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INTERPLEADER UNDER WYOMING R.C.P. 22

PURPOSE

Interpleader, although derived from the old common-law writ of interpleader,¹ is an equitable remedy.² Basically the purpose of interpleader in equity is to protect a party, not against double liability, but against double vexation in respect of one liability. Since the purpose is to protect against vexatious multiple litigation, it is not necessary that the multiple claims be meritorious; the mere threat of future litigation is enough.³

Surely a stakeholder, caught in the middle between two competing claimants, cannot in effect decide the merits of their claims by the mere physical act of delivering the stake to one of them. If his position as stakeholder becomes uncomfortable, and claimants do not take steps to get a judicial solution of the question, the law has provided him with an interpleader proceeding by which he can deposit the stake in court and walk out free of the annoyance of being in the middle.⁴

The stakeholder obviates double expense and the risk of defending two suits by bringing an interpleader action, and, in addition, the adverse claimants are thereby compelled to litigate between themselves at their own expense.

STRICT INTERPLEADER AND BILLS IN THE NATURE OF INTERPLEADER

Originally all actions in interpleader were "strict interpleader" the inherent requirements⁵ of which were: (1) a reasonable apprehension of double vexation; (2) absence of collusion;⁶ and (3) deposit of the res in court. In addition, the limitations imposed on a bill in strict interpleader during its evolution were summarized by Pomeroy⁷ as follows: (1) the same thing, debt or duty must be claimed by both or all the parties against whom relief is demanded; (2) all their adverse titles or claims must be dependent, or be derived from a common source; (3) the person asking the relief must not have nor claim any interest in the subject matter; (4) he must have incurred no independent liability to either of the claimants, that is, he must stand perfectly indifferent between them in the position merely of a stakeholder.⁸

These rigid limitations necessarily impeded the advantages derived from the interpleader remedy, and accordingly, equity developed the "bill

1. Chaffee, *Modernizing Interpleader*, 30 L.J. 814 (1921); Ilsen and Sardell, *Interpleader in the Federal Courts*, 35 St. John's L. Rev. 1 (Dec. 1960).

2. See Note 1, *supra*.

3. *Pank v. Chase Manhattan Bank*, 155 F. Supp. (1957), citing *Metropolitan Life Ins. Co. v. Segarita*, 20 F. Supp. 739, 741; *Hunter v. Federal Life Ins.*, 103 F.2d 192 (8th Cir. 19...).

4. *Newark Ins. Co. v. United States*, 169 F. Supp. 955 (Court of Claims, 1959).

5. Chaffee, *Modernizing Interpleader*, 30 Yale L.J. 814 (1921).

6. Failure to attach affidavit of no collusion to the bill was generally ground for demurrer. *Brown v. Marsh*, 98 Fla. 253, 123 So. 762 (1929).

7. 4 Pomeroy *Equity Jurisprudence*, § 1332 5th Ed. (1941).

8. For a discussion of the four requirements, see Ilsen & Sardell, *Interpleader in the Federal Courts*, 35 St. John's L. Rev. 1, 3 (Dec. 1960).

in the nature of interpleader" to circumvent the inflexible doctrine of strict interpleader. The material difference between the true bill of interpleader and bill in nature of interpleader is that plaintiff in the latter may show that he has an interest in the subject matter of the controversy.⁹

The Federal Interpleader Act of 1936¹⁰ was drafted to include actions in the nature of interpleader thereby extending broader usage of interpleader in the Federal Courts. The Committee on the Judiciary to whom the bill was referred wrote:¹¹

A bill in the nature of interpleader describes a suit filed by a stakeholder who has some special ground for equitable relief besides the double vexation. For instance, he is a trustee or wants cancellation of an instrument for fraud. On the other hand, double vexation is the only reason for equitable jurisdiction over a bill of interpleader (often called a strict bill) and the substantive questions at issue are nearly always legal. The practical difference between the two types of bills is that the long established equitable principle limiting strict bills are considerably relaxed in cases of bills in the nature of interpleader.

This Act was further supplemented by Federal Rule 22 *infra*, adopted in the Federal Rules of Civil Procedure in 1938. Federal Rule 22 (1) provides, in addition to the language of the Interpelader Act, . . . It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend to not have a common origin or are not identical but are adverse to and independent of one another, or that the Plaintiff avers that he is not liable in whole or in part to any or all of the claimants. . . .¹²

WYOMING HISTORY

Prior to the adoption of the Wyoming Rules of Civil Procedure on December 1, 1957, statutory interpleader¹³ was in effect in Wyoming.

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9. *Klaber v. Maryland Casualty Co.*, 69 F.2d 934, 106 A.L.R. 617 (CC (Neb. 1934)).
 10. 28 U.S.C. §§ 1335, 1397 and 2361.
 11. Senate Report No. 558, 74th Congress, 1st session.
 12. Chaffee, *Federal Interpleader since the Act of 1936*, 49 *Yale L.J.* 377, 380, "the rule makes one important liberalization of relief under the Act of 1936; it allows relief when the stakeholder is interested in the controversy by disputing his liability." P. 417, "As already suggested, the adoption of Rule 22 tends to minimize this distinction (interest in the controversy) and turn all interpleader into bills in the nature of interpleader.
 13. W.S.C. 1945, § 624. Interpleader. Upon affidavit of a defendant before answer in an action upon contract, or for the recovery of personal property, that a third party without collusion with him, has or makes a claim to the subject of the action, and that he is ready to pay or dispose of the same as the court or judge may direct, the court or judge may make an order for the safekeeping, or for the payment or deposit in court of the subject, or the delivery thereof to such person as the court or the judge may direct and also an order requiring such third party to appear in a reasonable time and maintain or relinquish his claim against the defendant; and if such third party, having been served with a copy of the order, by the sheriff or such person as the court or judge may direct, fail to appear, the court may declare him barred of all claim in respect to the subject of the action, against the defendant therein, but if he appear he shall be allowed to make himself defendant in the action, in lieu of the original defendant, who shall be discharged from all liability to either of the other parties in respect to the subject of the action, upon his compliance with the order of the court for the payment, deposit or delivery thereof.

The statute was adopted from Ohio¹⁴ in 1886^{14a} and provided for defensive interpleader only. Conditions precedent to invocation of the statutory remedy were payment of the res into court and an affidavit of no collusion. If a third party asserting an adverse claim failed to appear after service of the order, he was barred from asserting any further claim in respect to the subject of the action. The statute expressly provided for the termination of liability of the stakeholders by allowing the adverse claimant to make himself defendant in lieu of the original defendant.

The only decision of the Supreme Court of Wyoming based on the statute was *Kinney v. Hynds* in 1898.¹⁵ In this case, plaintiff brought action against the First National Bank of Rock Springs on certificates of deposit issued by the bank which had been lost by Kinney in a faro game and received by plaintiff through assignment. The bank filed its affidavit under the statute¹⁶ for an action in the nature of interpleader setting forth that third party (Kinney) made claim to the certificates and the money due thereon. The adverse claimant (Kinney) appeared by order of the court and asserted his claim which plaintiff denied. The court held that on the issue thus made, the only question was as to who is entitled to the certificates and that in a judgment for the plaintiff his recovery was limited to the amount due from the bank on the certificate only and that he was not entitled to interest.¹⁷ The court continued to say in a dictum:

The proceedings allowed by the code is a substitute for the equitable action of interpleader. The authorities hold that is cumulative and not exclusive. The code proceeding is not authorized until a suit has been brought against the person holding the property or fund. The bill of interpleader in equity might be brought by such person in the absence of any suit against him, to compel the adverse claimants to interplead and settle the matter in controversy between themselves. In such a suit, after the order had been made requiring the claimants to appear and interplead, proper issues by pleading would be framed, and upon those issues their respective rights would be determined. The code contemplates, in its effect and consequences, the same thing when its provisions in that respect are invoked. No statutory provision, however, is made as to the course to be pursued in the framing of the issues subsequent to the order against the third party, the adverse claimant.

This somewhat ambiguous language of the court in the *Kinney* case presumably was meant to explain¹⁸ that equitable interpleader might be

14. Pages Ohio Code, § 11265.

14a. Laws 1886, ch. 60, § 69; R.S. 1887, § 2405; R.S. 1899, § 3490; C.S. 1910, § 5603; R.S. 1931, § 89-524; W.C.S. 1945, § 3-624; Superseded, Rule 87, W.R.C.P. 1957.

15. *Kinney v. Hynds*, 7 Wyo. 22, 49 Pac. 403 (1898); rehearing denied, 52 Pac. 1081.

16. R.S. 1887, § 2405.

17. On petition for rehearing, denied, 7 Wyo. 22, 51 Pac. 1081 (1898).

18. See syllabus by the Court in 7 Wyo. 22, 24. "The statutory proceeding (R.S. § 2405) for requiring a claimant to appear and maintain or relinquish his claim against a defendant is a substitute for the equitable interpleader, but is not exclusive. The code contemplates in its effects and consequences the same thing as th equitable interpleader, when its provisions in that respect are invoked." (This syllabus is omitted in 52 Pac. 1081).

maintained by a plaintiff if the case had arisen in this manner, even though not provided for by statute, and that the code procedure was subject to cumulation by equitable interpleader principles. This is the better interpretation of this language and the one which should be followed in order to allow the equitable principles of interpleader to be used to supplement the statutory provision. This interpretation, if followed by the Wyoming Supreme Court under Wyoming Rule 22, would allow the equitable principles of interpleader to be used in conjunction with Wyoming Rule 22 in order to gain maximum benefit from the present rules.

WYOMING RULE 22 COMPARED

Wyoming RCP 22 is Federal Rule 22 (1). The rule reads as follows:

Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim.

It may be noted that the statutory action in interpleader is not limited to plaintiffs but may be obtained by a defendant exposed to similar liability by way of counterclaim or cross-claim and third parties may be impleaded.

The right of a defendant to implead claimants under Rule 22 is limited to claims whereby he would be exposed to multiple liability upon the same obligation. This rule does not permit him to interplead all claimants in an action brought by less than all merely because the several liabilities have a common origin, if the interests of the claimants are not adverse to each other and do not expose the defendant to the danger of double or multiple liability for the same thing or amounts.¹⁹

Other issues may be raised under Wyoming Rule 22 however, by the deletion of Federal Rule 2 (22), which provides:

The remedy herein provided is in addition to and in no way supersedes or limits the remedy provided by Title 28, U.S.C., secs. 1335, 1397 and 2361. Actions under those provisions shall be conducted in accordance with these rules.

These sections provide generally for payment of the res into court, termination of the stakeholders liability and issuance of injunction, in addition to jurisdictional and venue requirements. Thus, in the Federal Courts, Rule 22 (1) is not exclusive and additional provisions are provided by the Interpleader Act to supplement the rule both of which basically provide for equitable interpleader action.

19. United States v. Olson, 5 F.R.D. 513 (No. Calif. 1946).

The issues raised under Wyoming Rule 22 by this deletion are as follows:

1. Can the stakeholder pay the disputed res into court?
2. Can a preliminary order be obtained absolving the stakeholder from further liability?
3. Can the court issue an injunction against the other parties to the litigation from instigating further action against the stakeholder?
4. Can the litigation be severed into a series of hearings as to the claims of the several parties?

Consider the Iowa Rules of Civil Procedure²⁰ which provide a step by step codification of the equitable interpleader action:

Rule 35. Right of interpleader — A person who is or may be exposed to multiple liability or vexatious litigation because of several claims against him for the same thing may bring an equitable action of interpleader against all such claimants. Their claims or titles need not have a common origin, nor be identical, and may be adverse to, or independent of each other. Such person may dispute his liability wholly or in part.

Rule 36. By defendants — A defendant to an action which exposed him to similar liability or litigation may obtain such interpleader by counterclaim or cross-petition. Any claimant not already before the court may be brought in to maintain or relinquish his claim to the subject of the action, and on his default after due service, the court may decree him barred of such claim.

Rule 37. Deposit — discharge. If a party initiating interpleader admits liability for, or nonownership of, any property or amount involved, the court may order it deposited in court or otherwise preserved, or secured by bond. After such deposit the court, on hearing all parties, may absolve the depositor from obligation to such parties as to the property or amount deposited, before determining the rights of the adverse claimants.

Rule 38. Substitution of claimant. If a defendant seeks an interpleader involving a third person, the latter may appear and make himself a defendant in lieu of the original defendant, who may then be discharged in complying with Rule 37.

Rule 39. Injunction. After petition and returns of original notices are filed in an interpleader, the Court may enjoin all parties before it from beginning or prosecuting any other suit as to the subject of the interpleader until its further order.

Rule 40. Costs. Costs may be taxed against the unsuccessful claimant in favor of the successful claimant and the party initiating the interpleader.

Provision is made both for plaintiff bringing interpleader action and for defensive interpleader. Deposit in court is expressly provided for as discharge of stakeholder and issuance of injunction against all parties from prosecuting any other action relating to the subject of the interpleader until further order of court. Notice how much simpler is the action when it is clearly laid out and how much uncertainty is eliminated.

20. Code of Iowa, Vol. II, p. 2516 (1958).

Compare the Iowa Rules with Wyoming Rule 22. Wyoming Rule 22 must encompass in its scope a function equally as broad as that of the Iowa Rules and the Federal Rule in conjunction with the Federal Interpleader Act. In order to achieve this, Wyoming Rule 22 must be interpreted in accordance with the equitable principles of interpleader to allow broad usage of the rule in order to gain its maximum benefit. The procedure in the following section answers the above issues in the affirmative and attempts to provide the ideal solution to an interpleader action under Wyoming Rule 22.

MECHANICS

An interpleader action involves two successive litigations, the first phase of which is between plaintiff and claimants of the fund involved as to whether claimants shall interplead, and the court may grant or deny interpleader after hearing on the bill and answers, while the second phase follows the interpleader decree and is between adverse claimants on the merits after interpleading their claims to money secured by bond or paid into court.²¹

For the purpose of illustration assume the following situation. A and B are trustees of a trust established in 1930 to pay the income from the trust res to C, D and E until 1950 when the trust is to be terminated and the res to be distributed equally among the beneficiaries or their survivors. At the time for distribution C is alive, in good financial condition and has no claims against his share of the res. D died in 1959 and left a defective will. Both the intestate heirs and the legatees under the defective will claim D's share of the trust res. E is alive and had a judgment rendered against him in 1949 which remains unpaid. Numerous creditors of E also claim portions of his share of the trust res. A and B wish to distribute the fund and be relieved of the trustee duties but fear that if they distribute the proceeds to the wrongful claimant that they may later be held personally liable to the rightful claimants for breach of fiduciary duty in distribution of the fund.

This situation could be dealt with ideally under the Wyoming Rules of Civil Procedure by application of equitable principles of interpleader to the rules as follows:

1. A and B bring action for interpleader under Rule 22 joining all parties who assert claims to the fund under Rule 20.²² Joinder will include C, D's estate and his testate and intestate heirs, and E and all of his known creditors and asserting claims.

2. A and B obtain leave of court and after notification of all parties as required, pay the fund into court under Rule 67.

21. Barron and Holtzoff, Fed. Practice and Procedure, § 555, *supp. citing*. "Westinghouse Elec. Corp. v. United Elec. Radio and Machine Workers of America, 99 F. Supp. 597 (1951), affirmed, 194 F.2d 770; First State Bank of Chariton, Iowa v. Citizens State Bank of Thedford, Thomas County, Neb., 1950, 10 F.R.D. 424."

22. The last sentence of Rule 22 provides: "The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20."

3. A and B move for a temporary restraining order under Rule 65 to enjoin all parties asserting a claim to the fund from bringing further action or separate action against A and B in regard to the trust res. Such temporary restraining order may be granted without notice under Rule 65 (b) only upon a showing of irreparable injury to the applicant before notice can be served and a hearing held thereon. If the restraining order is granted without notice, a motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character. By these means, A and B are protected from further or separate action against them. The court issues a preliminary injunction at the hearing pending the trial.

4. The court holds a separate trial under Rule 42 (b) as to whether interpleader will lie. On the facts of this case, defendants will be required to interplead since the trustees have no interest in the trust res and the res has been deposited in court. Therefore, the Court enters judgment in accordance with Rule 54 (b) discharging A and B from all liability. The court also grants a permanent injunction restraining all parties to the action from prosecuting any further suit against the trustees.

5. The court now holds separate trials under Rule 42 (b) as to the rest of the parties. There are no claims against C so the court may distribute his share of the trust res and enter final judgment in his behalf under Rule 54 (b). Separate trials then may be conducted on the merits of the other adverse claims.

If, in the same situation, one or more of the parties had sued A and B for any part of the res, they could have brought a counterclaim for interpleader by usage of Rule 22 in conjunction with Rule 13. All adverse claimants could be interpleaded and the same procedure as set out above applied by the court. Any persons asserting adverse claims, which are not joined, could intervene under Rule 24 (a) by motion served upon all parties and thereby protect their interests.

CONCLUSION

Although Wyoming Rule 22 is limited in its language, broad application may be permitted by the use of the equitable principles of interpleader in conjunction with the rule in order to attain the broad usage of interpleader developed by the courts of equity. In deed the Supreme Court of Wyoming indicated that statutory interpleader was subject to cumulation in the *Kinney* case in 1898. There is no reason to depart from this interpretation under present statute, especially since the rules provide adequate procedure to be used in such circumstances. Interpleader is not used often but when appropriate circumstances arise, the remedy should not be impeded by strict construance of Rule 22.

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