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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

WILDA D. SNEDIGAR Plaintiff, v. BANK OF AMERICA and AMERICAN GENERAL ASSURANCE COMPANY f/k/a U.S. LIFE CREDIT LIFE INSURANCE COMPANY, Defendants.	*	4-00-CV-90279
BANK OF AMERICA, N.A., Third Party Plaintiff, v. AMERICAN GENERAL ASSURANCE COMPANY f/k/a U.S. LIFE CREDIT LIFE INSURANCE COMPANY Third Party Defendant.	*	MEMORANDUM OPINION AND ORDER

Before the Court is American General Assurance Company's Motion for Summary Judgment (#5), filed on June 21, 2000. Plaintiff Wilda D. Snedigar resisted on June 28, 2000. Defendant American General Assurance Company replied on July 10, 2000. Defendant Bank of America, N.A. joined Plaintiff's resistance to summary judgment on August 14, 2000. The Court held oral argument on August 22, 2000 at the United States Courthouse in Des Moines, Iowa. The matter is fully submitted.

Copies to Counsel: SEP 12 2000
By:

Pleading # 22

I. Facts

On a motion for summary judgment, the Court views the evidence in the light most favorable to the nonmoving party and gives that party the benefit of all reasonable inferences. *See United States v. City of Columbia*, 914 F.2d 151, 153 (8th Cir. 1990).

Plaintiff Wilda J. Snedigar's ("Snedigar") lawsuit arises out of Defendant Bank of America, N.A.'s (the "Bank") repossession of her car pursuant to an alleged default on her car loan. As part of Snedigar's disability policy with Defendant American General Assurance Company ("AGAC"), AGAC was responsible for making Snedigar's payments on the car loan in question. Snedigar sued both the Bank and AGAC. Subsequently, the Bank cross-claimed against AGAC on the basis that if the Bank is liable to Snedigar, AGAC is liable to the Bank.[1]

Snedigar took out a car loan with Nations Bank, N.A. The Bank later succeeded to the assets and liabilities of Nations Bank, N.A. (For convenience, Defendant Bank of America, N.A. and Nations Bank, N.A. will collectively be referred to as the "Bank.")

In conjunction with her car loan, Snedigar purchased a disability insurance policy from U.S. Life Credit Life Insurance Company, later known as AGAC (collectively referred to as "AGAC"). That insurance policy became effective on February 21, 1996. As a result of an accident on June 27, 1996, Snedigar became disabled within the meaning of her policy. AGAC began making payments to the Bank pursuant to that policy on August 5, 1996. AGAC does not

[1]Defendant Bank filed a Motion to File Cross-Complaint against AGAC pursuant to Federal Rule of Civil Procedure 14(a), asking the Court's permission to file a cross-claim against AGAC. However, Rule 14(a) is designed to bring in, or implead, a person who is not already a party to the litigation on the basis that the third party may be liable for all or part of the plaintiff's claim against the third-party plaintiff. Fed. R. Civ. P. 14(a). AGAC is already a party to the litigation. Defendant Bank should therefore have filed its cross-claim pursuant to Rule 13(g), which provides for cross-claims against co-parties–and does not require the Court's permission. See Fed. R. Civ. P. 13(g). The Court will thus construe the Bank as a third-party plaintiff with a cross-claim pursuant to Rule 13(g) against third-party defendant AGAC.

dispute that it was under a duty to make Snedigar's loan payments to the Bank.

Snedigar states that she telephoned AGAC on several occasions during the months of March and April, 1999, and informed it that the Bank was sending her notices that payments were not being received on her car loan. She says that every time she called AGAC and told it about the notices, AGAC would inform her that the payments were being made and then send her statements of the payments. The Bank repossessed Snedigar's car on April 6, 1999. On May 10, 1999, the Bank sent Snedigar's attorney a letter which stated in part as follows:

> After further research into this matter I have learned that due to the insurance company's failure to provide Ms. Snedigar's account number and social security number with their payments, the bank misapplied one of the payments on Ms. Snedigar's loan. In fact, the payment was applied to Ms. Snedigar's older loan with the bank. All of the appropriate payments have now been applied to the correct account and the account is current.

(Pl.'s Stat. Undisput. [sic] Mat. Facts Ex.1.) In its resistance to AGAC's motion for summary judgment against Snedigar, the Bank states that,

> One of the main reasons Plaintiff's loan went into default at Bank of America was that the checks from Defendant American General Assurance Company (AGAC) to the Bank of America, N.A. for the account of Plaintiff were not properly marked with Wilda Snedigar's social security number nor her loan number.

(McManamy Aff.) The Bank goes on to explain that at the relevant time in question Snedigar had another loan with the Bank. It claims that because AGAC did not mark Snedigar's social security number or loan number on its payments some of the payments got posted to wrong account. At oral argument, AGAC contended that it was under no duty to put Snedigar's social security number or loan number on the payments it made to the Bank.

II. Summary Judgment Standard[2]

Federal Rule of Civil Procedure 56(c) provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." An issue is "genuine," "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is "material" if the dispute over it might affect the outcome of the suit under the governing law. *Id.*

The moving party has the burden of demonstrating the absence of a genuine issue of material fact. *See Celotex*, 477 U.S. at 323; *Anderson*, 477 U.S. at 248. In meeting its burden, the moving party may support his or her motion with affidavits, depositions, answers to interrogatories, and admissions. *See Celotex*, 477 U.S. at 323. Once the moving party has carried its burden, the nonmoving party must go beyond the pleadings and, by affidavits or by the depositions, answers to interrogatories, and admissions on file, designate the specific facts showing that there is a genuine issue for trial. *See* Fed. R. Civ. P. 56(c), (e); *Celotex Corp.*, 477 U.S. at 322-323; *Anderson*, 477 U.S. at 257.

To survive a motion for summary judgment, the nonmoving party must present enough evidence for a reasonable jury to return a verdict in his or her favor. *Anderson*, 477 U.S. at 257. The Court does not weigh the evidence or make credibility determinations. *See Anderson*, 477 U.S. at 252. The Court only determines whether there are any disputed issues and, if so, whether

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[2]AGAC brought this Motion for Summary Judgment prior to filing an Answer. Nevertheless, because AGAC has brought the motion as one for summary judgment, and not a Rule 12(b)(6) motion for dismissal, the motion shall be adjudged pursuant to the standards for summary judgment.

those issues are both genuine and material. *Id.*

III. Discussion

Snedigar asserts three claims against AGAC. First, she alleges that AGAC was negligent in making the loan payments to the Bank.[3] Second, she alleges that AGAC breached its fiduciary duty to her by failing to properly make payments to the Bank and by not intervening in the Bank's repossession of her car.[4] Third, Snedigar alleges that AGAC tortiously interfered with her contract for a car loan with the Bank. AGAC moves for summary judgment on all three claims.[5]

A. Negligence

Snedigar claims that the Bank's repossession of her car was caused by AGAC's negligence in making payments to the Bank. The elements of a negligence claim under Iowa law are as follows: (1) the existence of a duty to conform to a standard of conduct to protect

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[3]Snedigar also alleges that AGAC was negligent in "failing to stop the repossession of plaintiff's vehicle after making payments on her account." (Petition ¶ 28(i).) However, Snedigar does not explain in her pleadings where such a duty would arise from apart from the contract to make payments.

[4]Federal Rule of Civil Procedure 15(a) states that leave of court is necessary if a party seeks to amend a pleading after a responsive pleading is served. Plaintiff filed an amendment to her Petition on June 28, 2000. Defendant Bank filed an Answer on June 9, 2000. Defendant AGAC filed a Motion for Summary Judgment on June 21, 2000. Generally, a responsive pleading by one defendant does not preclude amendment as of right against another defendant. *See* 6 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1481 (2d ed. 1990). However, while a motion is ordinarily not considered a responsive pleading, some courts have considered a motion for summary judgment to be a responsive pleading. 5 Wright & Miller, *Federal Practice and Procedure* at § 1348. The Eighth Circuit has not ruled on the issue. Regardless, the Court sees no reason to deny leave in the event that it is necessary: the amendment only affects AGAC, it is not frivolous, and AGAC has responded to the added claim in its reply. The Court therefore passes on the issue and prophylactically grants leave to Snedigar and considers her complaint amended by her June 28, 2000 filing.

[5]Federal Rule of Civil Procedure 56(f) provides that a court may refuse to grant summary judgment or continue the motion if a party is unable to present by affidavit facts necessary to justify the party's opposition. However, a party seeking shelter under Rule 56(f) must explain his or her inability to present the necessary facts in an affidavit, and in that affidavit conclusively demonstrate his or her inability to do so. *See Willmar Poultry Co. v. Morton-Norwich Products, Inc.*, 520 F.2d 289, 294 (8th Cir. 1975); 10B Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2740 (3d. ed. 1998). Snedigar has not filed an affidavit stating why it could not respond factually to AGAC's Motion for Summary Judgment, and therefore does not fall under the shelter of Rule 56(f).

others; (2) a failure to conform to that standard of conduct; (3) proximate cause; and (4) damages. *Van Essen v. McCormick Enterprises Co.*, 599 N.W.2d 716, 718 (Iowa 1999). In order to prevail on its Motion for Summary Judgment, AGAC must show there is no genuine issue of fact and be entitled to judgment as a matter of law as to at least one of these elements.

A contract may establish a duty under which a cause of action in tort will lie. *See Mid-Country Meats, Inc. v. Woodruff-Evans Construction*, 334 N.W.2d 332, 336 (Iowa 1983) (stating that [i]t is well established that a contract may give rise to a duty, the breach of which may be tortious). But not every breach of contract gives rise to an action in tort. *See Preferred Marketing Associates Co. v. Hawkeye National Life Insurance Co.*, 452 N.W.2d 389, 397 (Iowa 1990). In *Preferred Marketing Associates*, the Iowa Supreme Court held as follows:

> Only where a duty recognized by the law of torts exists between the plaintiff and defendant distinct from a duty imposed by the contract will a tort action lie for conduct in breach of the contract. As Prosser stated:
> '[I]f a relation exists which would give rise to a legal duty without enforcing the contract promise itself, the tort action will lie, otherwise not.'

Id. (quoting W. Prosser, Handbook of the Law of Torts § 33, at 205 (1st ed. 1941)). For example, in *Haupt v. Miller*, 514 N.W.2d 905, 910-911 (Iowa 1994), the Court held that an independent duty to handle a guarantee agreement in a protective manner may arise after the guarantee agreement was paid. Where as in *Preferred Marketing Associates Co.*, the Court held that no duty arose between an insurance company and corporation to pay renewal commissions independent of the contractual duty between them. Snedigar alleges that AGAC owed a duty to her, by virtue of their insurance contract, to make payments to the Bank on her behalf. Absent the contractual duty to make payments, no legal standard of care would exist regarding AGAC making payments to the Bank on Snedigar's behalf. The insurance contract simply does not create a duty under which a standard of conduct to protect others arises.

The Iowa Supreme Court has as much as said that the breach of a contractual duty to make insurance payments does not give rise to a negligence claim. In *Hollingsworth v. Schminkey*, 553 N.W.2d 591, 596 (Iowa 1996), the Court stated that "Iowa does not recognize a cause of action for negligent failure to pay or investigate an insurance claim." Snedigar's claim is just that, a claim for the negligent payment of her car loan. Therefore, as a matter of law, Snedigar cannot make out a prima facie case of negligence against AGAC.

B. Breach of Fiduciary Duty

Snedigar claims that AGAC breached a fiduciary duty it owed to Snedigar. The Iowa Supreme Court has adopted the following definition of a fiduciary relationship: "A fiduciary relation exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation." *Kurth v. Van Horn*, 380 N.W.2d 693, 695 (Iowa 1986) (quoting Restatement (Second) of Torts § 874 comment a, at 300 (1979)). Where a person is a fiduciary of another, that person is liable to the other person for any harm resulting from a breach of the duty imposed by that relationship. *Restatement (Second) of Torts* § 874 (1977).

Whether a fiduciary relationship exists between the parties must be determined by the facts and circumstances of each individual case. *Kurth*, 380 N.W.2d at 696. In this case, Snedigar claims that AGAC became its fiduciary when AGAC became contractually bound to pay off Snedigar's car loan with the Bank as per her disability policy. At oral argument, Snedigar added that the creation of a fiduciary relationship was bolstered by the fact that AGAC could have just paid off the car loan out right instead of making payments on it.[6] Snedigar

[6]The Court was not provided with a copy of the disability policy.

claims that AGAC breached its fiduciary duty by failing to properly make payments on Snedigar's car loan to the Bank and failing to intervene in the Bank's repossession of Snedigar's car. AGAC simply denies that it owed a fiduciary duty to Snedigar.

Iowa courts have not specifically addressed whether an insurer owes an insured a fiduciary duty when making payments to a third party on the insured's behalf. The Iowa Supreme Court has refused to recognize a fiduciary duty between an insurer and insured where the parties deal exclusively with each other. *See North Iowa State Bank v. Allied Mutual Insurance Co.*, 471 N.W.2d 824, 828 (Iowa 1991) (describing the insurer-insured relationship in a first-party situation as an arm's-length relationship); *Dolan v. Aid Insurance Co.*, 431 N.W.2d 790, 794 (Iowa 1988) (stating that the relationship between the insurer and insured in the first-party situation does not involves the same fiduciary duties as in third-party situations).

The Iowa Supreme Court has, on the other hand, recognized a fiduciary duty where the insurer deals with a third party on behalf of the insured. In *Pirkl v. Northwestern Mutual Insurance Assoc.*, 348 N.W.2d 633, 635 (Iowa 1984), the court clearly distinguished between the third-party situation from the first-party situation. The court held that in situations where an insurer settles a claim of a third party on behalf of the insured, "a clear fiduciary duty arises which places an affirmative duty on the insurer to investigate the claim and take such additional affirmative action as is required in the best interests of its insured." *Id.* The court contrasted this situation with the situation where an insured seeks payment directly from the insurer, in which case a fiduciary duty does not arise. *Id.* In *North Iowa State Bank*, the court stated that its reasoning has been that "the insurer, in handling a claim which might exceed the policy, owes a fiduciary duty to the insured to act responsibly in settlement negotiations to prevent exposure of the insured to unreasonable risk." *North Iowa State Bank*, 471 N.W.2d at 828 (citation omitted).

Snedigar alleges a third-party situation. Iowa courts have established a trend of *not recognizing* a fiduciary duty between the insured and insurer in first-party situations and *recognizing* a fiduciary duty between the insured and insurer in third-party situations. AGAC admits it was required to make payments to the Bank on Snedigar's behalf. It was thus dealing in a third-party situation on behalf of Snedigar. The Court, therefore, cannot conclude as a matter of law that AGAC did not owe Snedigar a fiduciary duty.

A genuine issue of material fact remains as to whether AGAC breached its alleged fiduciary duty. The Bank has admitted that it received all the payments due on Snedigar's loan. (*See* AGAC's Suppl. Authority Supp. Stat. Material Facts, Ex. A.) However, there is a dispute about whether AGAC properly marked its payments; and whether the lack of Snedigar's social security number and loan number on the payments was a reason why the Bank repossessed Snedigar's car. The Bank itself states that Snedigar's loan went into default because AGAC did not properly mark its payments with Snedigar's social security number and loan number. (McManamy Aff.) Part and parcel of this alleged error by AGAC is Snedigar's allegation that she repeatedly called AGAC and informed it that the Bank was telling her there was a problem with her loan. This position by the Bank, and AGAC's alleged knowledge of a problem, creates a genuine issue of material fact.

Summary judgment is therefore inappropriate on Snedigar's claim for breach of fiduciary duty. The Court is unable to say, as a matter of law, that AGAC did not owe Snedigar a fiduciary duty. And there is a genuine issue as to whether AGAC breached that alleged fiduciary duty to Snedigar.

C. Tortious Interference with Contract

Snedigar claims that AGAC tortiously intefered with her contract for a car loan with the

Bank. Under Iowa law, a plaintiff must prove the following elements in order to sustain a claim for tortious interference with contract:

> (1) plaintiff had a contract with a third-party; (2) defendant knew of the contract; (3) defendant intentionally and improperly interfered with the contract; (4) the interference caused the third-party not to perform, or made performance more burdensome or expensive; and (5) damage to the plaintiff resulted.

Jones v. Lake Park Care Center, Inc., 569 N.W.2d 369, 377 (Iowa 1997). Elements one, two and five do not appear to be in dispute. As mentioned above, there is a genuine issue as to whether AGAC's actions, or inactions, caused the Bank to repossess Snedigar's car (element four). That leaves element three: whether AGAC intentionally and improperly interfered with Snedigar's contract with the Bank.

In order to satisfy element three, the plaintiff must show that the defendant intended to financially injure or destroy the plaintiff. *Holdsworth v. Nissly*, 520 N.W.2d 332, 336 (Iowa 1994) ("The improper motive must be an intent to financially injure or destroy the plaintiff."); *Harsha v. State Savings Bank*, 346 N.W.2d 791, 799 (Iowa 1984) (requiring a showing that the defendant had a purpose to "injure or destroy"). Mere breach of contract by the defendant, even if deliberate, is not sufficient to establish that the defendant intentionally and improperly interfered with a contract between the plaintiff and a third party. *Harsha*, 346 N.W.2d at 799 (stating that deliberate breach of contract is generally not improper means). Moreover, the intention to financially injure or destroy the plaintiff must be the defendant's predominant purpose in doing what it did. *Holdsworth*, 520 N.W.2d at 336 (holding directed verdict for defendant was proper where there was no evidence that defendant's predominant purpose was to injure or destroy the plaintiff); *Hoffer v. Wisconsin Education Assoc. Insurance Trust*, 470 N.W.2d 336, 341 (Iowa 1991) (holding that defendant must have a predominant purpose to

injure).

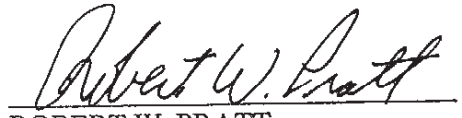
Viewing the facts in a light most favorable to Snedigar, there is no genuine issue as to whether AGAC intended to financially injure or destroy Snedigar. Snedigar alleges that AGAC did not make all the payments to the Bank, was late in making payments, and improperly marked the payments. Snedigar also states that she telephoned AGAC several times and notified it that the Bank was claiming it was not receiving payments. The Bank states that AGAC made all the payments, but that they were improperly marked. Even assuming that AGAC knowingly made the payments late and knowingly marked them insufficiently, Snedigar does not allege a motive to financially injure or destroy her, nor does such a motive appear from the facts. Summary judgment is therefore appropriate on Snedigar's claim for tortious interference with contract.

IV. Conclusion

AGAC's Motion for Summary Judgment (#5) is **granted** with respect to Snedigar's claims for negligence and tortious interference with contract and **denied** with respect to Snedigar's claim for breach of fiduciary duty.

IT IS SO ORDERED.

Dated this 8th day of September, 2000.



ROBERT W. PRATT,
U.S. DISTRICT JUDGE