

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF WYOMING
CHEYENNE DIVISION**

IN RE:) **CHAPTER 11**
)
GRANITE CREEK INVESTMENT) **CASE NO. 08-20690**
CORP.)
)
Debtor.)
)

David G. Bisbee,)
)
 Plaintiff,)
)
vs.) **ADVERSARY PROCEEDING**
) **NO. 08-02034**
Granite Creek Investment Corp., and)
Gary Rhineheart,)
)
Defendants.)
)

**CO-DEFENDANT GARY RHINEHEART'S RESPONSE TO PLAINTIFF
DAVID G. BISBEE'S COMPLAINT FOR INTERPLEADER**

COMES NOW, Gary Rhineheart, Co-Defendant in the above-styled Interpleader action, and responds to the Plaintiff David G. Bisbee's Complaint for Interpleader as follows:

FIRST DEFENSE

The Plaintiff David G. Bisbee's Complaint for Interpleader fails to set forth a claim for which relief can be granted.

SECOND DEFENSE

The Plaintiff David G. Bisbee's Complaint for Interpleader should be dismissed due to said Plaintiff's own breach of contract.

THIRD DEFENSE

The Plaintiff David G. Bisbee's Complaint for Interpleader should be dismissed because the only asset interplead is not an asset of the Bankruptcy Estate or the Co-Defendant Granite Creek Investment Corp., as ownership to said asset reverted to the Co-Defendant Gary Rhineheart prior to filing of the underlying Chapter 11 action.

FOURTH DEFENSE

The Plaintiff David G. Bisbee's Complaint for Interpleader should be transferred or dismissed because the Promissory Note, Stock Pledge Agreement, and Escrow Agreement relied upon by the Plaintiff require that all disputes be resolved in Cobb County, Georgia, same being contained within the Federal District Court for the Northern District of Georgia. (*See* Complaint, Exhibits "A," "B," and "C").

FIFTH DEFENSE

The Plaintiff David G. Bisbee's Complaint for Interpleader should be dismissed because the underlying Chapter 11 action was filed solely for an improper purpose, same being to harass, to cause unnecessary delay and/or needlessly increase the cost of litigation with respect to the Co-Defendant Gary Rhineheart. Accordingly, said Co-Defendant is entitled to sanctions against the Co-Defendant Granite Creek Investment Corp. pursuant to the Federal Rules of Bankruptcy Procedure, Rule 9011.

SIXTH DEFENSE

The Co-Defendant Gary Rhineheart responds to the individually-numbered Paragraphs set forth in the Plaintiff David G. Bisbee's Complaint for Interpleader as follows:

SEVENTH DEFENSE

1.

The Co-Defendant Gary Rhineheart lacks knowledge sufficient to form a belief as to the truth of the averments set forth in Paragraph 1 of the Plaintiff David G. Bisbee's Complaint for Interpleader. Answering further, pursuant to the Stock Pledge Agreement, attached to the Complaint as Exhibit "B," all notices to the Co-Defendant Granite Creek Investment Corp. must be sent to Suite 300, 2401 Lake Park Drive, Smyrna, Cobb County, Georgia 30080.

2.

The Co-Defendant Gary Rhineheart denies that he resides at 225 West paces Ferry Road, Atlanta, Georgia 30305, but, by way of further response, admits the remaining averments set forth in Paragraph 2 of the Plaintiff David G. Bisbee's Complaint for Interpleader.

3.

The Co-Defendant Gary Rhineheart denies that jurisdiction and venue are proper in this Court, but, by way of further response, said Co-Defendant admits the remaining averments set forth in Paragraph 3 of the Plaintiff David G. Bisbee's Complaint for Interpleader.

4.

The Co-Defendant Gary Rhineheart admits the averments set forth in Paragraph 4 of the Plaintiff David G. Bisbee's Complaint for Interpleader.

5.

The Co-Defendant Gary Rhineheart admits the averments set forth in Paragraph 5 of the Plaintiff David G. Bisbee's Complaint for Interpleader, but, by way of further response, denies that said Plaintiff is the lawful holder of stock certificate number 2, as proper demand was made by the Co-Defendant Gary Rhinehart on October 28, 2008 for the return of the shares pursuant to Paragraph

3 of the Escrow Agreement, but, said Plaintiff has, to date, failed to return said shares pursuant to said Agreement.

6.

The Co-Defendant Gary Rhineheart admits the averments set forth in Paragraph 6 of the Plaintiff David G. Bisbee's Complaint for Interpleader, but, by way of further response, said Co-Defendant contends that the stock certificate should have been immediately returned to said Co-Defendant.

7.

The Co-Defendant Gary Rhineheart admits the averments set forth in Paragraph 7 of the Plaintiff David G. Bisbee's Complaint for Interpleader.

8.

The Co-Defendant Gary Rhineheart denies the averments set forth in Paragraph 8 of the Plaintiff David G. Bisbee's Complaint for Interpleader.

9.

The provisions of Paragraph 4 of the Escrow Agreement speak for themselves. However, by way of further response, the Co-Defendant Gary Rhineheart responds that the escrowed stock should have been immediately tendered to said Co-Defendant on October 28, 2008, when demand was made for the return of said shares. Additionally, Paragraph 13 of the Escrow Agreement requires that all disputes be submitted to a court of competent jurisdiction in Cobb County, Georgia.

10.

The Co-Defendant Gary Rhineheart denies the averments set forth in Paragraph 10 of the Plaintiff David G. Bisbee's Complaint for Interpleader.

11.

The Co-Defendant Gary Rhineheart denies that the Plaintiff David G. Bisbee is entitled to receive any costs associated with the filing of the above-styled action, as Paragraph 4 of the Escrow Agreement only provides for said Plaintiff's claim for cost and fees in the event that said Plaintiff receive "contrary written instructions from any party" that there had been a defaulting event. However, said Plaintiff received written notice of a default by said Co-Defendant on October 28, 2008, and, to date, has not received any contrary written instructions from the Co-Defendant Granite Creek Investment Corp.

12.

All remaining averments set forth in the Plaintiff David G. Bisbee's Complaint for Interpleader not specifically responded to herein are hereby expressly denied.

WHEREFORE, the Co-Defendant Gary Rhineheart respectfully petitions this Honorable Court to issue an Order directing the Plaintiff David G. Bisbee to deliver the one hundred (100) common shares of stock currently in his possession to the Co-Defendant Gary Rhineheart, *instanter*, and to award all costs incurred in responding to said Complaint for Interpleader.

This 6th day of January, 2009.

KING & YAKLIN, L.L.P.
Attorneys for Co-Defendant

/s/Stephen A. Yaklin
Stephen A. Yaklin
Georgia State Bar No. 780125
Matthew M. Wilkins
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840 Roswell Street
Marietta, Georgia 30060
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 6, 2009, I electronically filed CO-DEFENDANT GARY RHINHEART'S RESPONSE TO PLAINTIFF DAVID G. BISBEE'S COMPLAINT FOR INTERPLEADER with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to the following attorneys of record:

Ken McCartney
The Law Offices of Ken McCartney, P.C.
P.O. Box 1364
Cheyenne Wyoming 82003
bnkrpcyrep@aol.com

David G. Bisbee
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Atlanta, Georgia 30345
bisbeed@bellsouth.net

This 6th day of January, 2009.

KING & YAKLIN, L.L.P.

/s/ Stephen A. Yaklin
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