

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WISCONSIN

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In re:

GREEN BOX NA GREEN BAY, LLC,  
Debtor.

Case No. 16-24179-beh  
Chapter 11

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**MOTION TO QUASH SUBPOENA DUCES TECUM OR, IN THE ALTERNATIVE,  
FOR PROTECTIVE ORDER**

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Little Rapids Corporation (“LRC”), by its attorneys Godfrey & Kahn, S.C., hereby moves the Court pursuant to Fed. R. Bankr. P. 2004(c) and 9016, incorporating Fed. R. Civ. P. 45(d)(3) for an order quashing a Subpoena Duces Tecum by Wisconsin Economic Development Corporation (“WEDC”) on LRC, directing LRC to produce the material described in the subpoena on July 21, 2017, and to appear, by corporate designee, for a Rule 2004 examination on July 21, 2017 (the “Subpoena”). In the alternative, LRC moves the Court for a protective order, pursuant to Fed. R. Bankr. P. 9016, incorporating Fed. R. Civ. P. 45(d)(1), limiting the size and timing of the requested discovery. The grounds for this Motion are as follows:

1. On July 19, 2017, WEDC filed the *Wisconsin Economic Development Corporation’s Motion for Order Compelling Examination of Little Rapids Corporation Under Rule 2004* [Dkt. # 276] (the “Motion for 2004 Exam”).

2. The Motion for 2004 Exam sought to examine LRC “on July 7, 2017 at 9:00 a.m. Central, or such other date as may be mutually agreed to between counsel for WEDC and Little

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Rapids at the Dodge County Justice Facility, Second Floor, Judicial Reception Area, 210 West Center Street, Juneau, Wisconsin 53039.”

3. The Court made a docket entry on July 19, 2017, addressing the discrepancy in WEDC’s Motion for 2004 Exam that requested an examination date in the past - July 7, 2017 - and directed WEDC to file an amended motion.

4. On July 19, 2017, WEDC filed the *Wisconsin Economic Development Corporation’s Amended Motion for Order Compelling Examination of Little Rapids Corporation Under Rule 2004* [Dkt. # 278] (the “Amended Motion for 2004 Exam”), identical in all respects to the Motion for 2004 Exam, except now requesting examination of LRC on July 21, 2017 at 9:00 a.m.

5. Within two hours of WEDC filing the Amended Motion for 2004 Exam, the Court entered an *Order Granting Wisconsin Economic Development Corporation’s Motion for Rule 2004 Examination of Little Rapids Corporation* [Dkt. # 280] (the “Order”).

6. Counsel for LRC spoke with counsel for WEDC in an attempt to resolve the requested areas of inquiry or to reschedule the Rule 2004 examination, but WEDC refused. Counsel for LRC believes—but has been unable to confirm--that WEDC served LRC with the Subpoena on July 20, 2017.

7. The Amended Motion for 2004 Exam, Order, and Subpoena provide LRC with less than 48 hours’ notice to appear for the July 21, 2017 9:00 a.m. Rule 2004 examination.

8. The bases for this Motion to Quash the Subpoena are:

- a. Pursuant to Fed. R. Civ. P. 45(d)(3)(i), the Subpoena fails to allow reasonable time for LRC’s compliance;

- b. Pursuant to Fed. R. Civ. P. 45(d)(3)(ii), the location of the Rule 2004 examination is more than 100 miles from LRC's place of employment in Green Bay, WI;
- c. Pursuant to Fed. R. Civ. P. 45(d)(3)(iii), the Subpoena may require disclosure of privileged or other protected matters to which no exception or waiver applies; and
- d. Pursuant to Fed. R. Civ. P. 45(d)(3)(iv), the Subpoena subjects LRC to undue burden.

9. WEDC's Amended Motion for 2004 Exam asserts that the examination of LRC must occur prior to a hearing scheduled before this Court on July 24, 2017. However, WEDC does not explain why it waited until July 19, 2017 to file the Motion for 2004 Exam or the Amended Motion for 2004 Exam, when the hearing was originally set by the Court on July 11, 2017. Counsel for LRC proposed attending the hearing on July 24, 2017 to stipulate to facts upon which testimony is being sought by the Subpoena.

10. Moreover, on January 18, 2017, LRC and the Debtor filed a *Notice of Motion to Approve Stipulation* [Dkt. # 199], providing notice to WEDC through its counsel of a proposed stipulation between LRC and the Debtor (the "Stipulation"). A copy of the Stipulation was attached to the motion.

11. The Stipulation provided, among other things, for the Debtor to vacate warehouse premises owned by LRC, by removing all of its assets located in the warehouse (the "Collateral") on or before March 31, 2017. Pursuant to the Stipulation, the Debtor agreed that if the Debtor's Plan of Reorganization was not confirmed by February 15, 2017 or if the Debtor defaults on its obligations outlined in the Stipulation, the following terms would apply:

- a. The Collateral will be deemed surrendered to the secured parties with the senior security interests in such Collateral (the “Secured Collateral”);
- b. LRC shall provide notice to the Secured Creditors that the Collateral must be removed from the warehouse Premises within 15 days of the delivery of such notice (the “Removal Date”); and
- c. All Collateral not removed by the Secured Creditors by the Removal Date will be deemed abandoned by such Secured Creditors and may be removed or destroyed by LRC without further notice to any party for any reason.

12. A list of secured creditors was attached to the Stipulation as Exhibit A. Absent an objection to the Stipulation, the Exhibit was to be used to notify secured creditors of the Removal Date. WEDC was not on the list of secured creditors with an interest in the Collateral. LRC complied with the notice requirements approved by the court for the removal of the equipment.

13. Despite notice of the Stipulation, WEDC failed to respond or to object to the Stipulation, and did not respond to LRC’s notice regarding timely removal of the equipment. As a result of WEDC’s failures and pursuant to the Court’s Order approving the Stipulation, all remaining equipment at the LRC warehouse is deemed abandoned.

14. At the request of WEDC, LRC permitted WEDC to survey the equipment in the warehouse that had been abandoned.

15. Now, WEDC claims that it has an interest in certain of the abandoned equipment, and in the Amended Motion for Rule 2004 Exam, seeks documents and information from LRC regarding its contract for the removal and salvage of the abandoned equipment.

16. A Rule 2004 examination can “relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor’s estate, or to the debtor’s right to a discharge.” Because the equipment has already been abandoned, it no longer constitutes “property of the Debtor” and is no longer part of the Debtor’s estate. Accordingly, WEDC cannot examine LRC on these matters outside the scope of Rule 2004.

17. LRC respectfully requests that the Court quash the Subpoena or, in the alternative, require WEDC to show a substantial need for the testimony or material that cannot otherwise be met without the undue hardship on LRC.

18. LRC further requests that it be reasonably compensated by WEDC.

Dated: July 20, 2017.

By:                     /s/ Erin A. West

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