

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.	§	
	§	
Defendant.	§	164th JUDICIAL DISTRICT

**DECLARATION OF DEWEY BURKE
IN SUPPORT OF PLAINTIFF’S EMERGENCY FOR EXPEDITED
HEARING ON LUX’S TRADITIONAL MOTION FOR SUMMARY
JUDGMENT**

1. My name is Dewey Burke. I am over the age of eighteen and I am legally competent to make this Declaration, which is true and correct and is based on my personal knowledge.
2. I am the Chief Executive Officer of Luxury Asset Capital, LLC (“**Lux**”), the named Plaintiff in the above-styled and numbered lawsuit. I am familiar with the underlying facts of this litigation.
3. On January 9, 2023, Lux initiated the underlying action against the defendant, F. Kenneth Bailey (“**Bailey**”) for breach of a contract with Lux (“the **Contract**”) involving the purchase of two paintings from Bailey for \$750,000; the paintings are entitled *Les Prunes* and *In the Orchard* (collectively, the “**Paintings**”). Although Bailey has appeared in this action in April of 2023, it is my understanding that he has not filed any answer or otherwise opposed the relief Lux seeks in this action.
4. Lux’s ownership was reaffirmed, and they obtained possession of the Paintings at issue in this suit over a year ago on May 3, 2023, pursuant to the writ of sequestration granted by this Court. The Paintings, under Lux’s ownership are currently being “kept safe and

preserved” pursuant to the writ of sequestration and are presently being stored with a third party. Because of the history and value of the Paintings, Lux hired a third party, Ty Art, to assist with securing the paintings, assessing their condition and damages, and storing the Paintings during the pendency of this suit. To date, Lux has incurred \$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.

5. 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. 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. 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. 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. Furthermore, these auctions take place annually at a specific time each year.
6. In October 2023, Lux intended to put the artwork with an Auction House but because it did not have the courts authorization to sell the Paintings it could not enter the auction. Lux also missed the 2024 “Classics” Auction that took place in January 2024 earlier this year. Lux cannot sell the Paintings 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. This is because Lux will not have enough time to market the paintings and garner interest for their sale, evaluate estimates from interested Auction Houses and consign with an appropriate Auction House. Auction Houses additionally have approximately 35-90 days from the potential sale of the Paintings until Lux would be compensated for the Paintings. This could easily push payment to Lux into 2025 for any auction in November 2024 or later.
7. If Lux is unable to sell the paintings at the 2024 auction, the next auction will not occur until 2025. The continued delay is causing Lux potential business revenue loss, and massive delays from 2023 in recouping its costs and loss. Lux will be prejudiced, and its business

will suffer harm if this matter is delayed further.

My name is Dewey Burke, my date of birth is November 25, 1983 and my address is 4100 E. Mississippi Avenue, Denver, Colorado, 80246, and the United States of America. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Denver County, State of Colorado, on the 24th day of May, 2024.



Declarant, Dewey Burke

Unofficial Copy Office of Marilyn Burgess District Clerk