

IN THE CHANCERY COURT OF THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART III

LESLIE A. NEWMAN,
Commissioner of Commerce and Insurance
for the State of Tennessee,

Petitioner,

v.

SMART DATA SOLUTIONS, LLC, a Tennessee
limited liability company, AMERICAN TRADE
ASSOCIATION, INC., an Indiana nonprofit
corporation with its principal place of business
in Tennessee, AMERICAN TRADE
ASSOCIATION, LLC, an Arkansas limited
liability company, SERVE AMERICA
ASSURANCE, a corporation with an unknown
location, BART S. POSEY, SR., an individual,
ANGIE POSEY, an individual, OBED W.
KIRKPATRICK, SR., an individual, LINDA
KIRKPATRICK, an individual, WILLIAM M.
WORTHY, II, an individual, COLIN YUELL,
an individual,

Respondents.

LESLIE A. NEWMAN,
Commissioner of Commerce and Insurance for the
State of Tennessee, in her Official Capacity as
Statutory Liquidator of Smart Data Solutions, LLC,
American Trade Association, Inc., American Trade
Association, LLC, and Serve America Assurance,

Plaintiff,

v.

BART S. POSEY, SR., and
ANGIE POSEY,

Defendants.

No. 10-507-III

FILED
2010 AUG 13 AM 10:33
CLERK & MASTER
DAVIDSON CO. CHANCERY CT.
D.C. & M.

**LIQUIDATOR'S PETITION TO RECOVER DAMAGES
FROM BART S. POSEY, SR., AND ANGIE POSEY**

PARTIES

1. Plaintiff, Leslie A. Newman, Commissioner of Commerce and Insurance for the State of Tennessee, brings this action in her official capacity as statutory Liquidator (“the Liquidator”) of the businesses comprised of and known by the names: American Trade Association, Inc. (“ATA”), American Trade Association, LLC (“ATALLC”), Smart Data Solutions, LLC (“SDS”), and Service America Assurance (“SAA”), that were operating with principal offices at 4676 Highway 41 North, Springfield, Tennessee 37172 and at 400 Memorial Boulevard, Springfield, Tennessee 37172. (hereinafter “the ATA entities, SDS and SAA,” or collectively “receivership entities.”) The Liquidator was appointed by final order appointing the Commissioner as Receiver for Liquidation entered May 20, 2010, in Newman v. Smart Data Solutions, LLC, et al, Davidson County, Tennessee, Chancery Court No. 10-507-III (“Final Order for Liquidation”). The Liquidator’s power to prosecute this action is set out in Tenn. Code Ann. § 56-9-313(b)(1) and the Final Order of Liquidation ¶¶ 16-17.

2. Defendant, Bart S. Posey, Sr. (hereinafter “Mr. Posey”), is a citizen and resident of Robertson County, Tennessee, with an address 3448 Forest Park Road, Springfield, Tennessee 37172.

3. Defendant, Angie Posey (hereinafter “Mrs. Posey”), the spouse of Mr. Posey, is a citizen and resident of Robertson County, Tennessee with an address 3448 Forest Park Road, Springfield, Tennessee 37172.

JURISDICTION AND VENUE

4. This Court has jurisdiction pursuant to Tenn. Code Ann. § 56-9-104 (b), (c)(1), (c)(3), (c)(4), (c)(5), and (e).
5. Venue is properly found in this Court and has already been accepted in this Court through the liquidation proceedings in Case No. 10-507-III (“the Liquidation”).

FACTS

6. At all relevant times, Mr. Posey was a member-manager, along with Mrs. Posey, of SDS, and a director and head of management of ATA. He had signatory authority on the bank accounts connected with SDS and SAA.
7. At all relevant times, Mrs. Posey was a member-manager, along with Mr. Posey, of SDS, and a director of ATA. She had signatory authority on the bank accounts connected with SDS and ATA.
8. ATA and SDS engaged in the unlicensed, unauthorized sale of nonexistent insurance coverage. ATA and SDS took premium payments from thousands of consumers, with representations that the payments were buying insurance coverage, when there was no licensed insurance company to fund and underwrite claims. ATA and/or SDS sent consumers policies and membership cards with the knowledge that no insurance coverage existed. SAA paid out for claims a relatively small amount of the money taken in by ATA and SDS, which served to facilitate the overall unlawful insurance acts and unfair and deceptive acts and practices of the business.
9. From this deceptive enterprise, Mr. Posey and Mrs. Posey transferred or caused the transfer from SDS of approximately \$2.6 million to themselves or for their benefit directly or

indirectly. The transfers diminished the money that could have been available to pay consumer claims through SAA.

10. The following transfers made between January, 2008, and March, 2010, are a few of the many unlawful transfers:

(a) On December 29, 2009, Mr. Posey fraudulently transferred \$588,539.78 from SDS account number XXXX0201, check number 2521, to First State Bank for payment of a mortgage on real property in his name located at 4676 Highway 41 N, Springfield, Tennessee 37172.

(b) On October 9, 2009, Mrs. Posey fraudulently transferred \$45,000.00 for car funding from SDS account XXXX2841, check number 7424, to 41 & Main, a business account at F&M Bank in the name of Mr. Posey. On October 8, 2009, Mr. Posey had signed a check from the 41 & Main account payable to Payne, a Chevrolet auto dealer in Springfield, in the amount of \$44,342.66 for a Camaro automobile.

(c) On August 27, 2009, Mr. Posey fraudulently transferred \$31,509.94 from SDS account number XXXX2841, check number 7212, to First State Bank for payment on real property in his name located at 814 Pitt Avenue, Springfield, Tennessee 37172.

(d) On August 14, 2009, Mrs. Posey fraudulently transferred \$12,106.99 for a motorcycle from SDS account XXXX2841, check number 7140, to Mr. Posey. Also, on or about August 14, 2009, Mr. Posey or Mrs. Posey issued a check in a similar amount from an account of the Poseys to Payne Chevrolet for a Harley Davidson Road King motorcycle.

(e) On August 3, 2009, Mr. Posey or Mrs. Posey fraudulently transferred by wire \$144,400.00 from SDS account number XXXX2841 to the law firm of Evans Petree

Bogatin PC, who at the time represented the entities now in the Liquidation and has represented the entities and Mr. Posey and Mrs. Posey in the Liquidation proceedings. Mr. Posey instructed attorney William Hendricks of Evans Petree Bogatin PC that the money was going to be used for the purchase of a house located at 209A New Chapel Road, Springfield, Tennessee 37172.

(f) On April 13, 2009, Mrs. Posey fraudulently transferred \$10,494.15 from SDS account number XXXX0201, check number 1552, payable to F&M Bank. It was used to purchase a cashier's check to buy real property adjacent to the lake house owned by Mr. Posey and Mrs. Posey at 49 Rocky Acres Road in Lewisburg, Logan County, Kentucky.

(g) On May 7, 2008, Mr. Posey fraudulently transferred \$2,500.00 from SDS account number XXXX0201, check number 1007, to F&M Bank. It was used to purchase a cashier's check to buy a parcel of real property adjacent to the lake house owned by Mr. Posey and Mrs. Posey at 49 Rocky Acres Road in Lewisburg, Logan County, Kentucky.

(h) On numerous other occasions, Mr. Posey or Mrs. Posey fraudulently transferred money from SDS accounts XXXX2841 and XXXX0201 to pay for, among other things:

- 1) Personal credit card bills;
- 2) Personal loan payments;
- 3) Springfield Realty, a business owned by Mr. Posey;
- 4) Larkin Lake Hunting Club;
- 5) Utilities and supplies in Kentucky;
- 6) \$138,000.00 for a stadium suite and football tickets at the University of Alabama, in addition to other transfers to the University of Alabama;
- 7) Springfield Sports Bar, a business owned by Mr. Posey;

- 8) Cosmetics;
- 9) Family members of Mr. Posey and Mrs. Posey; and
- 10) Numerous other fraudulent transfers to or for the benefit of Mr. Posey and/or Mrs. Posey.

11. At the time of the Order of Seizure entered March 23, 2010, in the Liquidation, the receivership entities owed in excess of \$5 million to their creditors. The business had approximately \$1.2 million in assets. ATA/SDS was insolvent.

CAUSES OF ACTION

Fraudulent Transfers: Tenn. Code Ann. § 56-9-315

12. Paragraphs 1-11 above are incorporated herein.
13. All transfers from SDS to or for the benefit of Mr. Posey and/or Mrs. Posey within one (1) year prior to the March 23, 2010, filing of the petition for appointment of a receiver for purposes of liquidation were fraudulent because they were made without fair consideration, or they were made with actual intent to hinder, delay or defraud either existing or future creditors.
14. The total of such transfers was approximately \$1.7 million.
15. Pursuant to Tenn. Code Ann. § 56-9-315, the Liquidator is entitled to judgment against Mr. Posey and Mrs. Posey, jointly and severally, in the amount of approximately \$1.7 million, or such amount as will be shown to the Court.

Uniform Fraudulent Transfer Act: Tenn. Code Ann. § 66-3-301, et seq.

16. Paragraphs 1-15 above are incorporated herein.

17. All of the transfers from SDS to or for the benefit of Mr. Posey and/or Mrs. Posey made within four (4) years (Tenn. Code Ann. § 66-3-310) of the filing of this action were fraudulent pursuant to Tenn. Code Ann. § 66-3-305.

18. As defined in Tenn. Code Ann. § 66-3-302, Mr. Posey and Mrs. Posey were insiders of SDS and ATA.

19. The total of such transfers was approximately \$2.6 million or such amount as will be shown to the Court.

20. The Liquidator is entitled to the remedies set out in Tenn. Code Ann. § 66-3-308, including but not limited to any other relief the circumstances require, which is judgment against Mr. Posey and Mrs. Posey, jointly and severally, for the \$2.6 million, or such amount as will be shown to the Court, of fraudulent transfers they made or caused to be made from SDS to themselves or for their benefit, directly or indirectly, within the four (4) year period preceding the filing of this action.

Sale of Unauthorized Insurance: Tenn. Code Ann § 56-6-114

21. Paragraphs 1-20 above are incorporated herein.

22. Mr. Posey and Mrs. Posey are liable for all premiums paid for, or valid claims made on, all contracts of insurance unlawfully sold within this state or by or through each or both of them, directly, or indirectly, for or on behalf of SDS, ATA, SAA, companies engaged in the insurance business that were unauthorized to do such business in this state.

23. Pursuant to Tenn. Code Ann. § 56-6-114, the Liquidator is entitled to judgment against Mr. Posey and Mrs. Posey, jointly and severally, for the damages for all premiums paid for and valid claims made in amounts to be shown to the Court.

Member-Manager Liability: Tenn. Code Ann. § 48-240-101, et seq.

24. Paragraphs 1-23 above are incorporated herein.
25. Mr. Posey and Mrs. Posey, as member-managers of SDS, are subject to Tenn. Code Ann. § 48-240-101, et seq.
26. Mr. Posey and Mrs. Posey failed to discharge all duties as members of SDS, in good faith; with the care an ordinary prudent person in a like position under similar circumstances would exercise; and in the best interest of SDS, in violation of Tenn. Code Ann. § 48-240-102(b).
27. Mr. Posey's and Mrs. Posey's actions in transferring approximately \$2.6 million, or such money as will be shown to the court, to themselves or for their benefit violated their fiduciary duties to SDS and were not in the best interest of SDS. Mr. Posey and Mrs. Posey are liable to SDS for actions taken as member-managers of SDS in violation of Tenn. Code Ann. § 48-240-102.

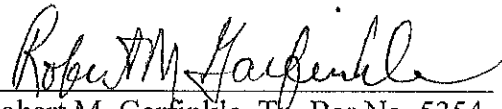
Conversion

28. Paragraphs 1-27 above are incorporated herein.
29. Mr. Posey and Mrs. Posey are liable to SDS for conversion of SDS assets transferred to themselves or for their benefit.

PREMISES CONSIDERED, the Liquidator requests:

1. That this action be filed, process issued, and service be made on the defendants;
2. That the defendants be required to answer or respond in the time allowed by law;
3. That upon a hearing the Court grant judgment in favor of the Liquidator against the defendants;

4. That the Court award the Liquidator damages from the defendants, jointly and severally, as shown to the Court and as allowed by law;
5. That the Court impose a constructive trust on the real property and personal property obtained by the defendants through fraud or other inequitable means;
6. That the Court impose such remedies of Tenn. Code Ann. § 66-3-308 as the circumstances may require; and award the Liquidator all other available statutory and equitable remedies, pre-judgment interest and costs;
7. That discretionary costs and court costs be assessed against the defendants, jointly and severally; and
8. That the Court fashion such other relief as justice requires.



Robert M. Garfinkle, Tn. Bar No. 5354
Phillip G. Young, Jr., Tn. Bar No. 21087
Garfinkle, McLemore & Young, PLLC
2000 Richard Jones Road, Suite 250
Nashville, Tennessee 37215
Phone: (615) 383-9495
Fax: (615) 292-9848
E-mail: bgarfinkle@gmylaw.com
E-mail: pyoung@gmylaw.com

Special Counsel for Commissioner
Leslie A. Newman in her Official Capacity
as Statutory Liquidator