

ABILITY INSURANCE COMPANY  
MARCO ARAUJO  
CROSSGATE PARTNERS, LLC,  
QUOTIENT PARTNERS, LLC,  
CLIFFTON EQUITIES, INC., and  
WISCONSIN ECONOMIC DEVELOPMENT CORPORATION

FILED  
JAN 29 2016  
CLERK OF COURTS  
BROWN COUNTY, WI

Plaintiffs,

v.

Case No. 15-CV-769

GREEN BOX NA GREEN BAY, LLC,

Defendant.

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**PLAINTIFF CLIFFTON EQUITIES, INC.'S NOTICE OF MOTION, MOTION AND  
MEMORANDUM OF LAW IN SUPPORT OF MOTION TO HOLD DEFENDANT  
GREEN BOX NA GREEN BAY, LLC IN CONTEMPT**

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**NOTICE OF MOTION**

PLEASE TAKE NOTICE that on a date and time to be set by the Court, Plaintiff Cliffton Equities, Inc. ("Cliffton"), by its attorneys, Quarles & Brady LLC, will move the Court, at the Brown County Courthouse, City of Green Bay, Wisconsin, to enter an order holding Defendant Green Box NA Green Bay, LLC ("Green Box") in contempt pursuant to Wis. Stats. Ch. 785.

**MOTION**

NOW COMES, Plaintiff Cliffton, and hereby moves the Court to enter an order holding Defendant Green Box in contempt pursuant to Wis. Stats. Ch. 785 in the above action because Green Box has disobeyed the Order Appointing Receiver, Enjoining creditors from Proceeds Against Green Box NA Green Bay, LLC and Granting Other Relief entered by this Court on June 2, 2015 (the "Motion for Contempt").

This Motion for Contempt further is supported by the following Brief and the Affidavit of Attorney Brittany S. Ogden, filed contemporaneously with this Motion.

**MEMORANDUM OF LAW AND ARGUMENT**

**I. INTRODUCTION**

This Motion for Contempt is centered on Green Box's undisclosed and unpermitted conversion of Cliffton's and the Receivership's collateral by removing it out of state in December, 2015 in disobedience of this Court's Order Appointing the Receiver, Enjoining Creditors from Proceedings Against Green Box NA Green Bay, LLC and Granting Other Relief dated June 2, 2015 (the "Order Appointing Receiver") (Dkt. 23) and contrary to Cliffton's lien and consent.

In 2014, Cliffton lent Green Box funds to purchase two pieces of equipment from Kool Manufacturing Company ("GB Kool Unit, No. 1" and "GB Kool Unit, No. 2," collectively, the

"GB Kool Units."). Green Box used Cliffton's money to purchase these GB Kool Units. In return, Green Box gave Cliffton a security interest in the GB Kool Units which Cliffton perfected by filing a UCC Financing Statement.

Thereafter, Green Box defaulted under the terms of Cliffton's loan and commenced suit against Green Box. Cliffton, among other creditors of Green Box, also filed this Receivership Action to protect their secured interests. The Court appointed a receiver in June, 2015 and enjoined Green Box from transferring or disposing of any of its assets, which includes the GB Kool Units.

In December of 2015, however, Green Box, contrary to the knowledge of the Receiver and Cliffton, cosigned and shipped the GB Kool Unit, No. 2 to a company in North Carolina. By doing this, Green Box disregarded Cliffton's secured interest and disobeyed this Court's Order Appointing Receiver. Cliffton seeks immediate relief to redress the wrongful conduct by Green Box.

## **II. STATEMENT OF FACTS**

### **Green Box's Agreement with Cliffton**

On June 19, 2014, Green Box executed the following documents in favor of Cliffton: (1) an Amended Loan and Investment Agreement (the "Loan Document"); (2) an Amended and Restated Promissory Note (the "Note"); and (3) an Amended and Restated Security Agreement (the "Security Agreement") (collectively, the "Loan Agreement"). (Affidavit of Brittany S. Ogden, "Ogden Aff.", ¶¶ 3, 4, 5; Exs. A, B, C; *see also* Dkt. # 46.<sup>1</sup>) The same day, Cliffton properly perfected its security interest in the GB Kool Units by the filing of UCC Financing

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<sup>1</sup> Dkt. # 46 is Cliffton's Proof of Claim, filed November 12, 2015. Attached to Cliffton's Proof of Claim are most of the operative documents and agreements. Therefore, Cliffton will refer to it for the Court's convenience in reviewing these documents and agreements.

Statement Amendment # 140008162825 (the "Green Box Financing Statement"). (Ogden Aff., ¶ 7; Ex. D; see also Dkt. 46, (POC).)

Under to the Loan Agreement, Cliffton loaned to Green Box \$4,577,944.98 to purchase, in part, Kool Manufacturing Company baled tire and plastic pellet thermal degradation units, otherwise referred to as the GB Kool Units. (Ogden Aff., ¶ 3; Ex. A; *see also* Dkt. 46, (POC).)

The Security Agreement granted Cliffton a continuing security interest and purchase money security interest in and to, the following, among other things:

(i) Any tire or pellet liquefaction thermal degradation units purchased from Kool Manufacturing Company using Loan [as defined in the Loan Agreement] proceeds, together with all parts and accessories hereafter acquired or received by Grantor and including all Proceeds of the foregoing[.]

(Ogden Aff., ¶ 5; Ex. C; see also Dkt. 46, (POC).) The Security Agreement also required Green Box to not remove the above described equipment from Wisconsin without prior written consent of Cliffton. (Ogden Aff., ¶ 5; Ex. C; see also Dkt. 46, (POC).) (Emphasis added.)

The Green Box Financing Statement includes coverage of:

[A]ny tire or pellet liquefaction thermal degradation units purchased from Kool Manufacturing Company using Loan proceeds, together with all parts and accessories now and hereafter acquired or received by [Green Box], including, without limitation, units with the following serial numbers: 8TKM0630NG03 and 8TKM111414NGO4.

(Ogden Aff., ¶ 7; Ex. D; see also Dkt. 46, (POC).)

#### **Green Box Purchased GB Kool Units Using Cliffton's Money**

On June 2, 2014, Green Box, subject to the Loan Agreement's terms, purchased from Kool Manufacturing Company the GB Kool Unit, No. 1 and GB Kool Unit, No. 2, with serial number 8TKM0630NG03 and 8TKM111414NGO4. (Ogden Aff., ¶¶ 6, 8, 10, ; Exs. E, G.)

On November 13, 2014, Cliffton wired \$300,000.00 for the deposit on the GB Kool Unit, No. 2 and emailed Ron Van Den Heuvel, owner of Green Box, to confirm the wiring of the

deposit. (Ogden Aff., ¶ -; Ex. -.) And Mr. Van den Heuvel confirmed its receipt. (Ogden Aff., ¶ 8; Ex. E.)

As required by the Loan Agreement, Green Box insured both GB Kool Units and provided proof of insurance to Cliffton. (Ogden Aff., ¶ 9; Ex. F.)

Green Box further confirmed the arrival of the GB Kool Units with Cliffton and provided photos of the GB Kool Units. (Ogden Aff., ¶ 10; Ex. G.)

### **Ability's Foreclosure Against Green Box**

On March 24, 2015, Ability Insurance Company ("Ability") brought a foreclosure action against Green Box as Brown County Circuit Court Case No. 15CV474 (the "Ability Foreclosure Action").<sup>2</sup> (Ogden Aff., ¶ 13.) Ability named Cliffton as a defendant. (*Id.*)

In the Ability Foreclosure Action, Cliffton filed a Cross-Claim and Third-Party Complaint against Green Box (the "Cliffton Complaint"). (Ogden Aff., ¶ 14; Ex. J.) In the Cliffton Complaint, Cliffton alleges that Green Box defaulted on the terms of the Loan Documents and demanded the return of its collateral. (*Id.*) In its Answer to Cliffton's Complaint, Green Box admitted to the Loan Agreement's terms. (Ogden Aff., ¶ 15; Ex. K.)

On May 15, 2015, counsel for Cliffton, along with counsel for Ability, inspected their collateral, including, but not limited to, the GB Kool Units. (Ogden Aff., ¶ 16.) Mr. Van Den Heuvel admitted that the GB Kool Units were purchased with the Loan funds provided by Cliffton and that the GB Kool Units still were on the premises. (Ogden Aff., ¶ 16.)

### **Court Appoints Receiver for Green Box**

On May 20, 2015, Plaintiffs filed the current action. (Dkt. 1.) At the same time, Plaintiffs filed a Motion for Appointment of a Wis. Stats. Chapter 128 Receiver. (Dkt. 4.) On

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<sup>2</sup> The Ability Foreclosure Action involves an agreement entered into between Ability and Green Box and is not the same as the Loan Agreement in this case.

June 2, 2015, the Court entered an Order Appointing Receiver, Enjoining Creditors from Proceedings Against Green Box NA Green Bay, LLC and Granting Other Relief (the "Order Appointing Receiver"). (Dkt. 23.)

The Order Appointing Receiver:

- Appointed Michael S. Polsky (the "Receiver") as the Receiver of Green Box pursuant to Chapter 128 of the Wisconsin Statutes;
- Enjoined and restrained Green Box, its members, agents, partners, officers and employees "from transferring, encumbering or otherwise disposing of any assets of Green Box;"
- Required Green Box to file a verified list of the assets and liabilities of Green Box; and
- Stayed the Ability Foreclosure Action. (Dkt. 23, ¶¶ 4, 6,.)

After appointing the Receiver, the Court also set a deadline for Plaintiffs to file proofs of claims. (Dkt. 26.) On November 12, 2015, Clifton filed a Proof of Claim in this action for \$3,973,014.75 (the "Clifton Proof of Claim"). (Dkt. 46.) The Clifton Proof of Claim included its claim to the GB Kool Units, along with the Loan Agreement documents. (Ogden Aff., ¶ 2; Dkt. 46.) Green Box was provided a copy of the Clifton Proof of Claim. (Ogden Aff., ¶ 2.)

### **Contempt by Green Box**

On June 24, 2015, the Receiver filed a Motion to Compel Green Box to Turn Over Business Records. (Dkt. 27.) On July 20, 2015, Judge Walsh held a hearing on the Receiver's Motion to Compel. (Dkt. 31.) The Court ordered Green Box to file with the Court certain documentation on or before July 30, 2015. (Dkt. 32.) On July 31, 2015, Green Box filed an "Inventory of Assets & Liabilities" with this Court (the "Inventory"). (Ogden Aff., ¶ -.) In the Inventory, Green Box lists both the GB Kool Unit, No. 1 and the BG Kool Unit, No. 2. (Ogden Aff., ¶ -.)

On November 2, 2015, the Receiver filed a Motion for Contempt and Sanctions and for Authority to Enter Into Stipulation (the "Receiver's Motion for Contempt"). (Dkt. 42.) The Court scheduled a hearing on the Receiver's Motion for Contempt for November 11, 2015. (Dkt. 47.) However, Judge Thomas J. Walsh recused himself from this case, and the hearing was adjourned. (Dkt. 47, 58.)

On November 20, 2015, after multiple demands by the Receiver, Green Box confirmed the location of the GB Kool Units. (Ogden Aff., ¶ 18; Ex. M.) Green Box responded stating that: (1) GB Kool Unit, No. 1 is located at 2107 American Blvd., De Pere, WI; and (2) that GB Kool Unit, No. 2 was located at 500 Fortune Ave., De Pere, WI. (*Id.*)

On December 1, 2015, the Court assigned Judge Tammy Jo Hock. (Dkt. 60.)

The Court scheduled a hearing on the Receiver's Motion for Contempt for January 8, 2016. (Dkt. 62.)

On January 7, 2016, on the eve of the scheduled hearing on the Receiver's Motion for Contempt, Green Box provided the Receiver with a Statement as to GB Kool Units which:

- Stated that the GB Kool Unit, No. 1 is owned by Green Box and is located in De Pere, Wisconsin;
- Stated that the GB Unit, No. 2 is owned by Green Box NA Detroit and GDARM, LLC and is located in Easley, North Carolina;
- Stated that no funds from Green Box were used to purchase GB Kool Unit, No. 2; and
- Provided the Receiver with an incomplete contract showing that Green Box was a co-purchaser of the GB Kool Unit, No. 2.<sup>3</sup> (Ogden Aff., ¶ 20; Ex. O.)

On January 8, 2016, the date scheduled for the hearing on the Receiver's Motion for Contempt, Judge Tammy Jo Hock recused herself from this case. (Dkt. 60, 63.)

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<sup>3</sup> In the contract that Green Box provided to the Receiver, Green Box did not include the Amendment to Original Contract (page 7) which lists that contract as being entered into by Kool Manufacturing and Green Box. (Ogden Aff., ¶ -.)

After the January 8, 2016 hearing, Cliffon against inspected the premises and learned that, on or about December 3, 2015, Green Box removed the GB Kool Unit, No. 2 from 500 Fortune Ave. and cosigned and arranged for its shipment to Easley, North Carolina. (Ogden Aff., ¶¶ 23, 24, Exs. Q, R.) This information, and supporting documentation, was provided by the plant manager for a green box related entity that frequents the 500 Fortune Ave. location. (*Id.*)

On January 15, 2016, the present case was reassigned to Judge John P. Zakowski. (Dkt. 64.)

Cliffon has asked Green Box to return the GB Kool Unit, No. 2 and provide all information regarding its transfer. To date, however, Green Box has provided no response. (Ogden Aff., ¶ 25, Ex. S.)

### **III. LEGAL STANDARD**

Wis. Stat § 785.01(1)(b) defines "contempt of court" as "[d]isobedience, resistance or obstruction of the authority, process or order of a court. A party's unwillingness to obey a court order "is the very definition of contempt." *Ash Park, LLC v. Alexander & Bishop, Ltd.*, 2010 WI 44, ¶ 78, 324 Wis. 2d 703, 783 N.W.2d 294. Whether conduct constitutes contempt is a decision committed to the circuit court's discretion. *Brown-Doney v. Oldenhoff*, 2014 WI App 90, ¶ 4, 356 Wis. 2d 330, 855 N.W.2d 494.

The statute contemplates two types of sanctions for contempt: remedial and punitive. Wis. Stat § 785.01(2) and (3). Remedial sanctions for contempt may include "[p]ayment of a sum of money sufficient to compensate a party for a loss or injury suffered by the party as the result of a contempt of court," and "[a]n order designed to ensure compliance with a prior order of the court." Wis. Stat §§ 785.04(1)(a), (d).



#### **IV. ARGUMENT**

When a receiver has been appointed by the court, “his possession is the possession of the court, for the benefit of the parties to the suit and all concerned, and cannot be disturbed without the leave of the court; and that if any persons without leave, intentionally interferes with such possession, he necessarily commits a contempt of court, and is liable to punishments therefore.” *Liberte Capital Group, LLC v. Capwill*, 462 F.3d 543, 552 (6th Cir. 2003) (citing *In re Tyler*, 149 U.S. 164, 182 (1893)). Green Box disobeyed this Court's Order Appointing Receiver because: (1) the Order Appointing Receiver explicitly precludes Green Box from transferring any assets of Green Box; and (2) the Kool Units are assets of Green Box; and (3) Green Box converted the GB Kool Unit, No. 2 without Clifton's or the Receiver's knowledge or permission. Therefore, Green Box is in contempt of court.

##### **A. The Order Appointing Receiver Explicitly Orders Green Box from Transferring Assets**

The Order Appointing Receiver is valid and unequivocally enjoins Green Box "from transferring, encumbering or otherwise disposing of any assets of Green Box." (Dkt. 23.) This language provides a reasonable understanding of the enjoined conduct. Green Box received a copy of the Order Appointing Receiver and fully was aware of its contents. In fact, communications about this occurred regularly. (Ogden Aff., ¶ -.)

##### **B. The BG Kool Units are Assets of Green Box**

The Kool Units are assets<sup>4</sup> of Green Box. The Loan Agreement, Note, and Security Agreement, and Green Box's acknowledgements prove this. Green Box entered into the Loan

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<sup>4</sup> Black's Law Dictionary (10th ed. 2014), defines "asset" as:

Document and the Note with Cliffton to fund the purchase of the GB Kool Units. (Ogden Aff., ¶ -.) Green Box then signed the Security Agreement granting Cliffton a continuing security interest and purchase money security interest in and to the GB Kool Units. (Ogden Aff., ¶ -.) Using the Loan funds, Green Box purchased the GB Kool Units. (Ogden Aff., ¶ -.) Cliffton's properly perfected its security interest in the GB Kool Units. (Ogden Aff., ¶ -.)

**C. Green Box Converted \$650,000.00 in Assets of Cliffton and/or the Estate**

Green Box disobeyed the Order Appointing Receiver when it removed and shipped the GB Kool Unit, No. 2 to Advanced Resource Materials in Easley, North Carolina. The Order Appointing Receiver explicitly enjoins Green Box from transferring, encumbering, or disposing of any assets, including the GB Kool Unit, No. 2. The GB Kool Unit, No. 2 is worth more than \$650,000.00. Green Box's actions constitute the transfer, encumbrance, and disposal of the GB Kool Unit, No. 2, contrary to the permission of the Receiver and Cliffton. Moreover, the Loan Agreement also specifically provided that Green Box could not remove Cliffton's collateral without Cliffton's prior written consent.

**V. CONCLUSION**

For the reasons stated above, Cliffton requests that the Court does the following:

1. Find Green Box in contempt of the Court's Order Appointing Receiver, Enjoining Creditors from Proceedings Against Green Box NA Green Bay, LLC and Granting Other Relief (the "Order Appointing Receiver") (Dkt. 23);
2. Order Green Box, any of its agents, or assigns, to immediately return the GB Kool Unit, No. 2 to the Receiver's possession;

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1. An item that is owned and has value. 2. (*pl.*)The entries on a balance sheet showing the items of property owned, including cash, inventory, equipment, real estate, accounts receivable, and goodwill. 3. (*pl.*)All the property of a person (esp. a bankrupt or deceased person) available for paying debts or for distribution.

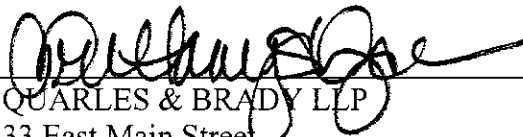
3. Order Green Box immediately to provide the Receiver with all proceeds obtained from the conversion and/or sale of the GB Kool Unit, No. 2;

4. Order Green Box to identify and produce all information and documents related to the transfer of the GB Kool Unit, No. 2, including the exact location of the BG Kool Unit, No. 2; all parties involved in the transaction; all sources of payment; and all other documents related to the transfer; and

5. Require Green Box to post an immediate bond for the value of the GB Kool Unit, No. 2 (at least \$650,000.00) until it is satisfactorily returned to the Receiver's possession in Wisconsin.

Dated this 21<sup>st</sup> day of January, 2016.

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