

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PRIME ALLIANCE BANK, INC. and
SERTANT CAPITAL, LLC,

Plaintiffs,

v.

THE GREAT LAKES TISSUE
COMPANY,

Defendant.

Case No. 23-10564

Honorable Laurie J. Michelson

**ORDER DENYING PLAINTIFFS' EX PARTE MOTION FOR A
TEMPORARY RESTRAINING ORDER AND SCHEDULING ORDER
FOR MOTION FOR POSSESSION PENDING FINAL JUDGEMENT**

Sertant Capital, LLC entered into a Master Lease Agreement with Great Lakes Tissue Company under which GLT agreed to lease certain equipment and personal property from Sertant for about \$68,000 per month. (ECF No. 1, PageID.2–3, 5.) Sertant assigned certain rights under the lease to Prime Alliance Bank, Inc., but it retained others. (*Id.* at PageID.7.) According to Sertant and PAB, GLT materially breached the lease agreement and defaulted under the lease by, among other things, failing to pay the monthly rent due in January and February 2023, changing ownership control and/or management without Sertant or PAB's prior written consent, and refusing to permit Sertant or PAB to inspect the leased equipment. (*Id.* at PageID.7–8.) So Sertant and PAB sued GLC for breach of contract, conversion, and claim and delivery. (*Id.* at PageID.2, 14.)

To protect their equipment and property more expeditiously, Sertant and PAB also filed a verified motion for possession pending final judgment, and requested that the Court enter a “Restraining Order and Order to Appear” against GLT pursuant to Mich. Ct. R. § 3.105(E)(2). (ECF No. 4) Sertant and PAB are seeking an ex parte order which, if granted, would restrain GLT from “damaging, destroying, concealing, disposing of, or using so as to substantially impair its value,” the equipment Plaintiffs currently have leased to GLT pending a hearing on their motion for possession. (*Id.* at PageID.112.) Plaintiffs say that the temporary restraining order is appropriate because it is only asking for what GLT is already obligated to do under the lease. (*Id.* at PageID.129.) Additionally, Plaintiffs allege that they will face irreparable harm if the equipment is damaged or destroyed pending hearing on their motion for possession. *Id.* Plaintiffs note that GLT has refused to grant them access to inspect the equipment. They believe this is occurring because GLT is housing the equipment in a dilapidated building and the equipment is in disrepair. *Id.* If the equipment is further damaged, destroyed, or disposed of, say the Plaintiffs, they will likely be left without any remedy since GLT’s business operations are in turmoil and GLT already owes over \$2.2 million dollars to Plaintiffs. *Id.*

Federal Rule of Civil Procedure 64 provides, in part, “every remedy is available that, under the law of the state where the court is located, provides for seizing a person or property to secure satisfaction of the potential judgment.” One such Michigan remedy for seizing property is an action for “claim and delivery.” The relevant Michigan Court Rule provides in part:

(1) After the complaint is filed, the plaintiff may file a verified motion requesting possession pending final judgment. The motion must

(a) describe the property to be seized, and

(b) state sufficient facts to show that the property described will be damaged, destroyed, concealed, disposed of, or used so as to substantially impair its value, before final judgment unless the property is taken into custody by court order.

(2) After a motion for possession pending final judgment is filed, the court, if good cause is shown, must order the defendant to

(a) refrain from damaging, destroying, concealing, disposing of, or using so as to substantially impair its value, the property until further order of the court; and

(b) appear before the court at a specified time to answer the motion.

Mich. Ct. R. § 3.105(E)(1), (2).

But pursuant to Federal Rule of Civil Procedure 1, the Federal Rules of Civil Procedure must “govern the procedure in all civil actions and proceedings in the United States district courts.” Therefore, Plaintiffs’ “request for the issuance of an ex parte injunctive order will be construed as a motion for the issuance of a temporary restraining order under Fed. R. Civ. P. 65(b).” *JP Morgan Chase Bank, N.A. v. Superior Carpet Supplies, Inc.*, No. 09-12134, 2009 WL 10720329, at *2 (E.D. Mich. June 19, 2009) (citing *Glacier Sales and Engineering, LLC v. Eagle Plastics Corp.*, No. 07-13806, 2007 WL 2694402, at *1 (E.D. Mich. Sept. 11, 2007) (request under M.C.R. § 3.105 to be analyzed according to temporary restraining order standard); *Sutton Leasing, Inc. v. Veterans Rideshare, Inc.*, 20-10815, 2020 WL 1531770, at *3 (E.D. Mich. Mar. 31, 2020) (same); *Wells Fargo Equip. Finance, Inc. v. Eagle 1 Tree*

Serv., LLC, No. 08-13142, 2008 U.S. Dist. LEXIS 70813 (E.D. Mich. Sept. 18, 2008) (same).

But Plaintiffs have not met the requirements of Rule 65(b). That Rule provides that a court may issue a temporary restraining order without notice to the adverse party only if: “(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and (B) the movant’s attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.” But Plaintiffs’ counsel has provided neither the relevant facts nor the required certification. (*See generally* ECF No. 4.) Indeed, Plaintiffs’ counsel failed to provide any written certification about efforts made to give notice to GLT and reasons supporting the claim that notice should not be required here.

Accordingly, the Court DENIES Plaintiffs’ ex parte motion for a temporary restraining order. (ECF No.4, PageID.111–114.)

Sertant and PAB must immediately serve GLT or, if possible, refile a motion for a temporary restraining order that complies with all requirements of Federal Rule of Civil Procedure 65(b). If the former, Sertant and PAB should notify the Court once GLT has been given notice of Plaintiffs’ motion for immediate possession pending final judgment and for a temporary restraining order.

The Court shall hold a hearing regarding Plaintiffs’ verified motion for immediate possession pending final judgment on April 17, 2023, at 2:00 p.m. The Court will reserve ruling on whether Plaintiffs are entitled to possession of the

property pending a final judgment until such time as GLT provides a response to Plaintiffs' motion and the Court has held a full hearing allowing opportunity to be heard on all sides.

IT IS SO ORDERED.

Dated: March 18, 2023

s/Laurie J. Michelson
LAURIE J. MICHELSON
UNITED STATES DISTRICT JUDGE