

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF DAVIDSON

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DAVIDSON COUNTY, N.C.

SUPERIOR COURT DIVISION
CIVIL ACTION 08CVS _____

SCV 02467

LEXINGTON FURNITURE
INDUSTRIES, INC.

BY _____

Plaintiff,

v.

NOTICE OF DESIGNATION OF ACTION
AS MANDATORY COMPLEX BUSINESS
CASE UNDER N.C. GEN. STAT. § 7A-45.4

THE BOB TIMBERLAKE
COLLECTION, INC. AND ROBERTS E.
"BOB" TIMBERLAKE

Defendants.

Pursuant to N.C. Gen. Stat. § 7A-45.4, Lexington Furniture Industries, Inc. hereby designates the above-captioned action as a mandatory complex business case. In good faith and based on information reasonably available, Lexington Furniture Industries, Inc., through counsel, hereby certifies that this action meets the following criteria for designation as a mandatory complex business case pursuant N.C. Gen. Stat. § 7A-45.4(a), and should be adjudicated in the Business Court:

- _____ (1) The law governing corporations, partnerships, limited liability companies, and limited liability partnerships.
- _____ (2) Securities law.
- _____ (3) Antitrust law, except claims based solely on unfair competition under N.C. Gen. Stat. § 75-1.1.
- X (4) State trademark or unfair competition law, except claims based solely on unfair competition under N.C. Gen. Stat. § 75-1.1.
- X (5) Intellectual property law.
- _____ (6) The Internet, electronic commerce, and biotechnology.

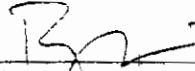
Briefly explain (attach additional sheets if necessary) why the action falls within

the specific categories of N.C. Gen. Stat. 7A-45.4(a) checked above, as well as any additional information you believe may be helpful to the Court in determining whether the Business Court should retain jurisdiction of this matter:

This case involves both state trademark law and intellectual property law. The parties entered into a License Agreement under which Lexington Furniture, Inc. licensed certain intellectual property rights, namely trademarks belonging to Defendants. Defendants have served a notice claiming that Lexington Furniture Industries breached the License Agreement and therefore Defendants intend to terminate the License Agreement. Defendants contend that Lexington Furniture Industries, Inc. will not be authorized to use the trademarks during the balance of the term of the License Agreement. Lexington Furniture Industries, Inc. denies that it breached the License Agreement and it seeks a declaration that it is entitled to the intellectual property rights acquired through the License Agreement.

A copy of all pleadings listed in N.C. R. Civ. P. 7(a) that have been filed to date in this action are attached hereto as Appendix A for the convenience of the Court.

This 18th day of June, 2008.



Richard A. Coughlin
N.C. State Bar No. 19894
C. Bailey King, Jr.
N.C. State Bar No. 34043

*Attorneys for Plaintiff Lexington Furniture
Industries, Inc.*

OF COUNSEL:

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EXHIBIT A

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
DAVIDSON COUNTY

RECORDED 3:39 08 CVS
BY [Signature] COUNTY, N.C. **8CV02407**

LEXINGTON FURNITURE
INDUSTRIES, INC.

Plaintiff,

v.

THE BOB TIMBERLAKE
COLLECTION, INC. AND ROBERTS
E. "BOB" TIMBERLAKE

Defendants.

**COMPLAINT
(JURY TRIAL DEMANDED)**

Plaintiff Lexington Furniture Industries, Inc. ("Lexington"), complaining against Defendant The Bob Timberlake Collection, Inc. ("Collection") and Defendant Roberts E. "Bob" Timberlake ("Timberlake"), alleges and says as follows:

PARTIES

1. Plaintiff Lexington is a corporation duly organized and existing under the laws of the State of North Carolina, having its principal place of business in Thomasville, North Carolina.

2. Upon information and belief, the Collection is a corporation duly organized and existing under the laws of the State of North Carolina, having its principal place of business in Lexington, North Carolina. Lexington is informed and believes that the Collection does business in its own name, as well as the assumed names "Bob Timberlake, Inc." and "The Bob Timberlake Gallery."

3. Upon information and belief, Timberlake is a citizen and resident of Davidson County, North Carolina.

JURISDICTION AND VENUE

4. This is a declaratory judgment action brought pursuant to N.C. Gen. Stat. §1-253 and Rule 57 of the North Carolina Rules of Civil Procedure. This is also an action for collection of monies owed for goods sold.

5. Personal jurisdiction is proper in this matter pursuant to N.C. Gen. Stat. §1-75.4.

6. Venue in this judicial district is proper pursuant to N.C. Gen. Stat. §1-82 because Plaintiff and Defendants reside in Davidson County.

FACTUAL BACKGROUND

7. Lexington, the Collection and Timberlake are parties to an existing License Agreement dated 11 December 1991 (as amended) in which the Collection and/or Timberlake granted certain exclusive licenses to Lexington to use trademarks owned by the Collection or Timberlake on or in connection with the manufacturing, marketing, promotion, distribution and sale of furniture products as defined in the license agreement. (hereinafter referred to as “the License Agreement.”)

8. The License Agreement does not expire until 31 December 2010 unless properly terminated under certain limited conditions set for in the License Agreement.

9. Over the past several months, the Collection and Timberlake have repeatedly requested that Lexington restructure the License Agreement so as to establish a different business arrangement or to permit the Collection and Timberlake to buy out Lexington's rights and interests under the License Agreement. Lexington has declined such requests and has stated that it wishes to complete the full duration of the License Agreement under its present terms and conditions.

10. On 11 June 2008, Collection and Timberlake, by and through counsel, served Lexington with a notice of intent to terminate the License Agreement. Such notice claims that Lexington has repeatedly breached the License Agreement by failing for a substantial period of time to use commercially reasonable efforts to promote, advertise and market the furniture products licensed under the agreement. Such notice also stated that, unless such alleged default was cured within sixty days and Lexington provided compensation for the alleged breaches, the License Agreement would be terminated and Lexington's license to use the trademarks licensed in the agreement would cease.

11. Article VII of the License Agreement provides, in part, as follows:

Promotion. Although the extent to which Lexington will market, distribute, or commercialize the Furniture Products is at the sole discretion of Lexington, subject to limitations relating to manufacturing capacity, materials, shortages, labor dispute, or similar interruptions beyond Lexington's reasonable control, Lexington agrees to use its commercially reasonable efforts in the manufacture, sale, promotion, advertisement, and marketing of Furniture Products to exploit the rights granted herein. Notwithstanding the preceding sentence, Lexington has no obligation to the Collection or Timberlake to manufacture any particular product

or market any specific quantity thereof and Lexington, in its sole discretion, shall determine the commercial life of Furniture Product(s).

12. Lexington has not breached any of its obligations under the License Agreement and the notice of intent to terminate the License Agreement is without any valid basis. Accordingly, under the terms of the License Agreement, Lexington is authorized to use the trademarks licensed under the Agreement on or in connection with the manufacture, marketing, promotion, distribution and sale of furniture products until 31 December 2010. Moreover, since Lexington has not breached the License Agreement, it has no obligation to cure any default and it has no obligation to provide the Collection or Timberlake any purported compensation. Rather, it is alleged upon information and belief that the Collection and Timberlake issued their notice of intent to terminate the License Agreement not because of a good faith belief that Lexington had breached the License Agreement, but instead because the Collection and Timberlake have determined that they would like to either have a different business relationship or they would like to license the intellectual property that is the subject of the License Agreement to others.

13. The notice of intent to terminate the License Agreement by the Collection and Timberlake has created actual controversy between the parties as to their respective rights and obligations under the License Agreement.

14. The Collection has also ordered and purchased goods from Lexington to sell either in retail stores or through catalog orders. Such

transactions were for the sale of goods and governed by N.C. Gen. Stat. § 25-2-101 et seq.

15. The Collection has ordered and received goods from Lexington for which payment has not been made and such accounts are past due. Moreover, the Collection has indicated that its counsel has advised it not to make payments as to these amounts due at this time and that the handling of the account will depend on Lexington's response to Defendants' purported notice of intent to terminate the License Agreement.

16. The total amount of the outstanding invoices for purchases made by the Collection from Lexington for goods that were ordered and delivered, yet payment has not been made, is \$145,372.28.

FIRST CLAIM FOR RELIEF
(DECLARATORY JUDGMENT)

17. Lexington incorporates by reference the allegations contained in paragraphs 1 through 16 as if fully set forth herein.

18. The Collection and Timberlake claim that Lexington has breached its obligations under the License Agreement and based on such claimed breach the Collection and Timberlake have given notice of intent to terminate the License Agreement. Lexington denies that it has breached its obligations under the License Agreement as alleged by the Collection and Timberlake and claims that it is entitled to performance by the Collection and Timberlake during the balance of the term of the License Agreement.

19. There exists an actual controversy as to whether Lexington has breached the License Agreement so as to give the Collection and Timberlake the right to terminate the License Agreement as they have given notice they intend to do, or whether Lexington is entitled to use the intellectual property licensed under the License Agreement for the balance of the term of the License Agreement.

20. Lexington is entitled to an order and judgment declaring that it has not breached the License Agreement and that it is entitled to all of the rights and benefits of the License Agreement, including the right to use the trademarks that are the subject of the License Agreement notwithstanding the notice of intent to terminate the License Agreement issued by the Collection and Timberlake.

SECOND CLAIM FOR RELIEF
(MONIES OWED FOR GOODS PURCHASED)

21. Lexington incorporates by reference the allegations contained in paragraphs 1 through 20 as if fully set forth herein.

22. The Collection has ordered and received goods from Lexington for which it has not made payment. The total amount of the outstanding invoices for purchases made by the Collection from Lexington for goods that were ordered and delivered, yet payment has not been made, is \$145,372.28.

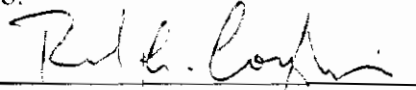
23. Lexington is entitled to payment for the goods purchases, as alleged above, pursuant to N.C. Gen. Stat. § 25-2-209.

PRAYER FOR RELIEF

WHEREFORE, Lexington prays that the Court:

1. Enter an order and judgment declaring that Lexington has not breached the License Agreement, that the License Agreement remains in full force and effect, and that Lexington is entitled to all of the rights bestowed upon it by the License Agreement, including the right to use the trademarks licensed.
2. Enter a judgment in favor of Lexington against The Bob Timberlake Collection, Inc. for failure to pay for goods purchased in the amount of \$145,372.28, plus interest.
3. Provide Lexington a trial by jury as to all matters so triable;
4. Award Lexington its costs and attorneys fees to the extent allowed by law; and
5. Award any and other further relief as the Court may deem just and proper.

This the 18th day of June 2008.



Richard A. Coughlin
N.C. State Bar No. 19894
C. Bailey King, Jr.
N.C. State Bar No. 34043

*Attorneys for Plaintiff Lexington Furniture
Industries, Inc.*

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