

SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department - Non-Limited	Entered by:
TITLE OF CASE: City of Fresno vs. Art Terzian	
LAW AND MOTION MINUTE ORDER	Case Number: 24CECG02985

Hearing Date: **March 25, 2025** Hearing Type: **Motion – Pre-Judgment Possession**
Department: **502** Judge: **Culver Kapetan, Kristi**
Court Clerk: **Gonzalez, Estela** Reporter: **Not reported**

Appearing Parties:	
Plaintiff:	Defendant:
Counsel:	Counsel:

Off Calendar

Continued to Set for ___ at ___ Dept. ___ for ___

Submitted on points and authorities with/without argument. Matter is argued and submitted.

Upon filing of points and authorities.

Motion is granted in part and denied in part. Motion is denied with/without prejudice.

Taken under advisement

No Oral Argument requested as required per Local Rule 2.2.5 & CRC 3.1308(a)(1).

Pursuant to CRC 3.1312(a) and CCP 1019.5(a), no further order is necessary. The minute order adopting the tentative ruling serves as the order of the court. See attached copy of the Tentative Ruling.

Remote appearances for any and all hearings must be approved by the Court ahead of the hearing date. Parties are required to e-file Judicial Council forms RA-010 & RA-020 by no later than one week prior to the hearing.

Personal appearances are mandatory for all trial dates, including any and all parties with settlement authority, pursuant to CRC 3.1380(b) & Fresno County Local Rules 2.5.5, 2.5.8 and 2.6.2(B).

Service by the clerk will constitute notice of the order

Judgment debtor ___ sworn and examined.

Judgment debtor ___ failed to appear.
Bench warrant issued in the amount of \$ ___

JUDGMENT:

Money damages Default Other ___ entered in the amount of:
Principal \$___ Interest \$___ Costs \$___ Attorney fees \$___ Total \$___
 Claim of exemption granted denied. Court orders withholdings modified to \$___ per ___

FURTHER, COURT ORDERS:

Monies held by levying officer to be released to judgment creditor. returned to judgment debtor.
 \$___ to be released to judgment creditor and balance returned to judgment debtor.
 Levying Officer, County of ___, notified. Writ to issue
 Notice to be filed within 15 days. Restitution of Premises
 Other: ___

(36)

Tentative Ruling

Re: **City of Fresno v. Art Terzian**
Superior Court Case No. 24CECG02985

Hearing Date: March 25, 2025 (Dept. 502)

Motion: by Plaintiff for Pre-Judgment Possession

Tentative Ruling:

To grant the plaintiff's motion for an order for possession. (Code Civ. Proc., § 1255.410.)

Explanation:

Under Code of Civil Procedure section 1255.410, subdivision (a), "At the time of filing the complaint or at any time after filing the complaint and prior to entry of judgment, the plaintiff may move the court for an order for possession under this article, demonstrating that the plaintiff is entitled to take the property by eminent domain and has deposited pursuant to Article 1 (commencing with Section 1255.010) an amount that satisfies the requirements of that article." (Code Civ. Proc. § 1255.410, subd. (a).)

"Not later than 30 days after service of the plaintiff's motion seeking to take possession of the property, any defendant or occupant of the property may oppose the motion in writing by serving the plaintiff and filing with the court the opposition. If the written opposition asserts a hardship, it shall be supported by a declaration signed under penalty of perjury stating facts supporting the hardship. The plaintiff shall serve and file any reply to the opposition not less than 15 days before the hearing." (Code Civ. Proc. § 1255.410, subd. (c).)

"If the motion is opposed by a defendant or occupant within 30 days of service, the court may make an order for possession of the property upon consideration of the relevant facts and any opposition, and upon completion of a hearing on the motion, if the court finds each of the following:

(A) The plaintiff is entitled to take the property by eminent domain.

(B) The plaintiff has deposited pursuant to Article 1 (commencing with Section 1255.010) an amount that satisfies the requirements of that article.

(C) There is an overriding need for the plaintiff to possess the property prior to the issuance of final judgment in the case, and the plaintiff will suffer a substantial hardship if the application for possession is denied or limited. [¶] (D) The hardship that the plaintiff will suffer if possession is denied or limited outweighs any hardship on the defendant or occupant that would be caused by the granting of the order of possession." (Code Civ. Proc., § 1255.410, subd. (d)(2).)

Also, a public entity seeking to take property by eminent domain must first obtain a resolution of necessity from its governing body. (Code Civ. Proc. § 1245.220.) "Except as otherwise provided by statute, a resolution of necessity adopted by the governing body of the public entity pursuant to this article conclusively establishes the matters referred to in Section 1240.030." (Code Civ. Proc., § 1245.250, subd. (a).) In other words, the resolution of necessity conclusively establishes that the public interest and necessity require the project, the project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury, and the property sought to be acquired is necessary for the project. (Code Civ. Proc. § 1240.030.)

Here, the plaintiff has established all of the required elements to allow it to obtain and order for prejudgment possession of the subject property. Plaintiff is a public entity with the right to take property by eminent domain. It obtained a resolution of necessity from the Council of the City of Fresno, California on April 18, 2024, thus establishing that the project is necessary, that it is planned and located in a manner that is most compatible with the public good and least private injury, and that the property to be acquired is necessary for the project. (Bain Decl., ¶¶ 9-11.) The plaintiff has also deposited the probable amount of compensation, \$2,259,500, with the State Treasurer. (Donahue Decl., ¶¶ 2-3; Bain Decl., ¶¶ 6-7; Linden Decl., ¶ 3.)

In addition, plaintiff has shown that there is an overriding need for it to possess the property in order to complete the Blackstone McKinley BNSF (Burlington Northern-Santa Fe) Grade Separation Project. (Bain Decl., ¶¶ 2, 4, 5.) The plaintiff will also suffer substantial harm if the project is delayed, since there may be a risk of the loss of funding for the project. (Bain Decl., ¶ 12.) To meet funding obligation deadlines, the project is scheduled to begin construction in the Spring of 2026. (*Ibid.*) Plaintiff cannot wait until trial in this case, which is not scheduled to commence until March 9, 2026, because plaintiff anticipates approximately six months is necessary in order to fully vacate the property and demolish the improvements. (*Ibid.*) Therefore, plaintiff has met its burden of showing the basic elements of its claim for an order of prejudgment possession.

Defendant was served with notice of the motion by electronic mail on December 16, 2024, which is more than 90 days before the hearing on the motion. Defendant opposes the motion, contending that he will suffer substantial harm if the order of possession is granted and plaintiff takes possession of the property. Defendant indicates that his business will be destroyed, because there are no other comparable properties priced under \$3.4 million to relocate his business to. (A. Terzian Decl., ¶ 5, T. Terzian Decl., ¶ 5.) Defendant has also received an estimate from a professional mover, who indicates it would cost approximately \$1,344,821 and three months to relocate defendant's business. (Avila Decl., ¶¶ 5, 6; Exhibit ISO Opposition, Ex. D.) Defendant asks the court either deny the motion outright, or impose conditions that might allow him the opportunity to relocate his business. Notably, defendant does not indicate what these conditions might be.

However, defendant provides little evidence to dispute the appraisal supplied by plaintiff. A competing appraisal is not attached, and defendant's valuation of comparable properties is supported only by his and his son's declarations. Nor has defendant engaged in negotiations with plaintiff or presented a counteroffer, despite being contacted on approximately sixteen occasions by plaintiff's agents and

