

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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RELIANT AMERICAN  
INSURANCE COMPANY and  
RELIANT AMERICAN  
GENERAL AGENCY, INC.,

Plaintiffs,

v.

SNYDER GENERAL AGENCY, INC.,  
SNYDER GENERAL AGENCY  
OF WISCONSIN, INC. and  
JOHN W. SNYDER,

Defendants.

OPINION AND ORDER

01-C-0554-C

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This is a civil action for monetary relief in which plaintiffs Reliant American Insurance Company and Reliant American General Agency, Inc., allege that defendants John W. Snyder, Snyder General Agency of Wisconsin, Inc. and Snyder General Agency, Inc. failed to deliver to plaintiffs premiums in excess of \$1 million. Plaintiffs allege seven causes of action: (1) breach of contract; (2) enforcement of a personal guaranty; (3) breach of fiduciary duty; (4) conversion; (5) piercing the corporate veil; (6) fraud; and (7) turnover of collateral. Jurisdiction is present under 28 U.S.C. § 1332.

Presently before the court is plaintiffs' motion for partial summary judgment on the issues of breach of contract, enforcement of a personal guaranty, conversion, breach of fiduciary duty and piercing the corporate veil. Because defendant does not oppose summary judgment on the issues of breach of contract and enforcement of defendant Snyder's personal guaranty, I will grant plaintiffs' motion for summary judgment as to these claims. Plaintiffs' motion for partial summary judgment on their claims of breach of fiduciary duty, conversion and piercing the corporate veil will be denied and those claims dismissed as moot. Plaintiffs' may have until May 1, 2002, to show cause why their claims of fraud and turnover of collateral should not be dismissed as moot because they seek identical relief to the relief awarded under breach of contract; and defendants will have until May 15, 2002, to file and serve a brief in opposition to plaintiffs' showing. The trial date will be stricken.

From the record and the proposed findings of fact offered by the parties, I find the following facts relevant and undisputed.

## UNDISPUTED FACTS

### A. Parties

Plaintiffs Reliant American Insurance Company and Reliant American General Agency, Inc. are Texas corporations with their principal places of business in Fort Worth, Texas. Defendant Snyder General Agency of Wisconsin, Inc. is a Wisconsin corporation

with its principal place of business in Madison, Wisconsin. Defendant John W. Snyder is the president and sole shareholder of defendant Snyder General Agency of Wisconsin. He resides in Dane County, Wisconsin.

Defendant Snyder General Agency, Inc. was a Wisconsin corporation with its principal place of business in Madison, Wisconsin. Defendant Snyder General Agency was owned by Douglass Snyder, defendant Snyder's father. It was dissolved in 1998. Defendant Snyder General Agency was not a party to the agreement at issue in this lawsuit. To distinguish the two agencies, I will refer to the existing agency as New Snyder and the dissolved agency as Old Snyder.

#### B. The Agreement

On May 9, 2000, defendant New Snyder and plaintiffs entered into a "General Agency – Company Agreement." The agreement contains a choice of law provision, requiring that "this agreement be interpreted in accordance with the laws of the State of Texas." In the agreement, defendant Snyder personally guaranteed the payment of all sums due plaintiffs.

Under the agreement, New Snyder was appointed plaintiffs' general agent for a variety of insurance needs in the states of Illinois, Minnesota and Wisconsin. New Snyder collected premiums from agents and finance companies in Wisconsin and Illinois on policies

that had been sold in these states. New Snyder does not collect premiums directly from insureds. Premiums flowed through New Snyder to plaintiffs, minus commissions. New Snyder was required to prepare monthly statements itemizing new coverages sold, endorsements made and cancellations that had occurred, as well as provide details of the premiums collected, commissions retained and amounts owed to plaintiffs. Statements were due no later than 10 days after the close of the month for which they were reported. The corresponding payment of the amounts owed to plaintiffs was due no later than 45 days after the close of the account month. According to the agreement, New Snyder could be in default if plaintiffs believed the financial condition of the agency or the collateral was impaired or unsafe.

### C. Payments

From August to January 2001, New Snyder forwarded payments to plaintiffs in a timely fashion. Payment for March 2001 was 10 days late. Payments for subsequent months became more and more untimely. Eventually, the entire amount owed to plaintiffs for April and May 2001 was paid. On August 21, 2001, David J. Macchia, plaintiffs' marketing manager, telephoned defendant Snyder and suspended New Snyder's binding authority for new and renewal business because of non-payment. New Snyder made payments on August 22 and August 27, 2001, totalling \$210,000, which were insufficient

to cover the June 2001 premiums owed to plaintiffs. New Snyder has not made any payments since August 27, 2001.

On August 27, 2001, Macchia spoke with defendant Snyder by telephone and confirmed the agency's suspension. On that same day, Gaye LeBoutillier, plaintiffs' assistant vice president, wrote to defendant Snyder, notifying him that their agreement had been cancelled. The letter included an acknowledgment of the cancellation, which defendant Snyder signed on behalf of New Snyder. (The parties dispute whether New Snyder's financial condition was impaired at the time of cancellation. Defendants maintain they have continued to make payments to their creditors with the exception of plaintiffs and one other insurer. Plaintiffs assert that New Snyder owes money to several insurers.) Defendants owe plaintiffs premiums on approximately 364 policies.

#### D. Corporate Financial Condition

Following the suspension and notice of cancellation, plaintiffs conducted an investigative audit of New Snyder's records. On August 31, 2001, a detailed listing of accounts payable indicated amounts due to plaintiffs more than 45 days after the end of the account month. The financial condition of New Snyder on August 31, 2001, included assets of \$1,764,933.24 and liabilities of \$1,862,247.34.

Over the course of several years, defendant Snyder has taken personal loans from

defendant New Snyder. All of these loans have been documented appropriately by New Snyder's corporate accountant. As a result of these loans, \$729,186.17 was due personally from defendant Snyder. Accounts receivable made up \$807,168.94 of the assets, the majority of which were over 91 days past due. Four of the receivable accounts were as follows: (1) "Account No. 12310: Loans to Stockholders"; (2) "Account No. 12400: Notes Receivable - JS"; (3) "Account No. 12405: Interest Rec - HSA - Snyder"; and (4) "Account No. 12407: Legal/JWS/Receivable." As of December 31, 2001, the four receivable accounts totalled \$847,185.58. Approximately 90% of the liabilities were current.

New Snyder's records include the following transactions, none of which has a business purpose for the agency: (1) "John W. Snyder - Loans from company"; (2) "MBNA America - Personal chges"; (3) "Barbara Snyder - Divorce settlement"; (4) "MBNA America - Limo - St. Petersburg." (5) "Monona State Bank - Principal and Interest - PIRM Note"; (6) "Wilson Law Group - Divorce chges"; and (7) "Condo - Withdrawal from savings account." In 1999, a judgment was entered against defendant Snyder and others. The assets of New Snyder have been used to satisfy that judgment. (The parties dispute whether judgment was against New Snyder. Defendant Snyder states that the judgment was against "SGA," making it appropriate to use corporate assets to pay the judgment. Plaintiffs believe judgment was against Old Snyder, the dissolved corporation owned by Douglass Snyder.)

Defendant Snyder concedes that if he had not received several loans and transfers

from the agency, more cash would have been available for defendant New Snyder's creditors. New Snyder does not have enough liquid assets to repay its current liabilities. (The parties dispute whether defendant Snyder intends to repay the loans.) Some repayment of the loans has already occurred. (The parties dispute whether these repayments were genuine. Plaintiffs assert that some repayments are actually reclassifications of other receivable accounts. Plaintiffs assert that one of the payments was a 1987 Ferrari that was accepted by New Snyder as repayment of debt but that the car is registered in defendant Snyder's name and remains at his home. Plaintiffs also assert that while these repayments were being made, defendant Snyder continued to take loans from the corporation.) In 2001, an agent in Illinois who sold plaintiffs' policies embezzled over \$400,000 in premiums on plaintiffs' policies, causing defendants to have cash flow problems. (Defendants assert that their cash flow problems were exacerbated by plaintiffs' improper cancellation of a large number of insurance policies.)

#### E. Corporate Structure and Operation

Under the agreement, defendant was obligated to hold plaintiffs' funds in a separate account, restricted to funds due insurance companies. New Snyder conducted all its business from a single banking account. It also paid premiums to insurers from this account. Defendant Snyder maintains a separate, personal checking account. (The

parties dispute whether defendant Snyder commingles corporate and personal funds to pay for personal expenses. Plaintiffs assert that defendant Snyder may have his own personal checking account, but uses the loans from the corporation to pay personal expenses.)

Defendant Snyder has attempted to observe all corporate formalities, including maintaining corporate minutes and holding required meetings, in the operation of New Snyder. Defendant Snyder never hid from its creditors the corporate structure of defendant New Snyder. New Snyder employs an in-house accountant, Eugene Kirley, who decided what financial information was to be recorded and what reports were to be generated. (The parties dispute the remaining duties of Kirley. Defendant Snyder states that Kirley handles “all the financials,” including deciding which bills would be paid and when. Plaintiffs maintain that Kirley kept the books and printed checks and that defendant Snyder decided which bills would be paid and to whom.) New Snyder employs an office manager, Mary Fisher. (The parties dispute what Fisher’s duties were. Defendant Snyder states that Fisher made recommendations as to office policies. Plaintiffs assert that Fisher routes paperwork, assigns offices and handles other administrative work but has no role in any business decisions.) New Snyder employs an individual in Illinois who is responsible for generating business independently. New Snyder also has an underwriting department that performs independent underwriting

services.

## OPINION

The parties agree that Texas law governs plaintiffs' breach of contract and personal guaranty claims by virtue of their agreement. They agree also that Wisconsin law governs the tort claims that are based on acts occurring allegedly in Wisconsin. These agreements make it unnecessary to do any choice of law analysis.

Defendants do not oppose plaintiffs' claims of breach of contract and enforceability of defendant Snyder's personal guaranty as to all debts owed by New Snyder to plaintiffs. Therefore, plaintiffs are entitled to summary judgment on these claims.

With the granting of plaintiffs' contractual claims, there is no reason to address the remaining tort claims on which plaintiffs are seeking partial summary judgment. Their request for relief on their tort claims is identical to their request for relief on the contract claims. Plaintiffs can only recover once against defendants, no matter how many theories of recovery they are asserting. They will be awarded the full amount of their loss against defendant New Snyder for breach of the agreement and the full amount of their loss against defendant Snyder, personally.

Plaintiffs contend that the court should address their remaining claims so that they have a non-dischargeable tort judgment against defendants in the event defendants seek

relief from the judgment in bankruptcy. I am not inclined to address matters that may never occur, particularly when my rulings would be nothing more than advisory as far as the bankruptcy court is concerned. See Brown v. Felsen, 442 U.S. 127, 138-39 (1979) (bankruptcy court not confined to judgment in prior state court proceeding when determining dischargeability of debt). The fact that this court is a federal tribunal and not a state one makes no difference because this suit is brought in diversity. In deciding it, I am acting as a state court, applying state law.

Plaintiffs did not seek summary judgment on their claims for fraud and for turnover of collateral. I will give them an opportunity to show cause why those claims should not be dismissed in light of the entry of judgment for plaintiffs on their claims of breach of contract and defendant Snyder's liability on his personal guarantee.

#### ORDER

IT IS ORDERED that the motion of plaintiffs Reliant American Insurance Company and Reliant American General Agency, Inc. for partial summary judgment is GRANTED as to plaintiffs' claims of breach of contract and enforcement of defendant John W. Snyder's personal guarantee; their motion for partial summary judgment on their claims of breach of fiduciary duty, conversion and piercing the corporate veil is DENIED and those claims are DISMISSED as moot; plaintiffs may have until May 1, 2002, in which to show cause why

their claims of fraud and turnover of collateral should not be dismissed as moot because they seek as relief the same relief already awarded to plaintiffs; and defendants may have until May 15, 2002, in which to file and serve a brief in opposition to plaintiffs' showing. FURTHER, IT IS ORDERED that the trial date and final pretrial conference are STRICKEN from the calendar.

Entered this \_\_\_\_\_ day of April, 2002.

BY THE COURT:

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BARBARA B. CRABB  
District Judge