

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KENT HANSEL, KENT HANSEL d/b/a	:
SERVICE PETROLEUM CO., and	:
SERVICE PETROLEUM BULK INC.,	:
	:
<i>Plaintiffs,</i>	: CIVIL ACTION
	:
v.	: NO. 95-CV-3631
	:
SHELL OIL CORPORATION,	:
	:
<i>Defendant.</i>	:

MEMORANDUM

Kauffman, J.

August 7, 1998

In their Amended Complaint, Kent Hansel, Kent Hansel d/b/a Service Petroleum Co., and Service Petroleum Bulk, Inc. (collectively, “Plaintiffs”), assert breach of contract and defamation causes of action arising from an alleged contract for the purchase of petroleum-based lubricants from Defendant, Shell Oil Company (“Shell Oil” or the “Company”).¹ Shell Oil counterclaims that Plaintiffs have failed to pay in full for products purchased from the Company. Now before the Court is Shell Oil’s motion for summary judgment. For the reasons set forth below, the motion is granted.

I. FACTS

On May 1, 1988, Shell Oil and “Kent Hansel, Inc.” entered into a written contract (the “1988 Contract”). (Am. Compl. ¶ 5; *see* Def.’s Ex. H.) Paragraph 2 of the 1988 Contract

¹ The Amended Complaint misnames Shell Oil Company as Shell Oil Corporation.

provides:

TERM. This Contract shall be in effect for a term beginning on May 1, 1988, and continuing through April 30, 1989, and thereafter for successive periods of one (1) year each, but shall be subject to nonrenewal, effective at the end of such initial period or of any such subsequent period, by either Shell or Buyer by giving the other at least 30 days' prior notice.

(Def.'s Ex. H.)

Plaintiffs allege that on May 1, 1990, the parties entered into a renewal contract (the "Alleged 1990 Renewal Contract"), which provided that nonrenewal could be effected only by giving the other party at least ninety (90) days' prior notice. (Am. Compl. ¶ 7.) Shell Oil claims that it never signed the Alleged 1990 Renewal Contract. (Schardon Aff. ¶ 5.)

On or about February 4, 1995, a representative of Shell Oil orally notified Mr. Hansel that his contract with the Company would not be renewed after it expired on May 1, 1995. (Schardon Aff. ¶ 6; Hansel Dep. at 150.) In a letter dated February 13, 1995, addressed to "Mr. Kent Hansel, President, Kent Hansel, Inc., D/B/A Service Petroleum," Shell Oil again notified Plaintiffs that "the Contract will expire on May 1, 1995, and there will be no extension or renewal." (Def.'s Ex. J.; see Am. Compl. ¶ 8.) Plaintiffs received this written notice on February 21 or 23, 1995. (Am. Compl. ¶ 8; Hansel Dep. at 150.) After May 1, 1995, Shell Oil refused to sell its products to Plaintiffs. (Am. Compl. ¶ 10.)

Plaintiffs allege that Shell Oil "slandered the plaintiffs by telling, among others, [Thomas] Brewer, Brewer Oil Co., that Shell had terminated the agreement because of plaintiff's failure to honor a debt owed to Shell." (Am. Compl. ¶ 22.) Plaintiffs do not know the name of the Shell Oil representative who allegedly defamed them. (Hansel Dep. at 231.) Thomas Brewer

testified that he does not recollect “any conversations with any Shell employee regarding the reason(s) for Shell’s nonrenewal of the contract between Shell and Kent Hansel d/b/a Service Petroleum Co. (“Hansel”), in February, 1995, or Hansel’s indebtedness to Shell at that time.” (Brewer Aff. ¶ 2.) The parties do not dispute that Shell Oil was owed money under the contract in effect at the time of the nonrenewal notification. (*See* Hansel Dep. at 169, 171, 174.)

LEGAL ANALYSIS

A. Summary Judgment Standard

A motion for summary judgment “shall be [granted] 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.” FED. R. CIV. P. 56(c). An issue is “genuine” only 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” only if it “might affect the outcome of the suit under the governing law.” *Anderson*, 477 U.S. at 248. A party opposing a properly supported motion for summary judgment “may not rest upon the mere allegations or denials of the adverse party’s pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial.” FED. R. CIV. P. 56(e).

B. Plaintiffs’ Breach of Contract Claim

Plaintiffs’ cause of action for breach of contract is based on Shell Oil’s noncompliance with the ninety-day advance notice provision of the Alleged 1990 Renewal Contract. As a threshold matter, the Court must determine which state’s law governs this claim. A federal district court adjudicating a state-law issue must apply the law of the forum state,

including that state's choice-of-law rules. *Klaxon v. Stentor Elec. Mfg. Co.*, 313 U.S. 487 (1941).

Here, the forum state is Pennsylvania. Under Pennsylvania's choice-of-law rules, courts combine contacts analysis and interest analysis, *Carrick v. Zurich-American Ins. Group*, 14 F.3d 907, 909-10 (3d Cir. 1994); *Griffith v. United Air Lines, Inc.*, 203 A.2d 796 (1964), and often look to the Restatement (Second) of Conflict of Laws for guidance, *Crabtree v. Academy Life Ins. Co.*, 878 F. Supp. 727 (E.D. Pa. 1995) (citing *Compagnie des Bauxites de Guinee v. Argonaut-Midwest Ins. Co.*, 880 F.2d 685, 689 (3d Cir.1989); *Griffith*, 203 A.2d at 802-03), *aff'd*, 106 F.3d 384 (3d Cir. 1996). According to the Restatement, in an action based on a contract, courts should determine which state's law governs by evaluating the following factors:

- (a) the place of contracting,
- (b) the place of negotiation of the contract,
- (c) the place of performance,
- (d) the location of the subject matter of the contract, and
- (e) the domicile, residence, nationality, place of incorporation and place of business of the parties.

These contacts are to be evaluated according to their relative importance with respect to the particular issue.

RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 188(2) (1971).

An evaluation of these factors leads to the conclusion that New York law should govern Plaintiffs' breach of contract claim. Plaintiffs are located in New York. The 1988 Contract states that it is a contract between Shell Oil in West Orange, New Jersey and "Kent Hansel, Inc." in West Winfield, New York. The Alleged 1990 Renewal Contract states that it is a contract between Shell Oil in Short Hills, New Jersey and Service Petroleum in West Winfield, New York. The return address in the February 13, 1995 nonrenewal notice is the Shell Oil office

in Texas, and the notice is addressed to Plaintiffs in New York. The New York contacts thus predominate, and the Court therefore will apply New York law to the breach of contract cause of action.

The Court concludes that under New York law, Plaintiffs cannot establish a breach of the Alleged 1990 Renewal Contract because they have failed to set forth any evidence that Shell Oil ever signed that instrument. The New York Uniform Commercial Code provides that a contract for the sale of goods in excess of \$500 is unenforceable “unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and *signed by the party against whom enforcement is sought* or by his authorized agent or broker.” N.Y. U.C.C. § 2-201 (McKinney 1997) (emphasis added).² In addition, the Alleged 1990 Renewal Contract explicitly states: “Neither this Contract nor any subsequent agreement amending or supplementing this Contract shall be binding on Shell unless and until it has been signed for Shell by a duly authorized representative.” (Def.’s Ex. M.)

Even construing the record in a light most favorable to Plaintiffs, the Court cannot find any evidence that Shell Oil ever signed the Alleged 1990 Renewal Contract. On the contrary, Stanley Schardon, the Shell district manager who had “contract authority for Shell in its dealings with wholesalers such as Kent Hansel,” testified that Shell Oil did *not* sign the Alleged 1990 Renewal Contract. (Schardon Aff. ¶ 5.) Schardon also testified that the last agreement that Shell had executed with Plaintiffs was the 1988 Contract. (Schardon Aff. ¶ 3.) In addition, Mr. Hansel conceded that “[Shell Oil] never returned a signed copy of [the Alleged 1990 Renewal

² The parties do not dispute that the Alleged 1990 Renewal Contract relates to the sale of goods in excess of \$500.

Contract],” and that he had no correspondence or other documentary evidence indicating that the contract had been executed. (Hansel Dep. at 122, 124.) Moreover, the first sentence of the February 13, 1995 letter notifying Plaintiffs of the nonrenewal states: “This is in reference to the . . . Contract effective May 1, 1988 between Shell Oil . . . and Kent Hansel, Inc.” (Def.’s Ex. J.)

Further undermining Plaintiffs’ contract claim is Mr. Hansel’s testimony regarding the effective period of the 1988 Contract:

Q: I guess my question is, did you believe after 1990 that you were operating under the 1988 agreement --

A: Yes.

Q: -- that was signed by Shell?

A: Yes, I did and I do.

(Hansel Dep. at 127.)

Because Shell Oil has presented evidence that it never executed the Alleged 1990 Renewal Contract, and because Plaintiffs have failed to present any evidence to the contrary, the Court rejects Plaintiffs’ argument that a reasonable jury could find that Shell Oil “has prevaricated to the Court by stating that it never signed the contract.” (Pls.’ Br. at 4.) Accordingly, the Court will grant summary judgment in favor of Shell Oil on Plaintiffs’ breach of contract claim.

C. Plaintiffs’ Defamation Claim

The Court also will grant summary judgment in favor of Shell Oil on the defamation cause of action because the allegedly defamatory statement was true. New York law defines defamation “as the making of a *false* statement which tends to ‘expose the plaintiff to

public contempt, ridicule, aversion or disgrace, or induce an evil opinion of him in the minds of right-thinking persons, and to deprive him of their friendly intercourse in society.” *Foster v. Churchill*, 665 N.E.2d 153, 157 (N.Y. 1996) (emphasis added) (quoting *Rinaldi v. Holt, Rinehart & Winston, Inc.*, 366 N.E.2d 1299, 1305 (N.Y. 1977)). Hence, “[t]ruth is an absolute defense to an action based on defamation.” *Heins v. Board of Trustees of Incorporated Village of Greenport*, 655 N.Y.S.2d 996 (N.Y. App. Div. 1997).³

Carol Insinga, the Shell Oil credit representative responsible for Plaintiffs’ account, testified that the account has been in arrears since July 1991 and that as of February 13, 1995, the time of nonrenewal, Plaintiffs owed Shell Oil \$173,297.75. (Insinga Aff. ¶¶ 3-8.) She also testified that Plaintiffs continue to owe the Company this amount. (Insinga Aff. ¶¶ 3-8.) Similarly, Mr. Hansel conceded that as of January 1996, Plaintiffs owed Shell Oil approximately \$150,000. (Hansel Dep. at 169, 171, 174.) The record contains no evidence that the allegedly defamatory statement was false. Accordingly, the Court will grant summary judgment in favor of Shell Oil on Plaintiffs’ defamation cause of action.

D. Counterclaim

In its Counterclaim, Shell Oil alleges that “since 1991 Hansel has not fully paid each invoice sent by Shell and Hansel is indebted to Shell in an amount in excess of \$50,000.00.” (Counterclaim ¶ 5.) The Company further alleges that “Shell made written demand for payment on March 22, 1995 and on May 4, 1995, and Hansel has refused to make payment.” (Counterclaim ¶ 6.) Plaintiffs do not deny the existence of the debt, but respond that Mr. Hansel

³ Because Plaintiffs reside in New York, New York law governs their defamation cause of action. *See Wilson v. Slatalla*, 970 F. Supp. 405, 414 (E.D. Pa. 1997).

is not liable in his individual capacity. (Pls.' Br. at 6.)

The 1988 Contract states: "THIS IS A CONTRACT effective May 1, 1988 between SHELL OIL COMPANY, 100 Executive Drive, West Orange, New Jersey 07052 ('Shell') and KENT HANSEL, INC., RD #1, West Winfield, NY 13491 ('Buyer')." (Def.'s Ex. H.) Mr. Hansel testified that "Kent Hansel, Inc." has never existed. (Hansel Dep. at 109.) The West Winfield address was Mr. Hansel's home address. (*See* Hansel Aff. ¶ 10; Hansel Dep. at 65; Def.'s Ex. F.)⁴ Mr. Hansel signed the 1988 Contract as "Kent Hansel d/b/a Service Petroleum Co." (Def.'s Ex. H.) He left blank the line for "Title of Officer or Agent," which appears just below the signature line.

Plaintiffs apparently contend that by signing the agreement as "Kent Hansel d/b/a Service Petroleum Co.," Mr. Hansel intended to bind only Service Petroleum Co. to the 1988 Contract. Mr. Hansel testified that he informed a Shell Oil salesperson that he had registered the name Service Petroleum Company, but acknowledged that he has no documentation to support this claim. (Hansel Dep. at 38.)

This testimony notwithstanding, the Court finds that Shell Oil may hold Mr. Hansel liable in his individual capacity for debts incurred under the 1988 Contract. Under New York law, "one who contracts as an agent in the name of a nonexistent or fictitious principal, or a principal without legal status or existence, renders himself personally liable on the contract so made." *Sierra Rutile Ltd. v. Lobel*, No. 90 Civ. 4913 (JFK), 1992 WL 236208, at *6 (S.D.N.Y. Sept. 8, 1992) (quoting 3 AM. JUR. 2D *Agency* § 280 (1980)); *see also Grutman v. Katz*, 608 N.Y.S.2d 663, 664 (N.Y. App. Div. 1994); *Imero Fiorentino Assocs. v. Green*, 447 N.Y.S.2d

⁴ Service Petroleum Co. Bulk Division, Inc. is located in Dryden, New York.

942, 943 (N.Y. App. Div. 1982); *Howells v. Albert*, 236 N.Y.S.2d 654, 657-58 (N.Y. Sup. Ct. 1962). Plaintiffs do not dispute that “Kent Hansel, Inc.” did not exist.

Moreover, “[a]n agent is individually liable if at the time of making the contract he fails to disclose the fact of his agency and the identity of his principal.” *Lumer v. Marone*, 569 N.Y.S.2d 321, 322 (N.Y. Sup. Ct. 1990); *see also Ell Dee Clothing Co. v. Marsh*, 160 N.E. 651 (N.Y. 1928); *Rennert-Diana & Co. v. Costarino*, 513 N.Y.S.2d 190, 191 (N.Y. App. Div. 1987); *Tarolli Lumber Co. v. Andreassi*, 399 N.Y.S.2d 739, 740 (N.Y. App. Div. 1977). ““The mere fact that the plaintiff had reason to suppose that defendants were acting as agents will not relieve them from liability on this account.”” *Action Temps. Management Co. v. Stratmar Sys., Inc.*, 101 F.3d 108, Nos. 95-7698(L), 95-7754(XAP), 1996 WL 110170, at *3 (2d Cir. Mar. 12, 1996) (Table) (quoting *Tarolli Lumber Co.*, 399 N.Y.S.2d at 740); *see also Orient Mid-East Lines v. Albert E. Bowen, Inc.*, 458 F.2d 572, 576 (2d Cir. 1972) (applying New York law). As noted above, the 1988 Contract states that it is a contract between Shell Oil and “Kent Hansel, Inc.,” and the line for “Title of Officer or Agent,” which appears just below Mr. Hansel’s signature on the 1988 Contract was left blank. Had Mr. Hansel intended to bind only Service Petroleum Co. to the 1988 Contract, he easily could have done so by clearly disclosing the fact of his agency and the identity of the principal. This, he failed to do.

Accordingly, the Court will grant summary judgment on Shell Oil’s Counterclaim against Plaintiffs, including Mr. Hansel in his individual capacity, as to liability. Final judgment will be entered in favor of Shell Oil and against Plaintiffs upon the Court’s determination of the Company’s damages. An Order accompanies this Memorandum.

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KENT HANSEL <i>et al.</i>,	:
	:
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v.	: NO. 95-CV-3631
	:
SHELL OIL CORPORATION,	:
	:
<i>Defendant.</i>	:

ORDER

AND NOW, this 7th day of August, 1998, for the reasons set forth in the Memorandum entered herewith, it is **ORDERED** that Defendant's Motion for Summary Judgment dismissing the breach of contract and defamation claims is **GRANTED**. Accordingly, the Amended Complaint is **DISMISSED** with prejudice.

It is further **ORDERED** that Defendant's Motion for Summary Judgment on its Counterclaim is **GRANTED** as to liability. Final judgment will be entered in favor of Defendant and against Plaintiffs, including Kent Hansel in his individual capacity, upon the Court's determination of Defendant's damages.

It is further **ORDERED** that Defendant shall file with this Court no later than August 21, 1998, a motion for calculation and assessment of damages, attached to which should be such affidavits and documents to support its motion as necessary. If Plaintiffs wish to respond thereto, they shall file their response and any counter documents no later than September 4, 1998.

BY THE COURT:

BRUCE W. KAUFFMAN, J.