

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION**

PRIME ALLIANCE BANK, INC.,
a Utah banking corporation;
and SERTANT CAPITAL, LLC,
a Delaware limited liability company,

Case No. 1:23-cv-10564-LJM-PTM
Hon. Laurie J. Michelson

Plaintiffs

v

THE GREAT LAKES TISSUE COMPANY,
a Michigan corporation,

Defendant.

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JOINT CASE MANAGEMENT REPORT/DISCOVERY PLAN

Plaintiffs, Prime Alliance Bank, Inc., and Sertant Capital, LLC (“Sertant”) (collectively, “Plaintiffs”) and Defendant, The Great Lakes Tissue Company (“Defendant”) (collectively, the “Parties”) submit their Joint Case Management Report/Discovery Plan as follows:

1. **Related Cases.** No related cases are pending in the U.S. District Court for the Eastern District of Michigan. After this case was filed, Great Lakes Tissue Group, LLC, a Nevada limited liability company (“GLTG”), filed a lawsuit entitled *Great Lake Tissue Group, LLC v. Patriot Advanced Environmental Technologies, LLC et al.*, Wisconsin Circuit Court, Case No. 2023-CV000652, that may contain claims that relate to this case, as Plaintiffs’ Complaint may be amended. The basis for the related

2. **Jurisdiction.** This Court has subject matter jurisdiction under 28 U.S.C. § 1332 over Plaintiffs’ claims because the matter in controversy is between citizens of different States, and the amount in controversy exceeds \$75,000 exclusive of costs, interests, and fees. Defendant is a Michigan corporation whose principal place of business is Michigan. Prime Alliance Bank, Inc. is a Utah corporation whose principal place of business is in Utah. Sertant is a Delaware limited liability company with its principal place of business in California. Its members are citizens of California.

3. **Venue.** Venue is proper in this judicial district under 28 U.S.C. § 1391 because Defendant’s principal place of business is located in Cheboygan, Michigan, and the events or omissions giving rise to this action occurred, in whole or in part, in the Eastern District of Michigan.

4. **Factual Summary.**

A. Plaintiffs’ Factual Summary

On October 13, 2022, Sertant, as lessor, and Defendant, as lessee, entered into a Master Lease Agreement (“Master Lease”) and a Lease Schedule No. 1 (“Schedule No. 1”) (collectively, “Lease”) under which Defendant agreed to lease from Sertant machinery, equipment and other personal property such as vertical drill presses and core machines (collectively, “Equipment”). Sertant subsequently assigned a portion of the stream of payments under the Lease to Prime Alliance Bank, Inc. while retaining certain other interests not specifically assigned. Under the Lease, Defendant agreed, among other things, (i) to maintain the Equipment in good operating order, condition, repair, and appearance, (ii) to protect the Equipment from deterioration other than normal wear and tear, (iii) to permit

Sertant the right to inspect the Equipment, (iv) to turn over possession of Equipment upon an Event of Default, (v) that all Equipment in the Lease existed with Lessor having free and clear ownership thereof; (vi) to replace any Equipment that was lost or otherwise missing; and (vii) not undergo a change in control in the ownership of Lessee or transfer possession of the Equipment to any third party without the prior written consent of Lessor.

Defendant agreed under the Lease to pay \$68,082.30 per month in rent to Sertant for four years commencing October 1, 2022. On January 4, 2023, Defendant paid \$68,082.30 to Plaintiffs, which was returned due to insufficient funds. On January 10, 2023, Defendant tried a second time to pay \$68,082.30 to Plaintiffs, which was returned due to insufficient funds. Plaintiffs have not received any payments from Defendant since its last payment on December 2, 2022.

Before January 13, 2023, GLTG was Defendant's sole shareholder, and Kip Boie served as Defendant's President and Chief Executive Officer. On January 12, 2023, GLTG entered into a Merger Agreement with Patriot Advanced Environmental Technologies, LLC, a Wisconsin limited liability company ("PAET"). Under the Merger Agreement, GLTG conveyed all of Defendant's stock to PAET in exchange for \$1.5 million, a \$15 million secured note, and ten percent of PAET's ownership in Defendant. On January 13, 2023, the Merger Agreement closed, with PAET purportedly assuming control and management of Defendant effective January 20, 2023. All of the preceding events occurred without Plaintiffs' prior knowledge or consent.

On January 20, 2023, PAET appointed Jeffrey W. Prange as Defendant's President and Chief Executive Officer without Plaintiffs' prior knowledge or consent.

On February 3, 2023, Plaintiffs notified Defendant that Events of Default occurred and elected to terminate and accelerate the Lease, thereby declaring the obligations under the Lease immediately due and payable. Plaintiffs demanded payment of \$2,271,354.51 as of February 3, 2023, plus late fees, attorney fees, and costs. Plaintiffs also demanded that Defendant surrender possession of the Equipment by February 10, 2023. Defendant failed to comply with these demands.

After February 10, 2023, Plaintiffs demanded to inspect the Equipment to no avail.

On March 10, 2023, Plaintiffs filed this action against Defendant, claiming that Defendant breached the Lease and requesting possession of the Equipment.

In March or April 2023, after Plaintiffs filed suit, Defendant transferred *all* of its assets to Tissue Depot, Inc., a Wisconsin corporation that conducts business under the name “Tissue Depot. “These assets included the Equipment and Defendant’s employees, goodwill, lease rights, operations, customers, intellectual property, and environmental permits. According to Defendant’s 30(b)(6) representative (Donald Swenson), the value of the environmental permits could be worth as much as \$21 million. Defendant transferred these assets to Tissue Depot Inc. intending to hinder, delay and defraud Defendant’s creditors. Specifically, Defendant transferred its assets to Tissue Depot Inc. because Defendant/PAET’s management viewed Defendant as a “dirty corporation” because it had significant debt. Defendant was insolvent when its assets were transferred to Tissue Depot Inc. or became insolvent due to that transfer. Before the transfer, Defendant failed to pay its debts in the ordinary course of business when due, or its assets were less than its liabilities. Defendant failed to pay rent to Plaintiffs from December 2, 2022, to the present. After the transfer, Defendant was left with no assets, employees, or operations. Over the past few months, multiple creditors, such as D-K Trading Corporation, Inc., Capytal.com, Joseph Enos, and others, filed collection actions against Defendant. Defendants received almost nothing in return from Tissue Depot, Inc. for transferring the assets. Based on deposition testimony, the only consideration that Tissue Depot, Inc. gave to Defendant was the assumption of certain debt owed by Defendant to employees, which was far less than the value of the transferred assets.

B. Defendant’s Summary

Defendant submits that this is not a case about a “true lease” of equipment nor is it case about collateral. That story is a fiction and those issues are red-herrings. That is because all parties are know that substantially all of the alleged “equipment” that Sertant now asserts that it is “leasing” never existed at all. A third-party to this lawsuit, Kip Boie, sold or disposed of the equipment before ever signing the “lease” with Sertant.

Kip Boie is a former officer of Great Lakes Tissue Company. Kip Boie sold or disposed all or nearly all of GLTC's assets (sometimes more than once) and then stole the proceeds from those sales, deposited the proceeds in undisclosed accounts, and distributed the proceeds to himself and his co-conspirators. After that, he fraudulently sold what remained of GLTC to PAET, hiding the fact that he had already sold off all of GLTC's assets.

Both Sertant and GLTC were victims of Boie's wrong-doing and both parties have claims against him. For the purposes of this case, there are two questions that must be resolved:

First, did Boie have authority to bind GLTC to the agreements that Sertant seeks to enforce? As a *per se* matter of law, Boie did not have express authority to undertake a scheme of fraud and embezzlement against the company. Thus, to prevail Sertant must show that he had apparent authority—*i.e.*, that Sertant under the circumstances reasonably believed that Boie had authority to enter the transactions at issue. GLTC submits that to the extent that Sertant believed that Boie had authority this belief was not reasonable. Indeed, minimal customary due diligence would have revealed that not only did Boie not have authority to enter the transactions, the subject equipment did not even exist.

Second, even if Boie had authority to enter the transactions, does the lease fail for frustration of purpose? To be clear, both parties now know that the contract at issue purports to lease equipment to GLTC that Sertant never owned because that equipment never existed. GLTC submits that this is a classic example of frustration of purpose and the contract fails as a matter of law. It was always impossible for Sertant to live up to its end of the bargain.

Although Sertant has no contract claim, Sertant likely has equitable claims that would entitle Sertant to the return of its money. The question, in equity, is from which party? GLITCH submits that Sertant's equitable claims are properly addressed to the party that received the proceeds. GLTC, however, cannot return the proceeds because GLTC never received the proceeds. What is more, Sertant is not entirely blameless. Sertant conducted no due diligence to even confirm the existence of the equipment. Had it done so, neither party would now be before the Court.

5. **Legal Issues.** Defendant admits that Kip Boie signed the Lease purporting to act as Defendant's President and CEO, a change in Defendant's ownership and management occurred in January 2023 without Plaintiffs' prior knowledge or consent, and Defendant has not made any payments to Plaintiffs since December 2, 2022. However, Defendant denies that Plaintiffs are entitled to possession because (1) the equipment does not exist; (2) the lease fails for the frustration of purpose; or the City of Cheboygan or INB, N.A., a national banking association, may have a superior security interest in the Equipment. Plaintiffs reject this claim. They inspected the Equipment in April 2023. While Defendant disposed of some Equipment in or before April 2023, the vast majority of Equipment exists and was wrongfully transferred by Defendant to Tissue Depot, Inc., without Plaintiffs' authorization, knowledge, or consent. Kip Boie certainly had the authority to sign the Lease. He was Defendant's President and Chief Executive Officer. He was a director and the manager of Defendant's sole shareholder. Moreover, a corporate resolution was issued authorizing Mr. Boie to sign the Lease. Defendant also contends that Kip Boie's former director and officer may have fraudulently transferred assets from Defendant to himself or entities he controlled (Trout Enterprises, LLC) or to other third parties (i.e., one or more entities owned by Rosemarie Capin). Plaintiffs are investigating that contention. However, even if true, that contention does not bar Plaintiffs' claims in this case.

6. **Amendment of Pleadings.** Plaintiffs anticipate filing a motion for leave to amend their Complaint to add new claims and parties to address the information discovered. These new claims include fraudulent transfer claims against Tissue Depot, Inc. and other parties involved in the unauthorized transfer and conversion of the Equipment. Defendant does not oppose the amendment of the Complaint. The Parties request that this Court enter an order permitting Plaintiffs to file an amended complaint after taking Kip Boie's deposition. Defendant may assert cross-claims against Kip Boie.

7. Discovery.

A. Summary of Discovery that the Parties Intend to Pursue, Including Expert Witnesses.

Per this Court's prior order, the parties already commenced discovery. Plaintiffs served written discovery upon Defendants. Plaintiffs conducted the depositions of Kenneth Schleben (Tissue Depot, Inc.'s President) and Donald Swenson (chairman of PAET and Defendant) under 30(b)(6) of the Federal Rules of Civil Procedure. Plaintiffs also served a subpoena upon Kip Boie and GLTG. Plaintiffs are working with Mr. Boie's counsel to schedule his deposition within the next few weeks. Plaintiffs may also need to conduct the depositions of individuals or entities that received transfers from Defendant or consulted or directed that the fraudulent transfers occur. Plaintiffs may need to conduct the depositions or subpoena documentation from the City of Cheboygan, INB, N.A., and Thomas Homco (or his entities) to the extent necessary to address any lien priority issues. Plaintiffs may retain two expert witnesses, a valuation expert concerning the Equipment and a damages/financial expert.

Defendant may depose Kip Boie, Rosemarie Capin (who owns an entity that received funds from Defendant), and the agents or representatives of Plaintiffs. It will serve written discovery upon Plaintiffs.

B. Proportionality of Discovery.

Plaintiffs contend that this case can be ultimately resolved on summary judgment. However, the Parties' planned discovery is proportional, especially if summary judgment is not granted. A proportionality analysis under Fed. R. Civ. P. 26(b)(1) requires consideration of the following factors: (a) the importance of the issues at stake in the action, (b) the amount in controversy, (c) the parties' relative access to relevant information, (d) the parties' resources, (e) the importance of the discovery in resolving the issues, and (f) whether the burden or expense of the proposed discovery outweighs its likely benefit. *A&W X-Press, Inc. v. FCA US LLC*, No. 2:21-cv-12209, 2022 U.S. Dist. LEXIS 191709, at *12 (E.D. Mich. October 20, 2022). The issues are important to the parties. The amount in controversy is

\$2,271,354.51 as of February 3, 2023, plus the fair market value of the Equipment, late fees, attorney fees, and costs. Neither Plaintiffs nor Defendants' current management has complete access to conduct that arose before January 20, 2023. The proposed discovery focuses on Defendants' defenses and fraudulent transfer claims; thus, the benefit outweighs the expense of the discovery.

C. Key Witnesses.

Plaintiff's first three key witnesses are (1) Kenneth Schleben; (2) Donald Swenson; and (3) Kip Boie.

Defendant's first three key witnesses are (1) Kip Boie; (2) Rosemarie Capin; and (3) a to be determined representative of Sertant Capital.

D. Request for Documents.

Defendant produced documents to Plaintiffs in response to written discovery. Plaintiffs are still reviewing the documents produced by Defendants Kip Boie and GLTG.

E. Protective Order.

Currently, there is no need for a protective or confidentiality order. If the need arises, the parties will meet and confer on this issue and submit a stipulated order to this Court.

8. **Electronic Discovery.** The Parties met and conferred concerning electronic discovery and reviewed the Checklist for Rule 26(f). Applying the proportionality standard outlined in Fed. R. Civ. P. 26(b)(2)(C), this case does not warrant the Parties incurring substantial costs on electronic discovery. Per this Court's order, the Parties agree that electronically stored information ("ESI") should be preserved by the custodian of the records for Defendant or Tissue Depot, Inc. covering the period from March 1, 2022, to the present. The Parties may produce ESI in PDF format unless a party specifically requests native format. No discovery liaison is necessary. If the need arises, ESI may be produced by querying the database for discoverable information using search terms submitted by the parties, resulting in a report or a reasonably usable and exportable electronic file for review by the requesting counsel or part. For any computer information that is not searchable, the parties will meet and

confer about sharing the cost of using optical character recognition.

9. **Settlement.** The Parties have explored, and are continuing to explore, a settlement of this case. The Parties are not interested in Case Evaluation. If a settlement cannot be reached, they would be willing to participate in facilitative mediation or a settlement conference per Local Rules 16.4 and 16.6.

10. **Consent.** The Parties do not consent to the jurisdiction of a United States Magistrate Judge as provided in 28 U.S.C. § 636(c) and Federal Rule of Civil Procedure 73.

11. **Trial.** The trial will be a bench trial. The estimated length of the trial is five court days. The Parties will be ready for trial after March 31, 2024.

12. **Miscellaneous.** There are no other matters to be addressed.

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