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COMMENTS

DECLARATORY JUDGMENTS IN FLORIDA

INTRODUCTION

In 1943 the Florida legislature adopted a new declaratory judgment act.¹ Until that time Florida had available limited declaratory relief under the 1919 Act² which applied only to bills in equity for construction of a deed, will, contract or other instrument in writing, and for a declaration of the rights of persons interested therein. This statute was limited to questions of construction and to the declaration of rights existing under such construction.³ The 1943 Act broadens the jurisdiction to afford relief to any interested person who may be in doubt as to his rights under a deed, will, contract, memorandum or other legal instrument in writing and whose rights, status or other legal or equitable relations are affected by the construction or validity of such writing or by any such statute, regulation, or municipal ordinance.

What the author has attempted here is a brief survey⁴ of selected cases that have arisen under F.S. § 87.01.

AVAILABILITY OF THE REMEDY

There is no language in F.S.A. § 87.01 calling for an "actual controversy" before the court can assume jurisdiction. Such language can be found in the federal act⁵ and various state acts and was undoubtedly included to overcome the early rulings of the courts that held declaratory judgment acts unconstitutional on the ground that the acts authorized advisory opinions and thus encroached upon the constitutionally established powers of the judiciary. In *Sample v. Ward*⁶ the Florida Supreme Court refused to set aside a prior declaratory decree construing a will. The petitioner here alleged there was no "actual controversy" in the prior proceeding but the court held that an "actual controversy" was not necessary if the question raised is real and not theoretical and the person raising it has a bona fide interest under the writing and there is a bona fide defender.⁷

1. FLA. STAT. § 87.01 (1943).

2. FLA. STAT. § 62.09 (1943).

3. *Stuart v. Stephanus*, 94 Fla. 1087, 114 So. 767 (1927).

4. For an extensive and comprehensive general treatment of declaratory judgments see BORCHARD, *DECLARATORY JUDGMENTS* (2d ed. 1941); 62 HARV. L. REV. 787 (1949).

5. 48 STAT. 955 (1934), 28 U.S.C. § 2201 (1952).

6. 156 Fla. 210, 23 So.2d 81 (1945).

7. While the Florida Supreme Court holds that no "actual controversy" is necessary, the Federal Act contains the language "actual controversy" thus raising some doubt as to whether a party could get into the federal courts, on diversity of citizenship for example, in a case arising under the Florida statute. The phrase "actual controversy", of course, involves a question of interpretation.

The court in *Ready v. Safeway Rock Co.*,⁸ where the dismissal of a bill for a declaratory decree to adjudicate rights under a lease was affirmed, stated that the test to activate jurisdiction under F.S. § 87.01 is whether or not the moving party shows that he is in doubt as to the existence or nonexistence of some right, status, immunity, power or privilege and that he is entitled to have such doubt removed. The same language was employed in *Caldwell v. North*⁹ which involved the construction of a will.

Necessity of justiciable issue

The court has employed various reasons, expressed or implied, in its findings of nonjusticiability and refusals to grant declaratory relief.

The court in *Miami Water Works Local 654 v. City of Miami*¹⁰ held that there was no duty upon the city to bargain with the union but refused to determine whether the city's discrimination against union members was legal because the union *lacked a bona fide and direct interest in the result*. Perhaps the court ignored the fact that the union's ability to survive would be affected by the continuance of such discrimination.

In *City of Pensacola v. Johnson*¹¹ the court affirmed the dismissal of a bill for a decree determining whether homesteads in the city of Pensacola up to the value of \$5,000 would be taxable to pay municipal auditorium bonds if authorized at a special election. It appeared that *uncertainty surrounding other future events* was the reason for dismissal.

Lack of adverse parties apparently caused dismissal of bills for declaratory relief in *Deen v. Weaver*¹² where the court stated that F.S. § 87.01 cannot be employed to point out the procedure for an attorney to litigate an action; *Ervin v. City of Miami Beach*¹³ where the only "issue" was the question of whether the opinion of the Attorney General construing certain statutes was correct and the relief sought by the city was, in effect, an advisory opinion; and *State v. Lewis*¹⁴ where the petition, of a clerk of a court for a declaratory decree construing the law fixing transportation allowances for jurors, named no parties defendant or respondent and no process was issued.

The court has also dismissed a bill for a declaratory decree seeking a determination of whether an act of the Board of County Commissioners making application to a state agency for construction and financing

8. 157 Fla. 27, 24 So.2d 808 (1946).

9. 157 Fla. 52, 24 So.2d 806 (1946).

10. 157 Fla. 445, 26 So.2d 194 (1946).

11. 159 Fla. 566, 28 So.2d 905 (1947).

12. 47 So.2d 539 (Fla. 1950).

13. 66 So.2d 235 (Fla. 1953).

14. 72 So.2d 823 (Fla. 1954).

from certain state funds was a valid exercise of the Board's power. It was held that the questions presented were *premature* since the application had not been approved, nor had there been approval of the legal and fiscal sufficiencies of the bonds.¹⁵ *Prematurity of issue* was also involved in *Bryant v. Gray*¹⁶ where a suit for a declaratory decree construing sections of the state constitution on the Governor's eligibility for re-election was dismissed because petitioner merely alleged that he *might* seek re-election.

*Coral Gates Properties, Inc. v. Hodes*¹⁷ involved a bill for declaratory relief based upon an alleged oral real estate brokerage contract. There was material dispute as to the terms, performance, and breach. The court held that declaratory relief was not available and that the action should have been in contract. The court stated that the purpose of the suit was not for the construction of an oral contract, where the terms of such contract were not in dispute but was for the purpose of obtaining a *money judgment* under an oral contract the *terms and performance of which were disputed*. (emphasis supplied) There was interesting dicta to the effect that F.S. § 87.01 *may* (emphasis by court) apply to an oral contract when the terms are not in dispute and where there may be some doubt as to the proper interpretation, or as to the existence or nonexistence of some right, statutes, immunity, power or privilege.

Judicial discretion in granting relief

Although requirements of justiciability and jurisdiction are met it does not follow that a court will automatically issue a declaration. *What is the effect of the existence of an alternative remedy?*

1) *Other cause of action*.¹⁸ In *Miller v. Doss*¹⁹ a suit against the tax assessor for a declaratory decree claiming that the assessor had arbitrarily exempted certain property from taxation was maintained notwithstanding the existence of another adequate remedy. *Lockleer v. City of West Palm Beach*²⁰ was a suit in which the city filed for a declaratory decree against Lockleer because of a dispute as to who was the senior officer in the police department. The court held that under the facts of the case it was appropriate for the city to have recourse to a declaratory decree, notwithstanding that the remedy of *quo warranto* was also available. In *Bowden v. Seaboard Air Line R.R.*,²¹ which concerned a dispute arising from uncertainty in a deed the defendant had received conveying to it a right of way across land, which the plaintiff later acquired, the court affirmed dismissal of

15. *City of Hollywood v. Broward County*, 54 So.2d 205 (Fla. 1951).

16. 70 So.2d 581 (Fla. 1954).

17. 59 So.2d 630 (Fla. 1952).

18. FLA. STAT. § 87.02 (1953) provides that the existence of another adequate remedy shall not preclude a decree for declaratory relief.

19. 36 So.2d 442 (Fla. 1948).

20. 51 So.2d 291 (Fla. 1951).

21. 47 So.2d 786 (Fla. 1950).

plaintiff's bill for declaratory decree. The grounds were that plaintiff did not come under F.S. § 87.01 because he had no rights under *this* instrument (plaintiff claimed under another deed) and that the real purpose of the bill was an attempt to use the declaratory statute in lieu of an ejectment suit. "Obviously, ejectment is his [appellant] proper remedy." Would declaratory relief have been available if the plaintiff had rights under the particular instrument? In *Stark v. Marshall*,²² which involved a boundary line dispute, the court stated that where ejectment will lie it is the appropriate remedy and such a dispute cannot be litigated under the declaratory judgments statute. Also in *Cape Sable Corp. v. McClurg*,²³ involving a suit by a purchaser at a sheriff's sale for a declaratory decree declaring plaintiff's rights to the land, which was in defendant's possession, the court held that upon the facts the proper remedy is an action of ejectment.

2) *Pendency of another suit.* In *Taylor v. Cooper*²⁴ the court held that declaratory relief was not authorized where all other matters attempted to be presented could be set up as defenses in criminal suits pending against applicant. It was further stated that declaratory relief may not be invoked when there is a suit pending over the same subject matter and the identical issues may properly be determined.

3) *Special statutory remedy.* In *Bessemer Properties Inc. v. City of Opa Locka*²⁵ the court held that an action for a declaratory decree validating certificates of indebtedness to be issued by the city should have been brought under F.S. § 75.01 which specifically authorized validation of certificates, rather than under the declaratory judgment statute. Yet in an earlier case, *North Shore Bank v. Town of Surfside*,²⁶ the court allowed the use of a declaratory decree to determine the validity of public improvement bonds issued by the Town of Surfside. The court held that F.S. § 75.01 is not an exclusive remedy for the validation of public bonds. The decision in the *North Shore Bank* case appears to be supported by numerous Florida cases.²⁷ In the *Bessemer Properties* case the court attempted to distinguish the earlier *North Shore Bank* case on the grounds that the bonds in the *Bessemer* case were for a *public purpose*.

4) *Fact finding.* One section of the declaratory judgment Statute provides that a decree may be rendered as to the existence or nonexistence of any *fact* upon which the existence or nonexistence of any immunity,

22. 67 So.2d 235 (Fla. 1953).

23. 74 So.2d 883 (Fla. 1954).

24. 60 So.2d 534 (Fla. 1952).

25. 74 So.2d 296 (Fla. 1954).

26. 72 So.2d 659 (Fla. 1954).

27. *Bessemer Properties v. MacVicar*, 63 So.2d 647 (Fla. 1953); *Bessemer Properties v. Peters*, 51 So.2d 786 (Fla. 1951); *City of Jacksonville v. Nichols Engineering & Research Corp.*, 49 So.2d 529 (Fla. 1950); *Seaboard Air Line R.R. v. Peters*, 43 So.2d 448 (Fla. 1949).

power, privilege or right may depend.²⁸ Another section provides that ". . . an issue of fact, . . . may be tried and determined . . ." by a jury.²⁹ It appears that the court will not allow the use of a declaratory judgment to determine doubt *only* as to questions of fact. *Columbia Casualty Co. v. Zimmerman*³⁰ was an action to determine the liability of the insurer for injuries inflicted while the insured's automobile was being driven by another. The only doubt which existed was whether the automobile was being driven with the knowledge and consent of the insured. The Supreme Court held that the real question which plaintiff sought to have determined was a purely factual one and *there was no question involved of the construction or validity of an instrument*. *Halpert v. Oleksy*³¹ was a proceeding by lessees for a decree that the lease of the premises, which had burned down, was cancelled and that the lessors should be required to return a security deposit because of alleged breaches of various lease terms. The cancellation of the lease was admitted by both parties, each of the parties claiming damages for the alleged breaches. In holding that a declaratory decree was not applicable and that the case should be tried in contract, the Supreme Court found no doubt asserted by either party as to the terms or meaning of any provision of the lease. The court stated that "Doubt, because of disputed questions of fact alone, is not sufficient, especially when the only relief sought is damages."

PARTICULAR APPLICATIONS

Status

Marital. In the case of *de Marigny v. de Marigny*³² the plaintiff wife attempted to use a declaratory decree to determine the validity of a Florida divorce granted the defendant husband and his former spouse. The court denied the use of declaratory relief on the grounds that F.S. § 87.01 was not meant to be applied to judgments or decrees. The court was assisted to its decision by the decree which was clear and unambiguous. The court stated that "the only tenable exception to the rule that a declaratory judgment is not an appropriate method of questioning a final judgment or decree (valid on the face of the record) is in the case the judgment or decree has become the source of definite rights *and* is unclear or ambiguous." It would appear that what the court is discussing here is clarification of a final decree or judgment. Declaratory judgment proceedings have been used in such cases.³³ What the plaintiff was attempting

28. FLA. STAT. § 87.01 (1943).

29. FLA. STAT. § 87.08 (1943).

30. 62 So.2d 338 (Fla. 1953).

31. 65 So.2d 762 (Fla. 1953).

32. 43 So.2d 442 (Fla. 1949).

33. *Avery Freight Lines v. White*, 245 Ala. 618, 18 So.2d 394 (1944); *accord*, *Solvay Process Co. v. NLRB*, 122 F.2d 993 (5th Cir. 1941), *cert. denied*, 313 U.S. 596 (1941). *Contra*: *J. Greenbaum Tanning Co. v. NLRB*, 129 F.2d 487 (7th Cir. 1942).

here was more than mere clarification. The court went on to say that "our declaratory decree statute is no substitute for established procedure for review of final judgments or decrees. *Nor is it a device for collateral attack upon them*" (emphasis supplied). Does the court mean by this last sentence that a divorced spouse could not ask for a declaration of the validity of an ex parte foreign divorce decree? Perhaps it would be best to restrict the court's broad language to the facts of the present case. Plaintiff was not even able to maintain an independent bill in equity since she did not have such interest in the former decree as would allow her, a third party, to collaterally attack it.

Profession and employment. *Watson v. Centro Espanol de Tampa*³⁴ was a case where a statute defining and punishing the practice of medicine without a license was ambiguous as to non-licensed hospital interns employed to aid a medical director. The court held an intern could maintain a petition for a declaratory decree adjudicating his rights under the statute.

Other. The court recently held that an action for a declaratory decree would lie to determine plaintiff's right to function as chairman of the Republican Party Executive Committee.³⁵

Constitutionality and construction of legislation

Actions for declaratory decrees have been maintained in the following instances: a suit against county commissioners to declare unconstitutional a statute relating to the public health service of the City of Tampa and County of Hillsborough;³⁶ a suit by a candidate whose name would appear on the ballot for a construction of the statute providing for arrangement of names of all candidates of each party in separate perpendicular columns on the ballot;³⁷ a suit against the City of Miami to determine the validity of a liquor licensing ordinance;³⁸ an action against the Board of Public Instructions to determine the validity of the statute forbidding school fraternities;³⁹ a suit by lessors of wires used to transmit information about horse racing for a determination of the validity of a statute regulating the use of private wires by public utility companies;⁴⁰ and a bill by a taxpayer for determination of the constitutionality of legislation authorizing expenditures of county monies.⁴¹

34. 158 Fla. 796, 30 So.2d 288 (1947).

35. *Shelly v. Brewer*, 68 So.2d 573 (Fla. 1953).

36. *Ball v. Branch*, 154 Fla. 57, 16 So.2d 524 (1944).

37. *Cobb v. Board of Comm'rs of Orange County*, 155 Fla. 60, 19 So.2d 505 (1944).

38. *City of Miami v. Kichinko*, 156 Fla. 87, 22 So.2d 627 (1945).

39. *Satan Fraternity v. Board of Public Instruction*, 156 Fla. 222, 22 So.2d 892 (1945).

40. *McInerny v. Ervin*, 46 So.2d 458 (Fla. 1950).

41. *Rosenhouse v. 1950 Spring Term Grand Jury, In and For Dade County*, 56 So.2d 445 (Fla. 1952).

Taxation

*State v. Everglades Drainage District*⁴² involved a suit by the Attorney General to obtain a declaratory judgment regarding the validity of Everglades Drainage District taxes upon state lands. The lower court dismissed the bill on the merits of the issue, holding that all questions raised by the complaint had been answered contrary to the contentions of the Attorney General in former opinions of the Supreme Court. In affirming the dismissal the Supreme Court stated that it did not think the declaratory judgment statute contemplated this kind of a suit. No reasons were stated for this conclusion.

Powers and duties of public authorities

A suit was brought by the mayor against the city commission in *Alsop v. Pierce*⁴³ for a declaration as to the rights, powers, and jurisdiction of the respective parties under the city charter. The city commission contended that such a controversy was not a proper one under the declaratory judgment statute, but the Supreme Court stated “. . . it would be difficult to find a more appropriate case. . . .” A suit was brought by the State Board of Control to obtain a declaratory judgment in *Oberman v. State Board of Control*⁴⁴ for construction of a statute authorizing payment of \$3,000 per year for each student enrolled in the first accredited medical school in the state. As a result of this suit such funds were made available to the University of Miami Medical School. A declaratory decree was also obtained in *Riviere v. Orlando Parking Commission for the City of Orlando*⁴⁵ to determine the commission's authority under certain statutes to acquire land and establish off street parking facilities.

SUMMARY

Florida's modern declaratory judgment statute generally has been given a liberal interpretation by the Supreme Court in most cases. Selected instances in which the court has, erroneously or otherwise, refused to grant declaratory relief have been discussed. The declaratory judgment should not be considered an extraordinary remedy or a strange or unusual form of action. It is an ordinary, simple, auxiliary remedy and one of the most desirable of the newly developed procedural devices.

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42. 155 Fla. 403, 20 So.2d 397 (1945).

43. 155 Fla. 185, 19 So.2d 799 (1944).

44. 62 So.2d 696 (Fla. 1952).

45. 74 So.2d 694 (Fla. 1954).