

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

Plaintiffs Prime Alliance Bank, Inc. (“PAB”) and Sertant Capital, LLC (“Sertant”) (collectively, “Plaintiffs”) request an entry of an *ex-parte* order authorizing an expedited hearing on a Second Motion for Possession and Injunctive Relief (“Second Motion”) that will be filed contemporaneously with this Motion. As part of this order, Plaintiffs request that this Court establish a briefing schedule as this Court deems just and equitable. Good cause exists to conduct an expedited hearing on the Second Motion. This Motion is based on the accompanying brief, the Second Motion, all papers filed in connection with the Second Motion, including, but not limited to, the Declaration of Donald Dailey (Cheboygan’s Fire Chief) and Robert S. McWhorter, the Verified First Amended Complaint (ECF No. 40) and all papers filed with this Court.

Under E.D. Mich. L.R. 7.1, Plaintiffs’ counsel spoke with Thomas Janczewski and Timothy Hansen, counsel for Defendant, The Great Lakes Tissue Company. He could not concur with the relief sought. Plaintiffs’ counsel requested that counsel arrange a conference call to discuss the relief requested. Plaintiffs’ counsel called Donald Swenson, the last known director for Tissue Depot, Inc. and Cheboygan Energies & Biofuel. Concurrence could not be obtained.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter an order granting an expedited hearing on the Second Motion, setting a briefing

schedule, and granting other relief as is just and equitable. A proposed Order will be separately submitted per Rule 12 of the Eastern District of Michigan's Electronic Filing Policies and Procedures.

Dated: October 23, 2023

BUCHALTER, a Professional Corporation

By: /s/ Robert S. McWhorter

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

STATEMENT OF ISSUES PRESENTED

Whether the Court should order immediate and expedited hearing on Plaintiffs' Verified Second Motion For Possession and Injunctive Relief where good cause exists?

Plaintiffs say: "Yes."

Defendants, presumably, say: "No."

I. INTRODUCTION

This Court must grant an expedited hearing on the Second Verified Motion for Possession and Injunctive Relief (“Second Motion”) filed by Plaintiffs Prime Alliance Bank, Inc. (“PAB”) and Sertant Capital, LLC (“Sertant”) (collectively, “Plaintiffs”). Plaintiffs face dire circumstances that threaten the equipment (“Equipment”) they own. After a fire broke out on September 13, 2023, the Equipment was abandoned in a paper mill operated by Tissue Depot, Inc. (“Tissue Depot”) (which was operated by The Great Lakes Tissue Company (“GLT”)) that is now closed, without employees, gas, electricity, or an operable fire suppression system. The basement below the Equipment has flooded, causing a portion of the Equipment to be in water. Plaintiff justifiably fears that if this Court does not act quickly, the Equipment and other value assets of GLT may be damaged, destroyed, disposed of, or concealed. Thus, Plaintiffs request an expedited hearing because a standard 21-day period for briefing schedule will unduly delay this Court’s consideration of this matter, thereby placing the Equipment at risk.

II. PROCEDURAL BACKGROUND

On March 10, 2023, Plaintiffs filed a complaint against The Great Lakes Tissue Company (“GLT”), seeking to recover the Equipment. (ECF No. 1.)

On March 16, 2023, Plaintiff filed a verified motion to recover possession of the Equipment (“First Motion”). (ECF No. 16.)

On April 12, 2023, this Court enjoined GLT and its agents, representatives, employees, officers, directors, shareholders, and other persons acting on its behalf “shall refrain from damaging, destroying, concealing, disposing of, moving, or using. . . [the Equipment] . . . so as to substantially impair its value.” (ECF No. 24.) This Court denied the First Motion without prejudice and entered a preliminary injunction continuing this relief with respect to GLT and, its successor/alter ego, Tissue Depot, Inc. (“Tissue Depot”). (ECF No. 38.)

On October 2, 2023, Plaintiffs filed their First Amended Complaint (“FAC”), adding Tissue Depot and Cheboygan Energies & Biofuels Corp. (“CEB”). (ECF No. 40.) Plaintiffs served the FAC upon Tissue Depot’s President, Ken Schleben, and Tissue Depot and CEB’s Director, Donald Swenson. Proofs of service will be separately filed with this Court.

On October 23, 2023, Plaintiffs filed, or will be filing, the Second Motion.

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.) After that, Plaintiffs' counsel investigated the status of the Equipment.

III. GOOD CAUSE EXISTS TO ENTER AN *EX-PARTE* ORDER SCHEDULING AN EXPEDITED HEARING ON THE SECOND MOTION

A. THIS COURT MAY EXPEDITE BRIEF SCHEDULES AND A HEARING ON MOTIONS

Under Local Rule 7.1(e), a "standard briefing schedule" requires that responses to motions must be filed within 14 days after service of the Motion. E.D. Mich. L.R. 7.1(e)(1). It further requires that a reply brief be filed within 7 days after service of the response, but at least 3 days before the motion hearing. *Id.* For a motion for injunctive relief, an enlarged briefing schedule applies; response briefs are due within 21 days of service, and reply briefs are due 14 days later. E.D. Mich. L.R. 7.1(e)(2)(A).

However, this Court possesses the inherent authority to expedite the hearing on a motion upon a showing of good cause. *Lyons-Bey v. Campbell*, No. 5:16-CV-13797, 2018 U.S. Dist. LEXIS 11001, at *6 (E.D. Mich. Jan. 24, 2018) (good cause required to expedite); *Perotti v. Marlberry*, No. 05-60172, 2012 U.S. Dist. LEXIS 106765, at *6 (E.D. Mich. July 31, 2012) (court has inherent power to regulate actions pending before it, including the authority to hear motions). A court has inherent power to

control its docket and the disposition of its cases with economy of time and effort for both the court and the parties. *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936); see also *Johnson v. Allison*, No. 1:12-cv-01210-SKO-HC, 2013 U.S. Dist. LEXIS 11931, at *2 (E.D. Cal. Jan. 28, 2013).

B. GOOD CAUSE EXISTS TO EXPEDITE THE BRIEFING SCHEDULE AND HEARING ON THE SECOND MOTION

Good cause exists to enter an ex-parte order scheduling an expedited briefing schedule and hearing on the Second Motion because this Court's existing preliminary injunction can no longer protect the Equipment from the dire circumstances it faces caused by fraudulent transfers, corporate closures, and a catastrophic fire. The facts described below are supported by the evidence and declarations filed supporting the Second Motion. All citations shall be to this evidence.

1. AN EXPEDITED HEARING IS NECESSARY TO PREVENT THE EQUIPMENT FROM BEING DAMAGED, DESTROY, DISPOSED OR CONCEALED

Upon learning that Plaintiffs filed this action, GLT fraudulently transferred all its assets, encompassing its operations, workforce, facilities, inventory, and customers, to Tissue Depot. Of note, GLT transferred the Equipment and environmental permits ("Environmental Permits") valued at \$21 million to Tissue Depot. (Declaration of Robert S. McWhorter ("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)].) To elude its creditors, GLT transferred its assets without receiving reasonably equivalent compensation, rendering it devoid of assets. (McWhorter Decl., Ex. G [Swenson Dep., pp. 46:1-9] Ex. H [Swenson Dep., pp. 13:5-14:4; 27:7-35:9].) GLT's and Tissue Depot's director, Donald Swenson, admitted that 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. (Declaration of Donald Dailey ("Dailey Decl."), ¶¶ 3, 6, Ex. 1.) This calamity rendered the warehouse inoperable, leading to the dismissal of all employees and the abandonment of the Equipment. (Dailey Decl., ¶¶ 7, 8.) The Equipment now languishes in an unsuitable and perilous environment within a disused and dilapidated paper mill, lacking fundamental utilities such as a fire suppression system, electricity, gas, and heat. (Dailey Decl., ¶ 7, 8.) Additionally, it is situated in a basement that is flooded due to an inoperable sump pump. Because of a roof collapse, 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. (Daley Decl., ¶ 7, 9.)

Plaintiffs have not delayed in bringing this Motion. Upon discovering the fire, Plaintiffs' counsel Plaintiffs' counsel emailed GLT's counsel to inquire about the condition of the Equipment without receiving any response. (McWhorter Decl., Exs. A-D.) From September 28, 2023, to October 11, 2023, Plaintiffs' counsel did not receive a reponse. 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.) After that, Plaintiffs' counsel investigated the status of the Equipment, which led to the filing of the Second Motion.

In addition to the abandoned fire, another threat exists that warrants an expedited hearing. 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.

Thus, this Court should conduct an expedited hearing on the Second Motion so that this Court may address the imminent threat looming over the Equipment and to prevent its destruction, damage, disposal, or concealment. If this Court follows its “standard brief schedule,” this Court will not address the Second Motion for at least 21 days, which is too long. The fact that GLT may be required to seek new counsel should not delay this hearing.

2. Expedited Hearing Is Needed To Enjoin Defendants from Transferring the Environmental Permits To a Third Party

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, especially given that Defendants are no longer operating and the paper mill is closed with an eviction imminent. (McWhorter Decl., ¶ 9.) If this occurs, Defendants will be judgment-proof, leaving Plaintiffs without a source of funds to satisfy its monetary claim.

This Court must conduct an expedited hearing so that it can undertake measures to safeguard the Environmental Permits, which constitute the sole

remaining asset of GLT and/or Tissue Depot. 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.

IV. CONCLUSION

Plaintiffs request that this Court enter an exparte order authorizing an expedited hearing on the Second Motion, setting a briefing schedule and granting other relief as is just and equitable.

Dated: October 23, 2023

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SOUTHERN DIVISION

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

BRIEF FORMAT CERTIFICATION FORM

I, Robert S. McWhorter, hereby certify that the foregoing brief complies with Eastern District of Michigan Local Rules 5.1(a), 5.1.1, and 7.1 and Judge Michelson's Case Management Requirements. In particular, I certify that each of the following is true (click or check box to indicate compliance):

- ☐ the brief contains a statement regarding concurrence, *see* LR 7.1(a);
- ☒ the brief, including footnotes, uses 14-point font, *see* LR 5.1(a)(3);
- ☒ the brief contains minimal footnotes and, in all events, no more than 10, *see* Case Management Requirements § III.A;
- ☒ the brief and all exhibits are searchable .pdfs, *see* Case Management Requirements § III.A;
- ☒ the brief is double spaced (except for footnotes and necessary block quotes) with one-inch margins, *see* LR 5.1(a)(2);
- ☒ deposition transcripts have been produced in their entirety and not in minuscrit, *see* Case Management Requirements § III.A;

☐ if the brief and exhibits total 50 pages or more, a courtesy copy with ECF headers will be sent to chambers, *see* Case Management Requirements § III.B.

I also acknowledge that if the Court later finds that these requirements are not met, my brief will be stricken.

/s/ Robert S. McWhorter
Dated: October 23, 2023

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PROOF OF SERVICE

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

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

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Via email and first class mail.

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