

2004

# Melvin J. Hunt v. Albert E. Hunt, Zera A. Hunt, and Douglas J. Hanks : Brief of Appellee

Utah Court of Appeals

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Mark D. Stubbs; Filmore Spencer; Victoria W. Romney; Kunzler and Associates; Attorneys for Appellant.

Douglas J. Hanks; Zera A. Hunt; Albert E. Hunt; Attorney for Appellees.

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**IN THE UTAH COURT OF APPEALS**

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Melvin J. Hunt,

Plaintiff and Appellant

Vs.

Case No. 20041068-CA

ALBERT E. HUNT, ZERA A. HUNT,  
and DOUGLAS J. HANKS

Defendants and Appellees

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**BRIEF OF APPELLEES**

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**APPEAL OF THE JULY 7, 2004 RULING DENYING PLAINTIFF'S REQUEST FOR  
JUDICIAL DISSOLUTION OF GOLD STREAM CORPORATION, ENTERED IN THE  
FOURTH DISTRICT COURT, UTAH COUNTY, PROVO DEPARTMENT, THE  
HONORABLE GARY D. STOTT PRESIDING**

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Mark D. Stubbs (9353)  
FILLMORE SPENCER, LLC  
3310 North University Avenue  
Provo, Ut 84604  
Telephone: (801-426-8200)  
Facsimile: (801-426-8208)

Victoria W. Romney (7434)  
KUNZLER & ASSOCIATES  
8 East Broadway, Suite 600  
Salt Lake City, UT 84111

Attorneys for Melvin J. Hunt

Douglas J. Hanks  
51 North 600 East  
Centerville, Utah 84014  
Phone: 801-298-0979  
Facsimile: 801-298-0900  
Defendant Pro Se

Zera A. Hunt  
10171 Golden Sands Place  
South Jordan, Ut 84095-2430  
Defendant

Albert E. Hunt  
233 East 900 North  
Bountiful, Ut 84010-4631  
Defendant

ORAL ARGUMENT NOT REQUESTED

FILED  
UTAH APPELLATE COURTS

OCT 29 2005

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Appellees defer to the Appellant

## BRIEF OF APPELLEES

### I. INTRODUCTION

The Trial Court did not err as a matter of law when it concluded that four patented mining claims held by the Gold Stream Corporation (hereinafter “GSC”) were transferred to Appellee Douglas J. Hanks. This Court should therefore find that the conveyance of said mining claims to Appellee Douglas J. Hanks was valid and proper and should therefore agree with the findings of fact and conclusion of law of the Trial Court.

### II. JURISDICTION AND NATURE OF THE PROCEEDINGS

This is an appeal from the July 7, 2004, Ruling of the Fourth District Court, Utah County, State Of Utah , (The honorable Judge Gary D. Scott) denying Plaintiff / Appellant’s request for Judicial Dissolution of GSC. This Court has jurisdiction for an appeal pursuant to Utah Code Annotated: 78-2a-3(2)(j) (2004).

### III. STATEMENT OF THE ISSUES AND STANDARDS OF REVIEW

1. **Did the Trial Court err as a matter of law when it concluded that the patented claims were properly transferred to Appellee Douglas Hanks?**

Questions of law are reviewed for correctness, giving no deference to the Trial Court.

3. **Did the Trial Court’s findings of fact support its conclusion that the mining claims were properly conveyed to Appellee Douglas Hanks?**

Findings of fact must be found “sufficient to provide a sound foundation for the judgment”.

### IV. CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

Utah Code Ann: 16010a-704  
Action without meeting

Utah Code Ann: 16-10a-1202(1) (2004)  
Sale of property requiring shareholder approval.

This Utah Code was complied with relative to the issue before the Court.

Utah Code Ann: 16-10a-1402

Authorization of dissolution after issuance of shares.

This Utah Code was complied with relative to the issue before the Court.

Utah Code Ann: 16-10a-1405

Effect of dissolution

This Utah Code was complied with relative to the issue before the Court.

Utah Code Ann; 16-10a-1406

Disposition of known claims by notification

This Utah Code was complied with relative to the issue before the Court.

Utah Code Ann: 16-10a-1407

Disposition of claims by publication

This Utah Code was complied with relative to the issue before the Court.

Utah Code Ann: 16-10a-1421

Procedure for and effect of administrative dissolution

This Utah Code does not apply relative to the issue before the Court.

Utah Code Ann: 16-10a-1430(2)

Grounds for judicial dissolution

This Utah Code does not apply relative to the issue before the Court.

## V. STATEMENT OF APELLEE'S CASE

On March 29, 2002 Douglas Hanks received from Appellant Melvin Hunt a Summons, Dated February 23, 2002, and a Complaint, dated February 11, 2002, against Albert E. Hunt , Zera A. Hunt, and himself, (Douglas J. Hanks), who were three of the five former Directors of Gold Stream Corporation (herein after GSC). [Summons and Complaint should have been filed against all five former Directors], filed in the 4<sup>th</sup> Judicial District of Utah in Provo, in order to obtain judicial dissolution of Gold Stream Corporation .

On April 18, 2002, [with a verbal Power Of Attorney from Appellees Albert E. Hunt and Zera A. Hunt], Appellee Douglas Hanks filed an answer in response to the complaint on behalf of himself, Albert E. Hunt and Zera Hunt. Twelve months later, on or about April 22, 2003 the Appellees Hunt, Hunt and Hanks received from the 4<sup>th</sup> Judicial Court and “Order to show cause” as to why the above noted case # 020400556 should not be dismissed. On or about May 1<sup>st</sup>, 2003 the Appellee’s received an amended complaint dated April 25, 2003, along with a set of Interrogatories and a request for Production Of Documents. On May 26 & 27, 2003 Appellees Albert E. Hunt and Zera A Hunt provided Notarized Power of Attorney’s to Appellee Douglas J. Hanks to act on their behalf in respect to the Melvin J. Hunt Complaint. On May 30<sup>th</sup> 2003 there was an “Order To Show Cause” hearing wherein the Honorable Judge, Gary Stott orders the Appellees to provide excess and review of the GSC records. On June 17, 2003 a meeting was held wherein the Corporate records were made available for review to the Appellant and his attorney Milton Harmon. However! only the attorney attended the meeting and none of the records were reviewed. On August 18, 2003 a 2<sup>nd</sup> pre-trial conference was held wherein the attorney mis-stated that he had reviewed the Corp records. The attorney asked for and received another extension for another pre-trial conference to be held October 3<sup>rd</sup> 2003, (which was extended to October 16, 2003) and the Court noted that that would be the last conference prior to dismissal of, or a trial date. On December 16 we attended another pre-trial conference wherein the Judge set a trial date for February 5<sup>th</sup>, 2004, which was later extended to April 6, 2004. A bench trial was held on April 6, 2004 wherein Appellee Hanks represented himself and the other two Appellees, Pro Se. On July 7, 2004, the trial court entered judgment in favor of Appellee’s Albert E. Hunt, Zera A. Hunt and Douglas J. Hanks A modified judgment was issued by the trial court on July 13, 2002

The Appellant filed a Motion to Amend Judgment and Reconsider Ruling of July 16, 2004. On July 26, 2004, Appellant filed a motion for a new trial. The motion for a new trial was denied on September 14, 2004. Appellant filed a notice of appeal on November 30, 2005. The case was transferred to the Utah Supreme Court on the December 9, 2004, and then transferred back to the Utah Court of Appeals on December 10, 2004. Appellee Hanks filed a Response to Appellant's Docketing Statement and Motion for Summary Disposition on December 30, 2004. **(Appellants Addendum A)**. Appellee Hanks erred in his response to Appellant's Docketing Statement because of his lack of understanding of the law, and the phrase "Manifest Error". His understanding was that "Manifest" meant "obvious". The Court of Appeals denied the Motion and Stipulation on February 9, 2005.

## **VI. APPELLEES STATEMENT OF FACT AND CORRECTIONS:**

### **With corrections to the APPELLANTS statements UNDERLINED**

1. On July 1, 1963, GSC was incorporated in the state of Utah. The original incorporators were Wilford Hunt, Albert Hunt, Melvin Hunt, and Sherald James. As far as the Appellee knows the documentation for the formation of the corporation consisted of the Articles of Incorporation and a Stockholders Agreement. One of the original incorporators, Appellant Melvin Hunt, alleges that there was a Compensation Agreement. However no record of, or any mention of a compensation agreement exists in any corporate records.
2. The Appellant alleges that the so called Compensation Agreement states that all monies advanced by a shareholder to the corporation above what other stockholders were able to contribute would be treated as a loan. The fallacy of this allegation is substantiated by the numerous times that money, time and effort was compensated from Treasury Shares.



3. The Articles of Incorporation set forth a board of directors of five (5) members. The Articles state that “Upon the affirmative vote of a majority of the issued and outstanding stock, at any regular or special meeting of the stockholders called for the purpose, the directors may be authorized to sell or otherwise dispose of any part or all of the assets of the corporation”  
Ex 22, page 7, par 3

4. GSC was started with limited financial resources and with the idea that all of the original incorporators would be responsible for personal work and financial contributions to advance the corporation. The Appellant’s, Melvin J. Hunt, allegation that “he was the primary person conducting actual mining and sales operations for the corporation” is without foundation and is not reflected in the corporate records or minutes. He was very involved for the first two years.

5. In the early 1970’s Appellee Douglas J. Hanks became a shareholder in GSC, first receiving shares as a finder’s fee and then inheriting his father’s shares when his father passed away. This statement by the Appellant is basically true, but it raises another question for later consideration. Question: From where did Father Hanks receive his shares? From where did Douglas J. Hanks receive his finders fee shares? The company records and Stock Ledger show that those shares along with shares issued and/or sold to many others, were issued from Treasury stock

6. In 1987 Gold Stream had three different groups of claims. There were the Four Patented lode claims, which are the subject of the matter before the Court and are often referred to as the Binz property, or the “Patented Claims”. Then there was a second group of Placer claims located down the hill from the patented lode claims, which are often referred to as the California Creek claims. Then there was a third group of Lode claims located in Mill Creek Canyon which were called the Smuggler Group. The Smuggler claims were located about twenty (20) miles, by road,

away from the other two groups, or about three miles as the Crow flies. In 1987, before the Smug-  
gler claims were lost to the Appellant Melvin Hunt, tests were run on some old milling pond  
tailings that were on that property. One of the investors in another company of which the Ap-  
pellee, Douglas Hanks was president, overheard our excitement about the results of those test  
and asked to be involved. He asked to be partners in the recovery from the tailings. He provid-  
ed money for that recovery project, but asked for his money back when Hanks advised him of  
an error he (Hanks) made when reading the assay results. The statement that Appellant, made  
wherein he states that: “The mill tailings invested in by the investor are on the Patented claims”  
is incorrect. The tailing ponds are miles apart from the Patented claims.

7. The Appellant’s statement on his pg 7, par 2 that: “that Hanks would loose his job”, is  
incorrect.. Hanks did negotiated an agreement, on behalf of GSC, granting the proposed partner,  
a partnership in the tailing ponds recovery with an option to purchase said mill tailings., What  
happened to the money received from that proposed partnership was not an issue before the court.

8. On April 27, 1989, GSC held a meeting during which it approved assumption of the Hanks  
position resulting from the tailing ponds fiasco. Appellee Zera Hunt made the motion to assume  
the debt and Appellee Albert E. Hunt seconded the motion. Appellee Hanks abstained. Ex. 7.

9. At the September 1, 1989, GSC annual Shareholders meeting Appellee Hanks proposed  
that the assets of the corporation, be sold or leased for not less than \$1,150,000.00. Ex. 1 p.3.  
Assets were sold to a third party interest, H & H Gold, that subsequently filed for Bankruptcy.

10. The Appellant’s statements that: “Appellee Albert F Hunt, as President of the corporation  
and in his own personal capacity thereafter, began to assume control of the company and bor-  
rowed from the Appellant Melvin J. Hunt and his father, Wilford Hunt, all of the corporate

documents that they had in their possession, including the records that Appellant Melvin J. Hunt had maintained as company Secretary; their stock certificates, and particularly the agreement (compensation agreement). The documents borrowed have never been returned to Appellant Melvin J. Hunt or his father, Wilford Hunt, and their present location is unknown, Appellee Albert E. Hunt being unable to disclose their location”, are not correct. After the Appellant Hunt was replaced as secretary of GSC he turned over all of the corporate records, including the minutes, to the next secretary, Mr. Hardy, who was secretary in 1966, who may have turned them over to Mr. Mitchell, who may have turned them over to Mr. Fellows, who turned them over to the Appellee Douglas Hanks when he became secretary. Minutes of meetings held during that time and which were taken by the Appellant Melvin Hunt as secretary are presently part of the GSC records. It is interesting to note that some of the old records of the Hunt Mining Company including the stock ledger were also included, so it is hard to justify the allegation that corporate records were borrowed and not returned. ”Question”: If stock certificates were borrowed by Appellee Albert Hunt and not returned, where did the stock certificates, submitted by the Appellant and his father, come from when they were re-called to be re-issued at the time of the authorized stock split of 1976.

11. On February 1, 1991. Appellee Albert F Hunt as President of GSC signed a promissory note on behalf of GSC agreeing to pay Appellee Hanks \$24,675.00 with an annual interest rate of 5% to satisfy the obligation owed to Douglas Hanks as a result of the Tailing Ponds fiasco  
Ex 9.

12. The Appellant’s statements that: “In January 17, 2002, GSC held two Meetings. The first meeting, held on January 17, 2002, addressed the question of dissolution and the transfer

of the mining claims, but neither issue was voted on. (R. 482 at 57: 15-23; R. 482 at 203: 4)

The meeting concluded with an agreement to meet again in March to further discuss these questions”, are incorrect. A shareholders meeting was called, due notice was provided to all the shareholders of record. The meeting was suspended temporarily and reconvened, after proper notice, on January 23, 2002. The part of the meeting addressed the question of dissolution and the transfer of the mining claims. (Ex. 4). The Appellant’s statement in par 3 that: “neither issue was voted on”, is not correct. On a Motion by Douglas Hanks and 2<sup>nd</sup> by Dilworth Strasser, it was proposed that Gold Stream divest itself of the four patented claims owned by GSC in favor of Douglas Hanks as full and final payment owed to Douglas Hanks as provided in the minutes of April 27, 1989. Ex 4, page 2. The Appellant’s statement that: “The meeting concluded with an agreement to meet again in March to further discuss these questions Ex. 4, page 3”, is incorrect. The fact that the meeting was called properly is evidenced by the attendance of the Appellant and the other attendee’s.

13. The Appellant’s statement that: “Evidence introduced by Appellee Douglas Hanks suggests that he received the mining claims 3 days later on January 20, 2002”, is incorrect. The Motion to liquidate the assets was made and carried at the re-convened meeting of January 23, 2002. As of that moment it was intended that the Patented mining claims were to be transferred. Steps were taken very quickly to transfer ownership from GSC to Douglas Hanks, or his assigns, as stated in the subsequent board meeting of January 23, 2002. The Appellant’s statement that: “The evidence states that the mining claims had been transferred to Appellee Hanks in order to fulfill the promissory note signed by Appellee Albert E. Hunt on behalf of GSC”, is incorrect because: 1) There was no such evidence. 2) claims were transferred to COG as an “Assigns” as noted in subsequent board meeting of January 23, 2002. 3) The statement that the Appellee, Albert E. Hunt signed as president for GSC is correct.

14. The mining claims were provided to Appellee Hanks as the only recognized legitimate creditor to GSC. The Trial Court agreed with this conclusion. There were other legitimate creditors who had vacated their claims or interest as shown in the Minutes of January 23, 2002. All other claims were found to be not legitimate, and without proper foundation.

15. The statement by the Appellant that: "In addition, Appellee Hanks received the mining claims before the board of directors of GSC voted on a proposed transfer. "Is incorrect because:

a) The shareholders voted on the transfer, not the board of Directors. b) The board implemented the transfer at a subsequently called Board Meeting held January 23, 2002, 7:00 pm. At that board meeting It was moved and 2<sup>nd</sup> to convey the Patented claims to Douglas Hanks or his assigns.

16. On January 23, 2002, the shareholders meeting was re-convened. At this meeting board elections were held and Appellees Albert Hunt, Zera A. Hunt, Douglas Hanks, along with Dilworth Strasser were re-elected as Directors. Marilyn Hunt was also elected. Ex. 4.

17. After the election Appellee Hanks moved that the assets of the corporation be liquidated and the ownership of the patented mining claims be conveyed to himself, Appellee Hanks, as full and final payment of monies owed to him. Ex. 4. The motion passed and was carried. This is a correct statement, however it was decided in the subsequent board meeting to make the transfer to an "assignes" rather than to the Appellee Douglas Hanks. Finally, Appellee Hanks proposed and Appellee Zera Hunt seconded a motion that GSC be dissolved. Motion carried.

18, This statement should be corrected to read On January 23, 2002, at 7:00 pm, GSC held a board meeting and resolved that the patented mining claims be transferred to COG, as an assigns of Douglas Hanks. Notice of the resolution was given to the shareholders shortly thereafter.

19. During the January 23, 2002, meeting there was no need to make any reference to the

value of the assets of the corporation since the corporation was deemed as insolvent and since the shareholders were not willing to pursue any further development. The unfounded allegation by the Appellant that there was a “Compensation Agreement” was dismissed by the court. The Appellant Melvin Hunt attended some shareholders meetings, and as a director he attended some board meetings. QUESTION: Why didn’t the Appellant raise the issue of the alleged “Compensation Agreement” in any of those meetings? There was no need for the shareholders to be made aware of GSC’s failure to pay its corporate taxes for 2001 since the Secretary Treasure provided notice that GSC was insolvent and had received notice that the State was not interested in pursuing any further action.

20. Appellant’s statement that: “The only reference to any of the debts and obligations owed by GSC was a reference to monies due as compensation for the tailings pond fiasco debt which Appellee Hanks said GSC owed to him” may be correct. However! Appellee Hanks satisfied that obligation back in 1987.

21. The record will show that on February 13, 2002 the State of Utah dissolved GSC by a administrative action for failing to pay its corporate taxes and for failing to file its annual report for the year 2001, and after the Secretary Treas provided notice to the State that GSC was insolvent and had voted to dissolve the corporation on January 23, 2002. The secretary then received verbal communication that the State of Utah was not interested in pursuing the matter any further, making this a mute issue. Said administrative action February 13, 2002 was taken after GSC elected to dissolved.

22. On February 27, 2002, Appellee Hanks, acting as secretary of GSC, mailed Articles of Dissolution to the State Of Utah. However, due to the fact that the corporation had notified the

State that the Corporation was insolvent and dissolved in January, 2002, the subsequent administrative dissolution becomes a mute issue, even though it was after the fact.

23. The Appellant's statement that: "On March 6, 2002, Appellee Hanks filed Articles of Incorporation for a new corporation called Corporate Office Group (herein after "COG")", Ex.51& 52, is incorrect. The Appellee Douglas Hanks organized and filed paper for COG on or about April 30, 1997. The Annual Report filed April 3, 2001 shows Douglas Hanks as the registered agent and Secretary Treas. The Directors at that time were J C Hanks, Dilworth Strasser and Douglas J. Hanks. The Directors held all of the ownership of COG. The Appellants statement that: "Appellees Hanks and Zera Hunt were both listed as shareholders in COG (on the date of incorporation) is incorrect. owning 35% and 5% of the shares respectively, is incorrect. The statement that: "Dilworth Strasser was listed as the primary stockholder of COG owning 50% of the shares", is incorrect on the date of filing for the corporation

24) The Appellants statement that: "Approximately one month prior to the incorporation of COG, on the February 5, 2002, Appellees Albert Hunt and Douglas Hanks, acting as directors of GSC, conveyed the four patented lode mining claims to COG for the nominal sum of ten dollars", is incorrect because: 1) On February 5, 2002 the Appellee's Hunt and Hanks acting as president and secretary of GSC conveyed the four patented claims to COG. 2) COG was organized in 1997, more than four years previous to the transfer.

25 The Appellants statement that: "No evidence was ever presented that GSC owed any debts or obligations to COG. No evidence was presented that COG paid anything other than nominal consideration for the patented mining claims, is not correct. These issues were not a consideration

before the court. The Trial Court found in favor of the Appellee / Defendant/s. That being the case then the Appellee assumed the right to orchestrate the transfer of ownership from GSC. The issue that the patented claims were transferred into another company rather than to the Appellee directly was not a consideration of the court, or to the stockholders of the dissolved GSC.

26 It would appear that the Appellants statements that: “There is no evidence that a proposal was ever sent to the shareholders regarding the transfer of the mining claims to COG, and there is no evidence that a vote was ever taken by the shareholders approving the transfer of the mining claims to COG. Finally, no evidence was ever presented showing that the shareholders of GSC had any knowledge whatsoever of the transfer of the mining claims to COG until a certain point in these proceedings,” are incorrect, redundant, after the fact, and has no bearing on the matter before the Court. However! The Appellee notes that in the board of directors meeting held after the shareholders meeting of January 23, 2002, the 2<sup>nd</sup> order of business was: That the Secretary prepare and provide the necessary documentation to convey ownership of the five (5) patented claims, then owned by Gold Stream Corporation, to Douglas J Hanks, or his assigns, as final and complete payment for all monies owed by GSC to Douglas J. Hanks, which including the obligation assumed by GSC regarding the tailing ponds fiasco, as provided in the Gold Stream minutes of April 2<sup>nd</sup>, 1989, and ratified again in the shareholders meeting held Oct. 16, 1990.

27) The Appellants Statement that:, “The record contains no evidence of an official appraisal of the mining claims in connection with their attempted transfer.” May be true, but the value of the claims was never mentioned or became and issue in the matter before the Trial Court because the “value possibilities” were known by most of the shareholders until the time when they be-



came disillusioned and just wanted their money back, as evidenced in the proposed contract of sale, as outlined in the shareholders meeting of October 1, 1989. In addition it might be well to note that the Patented Claims were restored to the control of GSC with a payment of \$5,000.00, which was added to the \$ 50,000.00 that had been expended by GSC for operations between the time of the Contract foreclosure by GSC and before the Bankruptcy Trustee took the un-secured claims as additional assets.

## **VII. APPELLEES SUMMARY OF THE ARGUMENT**

The Appellee notes the statement by the Appellant that “The findings of fact from the trial court do not sufficiently support the trial court’s conclusion that the transfer of the mining claims was valid”, is without merit. ((The Appellee here notes that before the trial was convened only the Plaintiff’s attorney was asked if one (1) day was sufficient for the trial. Plaintiff’s attorney, Milt Harmon, responded “that it was”. The Defendant / Appellee, Douglas Hanks, was not asked,----- but would not have known, based on his in-experience with court procedure and protocol. Time for the trial ran out at the end of the day, resulting in the fact that the Court was unable to hear the testimony of all the defendants witnesses and the consideration of the exhibits during testimony. However when the Judge stopped the trial both Plaintiff & Defendant elected not to give a closing argument after the Court offered them an opportunity to provide a “Proposed Findings and Judgment”. Plaintiff & Defendant both agreed. The Court then requested that the Defendant/Appellee provide the court with their unseen and un-used exhibits)). The statement that: “The Court merely concluded that the transaction was valid without drawing any connection to its factual findings”, Is without foundation. The statement that: “Furthermore, the trial court entirely omitted any reference to the value of the mining claims,” was not an issue before the

Court, “other creditors”, the other accepted creditors had vacated their claims against GSC in favor of the Judgment, “the selection of the Board of Directors”, The election of the Board of directors was done according to the Corp Articles, and as had been done for at least 42 years.) and was the same as when the Appellant was elected as a director on October 14, 1994 for the second time. Appellee disagrees with Appellants allegation that: “and the basis of Appellee Hunt’s alleged priority right”, are nothing more than “alleged” and are unfounded. The trial court dismissed the allegation.

The Appellants Statement on his pg 11, par. 2 That: “the findings of fact do support Appellant Hunt’s grounds for judicial dissolution”, is incorrect. Review of the Court transcript and exhibits provided by the Appellees show that the findings of facts do not include evidence of illegal or unethical actions taken by the Appellee’s, nor the misapplication of the mining claims. The statement that: “The Trial Court failed to show that the findings of fact represented the sentiment of the trial court in regards to its conclusions” is incorrect. The findings of fact did represented the sentiment of the trial court. The Appellants Statement that: “After noting the unavailability of the corporate documents critical to the proof of the Appellant’s case, and acknowledging Appellees’ culpability in the unavailability of the documents, the trial court acted on a presumption in favor of the Appellee by finding that “Plaintiff failed to meet his burden of proof” “, is incorrect because, 1) Appellee states that he has provided the Appellant and his group of “friends” access to the corporate records on at least two other occasions prior to the events of the Trial Court on April 6, 2004. 2) The corporate records were made available at a meeting called for June 17, 2003, (in which the Appellant Hunt refused to attend), which was required by the court, and again a subsequent meeting wherein he was able to copy any and all

corporate records provided by the Appellee Hanks. 3): The Appellee received the records from the previous secretary, (Mr. Fellows) who received them from the previous secretary (Mr. Mitchell) who received them from the previous secretary (Mr. Hardy) who received them from the previous secretary who was the Appellant, Melvin Hunt, who acknowledges that he did not turn over all of the corporate records that he had when he was replaced as the secretary. (as noted in the Appellants Brief page 7, paragraph #10. which says in part,) “borrowed from the Appellant Melvin J. Hunt and his father, Wilford Hunt, all of the corporate documents that they had in their possession, including the records that Appellant, Melvin J. Hunt had maintained as company Secretary.” With the involvement of so many officers and secretaries over the last 40 plus years how can the Appellant allege that the Appellee Albert E. Hunt “Borrowed and didn’t return” certain records?)

Referring to the last paragraph on page 11 of the Appellant’s Brief, The lower court did not err when as a matter of law it concluded that the patented mining claims should be awarded to the Appellee. Appellee Hanks received ownership of the mining claims on January 23, 2002, by a majority of the shares outstanding as settlement for an obligation to Appellee Hanks and / or his assigns. At the subsequent meeting of the board of directors the board voted by a unanimous vote to implement the vote of the shareholders and directed the Secretary to prepare and provide the necessary documentation for the transfer of the Patented claims and the dissolution. This was done along with a letter to all of the shareholders advising them as to what had been done. Hanks and Hunt as President & Secretary and as agents for GSC, signed a QUIT CLAIM DEED dated February 5, 2002 which was recorded in Madison County February 20, 2002. The court properly concluded that the transaction was proper after consideration of the evidence and testimony provided. FURTHER: Appellant’s statement that: “Therefore, Appel-

lee Hanks improperly transferred the mining claims to himself without board or shareholders approval” is incorrect because: 1) The claims were not transferred to Hanks. The Patented claims were transferred to COG. 2) The shareholders voted for the transfer. 3) The ownership of the Patented claims was terminated when the Quit Claim Deed was signed by the President and Secretary of GSC and subsequently recorded in Montana. Appellant’s statements on his page 12, par 2 that: “Furthermore, Appellee Hanks’ orchestration of the conveyance of the claims to COG was not lawful. Documents submitted to the court indicate that GSC transferred the mining claims to COG *after* the mining claims had allegedly been transferred to Appellee Hanks. If GSC no longer owned the claims, it had no right to convey them. Therefore, the attempted conveyance of the mining claims to COG is tacit admission that the conveyance to Appellee Hanks was invalid”. are not correct because: 1) There was no testimony given or documents submitted to the trial court concerning conveyance of the claims. 2) This issue has no bearing on the matter before the Court, which is “COMPLAINT AND DISSOLUTION OF A UTAH CORPORATION”. Therefore it would appear to be of no concern to the Court.

3) The mining claims were never transferred to the Appellee Hanks. 4) The claims had to be transferred to someone or some entity. Who received the claims was at the election of the Appellee Hanks. The Appellants statement, pg. 12, par 2, line 4, that: “Therefore, the attempted conveyance of the mining claims to COG is tacit admission that the conveyance to Appellee Hanks was invalid”, appears to be a contradictory and fallacious statement and is incorrect because:

1) the Appellee exercised the option provided in the board meeting minutes of January 23, 2002 to convey the Patented mining claims to Douglas Hanks or his assigns. 2) Appellee maintains that the conveyance from GSC to COG complied with Utah Code. 3) The Appellee elected to execute the transfer of ownership directly to a Corporation that was organized in 1997. The documentation and transfer was completed as quickly as possible including the above men-

tioned “Deed” which was recorded in Madison Montana on Febraury 20, 2002. 4) Therefore the conveyance of the mining claims to COG was valid. 5) The appellant acted in his capacity as Secretary of GSC and, at the request of the president, the conductor of the meeting held January 17<sup>th</sup> & 23<sup>rd</sup>. 6) The Appellee, as Secretary Treasure, director, and as the meeting conductor was responsible for the orchestration of transfer after he understood the mind and will of the shareholders and directors of GSC. However! the Appellee prays that the court will consider the fact that once the ownership was transferred way from GSC, the method or vehicle used as the recipient for that transfer is of no interest or concern to the Court. *If the foregoing statement by the Appellee is true then the following statement and allegation by the Appellant found on his pg 12, Par 3 grossly mi-represents the actions or intent of the Appellees because:* 7) Once the transfer was authorized the method of transfer, to, what, or who, was of no concern to the court or the shareholders. 8) The allegation that: “the transfer was hidden from the shareholders” is wrong since the method of transfer, to, what, or who, was of no concern to the court or the shareholders. 9) The mechanics of transfer were never a prerogative of the shareholders, or of interest to the court. 10) Since there was no basis for interest by the court or the shareholders concerning the method or mechanics of transfer, the statement on his pg 12, par. 3 is redundant and becomes a mute issue. The statement made by the Appellant found on his pg 12, Par 4 is not correct because: 1) The Appellee did not have a personal or financial interest in GSC. 2) He was a director and Secretary Treasure. That’s all. 3) Hanks had no stock in GSC. 4) The statement that three of the five directors were major shareholders of COG is not correct. Soon after the transfer-- Corp Office Group, Inc.(COG) held a shareholders and board meeting in January 2002, for the purpose of a reorganization and a change of ownership. Therefore:. Appellants statement found on pg 12, par 5 is incorrect because: 1) The Appellee Hanks did not have a personal interest beyond the fact that he was a bonified,

legal, legitimate creditor. 2) Appellee did sign the Quit Claim Deed as Secretary of GSC along with the president, as was required. 3) There was an obligation owed by GSC to the Appellee Hanks as the only remaining legitimate creditor of GSC, all other legitimate claimants having vacated their position, as is evidenced by their vote for the transfer. 4) It is only proper and reasonable that Appellee Hanks would take the necessary steps to protect his position as a legitimate creditor. 5) The fact that Hanks chose to transfer the claims to a legitimate third party, that being COG, is not an issue before the court.

The statements by the Appellant on his pg 13 par 2 are not correct because: 1) The trial court found correctly that the Appellant, Melvin Hunt, “had not perfected his claim”. 2) The records and the minutes of GSC support that decision. 3) There has been much speculation as to the value of “*all of the un-panted claims*”, as well as the four patented claims. 4) At one time the total number of claims, including the four patented claims, exceeded 120 claims. 5) The speculation has varied from zero (0) to 40 millions of dollars. 6) The Federal Bankruptcy Trustee’s, in the case of Holker and H & H Gold, held that the four Patented Mining Claims, along with the other machinery and equipment, were asset to be liquidated. 7) When the Trustee’s learned of the obligation, (\$ 50,000.00 plus) due and payable to GSC as a result of the work, money and development that had been expended on the property before they attached the claims, they decided to accept an offer of \$ 5,000.00 to release the claims back to GSC rather than to try and develop their asset position. 8) It would appear that the transaction with the “Trustee’s” may be an indication as to what the Federal Bankruptcy Court felt the property may be worth. 9) “one obligation, (\$24,675.00 plus interest), owed to the Appellee, Hanks, was over \$ 50,000.00. 10) Who was to say what the four claims were worth without the other claims around them.

11) The Patented Mining claims were provided to one legitimate creditor after any other recognized legitimate creditors had vacated their claim position.

The statements by the Appellant on his pg 13 par 3 are not correct because: 1) The Transaction did follow Utah Law and did not violate any Utah Statutes. 2) It is true that a formal audit has never been requested by any of the shareholders or the corporation. Since GSC has been insolvent for years there was never sufficient funds to do something that had not been requested. 3) The GSC records including the check register have always been available to any legitimate inquiry during business hours upon request. 4) However, since some records may have been lost GSC has insisted that any examination be monitored by a corporate officer. 5) The 4 Patented claims were transferred after the ownership was relinquished thru the Motion process and voted on by a large percentage of the shares outstanding at the time of the shareholders meeting of January 23, 2002. Therefore: The conveyance should not be reversed.

## VIII. APPELLEE'S ARGUMENT

**A. The trial court's findings of fact do in fact support its conclusions of law.**

1 Referring to Appellants statement on his page 14, par 1 The case before the Court should not be reversed base on a mistake made through a mis-understanding by the inexperienced Appellee when he filed a Motion For Summary Disposition attacking what he thought was "Manifest error" on the part of the Appellant. The Appellee was wrong and apologizes for this error and prays the Court will set it aside and judge the case before it based on the merits. The trial court's findings of fact do support the conclusion that GSC properly transferred the mining claims to Appellee Hanks. The findings show that conveyance followed the proper and legal procedures as required in Article IX c, par 3 of the GSC Articles of Incorporation, wherein the

shareholders and directors are “authorized to sell or otherwise dispose of any part or all of the assets of the corporation.” The Appellee agrees with the trial courts findings and suggests that the findings did clearly indicate the “mind of the court” and resolve all issues of material fact necessary to justify the conclusions of law and the judgment entered thereon”.

Referring to Appellants statement on his page 15, par 1: “The trial transcript and the GSC records did not consider the issue of interest by the Appellee. The Appellee had no interest as a shareholder in the GSC, but he did signed the GSC Quit Claim Deed, for the four patented claims, along with the president, as Secretary of GSC, as required. The record shows that he did have an interest in the money owed to him as a legitimate creditor. The record shows that the requirements of “Utah Case law, Fan v. Brinkerhoff” which held that to properly transfer substantially all of a corporation’s assets the board of directors must propose and the shareholders must approve of the transfer” were complied with. .

Referring to Appellants statement on his page 15, par 2 “In summary, the trial court found that: 1) Gold Stream Corporation (“GSC”) was Incorporated as documented in the Articles of Incorporation, the Stockholder’s Agreement and the alluded to Compensation Agreement”. Said agreement was never shown or recognized other than the Appellant’s claim that such a document did exist. GSC was a closed corporation with stated limitations on the first shares issued. The Corporation was authorized to issue 45,000 shares, The GSC records show that each of the five original incorporators received one-tenth, or 4,500 shares, (not 9,000) the rest were retained as treasury shares and were later sold or provided to individuals as compensation. Referring to pg 15, par 3, line 6, GSC operated a mining property in the state of Montana, with many of the originators contributing time effort and money to establish the new corporation, which was incorporated in the



State of Utah. June 28, 1963 as the Gold Stream Corporation. In the early years the Appellant Melvin J. Hunt, was one of many persons helping to conduct mining operations. The five shareholders met together, but there are not many records besides the Articles of Incorporation and the Shareholders Agreement. The first “Minutes” in the corporate files for GSC were taken in 1966. The original officers were Albert E. Hunt as President, Melvin J. Hunt as Secretary. The Appellant claims or states that in 1966 the Appellee, Albert E. Hunt, as President secured stock certificate forms “which were filled out, signed, and delivered to each of the five original shareholders. The Appellant claims (in-correctly) “that each of the certificates were for 9,000 shares”. GSC records show that of the original cancelled certificates available, at least two of the original five certificates show 4,500 shares each, and were dated June 25, 1966. The stock ledgers at that time and the updated ledger support the conclusion that the original certificates were for 4,500 shares. Albert E. Hunt, as President of the corporation normally exercised his position as well as he could. The Appellant has alleged that: “The President borrowed corporate records (which should have been turned over to the new secretary) from himself (Melvin Hunt) and his father (Wilford Hunt) including a “Compensation Agreement” Corporate records do not support this allegation. Further: when all of the shares were called in at the time of the “Split” (1976) the Appellant surrendered his certificate/s, along with everyone else, which suggests that the previous allegation was without merit and was unfounded. The corporation tried to continued its operations, and solicited help and involvement from the DALL Foundation, and subsequently from the Brigham Young University. Although it was planned and approved that the authorized stock be doubled, and all-though the minutes show in many places that ownership was transferred to the Dall Foundation and subsequently to the Brigham Young University, there are no cancelled or undelivered Stock Certificates

in the Corporate files, nor is there any note in any ledger that stock was actually cut or issued, nor is there any record that the stock position was doubled at that time. The appellant states that: “ That in spite of the Finding of Fact 7, in which the trial court explicitly acknowledged Appellee Albert E. Hunt’s responsibility for the unavailability of critical corporate records,” is incorrect. There was no testimony given to the court which would support this allegation. In the best of circumstances the only allegation that could be considered by the court was an allegation the Appellant made about something that was supposed to have happened more than thirty five years ago, and cannot be substantiated by any documentation or corroborated by anyone else. The statement made by the Appellant on pg 17, par 2 that: “Furthermore, the trial court failed to make the findings essential to support its conclusions. The trial Court did not agree The statement made by the Appellant line 2, that: “Among other omissions, the trial court failed to find that Appellee Hanks was a creditor of GSC, certainly isn’t correct. GSC records and exhibits provided to the Court contradict this statement. The statement made by the Appellant, that :“The court made no findings regarding other potential creditors of GSC with the exception of Appellant, whom the court recognized in its findings but ignored in its conclusion, is correct because: The court found that the Appellant had “failed to meet its burden of proof“ as a legitimate creditor. All legitimate creditors having vacated their claims. Further: GSC records and the exhibits provided to the Court show this statement to be unsubstantiated and without merit. The statement made by the Appellant that: “The Court did not address the totality of corporate debt or priority among creditors”, is incorrect. GSC records and the exhibits provided to the Court show this statement to be without merit and unsubstantiated. The legitimate creditors of record vacated their claims when they, as shareholders, voted to transfer the Patented Claims to the Appellee Douglas Hanks. The statement made

by the Appellant that, “The court failed to rebut the presumption that since the recognized debt to Appellant pre-dated the un-recognized debt to Appellee Hanks, Appellant’s debt had priority”, is not correct because. GSC records and the exhibits provided to the Court shows that this statement is without merit and is un-substantiated.

Referring to Appellants statement on his page 17, par 2, line 8 : “Furthermore, the trial made no findings as to the value of the four patented claims, whether this value exceed the corporate debt, and how any excess value should be distributed among the shareholders. This statement was not an issue before the Court.

Referring to Appellants statement on his page 17, par 2 “The court’s sole finding regarding the shareholder’s percentage ownership in GSC was that each shareholder received an initial distribution of 9,000 shares,” is incorrect. The available certificates from that initial issue show that they each received 4500 shares, with the balance being retained as Treasury Shares, which were later sold for operating funds, or distributed as compensation. The statement that: “Each of the five original shareholders had equal shares of stock,” IS TRUE, but that situation changed every time there was a distribution of Treasury shares to any one of those five, or to a new stockholder. The percent of ownership changed every time stock was distributed from Treasury shares. The Appellants continued statement, line 2, that: “thus, the findings of fact can support no other conclusion than that the shareholders had equal stock in the company” is incorrect and does not account for the later sale and distribution of Treasury Stock, which indirectly supports the court’s conclusion that the shares were properly transferred”, FURTHER: The treasury shares were sold to cover the cost of continued operation, or were issued as compensation for monies and services rendered, as was authorized in the Articles of Incorporation and the minutes of several share-

holder and board meetings. Referring to Appellants statement on his page 17, par 3, line 5,

The allegation that Appellee “Hanks” owned a substantial majority of the corporate shares”,

is probably a typographical error, [which probably should have said,] “Appellee HUNT”,

meaning Albert E. Hunt, who owned more that 50% of the outstanding shares, and has for some

years. Albert E. Hunt was able to buy corporate shares when they were made available. Most of

those same shares were offered to other stockholders, but they declined. The Appellee Albert E.

Hunt purchased the shares of his brothers, Wilford Hunt and Milt Hunt, along with other shares

which are recorded in the corporate stock ledger. Some of those shares were issued because of

money, time and services rendered by him in behalf of GSC. Referring also to Appellants state-

ment on his page 17, par 3 “and ramrodding the transfer to himself of \$ 1,1 50,000 of corporate

assets in payment for an alleged \$24,675 debt”, is grossly in-accurate because: 1) When it refers

to the “ramrodding” the Appellant is probably referring to the Appellee Hanks, not Hunt. How--

ever it should be noted that neither Hunt or Hanks did any ramrodding. “Nevertheless, one

searches the trial court’s findings in vain for any mention of a final distribution of shares” is at

best a curious statement which suggest that the Appellant recognizes that there were Treasury

shares after the initial issue of stock. “a contested issue of material fact essential to any deter-

mination of the propriety of the mining claim transfer. “The Appellee refers the Court and Appel-

lant to Ex 1, page 3, Par.1. The Appellant’s first statement on pg 18 of his Brief states that: “The

court’s finding additionally omitted the legality of the final Board member selection, which also

turns on the distribution of shares and is critical to the validity of the conveyance of the claims to

Appellee Hanks. This issue was not a consideration of the trial court, However the Appellee

notes that the Appellant was elected and the Appellant agreed to serve as a director and attended

meetings with the understanding and knowledge that the Appellee Albert E. Hunt owned more than 50% of the outstanding shares of GSC. The Appellee also notes that the elections of the reconvened meeting of January 23, 2002 were in compliance with the requirements of the Articles of Incorporation, and followed the same basic procedure as in the previous 35 years.

The Appellants statement on his pg 18, Par 2 that: “Ultimately, the trial court did not make a single finding in support of the transfer yet still ruled that it was proper. (R. 358 ~ 10 ,” is incorrect because:1) The court did recognize that GSC paid the obligation due the Appellee Hanks as a legitimate creditor. 2) The trial court did recognize the Articles Of Incorporation and thus accepted a procedure for transferring corporate assets. 3) The procedure holds that a majority of the outstanding share voted may approve of any transfer of corporate assets. 4) GSC complied with that requirement.

The Appellee Hanks suggests that the whole proceeding of the matter before the Court comes down to the issue of “Stock ownership”.(Please refer to page 36 of this Brief) The shareholders of record own the shares as stated on their certificates and as recorded in the stock ledger. That being true then what the officers and directors of the former Gold Stream Corporation did was legal and appropriate. Further: The ownership of the Patented claims by GSC ended when the Shareholders voted to provide the four Patented claims to the Appellee Hanks. How, or to who, the transfer was accomplished was not an issue, and is of no interest to the Court. Subsequent statements or questions about said transfer were not an issue and are of no interest to the Court. Further comments, question or allegations on that issue are not germane. The trial court did not commit any legal error.

**2. The trial court’s findings, after examination of testimony and exhibits, do not support Appellate Hunt’s request for judicial dissolution.**

The trial court’s findings do not support the proposition that GSC should not be Judi-

cially dissolved. Utah Code Annotated § 16-10a-1430 establishes the grounds for judicial dissolution. This Statute in the Utah Code does not apply to the issue before the Court because: At a Share-holders meeting held January 17 & 23 , wherein 81.79% of the outstanding shares were represented, the Shareholders voted by a large majority of the outstanding shares to dissolve the Corp. The statute, which states in part that: “ (2) A corporation may be dissolved in a proceeding by a shareholder if it is established that: (b) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, op-pressive, or fraudulent (d) the corporate assets are being misapplied or wasted,” The actions of the directors or those in control of GSC did not meet the required criteria under this statute. Therefore: The findings from the trial court do not support the Appellant Hunt’s petition for the judicial dissolution of GSC.

The Appellants first statement on page 19 of his brief states that: “The trial court’s findings support the suggestion that the directors of GSC were acting in an illegal or fraudulent manner. First, the trial court found that as Appellee A. Hunt began to assume to control of GSC that he took from Appellant and his father all of the corporate documents that they had, including their stock certificates, and never returned them,” is nothing more than an allegation that was not supported by any documentation or testimony other than the Appellants. The Appellant never provided any particulars concerning the supposed actions of the President, Albert E. Hunt, Such as the date, year, or time of alleged incident. The Appellant never suggested a reason or justification for said action. If the Appellee Albert Hunt took their stock certificates then perhaps the Appellant can explain the stock certificates that they turned into the corporation at the time of the stock split. Further: Perhaps the Appellant can explain the stock certificate that was provided by

Appellant's father, Wilford Hunt, to Appellee Albert E. Hunt, when Albert Hunt bought his fathers stock position. The Allegation is inconsistent with the exhibits, testimony or facts in this case. The Appellants statement on his pg 19, #7) that: "By withholding access to the records the Appellee's successfully hid from Appellant the transfer of the mining claims to COG" begs the question: What records is the Appellant referring to? The "after the fact" transfer was never an issue or consideration of the trial court. The Appellant had access to all of the GSC records at the meeting of the Appellant and Appellee on November 19, 2003.

The Appellants statement on his pg 19, Par 2 that: "Next, trial court's findings of fact effectively recognize that the Appellees mis-applied the mining claims in awarding them exclusively to Appellee Hanks in preference to Appellant and other creditors," Is incorrect because: All other legitimate creditors vacated their claims against GSC in favor of awarding the Patented claims to the Appellee Douglas Hanks.

The Appellants statement that: "The trial court found that the compensation agreement signed by the original shareholders was one of three documents that constituted the formation of the corporation. (R. 359-360 ¶ 1). The compensation agreement allowed the original Shareholders to be reimbursed for all money lent to the corporation," would appear to be nothing more than "Hearsay". The Trial Court agreed that there has been no evidence or exhibits showing a "Compensation Agreement," or that the original shareholders signed such a document.

: The Appellants statement on his pg 19, Par 3 that: "The trial court acknowledged Appellant's personal work and other contributions to GSC when it found that Appellant, in the early years of GSC, was the primary person working and contributing the operation of the mines. (R. 359 ¶ 4). By acknowledging Appellant's contributions, for which he had never been paid, and by recognizing the Compensation Agreement the trial court effectively found Appellant to be a creditor

of GSC”, is incorrect because: The corporation records suggests that the Appellant received additional shares for services rendered as did others in the corporation, Ex. 15. The Appellants allegations (par 3) that: “The court inherently recognized the State of Utah as a creditor of GSC when it found that the corporation had suffered an administrative dissolution for non-payment of taxes. (R. 258; Ex. 54). Conversely, the trial court failed to find that Appellee Hanks was a creditor of GSC. Even if GSC did assume the \$20,000 debt to Nupetco, Appellee was not the only creditor of GSC and the application of the mining claims to him alone was a mis-application of corporate assets”, is incorrect because: 1) the “administrative dissolution was after the fact. The dissolution had already taken place, making this a mute issue and of no interest to the court. 2) The court did find that Appellee Hanks was a legitimate creditor when it ruled that the “Claims were properly transferred.” 3) GSC assumed the obligation due and owing to Appellee Hanks as a consequence of the tailing ponds fiasco. 4) The Appellee Hanks was the only remaining legitimate creditor, all others having vacated their interest or claim.

The Appellants statement on page 20 of his Brief that:

**“B. The trial court erred as a matter of law when it concluded that GSC properly transferred the mining claims because the Appellees did not follow proper procedure and engaged in self-dealing,”**

is incorrect because: 1) The corporation and its officers followed correct and proper procedures in the Shareholders meeting, concluded on January 23, 2002, when it voted to transfer the Patented claims to the remaining legitimate creditor, after the other legitimate creditors had vacated their claims against the corporation. The Appellee Hanks was only interested as a legitimate creditor, and was not involved in self dealing.

The Appellants statement on pg 20, par 2 that: “Apellant’s position that the trial court erred as a matter of law rests on two common-sense principles supported by well-settled -----



Utah Court of Appeals and Utah Supreme Court authority. The *first* proposition is that the sale, lease, exchange, or disposal of substantially all of a corporation's property is not proper unless the board of directors proposes and the shareholders approve the transaction", suggests that the Appellee's did not meet the requirements of this "proposition", when in fact they did, as the Minutes of the January 23, 2002 show. The *second* principle is that the director who has an interest in a transaction does not have the authority to bind the corporation," suggests that the Appellee Hanks had a financial interest in the corporate decision to award the Patented claims to himself, when in fact that statement does not apply and is applied incorrectly since the Appellee was not a stockholder. His interest as a legitimate creditor was to see that he was compensated for the obligation due and payable.

The Appellants statement on pg 20, par 4 that "The impropriety of the sale of corporate assets without shareholder approval, when it is required, is well established in Utah Law" Does not apply to the matter before the Court since the requirement was complied with.

The Appellants statement that: "Additionally, Utah Supreme Court precedent establishes the illegality of directors preferring the payment of debts in which they have a personal stake, and the impropriety of director participation in transactions where the directors have a personal interest". This Statute does not apply because: The Shareholders, directed the payment or transfer, not the directors. However, the Appellee ask the Court to consider the fact that the Appellee Hanks voted as a director, not as a shareholder, and to please note that all other directors (consituting a quorum) were shareholders, owning more than 65% of the outstanding shares, and They all voted to sustained the Motion. The Appellants statement on page 21 Par 1, of his Brief that: "As a director of GSC, Appel lee Hanks preferred payment to himself. Furthermore, he not only participated in, but initiated, orchestrated, and motivated, the transaction allegedly transfer-

ring the mining claims to himself and to COG. Therefore, the trial court acted improperly when it held that the conveyance of nearly all of GSC's remaining assets to Appellee Hanks was proper," is incorrect. This issue has been answered in previous statements by the Appellee. What the Appellee did with the Patented claims and how he did it was not an issue before the Court. The Appellants statement on his page 21, par 2 that:

1. **"The January 20, 2002 vote to transfer the patented mining claims to Appellee Douglas Hanks should have been invalidated because GSC did not approve the transfer",**

is incorrect because: 1) To begin with the date is not correct. (January 23, 2002) 2) GSC did approve the transfer "from". To whom, or to what was of no concern after it was voted on to liquidate the asset. 3) This issue has been considered in previous pages of this Brief. Further comment may be considered redundant. The Appellants statement on his page 21, par 3 that "The trial court's ruling should not survive review because Appellee Hanks received the mining claims before the shareholders could vote on the matter. This Court has established that the sale of substantially all of a corporate assets requires shareholders approval and that a "failure to comply with statutory requirements renders the conveyance .....invalid." Fan 829 P.2d at 12 1; Utah Code Ann. § 16-10a-1202(1), is not correct because: 1) GSC did comply with the statutory requirements.

The Appellants statement on his page 21, par 4 that: "The Utah Court of Appeals held in Fan v. Brinkerhoff that the conveyance of corporate assets must comply with statutory authority. Fan 829 P.2d at 120. To properly convey substantially all of a corporation's assets the corporation's board of directors must (1) adopt a resolution recommending the conveyance, (2) provide a written or printed notice of the resolution to each shareholder entitled to vote, and (3) ensure that the resolution is adopted by the shareholders. Fan at 120-121; Utah Code Ann. § 16-1 0a1202(1),

does not apply. The action to liquidate the assets to satisfy a corporate obligation was done in a Shareholders Meeting wherein 81% of the out-standing share were represented and a large majority voted for said action. The Board of Directors and officers implemented the directive of that vote. This response is a repeat of what has already been stated and may also be considered redundant. It should be noted that in “Fan v. Brinkerhoff, the president of EEB, a corporation, transferred out the corporations only asset and sold it to a creditor in order to satisfy a personal debt.” In this case the Patented claims were awarded to satisfy a corporate obligation after a shareholders vote to do so.

The Appellants statement on his page 22, par 3 that: “Moreover, the trial court erred when it failed to invalidate the transfer because the conveyance of the corporate assets to Appellee Hanks was not approved by GSC shareholders. The GSC articles of incorporation state that the assets of the corporation “cannot” be sold or disposed of unless the majority of the shares approve the trans-action. Ex. 22 p. 7. In the present case Appellee Hanks has not provided the court with any evidence that prior to January 20, 2002, the shareholders voted to transfer the mining claims to him. Appellee Hanks’ motion at the January 23 stockholders meeting to vote on the transfer was nothing more than an attempt to receive post hoc approval for a transfer he knew to be invalid. Ex. 4 p. 4. Because neither the board of directors nor the shareholders approved the January 20, 2002 transfer the trial court erred when it found that the mining claims had been properly transferred to Appellee Hanks.” is incorrect because: 1) The share holders did vote to for the conveyance. 2) The reference to the articles of incorporation is incorrect.. The articles do not say “cannot” 3) As has been noted before, the transfer, as a result of the Shareholders Meeting of January 23, 2003, was correct. 4) The transfer occurred after the shareholders meeting of

January 23, 2002. 5) The spurious statement that there was no evidence shown before January 20, 2002 is irrelevant to the case before the court because: The transfer was after the January 23<sup>rd</sup>, 2002 meeting. The Appellants statement on his page 25, par. 2 that:

**2.The January 23, 2002 vote to transfer the mining claims should have been invalidated because Appellate Hanks engaged in self-dealing.**

The trial court erred because it failed to hold that Appellee Hanks' participation in the satisfaction of a debt owed to him by GSC invalidated the conveyance of the mining claims. The Utah Supreme Court has said that when officers of a corporation "deal with the corporation in their own interests that as to them the contract is void. Such a contract is void because "any director who has an interest in a proposed transaction with the corporation cannot participate in such business to bind the corporation, either to make up the quorum or to vote on the proposal," Id, does not apply in the matter before the court because: 1) The Appellee was not a shareholder, and had no "interest." 2) The shareholders voted on the motion, not the directors. 3) There was a quorum of over 81% of the outstanding shares. 73% voted for the motion. 4): The transfer was accomplished to satisfy an obligation due to a legitimate creditor, not because of self-dealing by a director.

The Appellants statement on his page 24, par. 2 that: Here, Appellee Hanks' participation voided the conveyance because he was the driving force behind the conveyance of the patented mining claims. Appellee Hanks not only made the motion to transfer the mining claims to himself but he also orchestrated an election for a new board of directors, successfully adding to the GSC board Dilworth Strasser and Appellee Z. Hunt, both leading shareholders in (C0G. the eventual attempted transferee of the mining claims," is incorrect because: 1) The Appellee had

been asked to conduct Board meetings and shareholder meetings for years, including meetings attended by the Appellant, Melvin Hunt, both as a shareholder and as a Director. 2) The Appellant is in error when he states that the Appellee successfully adding to the GSC board Dilworth Strasser and Appellee Z. Hunt,” both of whom had been directors for years, Ex 4, pg 3, Par 2, wherein Hanks and Strasser note their intention to resign as directors. The Appellants statement in that same paragraph that: “Strasser & Hunt were “both leading shareholders in COG”, is incorrect. Zera Hunt became a director in COG after the shareholders meeting of January 23, 2005.

The Appellants statement on his page 24, par. 3 that: “The trial court erred in recognizing the transfer as valid because Appellee Hanks was Secretary of GSC when he made the motion to transfer. Id. As a director with an interest in the transaction Appellee Hanks could not legally participate, yet he made the proposal that he receive the mining claims. Appellee Hanks should have abstained from the motion and the vote to convey the mining claims to himself, just as he abstained when GSC voted to assume his debt to Nupetco. Ex. 7. Because he was an interested party his motion was improper and the vote invalid”, is not correct because: 1) The Appellee conducted the meeting as Secretary. 2) He made the motion and voted as a director. The fact that he did not abstain is not relevant. 3) The Appellee had no interest in the GSC transaction. 4) The Appellee was not a stockholder. 5) He was a legitimate, recognized creditor.

The Appellants statement on his page 24, par. 4 that: “Additionally, Appellee Hanks Provided no evidence that he ever received possession of the mining claims subsequent to the shareholder vote. The record does show however that on February 5, 2002, GSC transferred the mining claims to a different entity, COG. By failing to transfer the mining claims to Appellee Hanks the GSC board of directors effectively declared the transfer of the mining claims to him was not

valid. February 5, 2002 transfer of the mining claims to COG was a further admission that the transfer to Appellee Hanks was invalid”, is incorrect, is not a valid argument and is not an issue before the court and is not relevant. The Appellants statement, his page 25, par. Marked .3: that:

- 3. “The February 5, 2002 transfer of the mining claims to COG was invalid under Utah Code Ann. § 16-10a-704 because GSC shareholders did not approve it and the Appellee’s again engaged in self-dealing,”**

Does not apply. A meeting was held wherein the Appellant was present and voted on the “Motion”. The Appellee Hanks, as a legitimate creditor, had no vested interest in GSC, was not a shareholder, and did not engage in self-dealing. The Appellants statement on his page 25 par. 4 that: “Without a finding of fact on the percentage ownership of shares, it is impossible to determine the number and identity of “the holders of outstanding shares having not less than the minimum number of votes” necessary to authorize the action. The history of share ownership subsequent to the initial distribution of 9,000 shares to each stockholder is one of the most hotly contested issues in this action”, IS INCORRECT. IT IS THE APPELLEE’S OPINION THAT THE PREVIOUS STATEMENT ABOVE IS PERHAPS THE MOST INCORRECT STATEMENT CONTAINED IN THE APPELLANTS BRIEF BECAUSE: (emphasis added) If incorrect, then the whole argument for the Appellants appeal is unfounded and unsubstantiated because 1) At the shareholders meeting of June 19, 1976 (29 years ago) 86.9% of the outstanding shares were represented in person, or by proxy, as follows: Ex 18.

Albert E. Hunt	7,312	shares
Milton Z. Hunt	7,313	“
Wilford E. Hunt	5,850	“
Melvin E. Hunt	5,850	“
Sherald James	5,850	“
Arlon Jacobs	<u>6,966</u>	“
Total	39,141	shares or 86.98%

2) All of the original share positions combined now exceeded the original issue of 22,500 shares. (4500 each). 3) Shares in excess of 22,500 had been issued from treasury stock. 4) The presence of Arlon Jacobs at that meeting shows that treasury shares were being issued and accepted by all of the original five incorporators and shareholders. 5) The corporate stock ledger did not show any certificates for 9,000 shares at that time or any time previous. 6) All of the original incorporators, and their stocks, were present or represented by proxy at that meeting. 7) At that meeting all of the original five stock positions were for less than 9,000 shares, as was claimed by the Appellant. 8) Had there been any question about “stock position” it should have surfaced at least by that time, or sometime previous to 1976. 9) The Appellants acceptance of: (a) the shareholders of record, (more than five), (b) the minutes of the meeting, ex 18 (c) The resolution for the stock split (d) the issuance of gift shares, (29 years ago) makes the Appellants appeal unfounded and without merit. 10) The original shareholders all had additional shares which were apparently issued for services rendered. 11) The vote was unanimous to support the resolution for the stock split. 12) It was also approved at that meeting to issue gift shares to nine people (including two of the original shareholders.) 13) All of the Share certificates were called in at the time of the stock-split. 14) The certificates issued June 25, 1966, were for 4500 shares, Ex 14. The Appellee notes that in the next Shareholders Meeting the Appellant signed the minutes wherein the minutes of the meeting held June 19, 1976 were read and approved.

The Appellants statement on his page 25, par. 6 that: “This issue alone is sufficient to justify a judicial dissolution in order to protect the other shareholders from the machinations of Appellee Hanks, who as secretary had control of the corporate records, and of other Appellees including Albert E. Hunt. Indeed, a judicial dissolution may be entirely justified by the trial court’s Finding of Fact 7 that “Albert F. Hunt, as President of the corporation and *in his own personal*

*capacity thereafter,”* began to assume control of the company” that he subsequently “borrowed” from Appellant and Wilford Hunt all of the corporate documents that they had in their Possession, including the records that Melvin J. Hunt had maintained as corporate Secretary, their stock certificates and *particularly the agreement(compensation agreement),*” and that the documents have never been returned, “Albert E. Hunt being unable to disclose their location.” (R. 359-58 emphasis added). Whether or not Appellees maliciously took measures to conceal evidence harmful to their claims, the very difficulty of resolving contested issues such as share ownership in the absence of that evidence calls for supervision by the court”, is incorrect because:

- 1) The Appellants allegation that the Appellee Hanks acted beyond his responsibilities as secretary / treasure, and as a director is unfounded.
- 2) The Appellee Hanks was secretary of GSC at the time of dissolution and still has all of the corporate records.
- 3) During the year of 1974 the Appellee Hanks received from a corporate officers all of the known records.
- 4) Since the corporation has never had a business office the corporate records were deposited with the secretary, as was the case when the Appellant and others served as secretary.
- 5) The corporate records and minutes show that care was given to the fact that GSC was a corporation and needed to behave as such. However! The allegation that the President may have acted beyond his responsibility as president had some merit. There were time when the directors had to remind the president that GSC was a corporation.
- 6) The Appellant’s allegation that the president, Appellee Albert Hunt “Borrowed” corporate records from the Appellant and his father is based on “here-say”, and suggests that the time of the alleged incident was after the Appellant was secretary, which raises the question as to why corporate records would be returned to a non-secretary.

FURTHER: The corporate records and minutes show that the Appellee, Albert Hunt,



had the confidence and trust of the Appellant, (as was shown by the number of times that the Appellee Albert Hunt had or received the proxies of the Appellant Melvin Hunt), up until March 1998 when there was an issue over some claim documents. The Appellants statements on his page 26, par. 2 that,: “it is uncontested, however, that GSC transferred the four patented mining claims to COG without a meeting, and without Section 16-10a-704(1) written consent. Section 16-10a-704(4) provides that a “shareholder action taken pursuant to this section is not effective unless all written consents on which the corporation relies for the taking of an action pursuant to Subsection (I) are received by the corporation within a 60 day period.” Therefore, in the absence of any evidence of the written consents, the non-meeting transfer of the mining claims to COG was and is invalid”, are not correct statements because: The ownership of the four patented claims changed when a majority of the shares outstanding voted to transfer the stock to satisfy an obligation. How that transfer was accomplished, or the method used, is not nor has been an issue before the Court.

The Appellants statements on his page 26, par. 3 that: “The February 5, 2002, transfer of the mining claims from GSC to COG is further invalid because: 1) the transfer was made prior to the incorporation of COG; 2) there is no evidence that the transfer ever received stockholder approval; 3) the leading shareholders of COG were on the board of directors for GSC; and 4) Appellee Hanks, despite his conflicts of interest, deeply involved himself in the transaction”, are incorrect because: 1) as was stated in a previous response, COG was organized as a corporation in the state of Utah April 30, 1997. Changes have been made as appropriate since that time.

2) How that transfer was accomplished is not, nor has been, an issue before the Court. 3) Zera Hunt was not on the board of COG as alleged by the Appellant. 4) Appellee Hanks was in-

volved as a creditor, but as a non-shareholder he had no interest.

The Appellants statements on his page 27, par.1 that: “Additionally, by failing to obtain share-holder approval for the COG transfer Appellee Hanks again failed to comply with the GSC Articles of Incorporation. In fact, Appellant only learned of this transfer after he received answers to his interrogatories in the present case, this despite being present when the share-holders dissolved GSC”, are incorrect because 1) the transfer was after the fact and was of no concern to the court, or to the Appellant. 2) There was no need for the Appellant to know the reason or method of transfer since it was not an issue before the Court. 3) Since the transfer to COG was after the fact and is of no concern to the court, “when or how the Appellant learned of the transfer” is a mute issue.

The Appellants statements on his page 27, par. 2 that: “Furthermore, there is no evidence to suggest that the board of directors of GSC ever considered transferring the mining claims to COG, nor is there any evidence to suggest that the GSC board of directors proposed to transfer the mining claims to COG. But even if the GSC board of directors had approved the transfer to COG they would have lacked the authority to bind GSC. Because three out of the five GSC directors were also major shareholders in COG, the GSC board could not form a voting quorum without engaging in self-dealing. Ex. 4 p. 4; Ex.57 p.2; see Davis 558 P.2 at 596 (holding that directors who have an interest in a transaction cannot bind the corporation.), are incorrect because: 1) The Appellant is assuming, incorrectly, that the “directors” of GSC were responsible for the vote to transfer the four patented claims. The shareholders were responsible for that action. 2) The reason or method of transfer was of no concern to the Appellant. 3) The court was not interested in whether or not the directors of GSC had evidence of a proposed transfer to

COG. 4) However, The Board did have a quorum without the Appellee's vote for any issue that may have come before the board at the time of dissolution. 5) The Appellee Zera Hunt had nothing to do with COG when the shareholders voted for the transfer.

The Appellants statements on his page 27, par. 3 that: "Additionally, the Quit Claim Deed transferring the mining claims was not binding because Appellee Hanks engaged in self-dealing. Appellees Albert Hunt and Douglas Hanks signed the quit claim deed on the part of GSC to convey the patented mining claims to COG. Appellee Hanks had a personal interest in the transaction because he was the second leading shareholder in COG. As a partial owner of COG, Appellee Hanks did not have the authority to bind GSC in conveying the mining claims", are incorrect because: 1) The Appellee Hanks was not involved in self-dealing and had no interest in the transfer transaction since he was not a shareholder. 2) The Appellees Hanks and Hunt signed, correctly, as President and Secretary of GSC. 3) The only interest of Appellee Hanks was as a legitimate creditor.

The Appellants statement on his page 27, par. 4 that: "The absence of shareholder approval, the violation of section 16-10a-704, the impermissibility of the GSC board of directors' approval of the transfer, and the Appellee Hanks' personal interest in the February 5 transaction nullified the conveyance of the mining claims to COG", is incorrect because: 1) the duly required meetings were held, therefore section 16-10a-704 does not apply. 2) The Shareholders approved the transfer. 3.) There was no need for director approval, particularly since all of the directors were shareholders except the Appellee Hanks. 4) The directors, as implementers, directed the secretary to prepare and provide all of the necessary documentation: 1) For the transfer, 2) Then the dissolution of GSC.

The Appellants statement on his page 28, par. 1 that: “The Utah Supreme Court has ruled that a director of an insolvent corporation does not have the right to prefer the debt of a creditor “where a director of the corporation was liable as indorser, guarantor, or surety.” Walker Bros. at 98; See also W.P. Mercantile Co. v. Mt. Pleasant Co-op., 42 P. 869 (Utah 1895) (holding that the bona fide debt of a director of a corporation may be paid in preference to the debt of another creditor); Hogan v. Price River Irrigation Co., 184 P. 536, 542 (Utah 1919) (holding that directors are prohibited from preferring debts due to themselves),” does not apply because: 1) The directors did not “prefer” Hanks. The shareholders voted to meet the obligation to the only recognized and legitimate creditor 2) Appellee Hanks was not liable as an indorser, guarantor, or surety. 3) GSC was liable after accepting the obligation as owed to the Appellee. “(holding that the bona fide debt of a director of a corporation may be paid in preference to the debt of another creditor)” 4) refers to a private debt of a director being paid by a corporation. “(holding that directors are prohibited from preferring debts due to themselves)” 5) does not apply in the present case because the shareholders voted for the transfer, not the directors. However: there was a quorum of the directors without the vote of the Appellee Hanks. 6) The court recognized the Appellee as the only legitimate creditor, all others having vacated their interest or claims.

The Appellants statement on his page 28, par.3 that:

**C. The trial court erred in approving the transfer because the value of the mining claims the amount owed to Appellee”, is in error because: 1) The Bankruptcy Trustee, prior to his acceptance of \$ 5,000.00 from GSC, held that that as Trustee for the Bankruptcy of H & H Gold, he was not prepared to pay GSC for the development funds, exceeding \$ 50,000.00, which were expended by GSC prior to his attaching the claims as assets. Rather than do so the Trustee**

accepted \$ 5,000.00 from GSC and returned the patented mining claims back to the control of GSC. 2) It would appear that the Trustee was not prepared to establish any value of the claims over and above the \$50,000.00 that would have to be paid to GSC to pursue the matter. 3) In the Agenda provided to the shareholders of the shareholders meeting held April 6,1995, (Ex. 45, Pg 1, the president noted that the corporation was insolvent with obligations in excess of One Hundred Thousand dollars. With the exception of the obligation due the Appellee Hanks most of the remaining claims were vacated in favor of the transfer to the Appellee Hanks. As reported previously, there have been other estimates as to the value of the *whole property*, not just the four Patented claims.

The Appellants statements on his page 28, par.3 con't that: " The trial court erred in it(s) decision because Appellee Hanks acted contrary to Utah law by orchestrating the transfer of a corporate asset of greater value than the debt owed. A director of a corporation cannot prefer himself in the payment of a corporate debt insofar as the payment exceeds the pro rata share of that which was properly payable. Walker Bros. 262 P. at 98. In Walker Bros. v. Eastern Motors Co., the president of an insolvent corporation sold five cars and applied the sum of the sale to a bank note for which he was the indorser. *Id.* at 98-99. The Utah Supreme Court. Held that the action was illegal insofar as the payment exceeded the pro rata share which was properly payable. *ID.* at 99" are incorrect because: 1) The shareholders made the decision. 2) It has not been established that the Patented claims had a value exceeding the corporate obligations in access of \$ 100,000.00. 2) in the case of Walker Bros.vs.Eastern Motors it would appear that the president sold five corporate vehicles and applied the sum to an obligation for which

he was responsible. That was not the situation in the present case.

The Appellants statements on his page 28, par. 5 that: “In the current case there is Evidence that GSC had approved a dept owed to Appellee Hanks of \$24,675 plus interest. Ex. 9. It is, however undisputed the GSC owed money to other GSC shareholders and to the State of Utah for unpaid taxes. The assets available to GSC for the payment of debts consisted primarily of the mining claims. Ex. 4 p. 1. The mining claims were not appraised at the time of the trial, however at the September 1, 1989, GSC annual shareholders meeting Appellee Hanks proposed the assets of the corporation, consisting of the mining claims, be sold or leased for not less than \$1,150,000.00. Ex.1 p. 3. Therefore, the value of the mining claims, far exceed the amount due to Appellee Hanks and should have been distributed on a pro rata basis among various GSG creditors including Appellant and the State of Utah, as Appellee Hanks was well aware. Nevertheless GSC, at Appellee Hanks’ instigation, preferred his debt, as a GSC director, above those of others. Furthermore, the value of the assets far exceed the amount of the debt. Accordingly, the trial court erred and its ruling should be overturned”, are incorrect because. 1) the shareholders voted to pay the debt. 2) Hanks suggesting a sales price does not establish a value. 2) The Appellants allegation that the four patented claims were the primary assets is erroneous. 3 The Appellant was well aware that at the time of the intended sale of the assets of GSC in 1989 there were more than 110 claims, in addition to the patented claims, that were part of the contract with H & H Gold 4) The company that held the contract (H & H Gold} went broke and could not continue operations, resulting in a Bankruptcy. 5) It would appear that the Appellee, who was not a mining engineer or geologist, may have been wrong in his

estimate of the value of *all* the claims, not just the Patented claims. 6) It was in the best interest of the shareholders of GSC to get the best price possible for all of the claims. 7) It would appear that any value of the property will only be established after extensive data has been provided as a result of extensive testing. 8) The corporate records and the minutes of corporate meetings show that the Court was right in its findings, “that Plaintiff failed to meet his burden of proof to establish its claim set forth in the Complaint filed herein”.

**D. GSC’s dissolution, including the transfer of the four patented mining claims to Appellee Hanks, violated Utah dissolution statutes and this matter should be remanded for judicial dissolution.**

The Appellants statements on his page 29, par. 3 that: “During the January 23, 2002, meeting Appellee Hanks moved that GSC be dissolved. Appellee Zera Hunt seconded the motion, which passed by shareholder vote. Utah Code Ann 16-10a-1402 authorizes the dissolution of a corporation after the issuance of shares. Section 1402(2) requires that “the board of directors must recommend dissolution to the shareholders *unless* the board of directors determines that because of a conflict of interest or other special circumstances, it should make no commendation and communicates the basis for its determination to the share-holders,”(Emphasis added). Thus, under the statute, the board of directors must assess any personal conflict of interest and disclose it to the shareholders before recommending dissolution. Board members subject to such a conflict or circumstances may not recommend dissolution to the shareholders”, does not apply because: 1) The board of directors did notify the Shareholders of the “Intent to dissolve” in its Agenda (notice) sent to all the shareholders of record. 2) With a quorum of directors present at the Shareholders Meeting of January 23, (a quorum without Hanks) and there being a large majority of shares represented at said meeting (81%), the shareholders recommended that the cor-

poration be dissolved after the liquidation of assets. 3) There was no personal conflict of interest to be disclosed since the Appellee Hanks was not a shareholder.

The Appellants statements on his page 30, par. 2 that: “Appellee Hanks’ conflict of interest is beyond dispute. He had orchestrated circumstances so that upon dissolution of GSC he stood to receive the entire corporate assets which he himself had recommended not be leased or sold for less than \$1,150,000. Ex. 1. p.3. Therefore, under Utah statute, Appellee Hanks had no authority to even recommend, much less propose, the dissolution. Consequently, the dissolution and all associated transactions, most notably the transfer of the mining claims, were invalid. See Farr 892 P.2d at 121 (“failure to comply with statutory requirements renders the conveyance invalid.”), are incorrect because. 1) There was no conflict of interest . Hanks was not a shareholder. His sole interest has been the satisfaction of the obligation owed to him, preferably in cash. 2) The law does not prohibit anyone from making a recommendation 3) Hanks did not orchestrate the fact that the corporation was insolvent, and did not have the funds to pay its obligations to creditors. 4) Hanks did not orchestrate the fact that the President was becoming older and his continued participation was being impaired. 5) Hanks did not orchestrate the fact that parties interested in development had not been willing to comply with sound business principles, as required by the corporation, to protect the corporation. 6) Hanks did agree with the shareholders and the directors that something had to be done. 7) Alternatives were considered and the results were that a majority of the shareholders present at the shareholders meeting agreed that it would be in the best interest of the corporation to satisfy the legitimate obligations owed by the corporation through the liquidation of assets, and then to dissolve the corporation. 8) Hanks did not orchestrate the fact that the president asked the Appellee Hanks to conduct the



meeting of January 23, 2005, which led to the discussion and vote to liquidate and then to dissolve the corporation.

The Appellants statements on his page 30, par. 3 that: “GSC was subsequently the subject of an administrative dissolution. The Appellant noted that the record indicates that on February 13, 2002, the State of Utah dissolved GSC. (R. 258); Ex. 54. The trial court found that “the state of Utah by administrative action dissolved the corporation” after GSC failed to pay corporate taxes and file an annual report as required by law”, is incorrect because: 1) the shareholders of GSC voted to dissolve the corporation on January 23, 2003. 2) Articles of Dissolution were mailed January 27. Proper notice having been provided to the State Of Utah, but may not have been recorded because the State of Utah, “according to the Appellant”, dissolved the Corporation on February 13, 2002. 3) The record of the Utah clerk will show that the clerk advised the Secretary of GSC (Appellee Hanks) that it was not interested in pursuing the matter any further with an insolvent corporation.

The Appellants statement on his page 30, par. 4 that:

“Utah Code Ann. § 16-10a-1421 provides that

(3) (a) Except as provided in Subsection (3)(b), a corporation administratively dissolved under this section continues its corporate existence but may not carry on any business except:

- (i) the business necessary to wind up and liquidate its business and affairs under Section 16-10a-1405; and
- (i) give notice to claimants in the manner provided in Section 16-10a-1406 and 16-10a-1407.

Does not apply because: 1) Only the business of liquidation and dissolvment was conducted after the date of January 23, 2002. 2) It was the understanding of all corporate officers and directors that there were no legitimate creditors that had not vacated their

claims except the Appellee Douglas Hanks.

The Appellants statements on his page 31, par. 1 that: “GSC was obligated by virtue of its administrative dissolution to adhere to the provisions of sections 16-10a-1405, 1406, and 1407. However, GSC’s dissolution-related transfer of its entire assets to an individual whom the trial court did not recognize as a creditor or majority stockholder violates Utah dissolution statutes 16-10a-1405 and 1421” are not correct because: 1) GSC complied with the requirements of the above noted statutes when they applied to the present case. 2) The trial court provided tacit recognition of the Appellee Hanks as a legitimate creditor when, “The Court finds that four Patented mining claims were properly transferred to Mr. Hanks for obligations due and owing to him by GSC.”

The Appellants statement on his page 31, par. 2 that: “GSC’s failure to give notice to creditors violated Utah notice statutes 16-10a-1406 and 1407. Utah Code Ann. § 16-10a-1405 provides, in relevant part, that a dissolved corporation may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

- (a) collecting its assets;
- (b) disposing of its properties that will not be distributed in kind to its shareholders;
- (c) discharging or making provision for discharging its liabilities;
- (d) distributing its remaining property among its shareholders according to their interest;
- (e) doing every other act necessary to wind up and liquidate its business and affairs”;

is not correct because: 1) It was the understanding of all corporate officers and directors that there were no legitimate creditors that had not vacated their claims except the Appellee Douglas Hanks. 2) GSC complied with the requirements of the above noted statutes when they applied to the present case.

The Appellants statements on his page 31, par. 3 that: “GSC’s transfer of the four patented

mining claims to Appellee Hanks and to COG was not “appropriate to wind up and liquidate its business and affairs.” GSC did not (a) collect its assets. A reasonable collection of assets would require an appraisal to determine the value of the assets. GSC did not (b) dispose of its properties that would not be distributed in kind to its share-holders. There is no evidence that the GSC Board even considered in kind distribution or any disposal of assets other than the transfer to Appellee Hanks. GSC did not (c) discharge or make provision for discharging its liabilities, Although the Trial Court’s findings recognize Appellant and the State of Utah”, as creditors (R. 360 pp. 2-3), GSC gave no consideration to liabilities other than the alleged debt to Appellee Hanks. GSC did not (d) distribute its remaining property among its shareholders according to their interests. The transfer of the mining claims to Appellee Hanks ignored the interests of all other shareholders. Therefore, this court should void the transfer of the mining claims and remand this matter for judicial dissolution conducted in compliance with Utah Code Ann. § 16-10a-1405.

Utah Code Ann. § 16-10a-1406 provides for the disposition of known claims by notification and Utah Code Anne § 16-10a-1407 provides for the disposition of claims by publication. There is no evidence that GSC attempted either notification or publication. Therefore, this court should void the transfer of the mining claims and remand this matter for judicial dissolution conducted in compliance with Utah Code Ann 16-10a-1406 and 1407”, are not correct because: 1) Except for the four Patented Claims, there were no assets. 2) GSC had been advised a number of times that a proper testing program for all of the claims, which could determine the value, would cost well over \$ 250,000.00. GSC was insolvent. 3) If GSC had the money for a proper appraisal it would not have been dissolved. 4) The position by the Trustee in the H & H Gold Bankruptcy

suggests that the property is worth something less than \$50,000.00, otherwise he would have liquidated the assets himself, as Trustee, rather than turn them back to GSC for \$ 5,000.00.

5) Except for Hanks there were no other legitimate creditors that had not vacated their interest in favor of the transfer to Hanks. 6) The State of Utah had no further interest. 7) The statement that: “The transfer of the mining claims to Appellee Hanks ignored the interests of all *other* share holders.” suggests that Hanks was a shareholder. He was not a shareholder. His only interest in the transfer was as a legitimate recognized creditor. 8) The Trial Court held that the Transfer was proper. 9) The corporate records and exhibits show that the obligation was due and payable. Hanks condescended when he accepted the four patented claims as payment. 10) After the transfer of the claims to the Appellee there were no assets to distribute. 11) It would appear that after all of the evidence is considered and the exhibits examined that the Court would agree that the decision of the Trial Court was correct.

## **IX. CONCLUSION**

This Court should not reverse the trial court’s judgment that the four patented mining claims owned by GSC were properly transferred to Appellee Douglas Hanks and should not remand this matter back to the trial court for judicial dissolution.

DATED this \_\_\_\_ day of October, 2005.

A handwritten signature in black ink, appearing to read "Douglas J. Hanks", written over a horizontal line.

Douglas J. Hanks, Appellee, Pro Se

CERTIFICATE OF SERVICE


I hereby certify that on the 18<sup>th</sup> day of October, 2005, I caused a true and correct copy of the foregoing to be sent by the method(s) indicated below to the following:

MARK D STUBBS  
FILLMORE SPENCER LLC  
3210 NORTH UNIVERSITY AVE  
PROVO UT 84604

UTAH COURT of APPEALS  
450 South State Street  
P O Box 140230  
Salt Lake City, Utah 84114-0230\_\_

- ☐ Hand Delivered
- ☒ First Class Mail
- ☐ Facsimile
- ☐ UPS

Appellate No: 20041068

  
Douglas J. Hanks