University of Miami Law Review

Volume 15 | Number 4 Article 12

7-1-1961

Interpleader Actions -- Plaintiff's Attorney's Fees

Edwin C. Ratiner

it was indicated that once the particular taxable course of action had been chosen, the court would not make the taxability of a transaction dependent upon an alternative procedure which might not have been taxable.[24] What was done, and not what might have been done, determined the tax liability.[25]

The interpretation of the Florida court is clearly in line with the construction of the parent federal statute by the United States Supreme Court, and with the tendency of all courts to attach tax liability upon a particular course of action even though non-taxable avenues are open but unused by the taxpayer.

The case illustrates the high degree of care and foresight required by today's complex tax statutes. The engaging in transactions without a full awareness of potential tax consequences may well result in a more burdensome tax liability than is necessary within the framework of the law.

LEON A. CONRAD

INTERPLEADER ACTIONS — PLAINTIFF'S ATTORNEY'S FEES

In an interpleader action to determine which of two defendant-claimants was entitled to a disputed fund, the chancellor, in his discretion, awarded attorney's fees to the plaintiff-stakeholder and court costs to the successful defendant, both to be paid directly by the losing defendant. On appeal, *held*, affirmed: an award of costs and fees to be paid directly by an unsuccessful claimant rather than from the interpleaded fund was not an abuse of the court's discretion. *Lucco v. Treadwell*, 127 So.2d 461 (Fla. App. 1961).

While the rule as to the assessment of costs varies between jurisdictions, in at least a plurality of states,[1] including Florida,[2] the "disinterested" stakeholder who brings an interpleader action is entitled to be reimbursed

---

10,000 shares, simply to provide each holder with more shares of stock, when 100 will serve the same end, is an unnecessary accrual of tax liability. This is particularly true of nonpublic corporations.

24. Founders General Corp. v. Hoey, 300 U.S. 268 (1937).

25. American Gas & Elec. Co. v. United States, 69 F. Supp. 614 (S.D.N.Y. 1946).

1. While articles and decisions dealing with the precise subject matter of this note are rather scarce, for an exhaustive study of the general subject of attorney's fees in interpleader suits, see Annot., 48 A.L.R.2d 190 (1956).

2. See Miller v. Gulf Life Ins. Co., 148 Fla. 1, 3 So.2d 519 (1941); Brown v. Marsh, 98 Fla. 253, 123 So. 762 (1929).

for his costs and attorney's fees.[3] As a matter of custom, these costs and fees are usually paid to the stakeholder directly from the disputed fund which had been deposited with the registry of the court upon the initiation of the suit.[4] However, it is generally agreed that, as between claimants, the costs incurred by the successful claimant and by the stakeholder should be taxed eventually against the losing claimant who, by his invalid claim, made the interpleader action necessary.[5] Thus, the costs awarded the stakeholder out of the fund are eventually paid back to the fund by the losing claimant.

The rationale for paying the stakeholder's litigation expenses directly out of the fund appears to be that since these costs may prove difficult to recover from a losing claimant, it would be unfair to place the burden of collection upon the innocent, disinterested stakeholder.[6]

---

3. 48 C.J.S. *Interpleader* § 50(b) (1947). While the instant case did not concern itself with the necessary conditions precedent to the stakeholder's recovery of attorney's fees, it is interesting to note Florida's unique position on the matter.

In Brown v. Marsh, 98 Fla. 253, 123 So. 762 (1929), plaintiff contracted with X to build plaintiff's house. X partially performed, then quit after receiving part payment. Plaintiff completed the house. Materialmen of X started suit against plaintiff who, as a stakeholder of a fund (balance of total amount due X under the contract less amounts paid to X less cost to plaintiff of completing the house), interpleaded the materialmen to determine the priority of their rights to the fund.

The Florida Supreme Court cited the general rule that a stakeholder with a substantial, although not direct, interest in the result of the litigation cannot recover his solicitor's fees from the fund. However, the court went on to say that since the decree of interpleader was sought by complainant *for his own protection*, the costs should be borne by him.

In Drummond Title Co. v. Weinroth, 77 So.2d 606 (Fla. 1955), the title company, as escrow agent for the parties to a contract, delayed interpleader until *after* suit was commenced against it by a claimant. The chancellor decreed the stakeholder could not recover his attorney's fees.

In affirming the decree, the Florida Supreme Court, quoting from Brown v. Marsh, 98 Fla. 253, 123 So. 762 (1929), (wherein the stakeholder also waited until he was sued before interpleading) said: "[T]he interpleader [is] sought by the complainant for his own protection." Drummond Title Co. v. Weinroth, *supra* at 610.

From these cases, it appears that Florida follows the rather unique view that the fact that the suit was commenced by a *claimant* against the stakeholder, while permitting the stakeholder to interplead the claimants by answer, gives the stakeholder sufficient "interest" in the outcome of the litigation to preclude his recovery of attorney's fees.

An analysis of the cases in Annot., 48 A.L.R.2d 190 (1956) shows that in all other cases in which the same question arose, the fact that the stakeholder did not originate the suit, but that it was started by a claimant, does not preclude the recovery of attorney's fees by the stakeholder.

Furthermore, it can well be said that *every* stakeholder is "interested" in the outcome of an interpleader suit, since the very purpose of it is to benefit the stakeholder primarily. In State v. Mauritz-Wells Co., 170 S.W.2d 625 (Tex. Civ. App. 1943), the court stated that the distribution of the fund is a mere incident to the primary purpose of protecting the stakeholder against double liability.

In essence, the recovery of attorney's fees by the Florida stakeholder seems to be predicated, among other things, on the stakeholder's ability to outrun the claimants to the courthouse.

4. Shrepic v. Metropolitan Life Ins. Co., 120 F. Supp. 650 (W.D. Pa. 1954); 48 C.J.S. *Interpleader* § 50(d) (1947).

5. Globe Indem. Co. v. Puget Sound Co., 154 F.2d 249 (2d Cir. 1946); Brown v. Marsh, 98 Fla. 253, 123 So. 762 (1929); 30 AM. JUR. *Interpleader* § 28 (1958).

6. Shrepic v. Metropolitan Life Ins. Co., 120 F. Supp. 650 (W.D. Pa. 1954).

In the instant case,[7] one of two defendant-claimants had deposited five hundred dollars ($500.00) with the plaintiff as an escrow agent pursuant to a proposed sale between the defendants. Failing to reach an agreement on the sale, both defendants claimed the escrowed fund. The plaintiff thereupon filed an interpleader suit, requiring both claimants to prove their claims. A decree *pro confesso* was rendered against one claimant. Among other things, this decree held that the losing claimant was to pay to the plaintiff-stakeholder the sum of one hundred fifty dollars ($150.00) as a reasonable attorney's fee. In addition, the losing claimant was to pay to the successful claimant the court costs of nineteen dollars and ten cents ($19.10) which had been previously deducted from the disputed fund. The losing claimant appealed on the ground that the costs should have been assessed against the fund itself. The appellate court, noting the unfairness of placing the burden on the stakeholder of collecting his costs from the losing claimant, acknowledged the customary procedure of paying attorney's fees directly out of the fund itself.[8] On the other hand, the court stated that taxation of the costs against the fund itself would be tantamount to taxing the successful claimant, thereby imposing upon him the burden of collecting from the losing claimant.[9] Finding that the losing claimant would, in any event, be ultimately liable for all costs, the appellate court held the decree of the chancellor to be a proper use of discretion.

While the decision will not alter the ultimate liability of a losing claimant, it may adversely affect the stakeholder who, instead of receiving cash in hand from the fund, receives an award which may prove difficult to collect. This decision effectively shifts the burden of collection from the winning defendant to the stakeholder. Perhaps a more equitable result could be obtained by advancing attorney's fees to the stakeholder directly from the fund, and by decreeing the losing defendant liable to his successful opponent for costs and the stakeholder's attorney's fees as well. This procedure would preserve the customary favoritism justly due the disinterested stakeholder, who, as a mere depositary, deserves this consideration.

EDWIN C. RATINER

7. Lucco v. Treadwell, 127 So.2d 461 (Fla. App. 1961).
8. *Id.* at 463.
9. *Ibid.*