

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

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

Plaintiff,

v.

THE GREAT LAKES TISSUE
COMPANY, TISSUE DEPOT, INC.,
and CHEBOYGAN ENERGIES &
BIOFUELS CORP.,

Defendants.

Case No. 23-10564

Honorable Laurie J. Michelson

ORDER FOR PLAINTIFFS TO SHOW CAUSE

Sertant Capital, LLC entered into a Master Lease Agreement with Great Lakes Tissue Company under which GLT agreed to lease certain equipment from Sertant for about \$68,000 per month. Sertant assigned certain rights under the lease to Prime Alliance Bank, Inc., but it retained others. According to Sertant and PAB, GLT materially breached the lease agreement by, among other things, failing to pay the monthly rent due, changing ownership or management without Sertant or PAB's prior written consent, keeping the equipment in disrepair, and transferring ownership of some of the leased equipment without Sertant or PAB's authorization or consent. So Sertant and PAB sued GLT for breach of contract, conversion, and claim and delivery. (ECF No. 1.)

On October 2, 2023, Plaintiffs filed an amended complaint (ECF No. 40) adding Cheboygan Energies & Biofuels Corporation (“CEBC”) and Tissue Depot Inc. as defendants. Plaintiffs’ amended complaint raises the same claims from the original complaint, and an additional claim for “avoidance of fraudulent transfers”—alleging that GLT transferred its assets to CEBC and Tissue Depot to defraud its creditors. (*Id.* at PageID.524.)

The Court recently granted Plaintiffs’ motion for a default judgment on their claims for breach of contract, claim and delivery, and fraudulent transfer, but denied default as to their conversion claim. *See Prime All. Bank, Inc. v. Great Lakes Tissue Co.*, No. 23-10564, 2024 WL 2607277, at *7 (E.D. Mich. May 24, 2024) (“While Plaintiffs may plead conversion in the alternative to their breach of contract claim, a conversion claim is unavailable when, as here, there is a contract that covers the subject matter, and no distinct breach of duty is asserted.”)

By June 4, 2024, Plaintiffs shall show cause, in writing, whether they wish to prosecute the conversion claim and if so, explain why that claim should not be dismissed for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *See e.g., Norfolk S. Ry. Co. v. Tobergte*, No. 18-207, 2022 WL 761466, at *1 (E.D. Ky. Mar. 10, 2022) (explaining that “a district court may act *sua sponte* to dismiss a complaint for failure to state a claim under Rule 12(b)(6)” (citing *Morrison v. Tomano*, 755 F.2d 515, 516–17 (6th Cir. 1985))). A failure to file a show-cause response by June 4, 2024, or an inadequate show-cause response, will result in the conversion claim being dismissed.

IT IS SO ORDERED.

Dated: May 29, 2024

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