

Declaratory Judgment Actions: When are they Appropriate?

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Declaratory judgments are an important tool in litigation. They allow businesses or individuals to seek a court's direction at the early stages of a controversy. When there is uncertainty as to the legal obligations or rights associated with a potential future course of action, declaratory relief offers an immediate means to resolve this uncertainty.

Both federal and Georgia law provide for mechanisms by which litigants may seek declaratory relief from the courts. Specifically, the Federal Declaratory Judgment Act states:

In a case of actual controversy within its jurisdiction, . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

28 U.S.C. § 2201(a).

Similarly, Georgia has codified the Uniform Declaratory Judgment Act at O.C.G.A. § 9-4-1 *et seq.* This chapter vests Georgia's superior courts with the authority to issue declaratory judgments:

In cases of actual controversy, the respective superior courts of this state shall have power, upon petition or other appropriate pleading, to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed; and the declaration shall have the force and effect of a final judgment or decree and be reviewable as such.

While many business disputes do present an "actual controversy" between the parties such that one party has standing to bring a lawsuit, not all business disputes may be appropriately resolved through a declaratory judgment action. Declaratory relief is appropriate where a litigant needs direction from a court *before* from taking future action. Such direction will afford the litigant relief from uncertainty or insecurity. See Amer. Household Products, Inc. v. Evans Manufacturing, Inc., 139 F.Supp.2d 1235, 1239 (N.D. Al. 2001).

In contrast, where the facts and circumstances in a dispute are such that damages or rights have *already* accrued, determination through a declaratory judgment action may be inappropriate:

The object of the declaratory judgment is to permit determination of a controversy before obligations are repudiated or rights are violated. As many times pointed out by this court, its purpose is to

permit one who is walking in the dark to ascertain where he is and where he is going, to turn on the light before he steps rather than after he has stepped in a hole.

Cox v. Athens Reg. Med. Cent., 279 Ga. App. 586, 594, 631 S.E.2d 792, 799 (2006); see also Baker v. City of Marietta, 271 Ga. 210, 214, 518 S.E.2d 879, 884 (1999) (“[w]here the rights of the parties have already accrued and the party seeking the declaratory judgment does not risk taking future undirected action, a declaratory judgment would be ‘advisory’”).

There are classic examples of business situations in which a declaratory judgment action is appropriate. For example, a declaratory judgment action may be brought by an employee against his or her former employer concerning the enforceability of a covenant not to compete. The employee’s new employer, who competes with the former employer, may also join in the action. The employee may seek declaratory relief that the covenant is unenforceable before commencing work with a competitor and potentially violating the covenant. The new employer may seek declaratory relief that its employment of the employee will not constitute tortious interference with the former employer’s contractual relations with its former employee. In this situation, declaratory relief is an appropriate remedy. See, e.g., Enron Capital & Trade Resources Corp. v. Pokalsky, 227 Ga. App. 727, 729, 490 S.E.2d 136, 138-9 (1997).

Similarly, an insurer may seek declaratory relief that it owes no duty to defend its insured under an insurance policy after a claim is submitted for coverage but before a formal declination of coverage is issued. See, e.g., Atlanta Casualty Co. v. Fountain, 262 Ga. 16, 17, 413 S.E.2d 450, 451 (1992). A company concerned about infringing another company’s patent may file a declaratory judgment action seeking a declaration of non-infringement. See, e.g., North Amer. Oil Co. v. Star Brite Distributing, Inc., 148 F.Supp.2d 1351, 1355 (N.D. Ga. 2001).

Under these circumstances, the court’s guidance through a declaratory judgment tells the litigant whether its proposed course of conduct or business will subject them to future damages. This procedure assists in relieving the insecurity or uncertainty associated with a proposed course of action. It is thus appropriate. See County Materials Corp. v. Allan Block Corp., 431 F.Supp.2d 937, 945 (W.D. Wisc. 2006) (“a declaratory judgment action is proper when a declaration of rights is a bona fide necessity for the natural defendant/declaratory judgment plaintiff to carry on with its business.”); Georgia Pub. Serv. Comm. v. CSX Trans., Inc., 225 Ga. App. 787, 788, 484 S.E.2d 799, 802 (1997) (declaratory relief proper where “facts alleged demonstrate the necessity of judicial intervention to protect CSX’s right to control the Cordele facility, a right denied by the Commission”).

In contrast, declaratory relief may be inappropriate in some circumstances, such as a pure breach of contract action. That is, where the actions that allegedly constitute a breach of a contract have *already* occurred, there is no *future* uncertainty to resolve.

For example, one party may claim that it performed under a commission agreement and is entitled to payment of his or her commission. The other party may file a declaratory judgment action seeking a declaration that there has not been performance under the agreement and that no commission is owed. In that situation, the question to be answered is whether a breach has *already* occurred by the declaratory judgment plaintiff’s failure to pay the commission, and thus whether payment is owed as a result of that past breach. There is no uncertainty as to a future

course of action (other than the payment of previously accrued damages) which warrants the immediacy of declaratory relief.

Thus, a declaratory judgment action that is nothing more than an anticipatory defense to a breach of contract claim may be an inappropriate use of the declaratory judgment mechanism. Given that courts have discretion whether to entertain a declaratory judgment action, they may decline to do so under such circumstances. See O.C.G.A. § 9-4-2 (“ . . . the respective superior courts of this state *shall have power*, . . . ”)(emphasis added); Wilton v. Seven Falls Co., 515 U.S. 277, 286 (1995)(federal courts have “unique and substantial discretion in deciding whether to declare the rights of litigants”); Public Serv. Commission of Utah v. Wycoff Co., 344 U.S. 237, 241, 73 S.Ct. 236, 239 (1952)(“[28 U.S.C. § 2201] is an enabling Act, which confers a discretion on the courts rather than an absolute right upon the litigant.”).

Additionally, federal courts consider other concerns when analyzing whether to exercise their discretion and hear a request for declaratory relief. A declaratory judgment action may be inappropriate where it is filed to beat the natural plaintiff to the courthouse. This tactic may be intended to deprive the other party of its natural position as plaintiff. Or, it may be intended to deprive the natural plaintiff of its choice of forum. Federal courts sometimes discourage or reject such tactical maneuvers, or “preemptive strike[s]”, as inappropriate uses of the Federal Declaratory Judgment Act. Institute for Studies Abroad Inc. v. Int’l Studies Abroad Inc., 263 F.Supp.2d 1154 (S.D. Ind. 2001). Such a use of the Federal Declaratory Judgment Act “provokes a disorderly race to the courthouse.” State Farm Fire and Casualty Co. v. Taylor, 118 F.R.D 426, 429-30 (M.D.N.C. 1988); see also Fireman’s Ins. Co. of Newark v. Riley, 322 F.Supp. 349, 351 (W.D. Ky. 1971).

The declaratory judgment procedure can be an important way to minimize the uncertainties which exist in the business world. When you or your businesses face a situation where immediate relief from a court may be necessary to protect your business interests before proceeding with a future course of conduct, it is highly recommended that you consult with counsel regarding what remedies may be available.