illegal repossessions include trespass in a dwelling,⁴⁷ the use of force under protest before the repossession,⁴⁸ or those achieved through a breach of the peace.⁴⁹ It should be noted that repossessors are strictly licensed and regulated.⁵⁰

While a reposessor cannot enter a locked garage, the creditor, in the context of a prejudgment writ of possession, can instruct the levying officer to enter a locked area and seize the property, but the declarations and orders must reflect this authority.⁵¹

If the lien of the creditor has been released through a forgery in the title, the creditor may not be able to obtain possession of the vehicle, because California is a "full title" state. A buyer who has no actual knowledge of a defect in title is entitled to rely upon the registration and ownership certificates.⁵² Thus, if a bona fide purchaser, for value, receives a certificate of title not reflecting a security interest either through fraud, forgery or mistake on the part of the legal owner or mistake on the part of the DMV, that bona fide purchaser receives title free and clear of any liens.

If the property is a mobile home in the possession of its resident, a claim and delivery action is not possible until the lienholder has foreclosed upon its security interest.⁵³ If the mobile home is still in the possession of the dealer or the manufacturer, it is classified as inventory, and can be levied upon by a writ of possession.⁵⁴

If the property is a documented vessel, it is subject to a maritime mortgage, and special proceedings in federal court must be initiated. Undocumented vessels are governed by the DMV, and normal claim and delivery procedures apply.⁵⁵

Accounts Receivable. If the property is accounts receivable, the security agreement and the UCC-1 Financing Statement must be checked to be sure that the creditor has the right to possession of the accounts receivable, ledgers, books and invoices. Without these items, the creditor will have a difficult time obtaining the accounts receivable. However, once the invoices are obtained, the creditor simply gives notification to the account. A creditor's suit would be the appropriate remedy for failure to pay a garnishment. The creditor should consider the possibility of having a receiver appointed.⁵⁶

Aircraft. Airplanes present special problems for the secured creditor. To perfect a lien, the contract, security agreement or assignment must be recorded with the Federal Aviation Administration (FAA).⁵⁷ After the airplane has been repossessed, a certificate of repossession must be recorded with the FAA, with a statement that the repossession did not violate local law.⁵⁸ Before title can be transferred, the creditor must obtain the flight logs. The FAA will need them to determine the number of hours flown and the location of the flights in connection with the issuance of the change of title and an airworthiness certificate.⁵⁹

Liquor Licenses. California law prohibits a liquor licensee from granting a security interest in the liquor license.⁶⁰ Many secured creditors attempt to perfect an interest in a liquor license using the "proceeds" clause in the security agreement. Nevertheless, an enforceable security interest in the proceeds of an item may not be taken without taking a security interest in the collateral.⁶¹

However, where there is a sale of a liquor license, statutory law dictates the manner in which the sale is to take place.⁶² The sale must take place through an escrow and, after satisfying federal and state taxes, the proceeds are applied to the claims of secured creditors.

Livestock and Farm Products. Livestock may present a problem for the secured creditor. While one may perfect a security interest in livestock or farm products,⁶³ it is classified as an interest in farm products, not inventory, unless the debtor is in the business of selling those products.⁶⁴

If farm products are classified as crops, dual filings may be necessary—one in the county of the debtor's residence and a second in the county where the crops are located.⁶⁵ The crops' location and a description of the real estate on which the crops are located must be included in the security agreement⁶⁶ and the financing statement if the filings depend on the particular classification of the collateral as crops or inventory.⁶⁷ If the crops are perishable, normal claim and delivery deadlines do not apply. The creditor should seek an order for sale immediately, and the proceeds will be deposited with the court.⁶⁸

The creditor must pay special attention to the description of crops, livestock or farm products. General descriptions will not suffice.⁶⁹

A livestock feeder has a statutory lien upon all livestock in its possession for services and feed for the past 12 months. No perfection is required, and it has priority over all other liens. The statute allows the lienholder to sell the livestock without notice to other secured creditors.⁷⁰

The secured creditor holding livestock or crops as collateral should be further mindful of some special rules. If a default occurs, special care may be required to maintain the collateral, in the case of livestock (feeding the animals) or crops (transportation and storage). Additionally, if the collateral is perishable, ordinary notice proceedings do not apply. Instead, the creditor simply can sell the collateral with little or no notice to the creditor.⁷¹

BONDS

In order to obtain a pre-judgment writ of possession, the secured creditor must obtain and file a bond.⁷² The bond must be in an amount not less than twice the value of the debtor's interest in the property, or such greater amount as the court may require.⁷³ In many instances, the amount owed by the debtor may be greater than the value of the property, and the creditor may be tempted to file a low bond. However, the debtor has the statutory right to file a re-delivery bond in the same amount as the creditor's bond, which prevents the creditor from levying on the property.⁷⁴

Prior to the hearing, the secured creditor should make a determination as to the amount of the bond to be set. Ideally, it should be high enough to make a re-delivery bond difficult to obtain but low enough to make the creditor's undertaking cost-effective. From a creditor's standpoint, the highest bond that would be necessary would be the amount of the total balance on the account. Any bond in excess of that amount simply would be a waste of money. Also, as with appeal bonds, both parties may object to the quality of the other party's bonding company.⁷⁵

LIENS

If the property is in the possession of a third party who claims a lien upon it, the marshal will not levy on the property unless the third party is a named defendant or unless the creditor advances the amount of the lien.⁷⁶ There is a general lien on personal property for labor or repairs, subject to a \$300 limitation for services and a \$200 limitation for storage.⁷⁷

If the property is a vehicle, a separate service lien statute is applicable. The statute grants a lien of \$750 for work and services and \$400 for storage if the lienholder presents the registered owner with a statement of charges.⁷⁸ That portion of the lien which exceeds \$750 for services and \$400 for storage is excessive and invalid.⁷⁹ If the creditor tenders the statutory amount and it is refused, the entire lien is extinguished.⁸⁰ A towing company has an unlimited lien for towing, but storage fees are limited depending upon the value of the vehicle.⁸¹

Additionally, a freight carrier has a similar lien, but secured creditors having a perfected security interest have priority over this lien.⁸² There are also liens for jewelers⁸³ and agricultural laborers.⁸⁴ If the property consists of livestock, a livestock servicer (feeder) has a general lien, which has priority over all other liens.⁸⁵

If the debtor of a secured creditor is engaged in retail sales

(Continued on page 51)

WRITS OF POSSESSION

(Continued from page 38)

and the creditor has a security interest in the debtor's inventory, then the creditor will not be entitled to claim and delivery against the retail purchaser of goods from the debtor's inventory. The retail purchaser takes the inventory free and clear of any liens under the "buyer in the ordinary course of business" doctrine,⁸⁶ which requires that:

- The seller must be engaged in the business of selling goods of the kind sold to the retail purchaser, and the retail purchaser must pay value for the property;⁸⁷ and

- The retail purchaser must act in good faith, which is defined as "honesty in fact," usually a subjective standard.⁸⁸

How do the above rules come into play? Typically the secured creditor has made a loan, and the debtor has possession of the creditor's collateral. The debtor may sell inventory to a retail consumer, and if that retail purchaser pays value without knowledge of the security interest, the secured creditor may not claim and deliver as against the innocent purchaser. The consumer takes the inventory free and clear of any liens created by the seller even if he has knowledge of the security interest. Courts have held that a purchaser must conduct a lien search if the purchaser is a dealer or is buying a mobile home⁸⁹ and that both a bulk sale from the debtor to another individual and pawnbroker transactions are not considered to be "in the ordinary course of business."⁹⁰

Once the order for writ issues and the creditor files the required undertaking, the clerk issues a writ of possession, which directs the levying officer to seize the property, as specified in the writ, at the location specified in the writ.⁹¹ Unfortunately, the levying officers do not grant much leeway with respect to the description of the collateral and the location. If the collateral is improperly or insufficiently described, the levying officer will not levy the writ.⁹²

If the property sought to be levied upon is in a different location from that specified on the writ, the creditor can obtain an endorsement on the writ through a simple *ex parte* proceeding. The court simply orders that the writ be amended to reflect the different location.⁹³

If the property sought to be levied upon is located in a private place, such as in an enclosed garage, a home, or behind a locked gate, the levying officer may break and enter and seize the property, unless seizure of the property involves a substantial risk of death or bodily harm.⁹⁴

If the property sought to be levied upon is being used as a dwelling, such as a mobile home or a boat, the levying officer must place a keeper on the premises for two days. After the expiration of this two-day period, the levying officer will remove the occupants and any personal property not specified in the writ and take possession of the property.⁹⁵

After the levying officer takes possession of the collateral, he holds it for a period of 10 days, after which he simply turns over the collateral to the creditor if a re-delivery bond or a third-party claim have not been filed.⁹⁶

Any third party that claims an interest in the property has an opportunity to file a third-party claim and have his right to possession litigated in a summary proceeding.⁹⁷

If the property cannot be located, but the whereabouts of the debtor in possession of the property is known, it is important that the creditor personally serve the order for writ upon the debtor.⁹⁸ The order for writ typically has a turnover order provision. If, after service of the turnover order, the debtor fails to turn over the collateral to the creditor, the creditor may bring a contempt of court proceeding against the debtor. This is a very effective procedure and should be utilized whenever a party in apparent possession of the collateral attempts to hide the collateral.

POST-JUDGMENT WRITS OF POSSESSION

The remedy of a pre-judgment writ of possession is provisional. In order to perfect the remedy, exonerate the bond and avoid claims as against the creditor and the bonding company, the secured creditor must obtain a judgment for possession.⁹⁹ This may be done in the context of a default judgment, summary judgment or judgment by trial. Once a judgment for possession is obtained, the judgment creditor should forward a copy of the judgment to the bonding company, with a request that the bond be exonerated.

Levying on a post-judgment writ of possession is different from levying on a pre-judgment writ of possession; in fact,

post-judgment writs are governed by a separate set of statutes.¹⁰⁰

A judgment for possession must describe the property and its value but it does not need to specify the location of the collateral.¹⁰¹

If the property is being used as a dwelling, the two-day keeper and turnover rule is inapplicable, and a noticed motion to remove the occupants is required.¹⁰² No bond is required. Immediately after taking possession of the property, the levying officer turns the property over to the creditor.¹⁰³ If the property sought to be levied upon is in a private place, such as a locked garage, a dwelling or behind a locked gate, the levying officer may not enter upon this private place, as he may with a pre-judgment writ of possession. Instead, the levying officer merely announces his identity, demands delivery of the property and, if refused, walks away.¹⁰⁴ Thereafter, the judgment creditor must make a motion for forcible entry into a private place, showing that the judgment creditor has established probable cause to believe that the property is located in the place described. This motion may be made on an *ex parte* basis. The court then issues an order directing the levying officer to enter the location, by force if necessary, to seize the property.¹⁰⁵

The debtor does not have the right to pay a sum of money because the writ is issued for the specific property, which must be turned over.¹⁰⁶ If the property cannot be found, the writ can be treated as a writ of execution for the stated value, as specified in the writ.¹⁰⁷ If the debtor fails to turn over the property, the creditor can apply for a turnover order. After issuance and service of the order, if the debtor still refuses to turn over possession, the debtor may be subject to being held in contempt of court.¹⁰⁸ The writ also may be enforced against a decedent.¹⁰⁹

CAREFUL PLANNING

The attorney representing a secured creditor must be mindful of many issues prior to proceeding with a writ of possession. An analysis should be done of the type of personal property to be seized, its location, its value, the individuals in possession and any lien rights they may have, together with the problems associated with seizing the collateral. The attorney's careful planning can reduce the client's attorneys' fees and increase the likelihood that the collateral will be located and seized in a cost-effective and timely fashion. ♦

¹ COM. CODE §§9105(1), 9110; *Personal Jet, Inc. v. Callihan*, 624 F.2d 562, 567 (5th Cir. 1980) (applying California law).

² *Komas v. Future Systems, Inc.*, 71 Cal.App.3d 809, 813 (1977) (UCC-1 Financing Statement as security agreement); *Personal Jet, Inc. v. Callihan*, 624 F.2d 562, 568 (5th Cir. 1980) (applying California law—letter held to be a valid security agreement).

³ COM. CODE §9302.

⁴ COM. CODE §§9304(1), 9305, 9302(1)(a).

⁵ COM. CODE §9302(1)(g).

⁶ COM. CODE §9302(1)(g).

⁷ COM. CODE §9302(2)(b).

⁸ COM. CODE §9304(5).

⁹ COM. CODE §9102(4).

¹⁰ COM. CODE §9102(1)(a).

¹¹ COM. CODE §9102(5)(a).

¹² COM. CODE §9104(i).

¹³ COM. CODE §9104(e); *Personal Jet, Inc. v. Callihan*, 624 F.2d 562, 567 (5th Cir. 1980) (applying California law).

¹⁴ COM. CODE §9302(d).

¹⁵ CODE CIV. PROC. §§512.060(a)(2); 714.010.

¹⁶ CODE CIV. PROC. §§514.030(a); 714.020(a).

¹⁷ CODE CIV. PROC. §§514.010(c); 714.020(a).

¹⁸ CODE CIV. PROC. §512.010.

¹⁹ CODE CIV. PROC. §512.010(b)(1); *Montgomery v. Grattan*, 156 Cal.App.2d 832 (1958) (perfected chattel mortgage had priority over landlord lien).

²⁰ CODE CIV. PROC. §512.010(b)(2); *International Airports, Inc. v. Finn*, 132 Cal.App.2d 293 (1955) (central issue of claim and delivery is the plaintiff's right to possession by virtue of a lien, not the issue of temporary custody).

²¹ CODE CIV. PROC. §512.010(b)(3,4); *Hill v. Walsh*, 105 Cal.App. 195 (1930) (description of "one grain drill" held sufficient).

²² CODE CIV. PROC. §512.040(b).

²³ CODE CIV. PROC. §511.090; offsets cannot defeat a right to reclaim the collateral. *RCA Service Co. v. Superior Court*, 137 Cal.App.3d 1, 3 (1982).

²⁴ CODE CIV. PROC. §512.030.

²⁵ CODE CIV. PROC. §512.020(b).

²⁶ CODE CIV. PROC. §395(a).

²⁷ *Peterson v. Sherman*, 68 Cal.App.2d 706 (1945). For consumer items, venue must be in the county of the debtor's residence. CODE CIV. PROC. §395(b); CIV. CODE §§2984.4; 1812.10.

²⁸ COM. CODE §9313(4).

²⁹ *Id.*

³⁰ COM. CODE §9313(5).

³¹ CIV. CODE §1019.

³² COM. CODE §9313(8).

³³ CIV. CODE §1801.6(b) (a supervised financial institution is a person, firm or corporation holding a license or certificate to make loans and who is subject to supervision by a federal or state agency).

³⁴ CIV. CODE §1812.5; *In Re Maldonado*, 46 B.R. 497 (9th Cir. BAP 1984).

³⁵ CIV. CODE §§2981, *et seq.*

³⁶ CIV. CODE §2982.5(a).

³⁷ CIV. CODE §2982.5(d)(4).

³⁸ CIV. CODE §2981.

³⁹ CIV. CODE §2983.1.

⁴⁰ CIV. CODE §2983.3.

⁴¹ CIV. CODE §2983.5.

⁴² CIV. CODE §2983.8.

⁴³ CIV. CODE §2983.2.

⁴⁴ CIV. CODE §2904.4.

⁴⁵ CIV. CODE §2983.5.

⁴⁶ COM. CODE §503; *Wixom v. Davis*, 57 Cal.App. 620 (1922); *Adams v. So. California Bank*, 492 F.2d 324 (9th Cir. 1963); *Kipp v. Cozens*, 40 Cal.App.3d 709 (1974).

⁴⁷ *Hileman v. Harter Bank & Trust*, 186 N.E.2d 853 (Ohio 1962) (creditor repossessing through window). *Webber v. Farmers Chevrolet*, 195 S.E. 139 (S.C. 1938); *Ben Cooper Motor Co. v. Amey*, 287 P. 1017 (Ok. 1930); *cf. Westernman v. Oregon Auto Credit Corp.*, 122 P.2d 435 (Or. 1942) (if protest occurs after repossession, creditor can use reasonable force to maintain possession); *Donain's v. General Motors Acceptance Corp.*, 374 F.2d 867 (7th Cir. 1967) (creditor can use force to withdraw from debtor's assault).

⁴⁸ *Morris v. First National Bank & Trust Co.*, 254 N.E.2d 683 (Ohio 1970) (debtor's subjective fear without battery was breach of peace); *Singer Sewing Machine Co. v. Phipps*, 94 N.E. 793 (Ind. 1911) (assault); *Schonafelt v. Seaboard Fin. Co.*, 108 Cal.App.2d 420 (1951) (blocking driveway constituted false imprisonment).

⁴⁹ BUS. & PROF. CODE §§7500, *et seq.*

⁵⁰ CODE CIV. PROC. §§512.050; 512.080(c).

⁵¹ T&O Mobile Homes, Inc. v. United California Bank, 40 Cal.3d 441 (1985).

⁵² HEALTH & SAF. CODE §18037.5.

⁵³ COM. CODE §9302(3)(b).

⁵⁴ 46 U.S.C. §1242.

⁵⁵ COM. CODE §9502(1); CODE CIV. PROC. §§708.20, *et seq.*

⁵⁶ 49 U.S.C. §1301; 14 C.F.R. §47.11; *Personal Jet, Inc. v. Callihan*, 624 F.2d 562 (5th Cir. 1980) (applying California law).

⁵⁷ 14 C.F.R. §49.21; 14 C.F.R. §47.11.

⁵⁸ 49 U.S.C. §1423; 14 C.F.R. §47.9.

⁵⁹ BUS. & PROF. CODE §424076.

⁶⁰ *In re Soft Talk Publishing Co. Inc.*, 64 B.R. 523, 526 (9th Cir. BAP 1986); *Imperial NH3, Div. of West. Farm Service, Inc.*, 70 Cal.App.3d 513, 520 (1977).

⁶¹ BUS. & PROF. CODE §24074.

⁶² COM. CODE §9113.

⁶³ COM. CODE §9109, Official Comment 4.

⁶⁴ 8 HAWKLAND, UNIFORM COMMERCIAL CODE §9.109:4 at 279 (1986).

⁶⁵ COM. CODE §9.203(1)(a).

⁶⁶ COM. CODE §9401(1).

⁶⁷ MARSHAL'S MANUAL OF PROCEDURE §214.3.

⁶⁸ 8 HAWKLAND, UNIFORM COMMERCIAL CODE §9-110:01, at 294 (1986).

⁶⁹ CIV. CODE §3080, *et seq.*

⁷⁰ COM. CODE §9504(3).

⁷¹ CODE CIV. PROC. §512.060(a)(2).

⁷² CODE CIV. PROC. §515.010.

⁷³ CODE CIV. PROC. §515.020.

⁷⁴ CODE CIV. PROC. §515.030.

⁷⁵ MARSHAL'S MANUAL OF PROCEDURE §212.2.

⁷⁶ CIV. CODE §3051a.

⁷⁷ CIV. CODE §3068(a)(c).

⁷⁸ CIV. CODE §3068.

⁷⁹ *Universal CIT Credit Corp. v. Rater*, 214 Cal.App.2d 493 (1963).

⁸⁰ CIV. CODE §3068.1.

⁸¹ CIV. CODE §3051.5.

⁸² CIV. CODE §3052a.

⁸³ CIV. CODE §3061.5.

⁸⁴ CIV. CODE §3080.01.

⁸⁵ COM. CODE §9307; 1201(9).

⁸⁶ COM. CODE §1201(9).

⁸⁷ COM. CODE §1201(9); 9 HAWKLAND, UNIFORM COMMERCIAL CODE §9-307.02, at 69-70 (1986).

⁸⁸ *Swift v. J.I. Case Co.*, 266 So.2d 379, 11 U.C.C. Rep.Serv. 896 (Fla. Dist. Ct.App. 1972); *McConnell v. Barrett*, 154 Ga.App. 767, 270 S.E.2d 13, 31 U.C.C. Rep.Serv. 565, 567 (1980).

⁸⁹ COM. CODE §1201(9); 6102(a)(3).

⁹⁰ CODE CIV. PROC. §512.080.

⁹¹ MARSHAL'S MANUAL OF PROCEDURE §211.3.

⁹² CODE CIV. PROC. §512.090.

⁹³ CODE CIV. PROC. §514.010(c); MARSHAL'S MANUAL OF PROCEDURE §212.3.

⁹⁴ CODE CIV. PROC. §514.010(b); MARSHAL'S MANUAL OF PROCEDURE §212.3A.

⁹⁵ CODE CIV. PROC. §514.030(a)(1); MARSHAL'S MANUAL OF PROCEDURE §214.2.

⁹⁶ CODE CIV. PROC. §514.050; CODE CIV. PROC. §720.110; MARSHAL'S MANUAL OF PROCEDURE §212.3.

⁹⁷ CODE CIV. PROC. §512.070.

⁹⁸ CODE CIV. PROC. §512.120.

⁹⁹ CODE CIV. PROC. §714.010.

¹⁰⁰ *Id.*

¹⁰¹ CODE CIV. PROC. §700.080(c); MARSHAL'S MANUAL OF PROCEDURE §412.

¹⁰² CODE CIV. PROC. §714.020(b).

¹⁰³ CODE CIV. PROC. §§7141020(a); 699.030(a).

¹⁰⁴ CODE CIV. PROC. §699.030(b).

¹⁰⁵ MARSHAL'S MANUAL OF PROCEDURE §412.

¹⁰⁶ CODE CIV. PROC. §§714.020; 712.040; MARSHAL'S MANUAL OF PROCEDURE §412.

¹⁰⁷ CODE CIV. PROC. §714.030.

¹⁰⁸ CODE CIV. PROC. §686.020; PROB. CODE §730.

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