

The Declaratory Judgement A Better Way to Resolve Disputes

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Consider this hypothetical situation: The Nesbitt Company has entered into a Lease with Shirley, Inc. to operate a store in a new high-rise building being developed by Shirley in Virginia. There are various preconditions and co-tenancy requirements to be met prior to occupancy.

As so often occurs in situations of this sort, a dispute has arisen concerning whether sufficient progress has been made on the preconditions and co-tenancy requirements to obligate Nesbitt to occupy the leased premises. Shirley contends that the preconditions have been met and demands that Nesbitt occupy the premises and begin to pay rent immediately. Nesbitt refuses. Each of the parties feels strongly that its position is correct and neither will agree to compromise. Is there an early and relatively non-confrontational way for them to settle their dispute? What is the best way for either party to resolve their differences?

There are of course various forms of dispute resolution that are available to the parties, including mediation and arbitration, but both of these remedies are confrontational in nature and in the absence of a provision in the Lease mandating the use of mediation or arbitration, neither remedy can be used without the consent of both parties. In far too many cases, the parties to a dispute of

this type will continue to bicker and argue until one or the other becomes sufficiently frustrated to file a traditional, adversarial breach of contract action, perhaps including a tort claim for good measure. Such litigation is likely to be very expensive and almost always provokes a hostile and emotional reaction.

There is, however, another way. An action for declaratory judgment, which is available in Virginia and almost every other state, is an effective and far less confrontational way to resolve disputes of this type. If Nesbitt and Shirley are able to establish to the satisfaction of a trial court that their disagreement involves an “actual legal controversy” – as certainly appears to be the case – then either one could file an action, with or without the consent of the other, asking the court to declare their legal rights under the Lease.

The purpose of a declaratory judgment (as established by many appellate decisions) is to afford contending parties with an efficient method of determining their legal rights without having to face the uncertainty and pent-up hostility inherent in a traditionally disputed lawsuit. Many business people believe that asking a court to determine the rights of the parties in a declaratory judgment setting is far preferable, and far less destructive of established business relationships, than traditional litiga-

tion. Of course, there is no perfect world, and litigation of any type can be costly and exasperating. Nevertheless, a declaratory judgment action is far less likely to be disruptive of established business relationships than a traditional lawsuit. It is helpful in this regard that Virginia law views declaratory judgment actions as “remedial” and requires state courts to administer and interpret the law liberally so as to make the courts more useful to the public.

The utility of a declaratory judgment is not confined to contract disputes. There are innumerable examples of cases seeking declaratory judgment relief which do not involve contract disputes. The Virginia Code provides that a declaratory judgment is applicable to “Controversies involving the interpretation of deeds, wills and other instruments of writing, statutes, municipal ordinances and other governmental regulation,” and expands even that broad definition by making it clear that the statutory enumeration of certain types of written documents “does not exclude other instances of actual antagonistic assertion and denial of right.”

It is clear that declaratory judgments are flexible legal vehicles that can be put to use in many settings. The law does not require that a party to a dispute wait until a right has actually been violated in order to seek judicial relief. Preventative relief is the predominate purpose of a declaratory judgment.

As previously noted, most states have a declaratory judgment procedure. Federal law also has similar provisions. It is likely, therefore, that wherever in the United States a dispute should arise there is an effective declaratory judgment remedy.

As with all litigation, there are potential technical problems, even with the seemingly transparent declaratory judgment procedure. If one of the parties is not willing to join issue by agreeing that there is an actual legal controversy, or if it is contended that the moving party is merely seeking an “advisory opinion,” what should be a fairly straightforward proceeding can become embroiled in time-consuming and unproductive controversy. In addition, in Virginia state courts, a demurrer may be filed contending that the legal rights of the parties have so matured that a declaratory action is no longer appropriate. There may also be an opportunity for a party bent on delay to

jockey for position by filing objections to venue and jurisdiction.

When businesses fall to fighting between themselves, or when individuals have disputes with other individuals or businesses, there is no perfect, inexpensive way to set the matter straight. Nevertheless, when faced between the choice of a hostile and antagonistic confrontation in a traditional lawsuit, and a less pejorative declaratory judgment procedure, a compelling case can be made for a declaratory judgment.

VA. CODE ANN. § 8.01-184 (West 1977).

VA. CODE ANN. § 8.01-191 (West 1977).



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