

CAUSE NO. 2023-01356

LUXURY ASSET CAPITAL, LLC, d/b/a LUX & LUX EXCHANGE	§ § §	IN THE DISTRICT COURT OF
Plaintiff,	§ § §	HARRIS COUNTY, TEXAS
v.	§ § §	
F. KENNETH BAILEY, JR.	§ § §	164 JUDICIAL DISTRICT
Defendant.	§	

**LUXURY ASSET CAPITAL, LLC'S EMERGENCY MOTION TO
REQUEST EXPEDITED HEARING**

To the Honorable Judge of this Court:

Plaintiff Luxury Asset Capital, LLC, d/b/a Lux and Lux Exchange (“**Lux**”) respectfully moves this Court to consider its Traditional Motion for Judgment at an expedited hearing sooner than the current hearing setting of July 10, 2024, at 2:00 P.M. In support, plaintiff shows the Court the following:

1. In this breach of a sales contract suit, defendant F. Kenneth Bailey, Jr. (“**Bailey**”) failed to make his required payments and retained possession of certain property (two paintings by 19th century realist William Adolphe Bouguereau, collectively, the “**Paintings**”) which Lux owns. Although he was served with citation, and although he appeared via Zoom at Lux’s Motion for Default Judgment hearing, Bailey, a lawyer, has not filed any answer to this suit, he has not filed a response to Lux’s Traditional Motion for

Summary Judgment, which was originally set for submission in this Court on November 6, 2023 at 8:00 A.M., and he has not otherwise put the merits of Lux's suit at issue.

2. Lux's ownership was reaffirmed and they obtained possession of the paintings over a year ago on May 3, 2023, pursuant to the writ of sequestration granted by this Court.¹ Bailey never paid the bond to replevy the Paintings and has not otherwise contested Lux's ownership of the Paintings, and at this time, as described in Paragraph 4 below, the Paintings are being preserved by Lux pending the Court's final judgment, allowing Lux the ability to sell the Painting's.²

3. Lux filed its Traditional Motion for Summary Judgment on October 13, 2023, to obtain a final judgment granting them ultimate possession of the Paintings, and its damages under the contract and incurred in bringing this suit against Bailey, as well as its attorneys' fees, and it was set for submission on November 6, 2023. Trial was originally set to begin in this matter on March 25, 2024, but the court *sua sponte* reset trial to begin the week of August 5, 2024, and *sua sponte* set Lux's Traditional Motion for Summary Judgment for hearing on July 10, 2024.

¹ Exhibit 1 – Order Granting Lux's Application for Writ of Sequestration.

² Exhibit 2 – 10 Day Constable Release.

4. Lux's Paintings are currently being "kept safe and preserved" pursuant to the writ of sequestration and are presently being stored with a third party and incurring ongoing expenses.³ Because of the era of the Paintings, and the specific artist behind the Paintings, Lux has to sell these Paintings to potential buyers at Auction Houses.⁴ As Art values fluctuate, Lux cannot engage communications with Auction Houses concerning the Paintings until Lux receives the courts authorization to enable them to sell the Paintings.⁵ For example, Lux will need to begin generating interest in the Paintings by sending detailed information about them, including current condition out to the Auction Houses.⁶ This process typically takes at least a month, after which Lux evaluates which Auction House would be best fit for the sale of the Paintings.⁷ Furthermore, these auctions take place annually at a specific time each year.⁸

5. Though Lux owns the paintings they cannot sell the artwork through an Auction House and make itself whole until a final judgment is obtained in this matter. The current July 10, 2024 hearing setting will make it nearly impossible for Lux to participate in a fall 2024 auction because Lux will not have enough time to market the paintings and garner interest for their

³ Ex. 1.

⁴ Exhibit 3 – Declaration of Dewey Burke, ¶ 5.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

sale, evaluate estimates from interested Auction Houses and consign with an appropriate Auction House.⁹ Auction Houses additionally have approximately 35-90 days from the potential sale of the Paintings until Lux would be compensated for the Paintings.¹⁰ This could easily push payment to Lux into 2025 for any auction in November 2024 or later.¹¹ Lux missed the October 2023 auction and the January 2024 “Classics” auction while its Traditional Motion for Summary Judgment was pending with this Court.¹²

6. If Lux is unable to sell the paintings at the 2024 auction, the next auction will not occur until 2025.¹³ The continued delay is causing Lux potential business revenue loss, and massive delays from 2023 in recouping its costs and loss.¹⁴ Additionally, costs to store the Paintings for the last year are accruing, and they will continue to accrue, until the hearing on Lux’s Traditional Motion for Summary Judgment. To date, Lux has incurred over \$3,125.00 in fees in securing and storing the Paintings during the pendency of this litigation and will incur additional fees should this matter not be resolved before July 10, 2024.¹⁵ Lux will be prejudiced if this matter is delayed further.

⁹ *Id.* at ¶ 6.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at ¶ 7.

¹⁴ *Id.*

¹⁵ *Id.* at ¶ 4.

7. It is also in the interest of judicial efficiency to resolve this case and issue a final judgment order, remove it from the trial court's docket, and prevent further waste of the trial court's resources on this unopposed matter.

Therefore, for the reasons set forth above, plaintiff respectfully requests that this Court consider its Traditional Motion for Summary Judgment on an expedited basis within the next fourteen (14) days, and that it grant plaintiff all further relief to which plaintiff is entitled.

Respectfully submitted,

BURFORD PERRY, LLP

By: /s/ Clyde J. "Jay" Jackson III

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CERTIFICATE OF SERVICE

On May 29, 2024, I served the foregoing document to all counsel of record, in accordance with Texas Rules of Civil Procedure 21 and 21a, by service via the court's electronic filing system and/or via CMRRR.

/s/ Erica E. M. Fauser

Erica E. M. Fauser

Unofficial Copy Office of Marilyn Burgess District Clerk

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Vicki Domingues on behalf of Erica Fauser

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Envelope ID: 88219707

Filing Code Description: Motion (No Fee)

Filing Description: Luxury Asset Capital, LLC's Emergency Motion to Request Expedited Hearing

Status as of 5/29/2024 4:10 PM CST

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