

DUNCAN
IN THE CIRCUIT COURT OF BENTON COUNTY, ARKANSAS
CIVIL DIVISION

ARVEST BANK

PLAINTIFF

v.

Case No. 04-CIV-2014-

454-5

- (1) H. DENNIS SMILEY,
- (2) BOKF, NATIONAL ASSOCIATION,
- (3) THE BANK OF FAYETTEVILLE,
- (4) BANK OF THE OZARKS, LITTLE ROCK, AR
- (5) BENEFIT BANK, FORT SMITH, AR,
- (6) CHAMBERS BANK, DANVILLE, AR,
- (7) CENTENNIAL BANK, CONWAY, AR,
- (8) DELTA TRUST & BANK, PARKDALE, AR,
- (9) FIRST BANK, HAMPTON, AR,
- (10) FIRST FEDERAL BANK, HARRISON, AR,
- (11) THE FIRST NATIONAL BANK OF FORT SMITH,
- (12) INTEGRITY FIRST BANK, NATIONAL ASSOCIATION,
- (13) FIRST SECURITY BANK, SEARCY, AR,
- (14) FIRST STATE BANK, LONOKE, AR,
- (15) FIRST STATE BANK OF DeQUEEN,
- (16) FIRST STATE BANK OF NWA, HUNTSVILLE, AR,
- (17) FIRST STATE BANK, RUSSELLVILLE, AR,
- (18) FIRST WESTERN BANK, BOONEVILLE, AR,
- (19) LEGACY NATIONAL BANK, SPRINGDALE, AR, and
- (20) SUMMITT BANK, ARKADELPHIA, AR

FILED
2014 APR 2 PM 12 51
BENTON COUNTY, AR
CLERK & RECORDER

DEFENDANTS

INTERPLEADER

Arvest Bank (hereinafter referred to as the "Plaintiff") and petitions to Interplead certain funds into the Registry of this Court pursuant to ARCP 22, and persons who may have claims to such funds include H. Dennis Smiley (hereinafter referred to as "Mr. Smiley"), BOKF, National Association, The Bank of Fayetteville, Bank of the Ozarks, Little Rock, AR, Benefit Bank, Fort Smith, AR, Chambers Bank, Danville, AR, Centennial Bank, Conway, AR, Delta Trust & Bank, Parkdale, AR, First Bank, Hampton, AR, First Federal Bank, Harrison, AR,

The First National Bank of Fort Smith, Integrity First Bank, National Association, First Security Bank, Searcy, AR, First State Bank, Lonoke, AR, First State Bank of DeQueen, First State Bank of Northwest Arkansas, Huntsville, AR, First State Bank, Russellville, AR, First Western Bank, Booneville, AR, Legacy National Bank, Springdale, AR, and Summit Bank, Arkadelphia, AR (collectively hereinafter to as the "Bank Defendants") and alleges and states as follows:

The Parties

1. Arvest Bank is an Arkansas State Bank.
2. Mr. Smiley is a resident of Benton County, Arkansas,
3. BOKF, National Association is a National Bank.
4. The Bank of Fayetteville is an Arkansas State Bank.
5. Bank of the Ozarks, Little Rock, AR is an Arkansas State Bank.
6. Benefit Bank, Fort Smith, AR is a Federal Savings Bank.
7. Chambers Bank, Danville, AR is an Arkansas State Bank.
8. Centennial Bank, Conway, AR is an Arkansas State Bank.
9. Delta Trust & Bank, Parkdale, AR is an Arkansas State Bank.
10. First Bank, Hampton, AR is an Arkansas State Bank.
11. First Federal Bank, Harrison, AR is a federal savings bank.
12. The First National Bank of Fort Smith is National Bank.
13. Integrity First Bank, National Association is a National Bank.
14. First Security Bank, Searcy, AR is an Arkansas State Bank.
15. First State Bank, Lonoke, AR is an Arkansas State Bank.
16. First State Bank of DeQueen is an Arkansas State Bank.

17. First State Bank of Northwest Arkansas, Huntsville, AR is an Arkansas State Bank.

18. First State Bank, Russellville, AR is an Arkansas State Bank.

19. First Western Bank, Booneville, AR is an Arkansas State Bank.

20. Legacy National Bank, Springdale, AR is National Bank.

21. Summit Bank, Arkadelphia, AR is an Arkansas State Bank.

Facts

22. Mr. Smiley was formerly an employee of Plaintiff, which is a subsidiary of Arvest Bank Group, Inc. (hereinafter "**ABGI**"), and a participant in the ABGI Stock Purchase Plan (hereinafter the "**Stock Plan**") and the ABGI Stock Option Plan (hereinafter the "**Option Plan**").

23. During the course of his participation in the Stock Plan and Option Plan, Mr. Smiley came to acquire certain shares of common stock in ABGI, as well as certain vested options to purchase common stock of ABGI at fixed prices.

24. Pursuant to the terms of the Stock Plan Mr. Smiley was not permitted to pledge or otherwise encumber the shares of ABGI common stock he acquired during his participation in the Stock Plan.

25. Nevertheless, upon information and belief, Mr. Smiley took certain actions by which he purported to pledge the shares of ABGI common stock he acquired during the course of his participation in the Stock Plan as security for certain debts he incurred with one or more of the Bank Defendants

26. Upon the termination of Mr. Smiley's employment with Plaintiff, the shares of ABGI common stock Mr. Smiley acquired during his participation in the

Stock Plan are to be repurchased from him at a price fixed by a formula set forth in the terms of the Stock Plan.

27. Plaintiff has issued a cashier's check made payable to Mr. Smiley and equal to \$427,991.25, which represents the proceeds payable to Mr. Smiley for the repurchase of the shares of ABGI common stock Mr. Smiley acquired during the time in which he participated in the Stock Plan (hereinafter the "Stock Plan Check").

28. Upon information and belief, the Bank Defendants each have claimed or may claim an interest in the shares of ABGI common stock Mr. Smiley acquired during his participation in the Stock Plan and/or the proceeds thereof, which proceeds are represented in the Stock Plan Check.

29. In light of the claims made by the Bank Defendants, Plaintiff has not delivered the Stock Plan Check to Mr. Smiley.

30. Pursuant to the terms of the Option Plan, Mr. Smiley was not permitted to pledge or otherwise encumber the vested options to purchase ABGI common stock he acquired during his participation in the Option Plan.

31. Nevertheless, upon information and belief, Mr. Smiley took certain actions by which he purported to pledge the vested options to purchase ABGI common stock he acquired during the course of his participation in the Option Plan as security for certain debts he incurred with one or more of the Bank Defendants

32. Upon the termination of Mr. Smiley's employment with Plaintiff, the vested options to purchase shares of ABGI common stock Mr. Smiley acquired

during his participation in the Option Plan are to be purchased from him at a price fixed by a formula set forth in the terms of the Option Plan.

33. Plaintiff has issued a cashier's check made payable to Mr. Smiley and equal to \$123,763.33, which represents the proceeds payable to Mr. Smiley for the purchase of the vested options to purchase shares of ABGI common stock Mr. Smiley acquired during the time in which he participated in the Option Plan (hereinafter the "Option Plan Check").

34. Upon information and belief, one or more of the Bank Defendants claim or may claim an interest in the of the vested options to purchase shares of ABGI common stock Mr. Smiley acquired during his participation in the Option Plan and/or the proceeds thereof, which proceeds are represented in the Option Plan Check.

35. In light of the claims made by the Bank Defendants, Plaintiff has not delivered the Option Plan Check to Mr. Smiley.

COUNT I
(Interpleader of the Proceeds of the Stock Plan Check)
Against All Defendants

36. Plaintiff adopts and incorporates by reference all previous allegations in its Complaint.

37. Because of the claims that have been or may be made by Mr. Smiley and the Bank Defendants, Plaintiff cannot determine without hazard to itself which, if any of them, is legally entitled to the proceeds of the Stock Plan Check.

38. Plaintiff should not be required to make this determination because by doing so, Plaintiff may subject itself to double or multiple liability.

39. Plaintiff claims no interest in the proceeds of Mr. Smiley's ABGI common stock that are represented by the Stock Plan Check.

40. Plaintiff should be permitted to deposit the funds represented by the Stock Plan Check into the Court's registry and, upon doing so, be discharged from all liability and awarded its reasonable attorneys' fees and costs.

COUNT II
(Interpleader of the Proceeds of the Option Plan Check)
Against All Defendants

41. Plaintiff adopts and incorporates by reference all previous alleges in its Complaint.

42. Because of the claims that have been or may be made by Mr. Smiley and the Bank Defendants, Plaintiff cannot determine without hazard to itself which, if any of them, is legally entitled to the proceeds of the Option Plan Check.

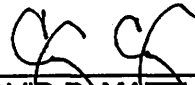
43. Plaintiff should not be required to make this determination because by doing so, Plaintiff may subject itself to double or multiple liability.

44. Plaintiff claims no interest in the proceeds of Mr. Smiley's vested options to purchase ABGI common stock that are represented by the Option Plan Check.

45. Plaintiff should be permitted to deposit the funds represented by the Option Plan Check into the Court's registry and, upon doing so, be discharged from all liability and awarded its reasonable attorneys' fees and costs.

WHEREFORE, Plaintiff prays that the Court issue an Order directing Plaintiff to deposit the funds represented by the Stock Plan Check and Option Plan Check into the Court's registry, releasing Plaintiff of any liability related to such funds, and awarding Plaintiff all other relief to which it is entitled including, but not limited to its reasonable attorneys' fees and costs.


ARVEST BANK, Plaintiff

By: 

DAVID R. MATTHEWS, Its Attorney
Arkansas Bar #76072
CRAIG A. CAMPBELL, Its Attorney
Arkansas Bar #80022
MATTHEWS, CAMPBELL, RHOADS,
McCLURE & THOMPSON, P.A.
119 South Second Street
Rogers, Arkansas 72756
(479) 636-0875

VERIFICATION

I, Craig A. Campbell, Attorney for the Plaintiff herein, state that I have read the above and foregoing instrument and state that the facts contained therein are true and correct to the best of my knowledge and belief.


CRAIG A. CAMPBELL

STATE OF ARKANSAS)
COUNTY OF BENTON)SS

SUBSCRIBED AND SWORN to before me, the undersigned Notary Public, this 2nd day of April, 2014.

My Commission Expires:

OFFICIAL SEAL
LORRI HALL
NOTARY PUBLIC, ARKANSAS
BENTON COUNTY
COMMISSION EXPIRES 04/21/2014

Lon Hall
Notary Public