

**UNITED STATES DISTRICT
EASTERN DISTRICT OF MICHIGAN (BAY CITY)**

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, TISSUE DEPOT, INC., a
Wisconsin corporation, CHEBOYGAN ENERGIES
& BIOFUELS CORP., a Wisconsin corporation,

Defendants.

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**PLAINTIFFS' VERIFIED SECOND MOTION
FOR POSSESSION AND INJUNCTIVE RELIEF**

Plaintiffs Prime Alliance Bank, Inc. (“PAB”) and Sertant Capital, LLC (“Sertant”) (collectively, “Plaintiffs”) hereby move this Honorable Court for an order granting them possession of their property pending final judgment and for injunctive relief to prevent the dissipation and transfer of environment permits. In support of their Motion, Plaintiffs state as follows:

Possession of the Equipment

1. Plaintiffs are entitled to possession of the following described property (collectively, the “Equipment”) because GLT breached a Master Lease Agreement and a Lease Schedule No. 1 (collectively, “Lease”) as stated in Plaintiffs’ Verified First Amended Complaint (ECF No. 40):

	Equipment Description	Serial No.
1.	1969 Bacock & Wilcox Gas Fired 60,000 BTU Boiler	M98133M
2.	2013 Alfa Laval Heat Exchanger	30115-70081
3.	2013 Alfa Laval CB400-86H Heat Exchanger	42787870
4.	Appleton 60”x72” Core Cutter	n/a
5.	Wulftec WLP-150 Automatic Stretch Wrap Machine	0700-6317
6.	Orion SW44-12 Stretch Wrapper	7117540
7.	Black Clawson Poly Re-Claim & Stock Prep System	95-H-P-3692
8.	Beloit/Proctor & Gamble 128” Tissue Paper Machine and all accessories	n/a
9.	Lot of Laboratory Equipment and all accessories	n/a
10.	1985 Atlas Copco ZR-3 200 HP Packaged Rotary Screw Air Compressor	ARP-1200-8
11.	1985 Atlas Copco ZR-3 200 HP Packaged Rotary Screw Air Compressor	ARP-490886
12.	1978 Zurn R110A Refrigerated Air Dryer	R-9510
13.	2014 Ingersoll Rand R110 Nirvana SVD 150 Air Compressor	VN1505u13175
14.	Knowlton Core Machine	n/a

	Equipment Description	Serial No.
15.	1997 Perini 200G Core Machine and Back Stand	09056; 09057
16.	1998 Perini 716B 106" Toilet Roll Rewinder	09719; 19718
17.	2020 Baosuo YD-PL400C-2900 12" Bathroom Tissue Rewinder Line and all accessories	19S13005Fs
18.	1999 Perini 702G 106" JRT Rewinder and all accessories	40533
19.	1997 Perini 702G 106" JRT Rewinder Line and all accessories	8897
20.	Hobema 14-H 13" Napkin Folder	446
21.	Lot of Press, Gears, Valves, Pumps, Motors, Etc. including all components and ancillary items	n/a
22.	Clausing Colchester 17" Horizontal lathe	2312
23.	Bridgeport Series Vertical Drill	J202453
24.	Hendey Horizontal Lathe 14 x 42	121
25.	Cincinnati Milling Machine	E506J
26.	Cincinnati Bickford Drill	122
27.	Boyd & Emmes Radial Engine Horizontal Lathe	n/a
28.	Enerpac Hydraulic Press	n/a
29.	Grob NS24 Band Saw	3508
30.	Clausing Vertical Drill Press	104435
31.	Bradford Grinder	86
32.	Clausing Vertical Drill Press	511876
33.	Abrasive Machine Tool Sander	n/a
34.	Miller Bobcat 225 NT Welding Set	n/a
35.	Miller Trailblazer 30 Z Welding Set	n/a
36.	Hobart Mega Arc 300 Welding Set	n/a
37.	Misc. Hand Tools and Cabinets	n/a
38.	Rigid 802 Pipe Threader	n/a
39.	Wells Metal Band Saw	14980
40.	Miller XMT 350 CC/CV Welding Set	n/a
41.	Modern C6251x1500 Horizontal Lathe – Age 2003	n/a
42.	Lincoln Wirematic 255 Welding Set, all components and ancillary items	n/a
43.	Caterpillar 99F – 3,500 lbs. Cap.	AT81C-00357

	Equipment Description	Serial No.
44.	Caterpillar 99H – 3,500 lbs. Cap.	AT81C-00944
45.	Caterpillar V-80	932200-14A
46.	Caterpillar #11 Roll Grab – 7,000 lbs. Cap.	AT8701785
47.	Caterpillar #12 Roll Grab – 7,000 lbs. Cap.	AT8701784
48.	Genie #1 Scissor lift	76192
49.	Genie #2 Scissor lift	65851
50.	Genie #3 Articulating boom	Z34N-3953
51.	Genie AWP – 300 lbs. Cap.	3892-1317
52.	Halla #11 – 4,400 lbs. Cap.	1449K
53.	Hyster S-150 – 16,000 lbs. Cap.	A24D1857P
54.	Hyster 50 – 4,800 lbs. Cap.	F187V13647 F
55.	JCB 506C – 6,000 lbs. Cap	585635
56.	JCB 506C – 6,000 lbs. Cap.	JCB5CAJLC 61184611
57.	Kubota SSV65	13738
58.	Linde #5 Roll Grab – 3,700 lbs. Cap.	A11313G001 84
59.	Linde #3 Roll Grab – 3,700 lbs. Cap.	A11313G001 85
60.	Linde #24 – 4,500 lbs. Cap.	A11319J002 24
61.	Linde #68 – 4,500 lbs. Cap.	A11319J001 68
62.	Nissan #8 – 3,500 lbs. Cap.	23108
63.	Skid Steer L230	wbm432589
64.	Terex All Terrain lift – 6,000 lbs. Cap.	TH06O6B- 6256
65.	Toyota #4 Roll Grab – 4,400 lbs. Cap.	84988
66.	Toyota #1 – 7,700 lbs. Cap.	77656
67.	Toyota #30 – 7,250 lbs. Cap.	63678

2. As confirmed by the Lease, Plaintiffs own the Equipment and/or hold a perfected security interest covering the Lease. Plaintiffs have an unequivocal

right to possession given GLT's failure to pay rent for the Equipment since December 2022, a significant change in ownership, control, and management of GLT, GLT's cessation of operations due to the transfer of all of its assets to Tissue Depot and GLT's evident financial deterioration. (ECF No. 40 [First Amended Complaint ("Compl."), Ex. 1 [§ 9, 17]]) See Cal. Com. Code § 9609(a)(1)-(2); MCL § 440.9609(1)(a)-(b).

3. The Equipment will be damaged, destroyed, concealed, disposed of, or used so as to substantially impair its value before final judgment unless this Court grants possession of the Equipment to Plaintiffs. As outlined in the accompanying brief, Defendant Great Lakes Tissue Company ("GLT") fraudulently transferred ("Transfer") to Tissue Depot, Inc. ("Tissue Depot") all of its assets, including the Equipment, once GLT learned of this action, with the intent to hinder, delay, and defraud GLT's creditors, including Plaintiffs, and for less than reasonably equivalent value when GLT's insolvent, or rendered insolvent. As a result of this transfer, Tissue Depot took over all of GLT's operations, employees, and customers, controlled by the same shareholder (Patriot Advance Environmental Technologies, LLC), officers, and directors. Tissue Depot is an alter ego and shell created to avoid the debts of GLT. (ECF No. 40 [Compl., ¶¶ 14-29, 46-54].)

4. On September 13, 2023, a fire engulfed Tissue Depot's (formerly GLT's) warehouse, which lacked an operable fire suppression system, leaving it in ruins. This fire led to Tissue Depot's cessation of operations, layoff of its employees, and abandonment of the Equipment in a boarded-up paper mill at 437 S. Main Street, Cheboygan, Michigan 49721 ("Paper Mill"). The Paper Mill lacks an operational fire suppression system, gas, and electricity. Its basement is flooded due to an inoperable sump pump, causing some Equipment to sit in water. Because

of a roof collapse, the Paper Mill's exterior wall is made of plywood, inviting vagrants to access the premises and damage the Equipment. This Court's injunction is no longer adequate to protect the Equipment. The imminent threat looming over the Equipment, which is now exposed to the risk of destruction, damage, disposal, or concealment, warrants the granting of immediate possession.

Injunctive Relief

5. As part of the Transfer, GLT fraudulently transferred environmental permits ("Environmental Permits") to Tissue Depot, purportedly worth \$21 million. Plaintiffs justifiably believe that GLT or Tissue Depot may transfer the Environmental Permits to unknown third parties to circumvent the satisfaction of Plaintiffs' monetary claim. (McWhorter Decl., ¶ 9.) If this occurs, Plaintiffs will suffer irreparable harm and be left without any adequate remedy at law because GLT and Tissue Depot will be judgment-proof if the Environmental Permits are transferred, leaving Plaintiffs without a source of funds to satisfy their monetary claim. GLT and Tissue Depot are insolvent. They are not paying their debts in the ordinary course of business. The landlord for the Paper Mill notified Plaintiffs' counsel that it would commence eviction proceedings on the Paper Mill because rent had not been paid.

6. Plaintiffs request that this Court enjoin Defendants from selling, transferring, canceling, conveying, encumbering, hypothecating, or otherwise disposing of the Environmental Permits without this Court's authorization. In addition, Plaintiffs request that this Court direct Defendants to file copies of the Environmental Permits with this Court and certify who owns them.

7. Defendants will not be harmed if this Court grants relief. The filing of a copy of the Environmental Permits and disclosure of the current owner does not cause any harm whatsoever. Such disclosure informs this Court so that it may

supervise the liquidation of this valuable asset. Any restriction on Defendants' transfer or sale of the Environmental Permits is minor. If Defendants want to sell or transfer the Environmental Permits, they can seek relief from this Court, thereby mitigating any harm caused by injunctive relief.

8. Plaintiffs do not have an adequate legal remedy at law.
9. The public interest favors granting the relief requested.

Basis for Motion

10. This Motion is based on Plaintiffs' Verified First Amended Complaint (ECF No. 40), the accompanying brief, the Declaration of Donald Dailey, the Declaration of Robert S. McWhorter, and all exhibits attached to those declarations, the files and records in this action, and such further evidence and argument that may be submitted in connection with the Motion and the hearing on the Motion.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter an order:

- (a) Directing Defendants and their agents, representatives, employees, officers, directors, shareholders, and other persons acting on behalf of Defendants to refrain from damaging, destroying, concealing, disposing of, moving, or using so as to substantially impair the value of the Equipment pending further order of this Court;
- (b) Enjoining Defendants and their agents, representatives, employees, officers, directors, shareholders, and other persons acting on behalf of Defendants from selling, transferring, canceling, conveying, encumbering, hypothecating, or otherwise disposing of the Environmental Permits without this Court's authorization;
- (c) Ordering Defendants to file copies of the Environmental Permits with

this Court and to certify who owns them with such time as this Court deems appropriate;

- (d) Awarding Plaintiffs possession of the Equipment pending final judgment, without the necessity of filing a bond or other undertaking;
- (e) Commanding Defendants to surrender possession of the Equipment to Plaintiffs or directing the sheriff or court officer to seize the Equipment within fourteen (14) days and deliver it to Plaintiffs; and
- (f) Granting other just and equitable relief.

Respectfully Submitted

Dated: October 23, 2023

BUCHALTER, a Professional Corporation

By: /s/ Robert S. McWhorter
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VERIFICATION

I declare under penalty of perjury that the foregoing is true and correct.
Executed on October 23, 2023.

SERTANT CAPITAL, LLC

By:



MICHAEL J. PRZEKOP
Its: President

I declare under penalty of perjury that the foregoing is true and correct.
Executed on October 23, 2023.

PRIME ALLIANCE BANK, INC.

By:

MICHAEL WARD
Its: President

VERIFICATION


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PRIME ALLIANCE BANK, INC.

By:  _____
MICHAEL WARD
Its: President

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**BRIEF IN SUPPORT OF PLAINTIFFS' VERIFIED
SECOND MOTION FOR POSSESSION AND INJUNCTIVE RELIEF**

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STATEMENT OF ISSUES

- I. Whether the Court should order granting possession of Equipment when (i) Plaintiffs own the Equipment, (ii) Great Lakes Tissue Company (“GLT”), as lessee, breached its lease with Plaintiffs by, among other things, failing to pay rent, changing ownership and management without Plaintiffs’ consent resulting in a deterioration of GLT’s financial condition, transferring the Equipment to another company, Tissue Depot, Inc. (“Tissue Depot”) after discovery of this lawsuit, and ceasing business operations, and (iii) the Equipment will be damaged, destroyed, concealed, disposed of, or used so as to substantially impair its value, before final judgment unless this Court grants possession because the Equipment has been abandoned in a paper mill that does not have electricity, gas, or an operating fire suppressions system, a portion of the Equipment is in water due a flood in the basement caused by an inoperable sump pump, and GLT and/or Tissue Depot ceased business operations after fire on September 13, 2023, laying off its employees and facing eviction from its landlord?

Plaintiffs say: “Yes.”

Defendants, presumably, say: “No.”

- II. Whether this Court should enjoin Defendants from selling, transferring, canceling, conveying, encumbering, hypothecating, or otherwise disposing of Environmental Permits, purportedly worth \$21 million, without this Court’s authorization, when (i) GLT already fraudulently transferred the environmental permits to Tissue Depot after it learned of this lawsuit, (ii) Defendants’ are insolvent and not operating, and (iii) the Environmental Permits are the only remaining asset of value, and it is in danger of being dissipated, transferred, sold, or depleted, thereby rendering Defendants uncollectable and unable to Plaintiffs’ monetary judgment?

Plaintiffs say: “Yes.”

Defendants, presumably, say: “No.”

- III. Whether this Court should direct Defendants to escrow the

Environmental Permits with this Court and certify who owns them so that this Court and Plaintiffs are fully informed of the status and nature of Environmental Permits?

Plaintiffs say: “Yes.”

Defendants, presumably, say: “No.”

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I. INTRODUCTION

Plaintiffs Prime Alliance Bank, Inc. (“Prime”) and Sertant Capital, LLC (“Sertant”) face dire circumstances that threaten the equipment (“Equipment”) owned by them. After this Court allowed Defendant Great Lakes Tissue Company (“GLT”) to retain possession of the Equipment under the protection of a preliminary injunction, Plaintiffs discovered a disconcerting trail of fraudulent transfers, corporate closures, and a catastrophic fire that threatened the Equipment.

Upon discovering this case, GLT fraudulently transferred all its assets, encompassing its operations, workforce, facilities, inventory, customers, and Equipment, to Tissue Depot, Inc. (“Tissue Depot”). Additionally, GLT assigned environmental permits (“Environmental Permits”) valued at \$21 million to Tissue Depot. The Environmental Permits are valuable because “they take five years to replace” and allow a company to use and discharge water. (McWhorter Decl., Ex. G [Swenson Dep., p. 28:9-22]¹.) To elude its creditors, GLT transferred its assets without receiving reasonably equivalent compensation, rendering it devoid of assets. GLT’s and Tissue Depot’s director, Donald Swenson, admitted that

¹ “Swenson Dep.” refers to the Deposition of Donald Swenson, a director of GLT, Tissue Depot, and Cheboygan Energies and Biofuels (“CEB”). “Boie Dep.” and “Schleben Dep.” refers to the Depositions of Kip Boie and Kenneth Schleben, who served as GLT’s and Tissue Depot’s President and Chief Executive Officer.

management decided to transfer all of the assets from GLT to Tissue Depot because GLT was a “dirty corporation” due to its “liens [and] debts.” (McWhorter Decl., Ex. G, [Swenson Dep., pp. 60:20-61:14]) This transfer rendered GLT a defunct company. (McWhorter Decl., Ex. F [Schleben Dep., pp. 106:4-106:6]; Ex. G [Swenson Dep., pp. 43:7-13].)

On September 13, 2023, a destructive fire engulfed Tissue Depot’s warehouse, which lacked an operable fire suppression system, leaving it in ruins. This calamity rendered the warehouse inoperable, leading to the dismissal of all employees and the abandonment of the Equipment. The Equipment now languishes in an unsuitable and perilous environment within a disused and dilapidated paper mill, lacking a fire suppression system, electricity, gas, and heat. It is situated in a flooded basement due to an inoperable sump pump. The paper mill’s exterior wall has been covered by plywood, inviting vagrants and other unauthorized parties to access the premises and cause potential damage to the Equipment.

This Court’s injunction is no longer adequate to protect Plaintiffs’ interest in the Equipment. Plaintiffs have an unequivocal right to possession given GLT’s failure to pay rent for the Equipment since December 2022, a significant change in ownership, control, and management of GLT, GLT’s cessation of operations due to the transfer of its assets to Tissue Depot, and GLT’s evident financial deterioration.

The imminent threat looming over the Equipment, which is now exposed to the risk of destruction, damage, disposal, or concealment, warrants the granting of immediate possession.

In addition, this Court must promptly undertake measures to safeguard the Environmental Permits, which constitute the sole remaining asset of GLT and/or Tissue Depot. The Court should enjoin any unauthorized transfer of these permits to undisclosed third parties, which would render GLT and Tissue Depot uncollectible to their creditors, including Plaintiffs, leaving them without recourse. Additionally, GLT and Tissue Depot must be obligated to escrow the Environmental Permits with this Court (i.e., file them with this Court), along with certification of their current ownership, to enable the Court's oversight of this valuable remaining asset.

II. STATEMENT OF FACTS

A. THE LEASE

Since 1993, GLT has manufactured recycled tissue paper and towel products at a paper mill at 437 S. Main Street, Cheboygan, Michigan ("Paper Mill"). (ECF No. 40 [First Amended Complaint ("Compl."), ¶¶ 3].) As of March 2022, Great Lakes Tissue Group, LLC ("GLTG"), a Nevada limited liability company, owned 100% of GLT's stock. (McWhorter Decl., Ex. J [Boie Dep., pp. 18:14-18:21, 21:5-

22:2, 37:7-37:21, 108:6-108:13].)

On October 13, 2022, Sertant and GLT entered into a Master Lease Agreement (“Master Lease”) and a Lease Schedule No. 1 (collectively, “Lease”), under which Sertant leased the Equipment to GLT. (ECF No. 40 [Compl., ¶¶ 31, 32, Exs. 1, 2]; McWhorter Decl., Ex. J [Boie Dep., pp. 36:23-37:6], Ex. K.] With the permission of GLT’s Board of Directors, Boie signed the Lease as GLT’s President and CEO. (McWhorter Decl., Ex. H [Swenson Dep., pp. 52:11-52:18, 53:9-54:3], Ex. J [Boie Dep., pp. 36:21-39:18, 43:7-44:18, 45:18-45:24, 48:1-5], Ex. K, p. 9, Ex. L, p. 1.]

Under the Lease, GLT agreed to pay \$68,082.30 per month in rent to Sertant for four years. (ECF No. 40 [Compl., ¶ 33(b), Ex. 2, p. 1].) GLT acknowledged that Sertant owned the Equipment and, alternatively, granted a perfected security interest in the Equipment to Sertant. (ECF No. 40 [Ex. 1, § 12].) GLT agreed that an Event of Default would occur if (i) it failed to “pay when due any installment of Rent . . . and such failure continues for a period of ten (10) days”; (ii) GLT removed, sold, transferred, any of the Equipment without Sertant’s prior written consent; (iii) GLT changed its organizational structure without Sertant’s prior written consent; or (iv) GLT “undergoes a sale, buyout, change in control, change in ownership . . . judged solely by Sertant, results in a material deterioration in

[GLT's] credit worthiness. (ECF No. 40 [Compl., Ex. 1, § 16, pp. 6-7].) Upon an Event of Default, GLT agreed to turn over possession of the Equipment. (ECF No. 40 [Compl., Ex. 1, §§ 13, 17].)

On October 13, 2022, Sertant assigned certain payments and residual interest rights under the Lease to PAB. Sertant retained other rights and interests in the Lease and the Equipment as part of the Assignment. (ECF No. 40 [Compl., ¶ 35].)

B. GLT'S BREACH OF THE LEASE

After the Lease, GLT's financial condition deteriorated. In December 2022, the Paper Mill's roof collapsed, causing GLT to lay off 60 employees. (McWhorter Decl., Ex. F [Schleben Dep., pp. 21:13-21:24]; ECF No. 40 [Compl., ¶ 28, Ex. 9]. After December 2022, GLT stopped paying rent to Plaintiffs. (ECF No. 40 [Compl., ¶ 60(a), Ex. 6]; McWhorter Decl., Ex. H [Swenson Dep., pp. 108:18-108:21]; Ex. I, p. 10; Ex. J [Boie Dep., pp. 84:10-85:16].). GLT failed to pay rent to Plaintiff due January 1, 2023, and February 1, 2023. (*Id.*)

On January 12, 2023, GLTG entered into a Merger Agreement with Patriot Advanced Environmental Technologies, LLC ("PAET"), changing GLT's ownership, control, and management without Plaintiffs' prior consent. (ECF No. 40 [Compl., ¶¶ 39, 40(b), 41, Ex. 5; McWhorter Decl., Ex. H [Swenson Dep., pp. 6:17-7:21, 12:17-13:4, 26:4-27:6, 43:3-43:6], Ex. J [Boie Dep., pp. 49:5-13,

124:15-126:1], Ex. N.) Under the Merger Agreement, GLT sold all of its interest in GLT to PAET. (ECF No. 40 [Compl., Ex. 5, § 1.2(a)].) After that, Jeffrey Prange replaced Boie as GLT's President, and PAET took control of GLT. (McWhorter Decl., Ex. H [Swenson Dep.], p. 7:6-10:17], Ex. J [Boie Dep. pp. 123:20-126:1].)

One of GLT's primary assets is Environment Permits, purportedly worth about \$21 million. (McWhorter Decl., Ex. G [Swenson Dep., pp. 28:6-29:17], Ex. H [Swenson Dep. pp.45:14-47:20].) PAET's goal in purchasing GLT was to acquire its Environmental Permits worth \$21 million for substantially less than that amount. PAET promised to pay \$1.5 million in cash and \$15 million in a promissory note secured by PAET's stock in GLT (which would later be rendered valueless by PAET's transfer of assets from GLT to Tissue Depot). (McWhorter Decl., Ex. N [Merger Agreement, §§ 1.2(a), 1.2(b), Stock Pledge Agreement].) Before PAET acquired GLT, PAET conducted no diligence and did not review GLT's books and records or its assets and liabilities because it wanted GLT's \$21 million of Environmental Permits. (*Ibid.*) Donald Swenson, who served as GLT, PAET, CEB, and Tissue Depot's director, testified:

Q So PAET went forward with this transaction blindly not knowing the debts and liabilities of Great Lakes Tissue Company?

A That's right.

Q Why would PAET do that?

A Because of the - Or why did it do that?

A Because of the intellectual property, the permits and so forth.

Q Because the intellectual property was worth much more than what any debt you were concerned about?

A That's right.

(McWhorter Decl., Ex. G [Swenson Dep., pp. 32:5-34:1].)

After the Merger Agreement, GLT's creditworthiness and financial condition materially deteriorated. (ECF No. 40 [Compl., ¶ 40(b)]; McWhorter Decl., Ex. H [Swenson Dep., pp. 61:16-62:3].) GLT was unable to pay its debts in the ordinary course of business. (McWhorter Decl., Ex. G [Swenson Dep., pp. 62:8-62:24], Ex. H [Swenson Dep., p. 27:7-27:17]; Ex. J [Boie Dep. pp. 147:8-147:12].)

On February 3, 2023, Plaintiff demanded payment of \$2,271,354.51 from GLT and the return of the Equipment. (ECF No. 40 [Compl., ¶ 43, Ex. 8].)

C. GLT FRAUDULENTLY TRANSFERRED ITS ASSETS TO AVOID PAYMENT TO ITS CREDITORS

On March 10, 2023, Plaintiffs filed a complaint against GLT for breach of the Lease and to recover possession of the Equipment. (ECF No. 1.) "Sometime after [GLT] saw the complaint," GLT secretly transferred all of its assets to Tissue Depot ("Transfer"),² including the Paper Mill, the Equipment, the Environmental

² GLT transferred its lease rights in the hydroelectric plant to CEB, who leased it to

Permits, and GLT's employees, phone number, customers, and goodwill.

(McWhorter Decl., Ex. G [Swenson Dep., pp. 15:25-16:1, 43:14-48:12], Ex. F [Schleben Dep., pp.103:25-104:5]; Ex. H [Swenson Dep., pp. 13:5-20:4, 25:23-31:21]). GLT's employees began receiving paychecks from Tissue Depot after the Transfer. (McWhorter Decl., Ex. F [Schleben Dep., pp. 94:2-95:3, 105:2-106:6], Ex. M.) GLT changed the sign on the Paper Mill from GLT to Tissue Depot and began "doing the exact same business as [GLT's] business was." (McWhorter Decl., Ex. F [Schleben Dep., pp. 88:14-90:8], Ex. G [Swenson Dep., 48:13-49:2].)

The Transfer was made with the intent to hinder, delay, and defraud GLT's creditors, including Plaintiffs, and for less than reasonably equivalent value when GLT was insolvent. Tissue Depot paid nothing for the Transfer except for allegedly paying ongoing wages to employees, providing "labor" to resolve environmental issues with the Department of Natural Resources and OSHA, and paying expenses to transfer the Environmental Permits from GLT to Tissue Depot. (McWhorter Decl., Ex. G [Swenson Dep., pp. 46:1-9] Ex. H [Swenson Dep., pp. 13:5-14:4; 27:7-35:9].) Before, during, and following the Transfer, GLT was not paying its debts when due in the ordinary course of business. (McWhorter Decl.,

Tissue Depot. (McWhorter Decl., Ex. H [Swenson Dep., pp. 89:23-97:23].) GLT, Tissue Depot and CEB shall collectively be referred to as "Defendants."

Ex. G [Swenson Dep., pp. 62:8-64:8]; Ex. H [Swenson Dep., p. 27:7-16], Ex. J [Boie Dep., p. 147:8-12].) Plaintiffs never consented to or had prior notice of the Transfer. (ECF No. 40 [Compl., ¶¶ 12, 19].) According to Mr. Swenson, the Transfer was made to avoid payment of GLT's debts, stating:

Q . . . why not operate as the Tissue Depot -- I'm sorry, as The Great Lakes Tissue Company, as opposed to Tissue Depot, Inc.? Why transfer the business and the operations from Great Lakes Tissue to Tissue Depot, Inc.?

A It's because Great Lakes Tissue is a dirty corporation and it was a mess.

Q Why do you say it's a dirty corporation?

A It's got all kinds of -- of liens, debts.

Q Anything else?

A That's it.

Q Okay. So the reason that the assets of Great Lakes Tissue Company were transferred to the Tissue Depot, Inc. was because Great Lakes Tissue Company was a dirty corporation because it had liens and other debts; right?

A Right. And other than the few pieces of leased equipment on the lease schedules that I -- we've just been talking about, there are no other assets left behind in Great Lakes Tissue.

(McWhorter Decl., Ex. G, [Swenson Dep., pp. 60:20-61:14]) The Transfer rendered GLT to be "a defunct company." (McWhorter Decl., Ex. F [Schleben Dep., pp. 106:4-106:6]; Ex. G [Swenson Dep., pp. 43:7-13].) GLT ceased all operations; Tissue Depot took over operating the Paper Mill using GLT's former

employees. (McWhorter Decl., Ex. G [Swenson Dep., pp. 43:1-24, 44:11-23].)

On March 31, 2023, Plaintiffs applied to this Court to recover possession of Equipment. (ECF No. 19)

On April 12, 2023, this Court enjoined GLT from damaging, destroying, concealing, or disposing of the Equipment. (ECF No. 24.)

On April 23, 2023, Plaintiffs found 21 missing pieces of Equipment (“Missing Equipment”) that were sold to Kling’s Auto Recycling without Plaintiffs’ prior authorization. (McWhorter Decl., ¶ 8, Ex. F [Schleben Dep., 28:20-58:19], Ex. O.)

On May 15, 2023, Kenneth Schleben became the President of Tissue Depot, Inc. after Jeff Prange resigned. (McWhorter Decl, Ex. F [Schleben Dep., p. 10:1-2]; Ex. G [Swenson Dep., p. 14:3-14:9].)

On July 18, 2023, this Court enjoined GLT and Tissue Depot from damaging, destroying, concealing, disposing of, or moving the Equipment. (ECF No. 38.)

D. THE ERUPTION OF A FIRE ON SEPTEMBER 13, 2023 CAUSED TISSUE DEPOT TO CEASE OPERATIONS

On September 13, 2023, a massive fire broke out at the Warehouse, which Tissue Depot was using to store paper byproducts, plastic, and other items. (Declaration of Donald Dailey (“Dailey Decl.”), ¶ 3, Ex. 1.) Fire crews from eight fire departments responded to the fire. (Dailey Decl., ¶ 3.) Without an operable fire suppression system, the fire burned uncontrollably. (Dailey Decl., ¶ 3.)

Since the fire, Tissue Depot has laid off its employees and “shut its doors.” (McWhorter Decl., ¶ 4.) The Paper Mill stands as a desolate building, continuing to house the Equipment. Its windows are boarded up. (Dailey Decl., ¶ 7.) Its doors are sealed. (*Id.*) It has no gas or electricity. (*Id.*) Its fire suppression system is inoperable, placing the now abandoned Equipment at risk of loss due to fire. (Dailey Decl., ¶ 8.) Its basement is flooded because the sump pump is inoperable, presumably due to a lack of energy or gas. (Dailey Decl., ¶ 9.) Some of the Equipment runs through the basement and, thus, may be damaged by the water collecting in the basement. (*Id.*) Because of the demolition after the roof collapsed in December 2022, one of the exterior walls of the Paper Mill consists of a temporary wall made of plywood, thereby exposing the Equipment to the risk of damage or destruction from thieves or vagrants. (Dailey Decl., ¶ 7.)

On October 2, 2023, Plaintiffs filed a First Amended Complaint against GLT, Tissue Depot, and CEB. (ECF No. 40.)

From September 29, 2023, to October 11, 2023, Plaintiffs’ counsel emailed GLT’s counsel to inquire about the condition of the Equipment without receiving any response. (McWhorter Decl., Exs. A-D.) Finally, on October 11, 2023, Plaintiffs’ counsel received an email from GLT’s counsel that the Equipment was not damaged from the fire. (McWhorter Decl., Ex. E.) On the same day, GLT’s

counsel filed a motion to withdraw, claiming he was unpaid and unable to communicate with GLT. (ECF No. 46.)

III. LEGAL ANALYSIS

A. THE APPLICABLE LAW

In a diversity action, the forum state's choice-of-law rules govern whether to enforce a contract's choice-of-law provision. *Wallace Hardware Co. v. Abrams*, 223 F.3d 382, 391 (6th Cir. 2000). The parties' choice of law applies unless the chosen state has no substantial relationship to the parties or the transaction or no reasonable basis exists for choosing that state's law. *Hudson v. Mathers*, 283 Mich. App. 91, 770 N.W.2d 883, 887 (2009).

Here, the parties reasonably agreed that California law governs any disputes under the Lease. (ECF No. 40 [Compl., Ex. 1, § 18, p. 7].) The Lease was entered into and performed in Orange County, California, and designated California as the venue for any litigation. (*Id.*) Sertant's principal place of business is in Newport Beach, California. (Verified Compl., ¶ 2, Ex. 1, p. 1.)

California and Michigan laws are relatively similar concerning the claims at issue. Given that there is no conflict, this Court must enforce the parties' choice of California law. *In re Stockx Customer Data Sec. Breach Litig.*, No. 19-12441, 2021 U.S. Dist. LEXIS 111685, at *6 (E.D. Mich. June 15, 2021). This Court should

enforce the Lease and apply California law. However, for thoroughness, Plaintiffs will address both Michigan and California law.

B. THIS COURT SHOULD AWARD PLAINTIFFS POSSESSION PENDING FINAL JUDGMENT

California law permits a party to file a claim and delivery action to recover possession of personal property. Cal. Civ. Proc. Code §§ 511.010 et seq. It authorizes a plaintiff to obtain possession upon filing a verified application showing that they are entitled to possession of property that defendant wrongfully detained. Cal. Civ. Proc. Code § 512.010. A court may also order the defendant to transfer possession of the property to the plaintiff. Cal. Civ. Proc. Code § 512.070. If the plaintiff establishes a right to possession, a court may grant the plaintiff possession of the personal property. Cal. Civ. Proc. Code § 512.010.

Under Michigan law, MCR 3.105(E)(3)(b) authorizes a plaintiff to obtain possession of goods upon establishing (i) that its right to possession is probably valid and (ii) that the property will be damaged, destroyed, concealed, disposed of, or used so as to substantially impair its value, before trial. Plaintiffs can establish the requirements under either California or Michigan law.

1. Defendant Defaulted On Its Lease Obligations, And Plaintiffs Are Therefore Entitled To Possession

Under the Lease, an Event of Default occurs if: (i) GLT fails to pay “when due any installment of Rent or any other sum owed by [GLT]” and “such failure

continues for a period of ten (10) days”; (ii) GLT changes its organizational structure without Plaintiffs’ prior written consent; (iii) GLT undergoes any change in control, change in ownership of any type without Plaintiffs’ prior written consent which results in a material deterioration in GLT’s creditworthiness or financial condition; (iv) GLT ceases doing business as a going concern: or (v) GLT sells, transfers or “parts with possession” or control of the Equipment without Plaintiffs’ prior written consent. (ECF No. 40 [Compl., Ex. 1, §§ 12, 16, pp. 5-7].) These Events of Default occurred here.

First, GLT failed to pay installments to Plaintiffs since December 2022. (ECF No. 40 [Compl., ¶ 40(a), Ex. 6]; McWhorter Decl., Ex. H [Swenson Dep., pp. 54:8-55:25, 56:15-56:18, 109:9-110:4].)

Second, the organizational structure, control, management, and ownership of GLT underwent significant and rapid transformations after entering into the Lease without Plaintiffs’ written consent. (ECF No. 40 [Compl., ¶ 40(b); McWhorter Decl., Ex. H [Swenson Dep., pp. 9:17-10:18, 11:9-11:14, 12:17-13:5, 57:12-59:4], Ex. J [Boie Dep., pp.49:5-52:1].) Since September 2022, GLT has experienced a series of changes in its executive leadership, with its President witnessing multiple turnovers. Specifically, Jeff Prange assumed the role of President in January 2023, succeeding Kip Boie. (McWhorter Decl., Ex. J [Boie Dep., p. 108:1-108:13].)

However, this transition was short-lived. In February 2023, Brett Herriman replaced Jeff Prange but resigned a few months later to take another job.

(McWhorter Decl., Ex. G [Swenson Dep., p. 11:17-12:18.] On May 15, 2023, Ken Schleben took over as President. (*Id.*; McWhorter Decl., Ex. F [Schleben Dep., pp. 9:8-10:2, 17:18-18:19].) A pivotal shift in ownership occurred on January 13, 2023, when GLTG sold its interest in GLT to PAET and when GLT transferred its assets to Tissue Depot after discovering Plaintiffs' suit against GLT. (ECF No. 40 [Compl., ¶¶ 39, 40, 41, 46-54, Ex. 5; McWhorter Decl., Ex. F [Schleben Dep., pp. 24:6-10, 103:25-104:5], Ex. G [Swenson Dep., pp. 15:25-16:1, 43:14-48:12, 62:3-7], Ex. H [Swenson Dep., pp. 6:17-7:21, 12:17-13:4, 13:5-20:4, 25:23-31:21, 43:3-43:6], Ex. J [Boie Dep., pp. 49:5-13, 124:15-126:1], Ex. N.)

Third, GLT transferred the Equipment after discovering Plaintiffs' Complaint without Plaintiffs' prior written consent. (McWhorter Decl., Ex. F [Schleben Dep., pp. 102:20-103:4, 103:25-104:5], Ex. G [Swenson Dep., pp. 45:1-4, 49:3-49:9], Ex. H [Swenson Dep., pp. 16:7-14, 17:12-19:2].)

Finally, since January 2023, GLT experienced a severe decline in its credit-worthiness. After GLTG sold its stock to PAET, GLT's assets and employees were transferred to Tissue Depot, leading to GLT's complete cessation of operations, rendering it defunct and insolvent. After the September 2023 fire, Tissue Depot

(GLT's alter ego) ceased operations. It cannot meet its financial obligations in the ordinary course of business, leading to the termination of electricity and gas services at the Paper Mill. (Dailey Decl., ¶ 7.) Tissue Depot's employees have been laid off. (McWhorter Decl., ¶ 4.)

Based on these Events of Default, Plaintiffs have a right to possession of Equipment. Under the Lease, the Lease recognizes that the title to the Equipment remains with Plaintiffs. (ECF No. 40 [Compl., Ex. 1, § 12, p. 5].) Upon an Event of Default, GLT agreed that Plaintiffs shall be entitled to possession and control of the Equipment. (ECF No. 40 [Compl., Ex. 1, § 12, 17, pp. 5, 7].) The Master Lease states that upon default, Sertant may repossess the Equipment without notice to GLT, with GLT "waiving all further rights of possession of the Equipment and all claims for injuries suffered through or loss caused by the repossess or demand that [Sertant] redeliver the Equipment at [Sertant's] expense." [ECF No. 40 (Compl., Ex. 1[Master Lease § 17].)

2. This Court Must Award Immediate Possession of the Equipment to Plaintiff To Prevent The Equipment's Damage, Destruction, Disposal, or Concealment

This Court should immediately award Plaintiffs possession of the Equipment to prevent its damage, destruction, disposal, or concealment. Since September 13, 2023, Tissue Depot laid off its employees. (McWhorter Decl., ¶ 4.) The Paper Mill

ceased operations, with its windows and doors boarded up (Dailey Decl., ¶ 7).

Without employees, no one is available to protect, repair, or maintain the Equipment. The north side wall of the dilapidated Paper Mill is made of plywood, which vagrants or thieves could cut to enter the Paper Mill and damage or destroy the Equipment. (Dailey Decl., ¶ 7). The Equipment within the Paper Mill lacks an operational fire suppression system. (Dailey Decl., ¶¶ 7-9.) If a fire erupted, there would be no means to control it, posing a significant risk to the Equipment (Dailey Decl., ¶ 6). Immediate possession of the Equipment is imperative.

The Paper Mill's electricity and gas have been shut off. (Dailey Decl., ¶ 7.) As a result, the Paper Mill's basement has experienced flooding since the sump pump, which relies on electricity, cannot function (Dailey Decl., ¶ 9). Some of the Equipment is routed through the basement, making it susceptible to potential damage from the accumulating water (*Id.*). The absence of electricity and gas, coupled with plummeting temperatures, has resulted in a lack of heating within the Paper Mill, posing a significant risk of damage to the Equipment.

Finally, Homco Paper XI LLC, as GLT/Tissue Depot's landlord, issued a seven-day notice to vacate the Paper Mill and intends to commence eviction proceedings on or after October 20, 2023. (McWhorter Decl., ¶ 4.) This eviction puts the Equipment at risk because the Equipment would fall into the hands of a

third party who has no contractual obligations to Plaintiffs, thereby making the Equipment vulnerable to potential damage or loss.

3. This Court Should Not Require Plaintiffs to Post a Bond

Under Michigan Court Rule 3.105(E)(4)(c)(i), a court may require a bond to postedis discretionary. See MCR 3.105(E)(4)(c) (using the discretionary language “may”). In *Glacier Sales & Eng’g, LLC v. Eagle Plastics Corp.*, No. 07-CV-13806-DT, 2007 U.S. Dist. LEXIS 66908, at *7 (E.D. Mich. Sep. 11, 2007), the court did not require a bond because the defendant had contractually agreed to turn over possession of the equipment upon default.

Here, this Court should not require Plaintiffs to post a bond upon obtaining possession of the Equipment. Plaintiffs hold title to the Equipment. GLT agreed to relinquish possession of the Equipment upon default and waived any damages caused by such repossession. (ECF No. 40 [Compl., Ex. 1, §§ 12, 13, 16, 17, pp. 5-7].) Again, the Master Lease states that upon default, Sertant may repossess the Equipment without notice to GLT, with GLT “waiving all further rights of possession of the Equipment and all claims for injuries suffered through or loss caused by the repossession or demand that [Sertant] redeliver the Equipment at [Sertant’s] expense.” [ECF No. 40 (Compl., Ex. 1[Master Lease § 17].) By doing so, the posting of a bond is unnecessary.

C. THIS COURT SHOULD ENJOIN DEFENDANTS' DISPOSING OF THE ENVIRONMENTAL PERMITS

This Court should enjoin Defendants from selling, transferring, canceling, conveying, encumbering, hypothecating, or otherwise disposing of the Environmental Permits without this Court's authorization and should direct Defendants to escrow the Environmental Permits with this Court and certify who owns them.

A court may grant a preliminary injunction after considering four factors: "(1) the likelihood that the party seeking the preliminary injunction will succeed on the merits of the claim; (2) whether the party seeking the injunction will suffer irreparable harm without the grant of the extraordinary relief; (3) the probability that granting the injunction will cause substantial harm to others; and (4) whether the public interest is advanced by the issuance of the injunction." *Jones v. Caruso*, 569 F.3d 258, 265 (6th Cir. 2009). All factors favor granting injunctive relief.

1. Plaintiffs Demonstrated They Will Prevail on Their Claims

The overwhelming evidence establishes that Plaintiffs are likely to prevail on their claims. As discussed in Sections II and III(B)(1), GLT breached the Lease, and Plaintiffs are entitled to recover possession of the Equipment. GLT and Tissue Depot are liable for conversion for refusing to turn over the Equipment and for transferring the Equipment to Tissue Depot without Plaintiffs' authorization and

consent. GLT fraudulently transferred its assets to CEB and Tissue Depot to hinder, delay, and defraud GLT's creditors, including Plaintiffs, and for less than reasonably equivalent value when GLT was insolvent or rendered insolvent.

In particular, the Michigan Uniform Voidable Transactions Act, MCL 566.31 et seq., contemplates an injunction under these circumstances. MCL 566.37 specifically provides that a creditor may obtain an injunction against further disposition by the debtor, a transferee, or both, of the transferred asset. MCL 566.37(1)(c)(i). The Act further contemplates that a creditor is entitled to attach the transferred assets as a provision remedy. MCL 566.37(1)(b).

2. Plaintiff Will Suffer Immediate and Irreparable Injury Unless This Court Grants Injunctive Relief

Defendants' director, Donald Swenson, admitted that the Environmental Permits are "the most valuable asset" of GLT. (McWhorter Decl., Ex. G [Swenson Dep., pp. 28:19-28:22, 122:1-12].) All of GLT's assets, including the Environmental Permits, were transferred to Tissue Depot, which has no operations, has laid off all its employees, and faces eviction from the Paper Mill. (Daley Decl., ¶ 7; McWhorter Decl., ¶ 4, Ex. G [Swenson Dep., pp. 27:14-30:4].)

Under the Lease, in addition to the return of the Equipment, Plaintiffs are owed over \$2.2 million plus interest, late charges, and attorneys fees. (ECF No. 40 [Compl., ¶ 44, Ex. 9].) Using history as a yardstick, Defendants' multiple transfers

demonstrate that they cannot be trusted to administer their own assets without this Court's supervision. As such, Plaintiffs justifiably believe that Defendants will transfer and dissipate the Environmental Permits to unknown third parties to circumvent the satisfaction of Plaintiffs' monetary claim. (McWhorter Decl., ¶ 9.) If this occurs, Defendants will be judgment-proof, leaving Plaintiffs without a source of funds to satisfy its monetary claim.

While generally, financial loss is insufficient to support the issuance of a preliminary injunction, a court may grant such relief if a defendant is insolvent and/or there is a strong possibility that the plaintiff would not receive adequate compensatory relief in the absence of an injunction. *CJPS Healthcare Supplies & Equip. v. Ansar Med. Techs., Inc.*, Civil Action No. 12-CV-14885, 2013 U.S. Dist. LEXIS 119098, at *18-19 (E.D. Mich. Aug. 22, 2013).

Multiple courts have granted injunctive relief when a defendant is insolvent or a plaintiff is unlikely to receive an adequate financial remedy without an injunction. In *Deckert v. Independence Shares Corporation*, 311 U.S. 282, 290-291 (1940), the court held that where the defendant "was insolvent and its assets in danger of dissipation or depletion," the possibility of legal remedy was inadequate and a temporary injunction restraining the transfer of funds was properly issued. In *Plainfield Specialty Holdings II Inc. v. Children's Legal Services PLLC*, 634 F.

Supp. 2d 833, 846-847 (E.D. Mich. 2009), the court enjoined the defendant from diverting proceeds pledged as security to the plaintiff because it concluded “future collections . . . speculative and uncertain” without sufficient funds to pay and “Plaintiff has demonstrated that it is likely to not have recourse to other funds should these be depleted.”

In contrast to Plaintiffs, Defendants will not suffer any harm if this Court grants injunctive relief. The Paper Mill is closed. GLT and Tissue Depot’s employees have been laid off. Thus, restricting the sale of the Environmental Permits without this Court’s permission will cause no harm. Further, Defendants will not be harmed by filing a copy of the Environment Permits so that this Court is fully informed of the nature and scope.

Further, Defendants suffer no harm from disclosing the current ownership of the Environment Permits, nor would the requested injunctive relief restrict their ability to liquidate the Environmental Permits. If Defendants want to sell or transfer the Environmental Permits, they can seek relief from this Court, thereby mitigating any harm caused by injunctive relief.

3. Injunctive Relief Serves the Public Interest

An injunction prohibiting Defendants from transferring and requiring disclosure of the Environment Permits serves the public interest. GLT has many

creditors that have not been paid after January 2023. (McWhorter Decl., Ex. J [Boie Dep., pp. 102:8-13, 143:3-18, 146:7-147:12].) Mr. Swenson had stated that GLT's creditors "were coming out of the woodwork." (McWhorter Decl., Ex. H [Swenson Dep., p. 22:16-22].) With all of the employees laid off, they have additional claims against Tissue Depot or GLT. According to Mr. Swenson, the City of Cheboygan and INB Bank may have a claim against GLT. (ECF No. 26 [Declaration of Donald Swenson, ¶¶ 10, 11].) Entry of an injunction to prevent dissipation of the Environmental Permits subject to the supervision of this Court will preserve and maintain this asset for the benefit of all creditors, thereby serving the public interest.

Denial of injunctive relief undermines the public interest. The public interest is not furthered by allowing potential wrongdoers, such as Defendants, to complete the last step in their scheme to strip GLT's assets, take its most valuable asset – the Environmental Permits – and leave it unable to pay creditors. The public interest is not served by leaving Plaintiffs and other creditors without sufficient resources to pursue and recover their claims.

IV. CONCLUSION

This Court should act immediately to prevent damage, destruction, disposal, or concealment of the Equipment by awarding possession to Plaintiffs. Neither

GLT nor its successor, Tissue Depot, have the right to retain the Equipment. This Court should prevent Defendants from transferring the Environment Permits to unknown third parties, leaving them unable to pay Plaintiffs, by requiring that Defendants put the Environment Permits into escrow during the time this case is pending. If the Equipment is damaged, destroyed, disposed of, or concealed, or if the Environmental Permits are dissipated, Plaintiffs will be left without any remedy because Defendants are defunct, with over \$2.2 million owed to Plaintiffs. Plaintiffs respectfully request that this Honorable Court enter an order:

- (a) Directing Defendants and their agents, representatives, employees, officers, directors, shareholders, and other persons acting on behalf of Defendants to refrain from damaging, destroying, concealing, disposing of, moving, or using so as to substantially impair the value of, the Equipment pending further order of this Court;
- (b) Enjoining Defendants and their agents, representatives, employees, officers, directors, shareholders, and other persons acting on behalf of Defendants from selling, transferring, canceling, conveying, encumbering, hypothecating, or otherwise disposing of the Environmental Permits without this Court's authorization;
- (c) Ordering Defendants to escrow the Environmental Permits with this

Court and to certify who owns them with such time as this Court
deems appropriate;

- (d) Awarding Plaintiffs possession of the Equipment pending final
judgment, without the necessity of filing a bond or other undertaking;
- (e) Commanding Defendants to surrender possession of the Equipment to
Plaintiffs or directing the sheriff or court officer to seize the
Equipment within fourteen (14) days and deliver it to Plaintiffs; and
- (f) Granting other just and equitable relief.

Respectfully Submitted

Dated: October 23, 2023

BUCHALTER, a Professional Corporation

By: /s/ Robert S. McWhorter
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**UNITED STATES DISTRICT
EASTERN DISTRICT OF MICHIGAN (BAY CITY)**

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, TISSUE DEPOT, INC., a
Wisconsin corporation, CHEBOYGAN ENERGIES
& BIOFUELS CORP., a Wisconsin corporation,

Defendants.

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PROOF OF SERVICE

I hereby certify that on October 23, 2023, I served the following documents:

**PLAINTIFFS' VERIFIED SECOND MOTION FOR POSSESSION AND
INJUNCTIVE RELIEF**

**BRIEF IN SUPPORT OF PLAINTIFFS' VERIFIED SECOND MOTION FOR
POSSESSION AND INJUNCTIVE RELIEF**

DECLARATION OF ROBERT S. MCWHORTER

INDEX OF EXHIBITS TO DECLARATION OF ROBERT S. MCWHORTER

DECLARATION OF DONALD DAILEY WITH EXHIBITS

**PLAINTIFFS' *EX PARTE* MOTION FOR AN EXPEDITED HEARING
ON PLAINTIFFS' VERIFIED SECOND MOTION FOR POSSESSION AND
INJUNCTIVE RELIEF**

**BRIEF IN SUPPORT OF PLAINTIFFS' *EX PARTE* MOTION FOR AN
EXPEDITED HEARING ON PLAINTIFFS' VERIFIED SECOND MOTION
FOR POSSESSION AND INJUNCTIVE RELIEF**

**PLAINTIFFS' *EX PARTE* MOTION FOR AN EXPEDITED HEARING
ON PLAINTIFFS' VERIFIED SECOND MOTION FOR POSSESSION AND
INJUNCTIVE RELIEF**

**ORDER GRANTING PLAINTIFFS' *EX PARTE* MOTION FOR AN
EXPEDITED HEARING ON PLAINTIFFS' VERIFIED SECOND
MOTION FOR POSSESSION AND INJUNCTIVE RELIEF**

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**UNITED STATES DISTRICT
EASTERN DISTRICT OF MICHIGAN (BAY CITY)**

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, TISSUE DEPOT, INC., a
Wisconsin corporation, CHEBOYGAN ENERGIES
& BIOFUELS CORP., a Wisconsin corporation,
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**ORDER GRANTING PLAINTIFFS' *EX PARTE* MOTION FOR AN
EXPEDITED HEARING ON PLAINTIFFS' VERIFIED SECOND
MOTION FOR POSSESSION AND INJUNCTIVE RELIEF**

This matter having come before this Court on the *Ex-Parte* Motion for an Expedited Hearing on Plaintiffs' Verified Second Motion for Possession and Injunctive Relief filed by Plaintiffs Prime Alliance Bank, Inc. ("PAB") and Sertant Capital, LLC ("Sertant") (collectively, "Plaintiffs"); this Court having found that good cause exists to conduct an expedited hearing on the Second Motion for Possession and Injunctive Relief ("Second Motion"); and being duly advised in the premises;

NOW, THEREFORE, IT IS HEREBY ORDERED that this Court shall conduct a hearing on the Second Motion on or before _____, 2023 at _____.m. Any response to the Second Motion shall be filed served on or before _____, 2023. Any reply brief to the Second Motion shall be filed served on or before _____, 2023. Given the withdrawal of the Hanson Reynolds firm, a copy of this Order and the Second Motion shall be served on The Great Lakes Tissue Company, The Tissue Depot, Inc. and Cheboygan Energies & Biofuels Corp. as follows:

Dated: October __, 2023

U.S. District Court Judge

**UNITED STATES DISTRICT
EASTERN DISTRICT OF MICHIGAN (BAY CITY)**

PRIME ALLIANCE BANK, INC.,
a Utah banking corporation;
and SERTANT CAPITAL, LLC,
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**DECLARATION OF ROBERT S. MCWHORTER
IN SUPPORT OF PLAINTIFFS' VERIFIED SECOND MOTION
FOR POSSESSION AND INJUNCTIVE RELIEF**

I, Robert S. McWhorter, declare:

1. I am making this Declaration based on personal knowledge and state affirmatively that if called as a witness, I can testify competently to the facts set forth in this Declaration.

2. I am an attorney licensed to practice law in Michigan and California. I am a shareholder at Buchalter, A Professional Corporation. In this case, I am one of the attorneys of record for Prime Alliance Bank, Inc. and Sertant Capital, LLC (collectively, “Plaintiffs”).

Counsel Communications

3. In late September 2023, I learned about the fire at the warehouse across the street from the papermill at 437 S. Main Street, Cheboygan, Michigan. On September 29, 2023, October 2, 2023, October 3, 2023, and October 11, 2023 (“Hansen Emails”), I emailed Tim Hansen and Thomas Janczewski to inquire about the fire and its impact, if any, on the equipment. True and correct copies of these emails are attached to this Declaration as **Exhibits A, B, C, and D**. I did not receive a response to the Hansen Emails until after I received Timothy Hansen’s motion to withdraw as counsel for The Great Lakes Tissue Depot, Inc. (“GLT”) on October 11, 2023. After receiving his motion, I emailed Mr. Hansen a second time on October 11, 2023, to which Mr. Hansen finally responded, stating: “My understanding is that none of the equipment was located in the building that burned. Sorry for the delay in getting back to you.” A true and correct copy of this email is attached to this Declaration as **Exhibit E**.

4. On October 12 and 13, 2023, I spoke with Donald R. Bachand III, an attorney who represents Thomas Homco, a principal of the entity that serves as the landlord (which I believe is Homco Paper, XI, LLC) (“Landlord”) for real property located at 437 S. Main Street, Cheboygan, Michigan (“Property”), where the

papermill for GLT and then Tissue Depot, Inc. Mr. Bachand stated that Tissue Depot, Inc. “shut its doors” and laid off its employees on October 6, 2023. He affirmed that during the week of October 9, 2023, the Landlord served a seven (7) day notice to quit to recover possession of the Property due to nonpayment of rent and that the Landlord intends to file an eviction proceeding. On October 19, 2023, Donald Swenson affirmed to me that all employees had been laid off.

Deposition Transcripts

5. On May 25, 2023, I deposed Kenneth Schleben as GLT’s representative under Rule 30(b)(6) of the Federal Rules of Civil Procedure. After the deposition, my office received a deposition transcript. A true and correct copy of Mr. Schleben’s deposition transcript, including the reporter’s executed certificate, is attached hereto as **Exhibit F**. Exhibit 19 to Mr. Schleben’s deposition is attached as **Exhibit M**.

6. On May 25, 2023, and June 23, 2023, I deposed Donald Swenson as a representative under Rule 30(b)(6) of the Federal Rules of Evidence. After the depositions, my office received deposition transcripts. True and correct copies of Mr. Swenson’s deposition transcripts, including the reporter’s executed certificates, are attached hereto as **Exhibits G and H**. Exhibit 28 of Donald Swenson’s deposition consisted of the statement from First Community Bank, attached hereto as **Exhibit I**. Exhibit 21 of Donald Swenson’s deposition consists of the Merger Agreement and is attached as **Exhibit N**.

7. On September 19, 2023, I deposed Kip Boie. After the deposition, my office received a deposition transcript. A true and correct copy of Mr. Boie’s deposition transcript, including the reporter’s executed certificate, is attached hereto as **Exhibit J**. A true and correct copy of Exhibits 5 and 6 in Mr. Boie’s deposition are attached hereto as **Exhibits K and L**.

Missing Equipment

8. Sertant Capital, LLC retained Quik Pro Equipment Inspection (“Quik Pro”) to inspect the equipment leased to Great Lakes Tissue Company. A true and correct copy of Quik Pro inspection report dated April 21, 2023 is attached hereto as **Exhibit O**. Based on this report, my office prepared the following chart of equipment that was not present during the inspection:

	Description of Equipment	Serial No.
1.	1985 Atlas Copco ZR-3 200 HP Packaged Rotary Screw Air Compressor	ARP-1200-8
2.	1985 Atlas Copco ZR-3 200 HP Packaged Rotary Screw Air Compressor	ARP-490886
3.	Caterpillar 99F – 3,500 lbs. Cap.	AT81C- 00357
4.	Caterpillar 99H – 3,500 lbs. Cap.	AT81C- 00944
5.	Caterpillar V-80	932200-14A
6.	Caterpillar #11 Roll Grab – 7,000 lbs. Cap.	AT8701785
7.	Caterpillar #12 Roll Grab – 7,000 lbs. Cap.	AT8701784
8.	Genie #1 Scissor lift	76192
9.	Genie #2 Scissor lift	65851
10.	Halla #11 – 4,400 lbs. Cap.	1449K
11.	Hyster 50 – 4,800 lbs. Cap.	F187V13647 F
12.	JCB 506C – 6,000 lbs. Cap	585635
13.	JCB 506C – 6,000 lbs. Cap.	JCB5CAJLC 61184611
14.	Linde #3 Roll Grab – 3,700 lbs. Cap.	A11313G00 185
15.	Linde #24 – 4,500 lbs. Cap.	A11319J00224
16.	Nissan #8 – 3,500 lbs. Cap.	23108
17.	Skid Steer L230	wbm432589
18.	Toyota #4 Roll Grab – 4,400 lbs. Cap.	84988
19.	Genie #3 Articulating boom	Z34N-3953
20.	Toyota #1 – 7,700 lbs. Cap.	77656
21.	Toyota #30 – 7,250 lbs. Cap.	63678

Environmental Permits

9. Based on the depositions taken in this case, Sertant Capital, LLC and

Prime Alliance Bank, Inc. are justifiably concerned that Defendants may transfer environmental permits to a third party to render them judgment proof and to prevent Plaintiffs from satisfying any judgment obtained. Accordingly, Plaintiffs request that this Court enjoin Defendants from selling, transferring, cancelling, conveying, encumbering, hypothecating, or otherwise disposing of the environmental permits without this Court's authorization, direct Defendants to file copies of the Environmental Permits with this Court, and certify who owns them.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on October 23, 2023.

/s/Robert McWhorter
ROBERT S. MCWHORTER