

**UNITED STATES DISTRICT
EASTERN DISTRICT OF MICHIGAN**

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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JOINT REVISED DISCOVERY PLAN

Plaintiffs Prime Alliance Bank, Inc. (“PAB”), and Sertant Capital, LLC
 (“Sertant”) (collectively, “Plaintiffs”) hereby submit a revised discovery plan to assist

this Court in its review of the proposed Scheduling Order submitted contemporaneously:

Summary of History of Case

1. On March 10, 2023, Plaintiffs filed a Verified Complaint. (ECF No. 1.)
2. This Court conducted a telephonic scheduling conference on July 21, 2023, during which the Court ordered Plaintiffs to file an amended complaint by October 2, 2023, to meet and confer for a follow-up Rule 26 conference, and to submit a Stipulated Scheduling Order by October 31, 2023.
3. On October 2, 2012, Plaintiffs filed a First Amended Complaint (“FAC”) against Defendants alleging: (1) Avoidance of Fraudulent Transfers, (2) Breach of Contract, (3) Claim and Delivery, and (4) Conversion. (ECF No. 40.)
4. On October 23, 2023, Plaintiffs filed a Verified Second Motion for Possession and Injunctive Relief (“Second Motion”). (ECF No. 50.) This Court scheduled a hearing on the Second Motion for November 20, 2023. Defendants have until November 7, 2023, to file an opposition to the Second Motion.
5. On October 24, 2023, the Court granted Great Lakes Tissue Company’s (“GLT”) Motion to Withdraw, permitting Timothy Hansen, Thomas Albert Janczewski, and Christopher E. Nyenhuis to withdraw as GLT’s counsel. (ECF No. 53.) The Court gave Defendants until October 31, 2023 to retain counsel.

Discovery Plan To Support Proposed Scheduling Order

6. **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 Lakes 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. This lawsuit addresses claims pertain to the Merger Agreement as discussed below.

7. **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. GLT is a Michigan corporation whose principal place of business is Michigan. Cheboygan Energies & Biofuels Corp. (“CEB”) and Tissue Depot are Wisconsin corporations whose principal place of business is in Wisconsin. This Court has personal jurisdiction over CEB and Tissue Depot because (i) Tissue Depot is registered to do business in Michigan, (ii) Tissue Depot conducts business in Cheboygan, Michigan, and (iii) CEB leases a hydroelectric plant (obtained from GLT) to Tissue Depot in Cheboygan, Michigan. PAB 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.

8. **Venue.** Venue is proper in this judicial district under 28 U.S.C. § 1391 because GLT's principal place of business is located in Cheboygan, Michigan, Tissue Depot and CEB conduct business 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.

9. **Factual Summary.**

A. Plaintiffs' Factual Summary

On October 13, 2022, Sertant, as lessor, and GLT, as lessee, entered into a Master Lease Agreement ("Master Lease") and a Lease Schedule No. 1 ("Schedule No. 1") (collectively, "Lease") under which GLT agreed to lease equipment from Sertant (collectively, "Equipment"). Under the Lease, GLT agreed to pay \$68,082.30 per month in rent to Sertant for four years commencing October 1, 2022. An Event of Default occurs under the Lease 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. Sertant subsequently assigned a portion of the stream of payments under the Lease to PAB.

GLT breached the Lease as its financial condition deteriorated. In December 2022, the Paper Mill’s roof collapsed, causing GLT to lay off 60 employees. After December 2022, GLT stopped paying rent to Plaintiffs. GLT failed to pay January 1, 2023 and February 1, 2023 rent to Plaintiff. The organizational structure, control, management, and ownership of GLT underwent significant and rapid transformations after entering into the Lease without Plaintiffs’ written consent.

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. Under the Merger Agreement, GLT sold all of its interest in GLT to PAET. After that, Jeffrey Prange replaced Kip Boie as GLT’s President, and PAET took control of GLT. PAET’s goal in purchasing GLT was to acquire its Environmental Permits worth \$21 million for substantially less than that amount. Plaintiffs fear that Defendants will transfer the Environmental Permits to unknown third parties.

After the Merger Agreement, GLT’s creditworthiness and financial condition materially deteriorated. GLT was unable to pay its debts in the ordinary course of business. 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].)

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, including the Paper Mill, the Equipment, and the Environmental Permits, as well as GLT’s employees, phone number, customers, and goodwill, but excluding GLT’s lease rights in the hydroelectric plant, which GLT transferred to CEB for no consideration. CEB then leased the hydroelectric plant to Tissue Depot, who operated it just as GLT had done. The preceding transfers shall collectively be referred to as the “Transfers.”

The Transfers were 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 Transfers 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. Before, during, and following the Transfers, GLT was not paying its debts when due in the ordinary course of business. Plaintiffs never consented to or had prior notice of the Transfers. The Transfers rendered GLT to be “a defunct company.”

GLT ceased all operations; Tissue Depot took over operating the Paper Mill and the hydroelectric plant using GLT's former employees.

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. Since the fire, Tissue Depot has laid off its employees and shuttered its operations. The Paper Mill stands as a desolate building, continuing to house the Equipment. Its windows are boarded up. Its doors are sealed. It has no gas or electricity. Its fire suppression system is inoperable, placing the now abandoned Equipment at risk of loss due to fire. Its basement is flooded because the sump pump is inoperable, presumably due to a lack of energy or gas. Some of the Equipment runs through the basement and, thus, may be damaged by the water collecting in the basement. 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.)

B. Defendants' Summary

None provided by Defendants.

10. Legal Issues.

A. Plaintiffs' Legal Issues. The FAC asserts the following legal issues:

(a) Whether GLT's transfer of all of its assets to CEB and

Tissue Depot after learning of this action, for less than reasonably equivalent value, when GLT was rendered insolvent or with the intent to hinder, delay, or defraud creditors constitutes a fraudulent transfer in violation of the Uniform Fraudulent Transfer Act, MCL 566.31 et seq.

(b) Whether CEB and Tissue Depot are liable for an alter ego or successor liability when GLT transferred its assets, including its employees, building, customers, operations, Equipment, and Environment Permits, to these entities.

(c) Whether GLT breached the Lease by, among other things, (i) failing to make payments to Plaintiffs from January 2023 to the present, (ii) transferring possession of the Equipment to Tissue Depot without Plaintiffs' consent, (iii) changing the organizational structure, control, management, and ownership of GLT without Plaintiffs' written consent, resulting in the deterioration in GLT's creditworthiness and financial condition, and (iv) transferring all of its assets to CEB and Tissue Depot, without Plaintiffs' consent.

(d) Whether Defendants are liable for conversion (i) for refusing to relinquish possession of the Equipment after an Event of

Default occurred under the Lease and (ii) for scrapping and selling 21 pieces of Equipment without Plaintiffs' authorization and consent, despite Plaintiffs' ownership of the Equipment.

(e) Whether Plaintiffs are entitled to recover possession of the Equipment when GLT breached the Lease and Plaintiffs own the Equipment.

B. Defendant's Legal Issue.

None provided by Defendants.

11. **Amendment of Pleadings.** No additional amendments are anticipated.

12. **Discovery.**

(a) Summary of Discovery that the Parties Intend to Pursue, Including Expert Witnesses.

Thus far, Plaintiffs have engaged in substantial discovery. They served subpoenas upon Kip Boie and GLTG, GLT's former shareholder, requesting that they produce documents. Plaintiffs served a request for documents upon GLT. Plaintiffs conducted the depositions of Donald Swenson and Ken Schleben under Rule 30(b)(6) of the Federal Rules of Civil Procedure. They also conducted the deposition of Kip Boie, the former President and CEO of GLT.

Plaintiffs intend to take discovery of GLT's transfer of the Environmental Permits to Tissue Depot, which seems to be the primary remaining assets, to allow

Plaintiffs to recover monetarily. They may seek discovery of CEB about its acquisition of the hydroelectric plant to the extent that it makes economic sense.

If this case goes to trial, Plaintiffs will retain one or more expert witnesses to testify as to damages and Defendants' insolvency.

(A) 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 critical 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.

(B) KEY WITNESSES.

Plaintiffs have taken depositions of three key witnesses: Kip Boie, Donald Swenson, and Kenneth Schleben.

(C) 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.

13. **Electronic Discovery.** Several months ago, the Parties met and conferred on electronic discovery and reviewed the Rule 26(f) Checklist. 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, covering the period from March 1, 2022 to present. The Parties may produce ESI in PDF format unless a party requests explicitly 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.

14. **Settlement.** No settlement discussions are ongoing. While initial settlement discussions were conducted, they were discontinued. If a settlement

cannot be reached, Plaintiffs would be willing to participate in facilitative mediation or a settlement conference per Local Rules 16.4 and 16.6.

15. **Consent.** Based on a discussion from several months ago, 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.

16. **Trial.** The trial will be a bench trial of five court days.

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

STIPULATED AND AGREED TO BY:

DATED: October 31, 2023

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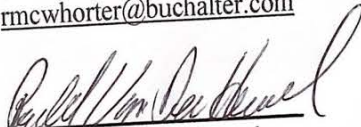
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