

CAUSE NO. 2023-01356

LUXURY ASSET CAPITAL, LLC, d/b/a
LUX & LUX EXCHANGE,

Plaintiff

v.

F. KENNETH BAILEY, JR.,
Defendant.

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IN THE DISTRICT COURT

OF HARRIS COUNTY

164th JUDICIAL DISTRICT

RESPONSE IN OPPOSITION
TO TRADITIONAL MOTION FOR SUMMARY JUDGMENT

The Defendant F. Kenneth Bailey, Jr. (“Defendant”), hereby files his *Response In Opposition To Plaintiff’s Traditional Motion For Summary Judgment*, and would respectfully show as follows:

1. The Plaintiff entered into a Pawn Transaction, or Repurchase Agreement, with the Defendant.
2. Pawn Transactions require a license in Texas (and Colorado).
3. Plaintiff has not alleged nor provided proof of a license to conduct pawn or repurchase transactions.
4. Such transactions are forbidden by law without a license, in both Colorado and Texas.
5. A “Pawnbroker” means a person engaged in the business of purchasing goods on condition that the goods be redeemed or repurchased by the seller for a fixed price within a fixed period. TEX. FIN. CODE § 371.003(6)(B)
6. A person may not engage in business as a pawnbroker unless the person holds a pawnshop license. TEX. FIN. CODE § 371.051
7. “Pawnbroker” means a person regularly engaged in the business of making contracts for purchase or purchase transactions in the course of his or her business. CO CODE § 29-11.9 (2022).
8. “Purchase Transaction” means the purchase by a pawnbroker in the course of his or her business of tangible personal property for resale, other than newly manufactured tangible

personal property that has not previously been sold at retail, when the purchase does not constitute a contract for purchase. *Id.*

9. “No person shall engage in pawnbrokering without first obtaining a pawnbrokering license and paying all required fees. The City Council shall be the licensing authority for each pawnbrokering license.” GLENDALE CO MUNICIPAL CODE, § 5.56.030(A)
10. Plaintiff has provided no evidence of the proper licensing to enter into the pawn transaction at question in this case. Without a proper license, the transaction is illegal and unenforceable. See *Phillips v. Phillips*, 820 S.W.2d 785, 789 (Tex. 1991) (Courts will not enforce a plainly illegal contract even if the parties do not object because enforcement of an illegal agreement violates public policy.); see also *RR Maloan Invs., Inc. v. New HGE, Inc.*, 428 S.W.3d 355, 362 (Tex. App.—Houston [14th Dist.] 2014, no pet.); *Cruse v. O’Quinn*, 273 S.W.3d 766, 776 (Tex. App.—Houston [14th Dist.] 2008, pet. denied).
11. Plaintiff has likewise failed to provide any accounting of funds received, and the statements regarding funds owed in the declaration are hearsay, violating the best evidence rule (Declarant is merely repeating information he obtained from another source).
12. Even taking the information provided by the Plaintiff, their position is that they are entitled to not only personal property valued in excess of \$2,000,000.00, but also to more than \$700,000.00 received from the Defendant, an unconscionable result. See generally *Hoover Slovacek LLP v. Walton*, 206 S.W.3d 557 (Tex. 2006). The retention of the substantial funds coupled with the requested surrender of the \$2,000,000.00 in personal property is on its face unconscionable.
13. Defendant is further unable to provide a substantive factual response to the Motion For Summary Judgment at this time due to significant health issues, and if the Court considers granting the *Motion For Summary Judgment*, would request a continuance to enable him to potentially provide the Court with facts in support of his opposition.

WHEREFORE, Defendant requests the Court to deny the Motion For Summary Judgment, in the alternative continue this hearing for a minimum of sixty (60) days due to the health of the Defendant, and for such other and further relief, at law or in equity, to which it may be justly entitled.

Dated: June 6, 2024

Respectfully submitted,

By: /s/Johnie Patterson

Johnie Patterson
SBN #15601700
jjp@walkerandpatterson.com
WALKER & PATTERSON, P.C.
P.O. Box 61301
Houston, TX 77208-1301
713.956.5577
713.956.5570 Fax

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was delivered to Clyde Jackson and Al Odom via electronic delivery on June 6, 2024.

/s/ Johnie Patterson
Johnie Patterson

Unofficial Copy Office of Marilyn Burgess District Clerk

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Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Clyde J. "Jay" Jackson III		jackson@BURFORDPERRY.COM	6/6/2024 7:05:14 PM	SENT
Al Odom		aodom@aodowlawfirm.com	6/6/2024 7:05:14 PM	SENT
Camryn Odom		codom@aodowlawfirm.com	6/6/2024 7:05:14 PM	SENT
Burford Perry Service		service@burfordperry.com	6/6/2024 7:05:14 PM	SENT
Erica Fauser		efauser@burfordperry.com	6/6/2024 7:05:14 PM	SENT

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