CHAPTER 53

Declaratory Judgments

**SECTION 15‑53‑10.** Short title.

 This chapter may be cited as the “Uniform Declaratory Judgments Act.”

HISTORY: 1962 Code Section 10‑2001; 1952 Code Section 10‑2001; 1948 (45) 2014.

CROSS REFERENCES

Declaratory judgments under South Carolina Rules of Civil Procedure, see Rule 57, SCRCP.

Entry of judgment under South Carolina Rules of Civil Procedure, see Rule 58, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 118Ak21.

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C.J.S. Declaratory Judgments Sections 5, 7.

RESEARCH REFERENCES

Encyclopedias

102 Am. Jur. Proof of Facts 3d 313, Acts Constituting Rejection of Real Estate Contract Offer.

102 Am. Jur. Proof of Facts 3d 401, Impossibility of Performing Contract.

120 Am. Jur. Proof of Facts 3d 1, Establishing Fee Simple Title Subject to Condition Subsequent.

121 Am. Jur. Proof of Facts 3d 101, Establishing Vested Remainder Title to Real Estate.

123 Am. Jur. Proof of Facts 3d 1, Establishing Fee‑Simple Title Subject to Executory Interest.

125 Am. Jur. Proof of Facts 3d 1, Establishing Contingent‑Remainder Title to Real Estate.

S.C. Jur. Declaratory Judgments Section 3, Jurisdiction.

S.C. Jur. Declaratory Judgments Section 5, Nature of Relief.

S.C. Jur. Declaratory Judgments Section 6, Requirements for Bringing.

S.C. Jur. Declaratory Judgments Section 7, Classification as Legal or Equitable.

S.C. Jur. Equity Section 22, Declaratory Judgment.

S.C. Jur. Estoppel and Waiver Section 4, Equitable Estoppel or Estoppel in Pais.

S.C. Jur. Limitation of Actions Section 54, General Rule.

S.C. Jur. South Carolina Rules of Civil Procedure Section 57.0, Rule 57. Declaratory Judgments.

S.C. Jur. Wills Section 132, Declaratory Judgment.

Forms

South Carolina Litigation Forms and Analysis Section 10:4 , Answer and Counterclaim for Declaratory Judgment.

LAW REVIEW AND JOURNAL COMMENTARIES

Practice and Procedure: Declaratory Judgment. 23 S.C. L. Rev. 620.

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1. In general

Applied in Seaber v Kohn, 227 SC 103, 86 SE2d 872 (1955). Baldwin v McFadden, 234 SC 563, 109 SE2d 579 (1959). Ruggles v Padgett, 240 SC 494, 126 SE2d 553 (1962). Distin v Bolding, 240 SC 545, 126 SE2d 649 (1962). Miller v Farr, 24 SC 342, 133 SE2d 838 (1963). Vernon v Harleysville Mut Cas. Co., 244 SC 152, 135 SE2d 841 (1964). Stone v Salley, 244 SC 531, 137 SE2d 788 (1964). Ramsey v Cameron, 245 SC 189, 139 SE2d 765 (1965). Grain Dealers Mut. Ins. Co. v Julian, 247 SC 89, 145 SE2d 685 (1965). Melody Music Co. v McLeod, 248 SC 545, 151 SE2d 749 (1966). Southern Farm Bureau Cas. Ins. Co. v Ausborn, 249 SC 627, 155 SE2d 902 (1967). Elliott v McNair, 250 SC 75, 156 SE2d 421 (1967). Nuessner v McNair, 250 SC 257, 157 SE2d 410 (1967). Bean v Bean, 253 SC 340, 170 SE2d 654 (1969). Hunt v McNair, 255 SC 71, 177 SE2d 362 (1970). Echols v Graham, 256 SC 202, 182 SE2d 69 (1971). Lindsay v Southern Farm Bureau Cas. Ins. Co., 258 SC 272, 188 SE2d 374 (1972). State ex rel. McLeod v Ellisor, 259 SC 364, 192 SE2d 188 (1972). Allstate Ins. Co. v Wilson, 259 SC 586, 193 SE2d 527 (1972). State Farm Mut. Auto. Ins. Co. v Nationwide Mut. Ins. Co., 349 F Supp 158 (D SC 1972). Aetna Cas. & Sur. Co. v Sessions, 260 SC 150, 194 SE2d 877 (1973). Government Emp. Ins. Co. v White, 260 SC 163, 194 SE2d 884 (1973). Loadholt v Harter, 260 SC 176, 194 SE2d 880 (1973). South Carolina Nat’l Bank v Bonds, 260 SC 327, 195 SE2d 835 (1973). Turner v Turner, 260 SC 439, 196 SE2d 498 (1973). Powell v Chapman, 260 SC 516, 197 SE2d 287 (1973). Stonewall Ins. Co. v Richardson, 261 SC 595, 201 SE2d 743 (1974). McKinney v City of Greenville, 262 SC 227, 203 SE2d 680 (1974). Myers v Cornelius, 262 SC 417, 205 SE2d 180 (1974). Lindsay v National Old Line Ins. Co., 262 SC 621, 207 SE2d 75 (1974).

Cited in Lee v Clark, 224 SC 138, 77 SE2d 485 (1953). Legette v Smith, 226 SC 403, 85 SE2d 576 (1955). Utica‑Mohawk Mills v Orr, 227 SC 226, 87 SE2d 589 (1955). Edens v Columbia, 228 SC 563, 91 SE2d 280 (1956). Stanton v Gulf Oil Corp., 232 SC 148, 101 SE2d 250 (1957). Caine v Griffin, 232 SC 562, 103 SE2d 37 (1958). Brunson v Sports, 239 SC 58, 121 SE2d 294 (1961). Atkinson v Carolina Power & Light Co., 239 SC 150, 121 SE2d 743 (1961). McKenzie v McLeod, 251 SC 226, 161 SE2d 659 (1968). St. Paul Fire & Marine Ins. Co. v Boykin, 251 SC 236, 161 SE2d 818 (1968). Smythe v Stroman, 251 SC 277, 162 SE2d 168 (1968). Home Indem. Co. v Harleysville Mut. Ins. Co., 252 SC 452, 166 SE2d 819 (1969). City of Greenville v Bozeman, 254 SC 306, 175 SE2d 211 (1970). Government Employees Ins. Co. v Chavis, 254 SC 507, 176 SE2d 131 (1970). Criterion Ins. Co. v Hoffmann, 258 SC 282, 188 SE2d 459 (1972). Darden v Witham, 258 SC 380, 188 SE2d 776 (1972). Harper v Schooler, 258 SC 486, 189 SE2d 284 (1972). Government Employees Ins. Co. v Mackey, 260 SC 306, 195 SE2d 830 (1973). Briarcliffe Acres v Briarcliffe Realty Co., 262 SC 599, 206 SE2d 886 (1974).

A South Carolina movie theater operator challenging the constitutionality of Section 12‑21‑2710, imposing a 20 percent tax on “X” rated movies as compared with a 4 percent tax imposed by Section 12‑21‑2420 on other movies, could maintain an action in South Carolina courts pursuant to the Declaratory Judgments Act (Sections 15‑53‑10, et seq.), or pursuant to the State’s equity jurisdiction for injunctive relief. Accordingly, since adequate remedies existed in state court, a federal court action was barred. Eastern Federal Corp. v. Wasson (D.C.S.C. 1981) 525 F.Supp. 241. Courts 508(6)

The Uniform Declaratory Judgments Act does not require the courts to give purely advisory opinions as to the issues sought to be raised. Auto‑Owners Ins. Co. v. Rhodes (S.C. 2013) 405 S.C. 584, 748 S.E.2d 781. Declaratory Judgment 66

The Uniform Declaratory Judgments Act is not an independent grant of jurisdiction. Tourism Expenditure Review Committee v. City of Myrtle Beach (S.C. 2013) 403 S.C. 76, 742 S.E.2d 371. Declaratory Judgment 272

The Uniform Declaratory Judgments Act is remedial and procedural in nature and does not create substantive rights or duties. Felts v. Richland County (S.C.App. 1989) 299 S.C. 214, 383 S.E.2d 261, affirmed 303 S.C. 354, 400 S.E.2d 781.

Design. The Declaratory Judgments Act is designed to provide an expeditious method of procuring a judicial decree construing wills and declaring the rights and liabilities of the parties thereunder. Henry v. Cottingham (S.C. 1969) 253 S.C. 286, 170 S.E.2d 387.

2. Liberal construction

The Declaratory Judgment Act should be liberally construed to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships, without awaiting a violation of the rights or a disturbance of the relationships. Pond Place Partners, Inc. v. Poole (S.C.App. 2002) 351 S.C. 1, 567 S.E.2d 881, rehearing denied, certiorari denied. Declaratory Judgment 26

The Declaratory Judgment Act should be liberally construed to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes and settling legal rights and relationships, without awaiting a violation of the rights or a disturbance of the relationships. Graham v. State Farm Mut. Auto. Ins. Co. (S.C. 1995) 319 S.C. 69, 459 S.E.2d 844. Declaratory Judgment 2

3. Propriety of purely advisory opinions

An adjudication that would not settle the legal rights of the parties would only be advisory in nature and, therefore, would be beyond the intended purpose and scope of the Uniform Declaratory Judgments Act. Sunset Cay, LLC v. City of Folly Beach (S.C. 2004) 357 S.C. 414, 593 S.E.2d 462, rehearing denied. Declaratory Judgment 66

The Declaratory Judgments Act does not require the court to give a purely advisory opinion as to the issues sought to be raised. Power v. McNair (S.C. 1970) 255 S.C. 150, 177 S.E.2d 551.

An adjudication which would settle no legal rights of the parties would be only advisory and, therefore, beyond the intended purpose and scope of a declaratory judgment. Power v. McNair (S.C. 1970) 255 S.C. 150, 177 S.E.2d 551.

4. Action at equity or law

A suit for declaratory judgment may be legal or equitable, and is characterized as such by the nature of the underlying issue outlined in the complaint. Lowcountry Open Land Trust v. State (S.C.App. 2001) 347 S.C. 96, 552 S.E.2d 778. Declaratory Judgment 253

A declaratory judgment action is like a chameleon. Its color is determined by its background, i.e., the underlying action. Unless the cause of action and the relief sought in a declaratory judgment action are distinctly equitable, the action will be considered one at law. Noisette v. Ismail (S.C.App. 1989) 299 S.C. 243, 384 S.E.2d 310, reversed in part 304 S.C. 56, 403 S.E.2d 122.

The underlying action in a declaratory judgment action neither alleged an equitable cause of action nor sought equitable relief where the complaint merely sought a declaration regarding whether an insurer provided an insured certain insurance coverage at a particular time and whether any such coverage embraced a particular accident. Thus, the action for declaratory judgment was an action at law. Noisette v. Ismail (S.C.App. 1989) 299 S.C. 243, 384 S.E.2d 310, reversed in part 304 S.C. 56, 403 S.E.2d 122.

A particular declaratory judgment action draws its equitable or legal substance from the nature of the underlying controversy. Declaratory judgment actions are classified by looking to the kind of action in which the issue involved would have been decided if there were no declaratory judgment procedure. Felts v. Richland County (S.C.App. 1989) 299 S.C. 214, 383 S.E.2d 261, affirmed 303 S.C. 354, 400 S.E.2d 781. Declaratory Judgment 253

5. Necessity of existence of justiciable controversy—In general

To fall within the intended purpose and scope of the Declaratory Judgments Act, the parties must seek adjudication of a justiciable controversy. Tourism Expenditure Review Committee v. City of Myrtle Beach (S.C. 2013) 403 S.C. 76, 742 S.E.2d 371. Declaratory Judgment 61

The Declaratory Judgments Act does not eliminate the case‑or‑controversy requirement. Tourism Expenditure Review Committee v. City of Myrtle Beach (S.C. 2013) 403 S.C. 76, 742 S.E.2d 371. Declaratory Judgment 61

To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy; a justiciable controversy exists when a concrete issue is present, there is a definite assertion of legal rights and a positive legal duty which is denied by the adverse party. Pond Place Partners, Inc. v. Poole (S.C.App. 2002) 351 S.C. 1, 567 S.E.2d 881, rehearing denied, certiorari denied. Declaratory Judgment 61; Declaratory Judgment 62

To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy. Holden v. Cribb (S.C.App. 2002) 349 S.C. 132, 561 S.E.2d 634. Declaratory Judgment 61

To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy. Graham v. State Farm Mut. Auto. Ins. Co. (S.C. 1995) 319 S.C. 69, 459 S.E.2d 844. Declaratory Judgment 61

All that is required under the Declaratory Judgment Act, Sections 15‑53‑10, et seq., is that the plaintiffs demonstrate a justiciable controversy. Brown v. Wingard (S.C. 1985) 285 S.C. 478, 330 S.E.2d 301. Declaratory Judgment 61

Where complaint seeking declaratory judgment is answered by demurrer, test of sufficiency is not whether complaint shows plaintiff is entitled to declaration of rights according to his theory, but whether he is entitled to declaration of rights at all. Dismukes v. Carletta (S.C. 1977) 269 S.C. 110, 236 S.E.2d 421. Declaratory Judgment 312.1

The existence of an actual controversy is essential to jurisdiction to render a declaratory judgment. Power v. McNair (S.C. 1970) 255 S.C. 150, 177 S.E.2d 551.

In order to maintain an action under this chapter, there must exist a justiciable controversy. Power v. McNair (S.C. 1970) 255 S.C. 150, 177 S.E.2d 551.

Parties cannot by consent or agreement confer jurisdiction on the court to render a declaratory judgment in the absence of an actual justiciable controversy. Power v. McNair (S.C. 1970) 255 S.C. 150, 177 S.E.2d 551. Declaratory Judgment 271

6. —— What constitutes justiciable controversy, necessity of existence of justiciable controversy

Justiciable controversy existed, such that review of developer’s challenge to facial validity of ordinance limiting expansion of sewer system outside central commercial district was appropriate under the Declaratory Judgments Act; even though developer had not applied for a sewer extension, Act did not require developer to spend time and money complying with what allegedly was an invalid or unconstitutional ordinance. Sunset Cay, LLC v. City of Folly Beach (S.C. 2004) 357 S.C. 414, 593 S.E.2d 462, rehearing denied. Declaratory Judgment 128

“Justiciable controversy” is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character. Holden v. Cribb (S.C.App. 2002) 349 S.C. 132, 561 S.E.2d 634. Action 6

The concept of justiciability encompasses the doctrines of ripeness, mootness, and standing. Holden v. Cribb (S.C.App. 2002) 349 S.C. 132, 561 S.E.2d 634. Action 6; Action 13

Taxpayer stated cause of action under Declaratory Judgment Act, as allegations of expenditures by school district in violation of competitive sealed bidding requirement demonstrated justiciable controversy. Sloan v. School Dist. of Greenville County (S.C.App. 2000) 342 S.C. 515, 537 S.E.2d 299. Declaratory Judgment 319

Taxpayers had an interest in seeing that city officials disbursed funds in a lawful manner, and taxpayers presented a justiciable controversy under the Declaratory Judgment Act in challenging a city’s payment of traveling expenses for the spouses of the mayor and council members. Brown v. Wingard (S.C. 1985) 285 S.C. 478, 330 S.E.2d 301.

Demurrer was properly granted where plaintiff seeking to invalidate will provision admitted in complaint that defendant was one and same person as legatee, whose name had been changed upon adoption, and therefore left no question for determination. Dismukes v. Carletta (S.C. 1977) 269 S.C. 110, 236 S.E.2d 421.

Where a concrete issue is present, and there is a definite assertion of legal rights and a positive legal duty with respect thereto, which are denied by the adverse party, there is a justiciable controversy calling for the invocation of declaratory judgment action. Power v. McNair (S.C. 1970) 255 S.C. 150, 177 S.E.2d 551.

A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character. Power v. McNair (S.C. 1970) 255 S.C. 150, 177 S.E.2d 551.

7. Review

Even where the parties do not raise such a challenge, the issue of subject matter jurisdiction is properly raised for the first time on appeal by the appellate court since the parties cannot by consent or agreement confer jurisdiction on the court to render a declaratory judgment in the absence of an actual justiciable controversy. Tourism Expenditure Review Committee v. City of Myrtle Beach (S.C. 2013) 403 S.C. 76, 742 S.E.2d 371. Declaratory Judgment 392.1

To determine the standard of review for a claim brought under the Declaratory Judgment Act, the appellate court looks to the main purpose of the complaint, as reflected by the character of the claims, evidence, and relief sought. Baugh v. Columbia Heart Clinic, P.A. (S.C.App. 2013) 402 S.C. 1, 738 S.E.2d 480, rehearing denied, certiorari denied, on remand 2015 WL 1887834. Declaratory Judgment 393

**SECTION 15‑53‑20.** Courts of record may declare rights, status and other legal relations.

 Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect. Such declarations shall have the force and effect of a final judgment or decree.

HISTORY: 1962 Code Section 10‑2002; 1952 Code Section 10‑2002; 1948 (45) 2014.

CROSS REFERENCES

Courts, in general, see Title 14.

Declaratory judgments under South Carolina Rules of Civil Procedure, see Rule 57, SCRCP.

Entry of judgment under South Carolina Rules of Civil Procedure, see Rule 58, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Searches: 118Ak271; 118Ak383; 118Ak390.

Declaratory Judgment 271, 383, 390.

C.J.S. Declaratory Judgments Sections 114, 155 to 156.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Death and Right to Die Section 43, Declaratory Relief.

S.C. Jur. Declaratory Judgments Section 5, Nature of Relief.

LAW REVIEW AND JOURNAL COMMENTARIES

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1. Action in equity or at law

A suit for declaratory judgment may be legal or equitable, and is characterized as such by the nature of the underlying issue outlined in the complaint. Lowcountry Open Land Trust v. State (S.C.App. 2001) 347 S.C. 96, 552 S.E.2d 778. Declaratory Judgment 253

A declaratory judgment action is like a chameleon. Its color is determined by its background, i.e., the underlying action. Unless the cause of action and the relief sought in a declaratory judgment action are distinctly equitable, the action will be considered one at law. Noisette v. Ismail (S.C.App. 1989) 299 S.C. 243, 384 S.E.2d 310, reversed in part 304 S.C. 56, 403 S.E.2d 122.

The underlying action in a declaratory judgment action neither alleged an equitable cause of action nor sought equitable relief where the complaint merely sought a declaration regarding whether an insurer provided an insured certain insurance coverage at a particular time and whether any such coverage embraced a particular accident. Thus, the action for declaratory judgment was an action at law. Noisette v. Ismail (S.C.App. 1989) 299 S.C. 243, 384 S.E.2d 310, reversed in part 304 S.C. 56, 403 S.E.2d 122.

A particular declaratory judgment action draws its equitable or legal substance from the nature of the underlying controversy. Declaratory judgment actions are classified by looking to the kind of action in which the issue involved would have been decided if there were no declaratory judgment procedure. Felts v. Richland County (S.C.App. 1989) 299 S.C. 214, 383 S.E.2d 261, affirmed 303 S.C. 354, 400 S.E.2d 781. Declaratory Judgment 253

2. In general

Cited in Nationwide Mut. Ins. Co. v Fleming, 257 F Supp 261 (D SC 1966). Morgan v Liberty Mut. Ins. Co., 261 F Supp 709 (D SC 1966).

Applied in South Carolina Elec., etc., Co. v Pinckney, 217 SC 407, 60 SE2d 851 (1950). Nolan v Daley, 222 SC 407, 73 SE2d 449 (1952). Bank for Savings & Trusts v Towe, 231 SC 268, 98 SE2d 539 (1957). Rogers‑Kent, Inc. v General Electric Co., 231 SC 636, 99 SE2d 665 (1957). Aiken v State, 232 SC 284, 101 SE2d 841 (1958).

Insurer, by bringing action in federal court for declaratory judgment that it need not defend or pay judgments against its insured, ignored Code 1962 Sections 10‑2002 and 10‑2012 [Code 1976 Sections 15‑53‑20 and 15‑53‑120], which would have given insurer an opportunity to bring an action for declaratory judgment and other relief in South Carolina courts. Independent Fire Ins. Co. v. Huggins (D.C.S.C. 1975) 404 F.Supp. 865.

Quoted in Lumbermens Mut. Cas. Co. v. Quick (D.C.S.C. 1966) 257 F.Supp. 252.

The Supreme Court would decline to answer certified questions as to extent of obligations of a developer, and its assignee, for a planned unit development (PUD) once control of the property owners association passed to the property owners, given that such dispute may never arise. Concerned Dunes West Residents, Inc. v. Georgia‑Pacific Corp. (S.C. 2002) 349 S.C. 251, 562 S.E.2d 633. Federal Courts 3108

The Uniform Declaratory Judgments Act is remedial and procedural in nature and does not create substantive rights or duties. Felts v. Richland County (S.C.App. 1989) 299 S.C. 214, 383 S.E.2d 261, affirmed 303 S.C. 354, 400 S.E.2d 781.

A trial court’s determination that an individual was not an “employee” of a county, and therefore was not entitled to file a grievance under the county’s grievance procedure, was supported by the evidence where: (1) the individual was recruited and hired by the township’s director; (2) although the individual received his pay from the county, the county was reimbursed by the township pursuant to an agreement between the county and the township; and (3) the township’s director had the express power to terminate the individual’s employment and had control and supervision over his work performance. Felts v. Richland County (S.C.App. 1989) 299 S.C. 214, 383 S.E.2d 261, affirmed 303 S.C. 354, 400 S.E.2d 781. Counties 67; Public Employment 4

This section [Code 1962 Section 10‑2002] is remedial. Guimarin & Doan, Inc. v. Georgetown Textile & Mfg. Co. (S.C. 1967) 249 S.C. 561, 155 S.E.2d 618.

Where the action was essentially one of trespass to try title, its nature was not changed by reason of its being cast under the Declaratory Judgments Act. Rush v. Thigpen (S.C. 1957) 231 S.C. 230, 98 S.E.2d 245.

The Declaratory Judgments Act does not require court to give a purely advisory opinion which the parties might, so to speak, put on ice to be used if and when the occasion might arise, or license litigants to fish in judicial ponds for legal advice. City of Columbia v. Sanders (S.C. 1957) 231 S.C. 61, 97 S.E.2d 210. Declaratory Judgment 66

The Uniform Declaratory Judgments Act covers the whole field of declaratory judgments. Waller v. Waller (S.C. 1951) 220 S.C. 212, 66 S.E.2d 876.

It is quite true that a declaratory judgment should not deal with moot or abstract matters or constitute a merely advisory opinion, and to this end there should be an existing controversy, or at least the “ripening seeds of a controversy,” but the basic purpose of this chapter is to provide for declaratory judgments without awaiting a breach of existing rights. Waller v. Waller (S.C. 1951) 220 S.C. 212, 66 S.E.2d 876. Declaratory Judgment 61; Declaratory Judgment 66; Declaratory Judgment 67

3. Liberal construction

Under Tax Injunction Act and principles of comity and federalism, it is only upon showing that state law furnishes no adequate legal remedy that federal district court can hear case which seeks injunctive, declaratory, or monetary relief for unconstitutionality of state tax system. Campbell v. Hilton Head No. 1 Public Service Dist., 1999, 114 F.Supp.2d 482, affirmed 220 F.3d 298, appeal after remand from federal court 354 S.C. 190, 580 S.E.2d 137, certiorari denied, certiorari denied 124 S.Ct. 388, 540 U.S. 947, 157 L.Ed.2d 277. Federal Courts 2036

The Court should liberally construe the Declaratory Judgment Act so as to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships, without awaiting a violation of the rights or a disturbance of the relationships. Thompson v. State (S.C. 2016) 415 S.C. 560, 785 S.E.2d 189. Declaratory Judgment 2

The Declaratory Judgments Act should be liberally construed and applied, especially where litigation will be prevented, but there is a limit beyond which the courts should not go. Park v. Safeco Ins. Co. of America (S.C. 1968) 251 S.C. 410, 162 S.E.2d 709. Declaratory Judgment 26

The statute providing for declaratory judgments meets a real need and should be liberally construed to accomplish the purposes intended, namely, to afford a speedy and inexpensive method of adjudicating legal disputes without invoking any coercive remedies of the old procedure, to settle legal rights, and to remove uncertainty and insecurity from legal relationships without awaiting a violation of the rights or a disturbance of the relationships. Williams Furniture Corp. v. Southern Coatings & Chemical Co. (S.C. 1949) 216 S.C. 1, 56 S.E.2d 576. Declaratory Judgment 26

3.5. Divorce agreements

The Declaratory Judgment Act provisions that provided courts of record the power to declare rights, status, and other legal relations, and to construe contract provisions, did not grant the circuit court the authority to hear ex‑husband’s case with regard to a divorce settlement agreement that had been incorporated into a family court divorce decree, regardless of whether or not the family court record was sealed; the agreement was part of the parties’ earlier divorce proceeding, over which the family court had exclusive jurisdiction, and by merging the agreement into the family court order, the family court transformed it from a contract between the parties into a decree of the court. Hammer v. Hammer (S.C.App. 2012) 399 S.C. 100, 730 S.E.2d 874, rehearing denied. Divorce 940

4. Pleading

While the Uniform Declaratory Judgments Act does not specifically provide for the filing of cross actions between codefendants, proceedings brought under the act are governed by the applicable established rules of pleading. Bank of Augusta v. Satcher Motor Co. (S.C. 1967) 249 S.C. 53, 152 S.E.2d 676.

A complaint is not rendered impregnable against attack by demurrer for insufficiency merely because it seeks only declaratory relief, or both declaratory and coercive relief. Plenge v. Russell (S.C. 1960) 236 S.C. 473, 115 S.E.2d 177. Declaratory Judgment 325

5. Demurrer

The use and determination of the demurrer in actions arising under the Declaratory Judgments Act is controlled by the same principles as apply in other cases. Dantzler v. Callison (S.C. 1955) 227 S.C. 317, 88 S.E.2d 64. Declaratory Judgment 325

In passing on a demurrer in a declaratory judgment action, the court is not concerned with whether the plaintiff is right in the controversy, but is only concerned with whether he is entitled to a declaration of rights with respect to the matters alleged. Dantzler v. Callison (S.C. 1955) 227 S.C. 317, 88 S.E.2d 64. Declaratory Judgment 325

6. Justiciable controversy

A “justiciable controversy” for purposes of the Declaratory Judgment Act is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character. Thompson v. State (S.C. 2016) 415 S.C. 560, 785 S.E.2d 189. Declaratory Judgment 63; Declaratory Judgment 65; Declaratory Judgment 68

To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy. Holden v. Cribb (S.C.App. 2002) 349 S.C. 132, 561 S.E.2d 634. Declaratory Judgment 61

The courts generally decline to pronounce a declaration in a suit wherein the rights of the plaintiff are contingent upon the happening of some event which cannot be forecast and which may never take place. Park v. Safeco Ins. Co. of America (S.C. 1968) 251 S.C. 410, 162 S.E.2d 709. Declaratory Judgment 68

A complaint for declaratory judgment is good against demurrer for insufficiency of facts if its allegations show the existence of a justiciable controversy between the parties. Guimarin & Doan, Inc. v. Georgetown Textile & Mfg. Co. (S.C. 1967) 249 S.C. 561, 155 S.E.2d 618. Declaratory Judgment 325

A complaint is not subject to demurrer for failure to state a cause of action for declaratory judgment if the facts alleged show the existence of a justiciable controversy between the parties. Bank of Augusta v. Satcher Motor Co. (S.C. 1967) 249 S.C. 53, 152 S.E.2d 676. Declaratory Judgment 325

To withstand a demurrer for insufficiency, a complaint in an action for declaratory relief need show no more than the existence of a justiciable controversy between the parties. Plenge v. Russell (S.C. 1960) 236 S.C. 473, 115 S.E.2d 177. Declaratory Judgment 325

But rule requiring the existence of a justiciable controversy is somewhat relaxed where the public interest is involved. City of Columbia v. Sanders (S.C. 1957) 231 S.C. 61, 97 S.E.2d 210.

Where a complaint seeking a declaratory judgment sets forth a justiciable controversy it is not subject to demurrer on the ground that it fails to state a cause of action. Dantzler v. Callison (S.C. 1955) 227 S.C. 317, 88 S.E.2d 64. Declaratory Judgment 325

7. Elements of justiciable controversy

The concept of justiciability encompasses the doctrines of ripeness, mootness, and standing. Holden v. Cribb (S.C.App. 2002) 349 S.C. 132, 561 S.E.2d 634. Action 6; Action 13

“Justiciable controversy” is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character. Holden v. Cribb (S.C.App. 2002) 349 S.C. 132, 561 S.E.2d 634. Action 6

A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character. Guimarin & Doan, Inc. v. Georgetown Textile & Mfg. Co. (S.C. 1967) 249 S.C. 561, 155 S.E.2d 618. Declaratory Judgment 63

Where a concrete issue is present, and there is a definite assertion of legal rights and a positive legal duty with respect thereto which are denied by the adverse party, there is a justiciable controversy calling for the invocation of declaratory judgment action. Dantzler v. Callison (S.C. 1955) 227 S.C. 317, 88 S.E.2d 64. Declaratory Judgment 62

8. Trial court’s discretion

The granting of a declaratory judgment rests in the sound discretion of the court, to be reasonably exercised in furtherance of the purposes of the act. Guimarin & Doan, Inc. v Georgetown Textile & Mfg. Co., 249 SC 561, 155 SE2d 618 (1967). Bank of Augusta v Satcher Motor Co., 249 SC 53, 152 SE2d 676 (1967).

Whether a declaratory judgment shall be accorded one who petitions for it is a matter resting in the sound discretion of the trial court, to be reasonably exercised in furtherance of the purposes of the statute. It is a judicial discretion, subject to review, and must be exercised in accordance with legal principles. Williams Furniture Corp. v. Southern Coatings & Chemical Co. (S.C. 1949) 216 S.C. 1, 56 S.E.2d 576. Declaratory Judgment 6

The jurisdiction to render a declaratory judgment is discretionary, and should be exercised with great care with due regard to all the circumstances of the case. Southern Ry. Co. v. Order of Ry. Conductors of America (S.C. 1947) 210 S.C. 121, 41 S.E.2d 774, construing a former similar provision (1942 Code, Section 660). Declaratory Judgment 5.1

9. Effect of existence of other remedy upon declaratory relief, generally

Declaratory relief will ordinarily be refused where a special statutory remedy has been provided, or where another remedy will be more effective or appropriate under the circumstances. Bank of Augusta v. Satcher Motor Co. (S.C. 1967) 249 S.C. 53, 152 S.E.2d 676. Declaratory Judgment 42; Declaratory Judgment 44

Ordinarily, a court will refuse a declaration where a special statutory remedy has been provided or where another remedy will be more effective or appropriate under the circumstances. Williams Furniture Corp. v. Southern Coatings & Chemical Co. (S.C. 1949) 216 S.C. 1, 56 S.E.2d 576. Declaratory Judgment 44

10. Qualification of rule

The existence of another remedy and the presence of complicated issues of fact may be considered by the court in exercising its discretion as to whether declaratory relief should be granted. However, neither is ground for sustaining a demurrer, which tests the legal sufficiency of the pleading. Guimarin & Doan, Inc. v. Georgetown Textile & Mfg. Co. (S.C. 1967) 249 S.C. 561, 155 S.E.2d 618. Declaratory Judgment 9; Declaratory Judgment 41; Declaratory Judgment 325

Where the plaintiff has available other remedies, this fact alone would not bar an action for declaratory relief. This section [former Code 1962 Section 10‑2002] so provides. Bank of Augusta v. Satcher Motor Co. (S.C. 1967) 249 S.C. 53, 152 S.E.2d 676.

The fact that other remedies are available does not preclude the granting of a declaratory judgment, but are factors to be considered by the court in the exercise of its discretion. Bank of Augusta v. Satcher Motor Co. (S.C. 1967) 249 S.C. 53, 152 S.E.2d 676.

When there exists a genuine controversy requiring a judicial determination, the court is not bound to refuse to exercise its power to declare rights and other legal relations merely because there is another remedy available, construing a former similar provision (1942 Code, Section 660). Southern Ry. Co. v. Order of Ry. Conductors of America (S.C. 1947) 210 S.C. 121, 41 S.E.2d 774. Declaratory Judgment 41

That another remedy may exist and that other relief may be available to the plaintiff are factors to be considered by the court. However, before declaratory relief may be denied in the discretion of the court on the ground of the existence of other remedies, it must clearly appear that the asserted cumulative remedies are not only available to the plaintiff, but that they are speedy and adequate or as well suited to the plaintiff’s needs as declaratory relief, construing a former similar provision (1942 Code, Section 660). Southern Ry. Co. v. Order of Ry. Conductors of America (S.C. 1947) 210 S.C. 121, 41 S.E.2d 774.

11. Declaratory relief in particular circumstances

Court of Common Pleas had jurisdiction to make finding as to whether petitioner’s kidnapping offense for which he was convicted involved sexual misconduct as to require him to register as a sex offender, where issue was raised not in General Sessions court but in the Court of Common Pleas, in a petition for declaratory judgment, which was thus subject to Declaratory Judgment Act, and registration statute was a civil statute. Hazel v. State (S.C. 2008) 377 S.C. 60, 659 S.E.2d 137. Declaratory Judgment 273

Landowner’s declaratory judgment action to obtain declaration of fee simple title to a tract of tidelands was a law case tried alone by a master‑in‑equity with direct appeal to the Supreme Court; as such, review by the Court of Appeals would be limited to correcting errors of law, and master’s factual findings would be affirmed if there was any evidence in the record that reasonably supported them. Lowcountry Open Land Trust v. State (S.C.App. 2001) 347 S.C. 96, 552 S.E.2d 778. Declaratory Judgment 253; Declaratory Judgment 392.1; Declaratory Judgment 393

A determination of title is legal in nature. Lowcountry Open Land Trust v. State (S.C.App. 2001) 347 S.C. 96, 552 S.E.2d 778. Quieting Title 27

A declaratory judgment action seeking to reform a homeowner’s policy was an action in equity, and thus the Supreme court could find facts in accordance with its view of the preponderance of the evidence, since a declaratory judgment action can be legal or equitable, depending on the jurisdiction if there had been no declaratory judgment procedure, and an action to reform an insurance policy is an action in equity. Elias v. Firemen’s Ins. Co. of Newark, New Jersey (S.C. 1992) 309 S.C. 129, 420 S.E.2d 504, rehearing denied.

It was error for the trial court in a declaratory judgment action brought under Section 15‑53‑20 to hold that the Tax Commission was entitled to assess and collect additional taxes from the defendant taxpayer pursuant to the tax statute in question where in its complaint the commission merely asked the court to determine whether the tax statute was constitutional, and if it was not, if a portion of it was severable. South Carolina Tax Com’n v. United Oil Marketers, Inc. (S.C. 1991) 306 S.C. 384, 412 S.E.2d 402.

The evidence was sufficient to support a trial court’s finding that an insurance company was obligated to provide garage liability coverage to an insured on February 14, 1982 where the insurance company entered into an agency agreement whereby the agent was authorized “to receive and accept proposals for insurance including binding authority, covering such . . . risks as [the insurance company] may . . . authorize to be insured,” garage liability was a risk that the insurance company had authorized the agent to insure, the insured went to the agent on November 20, 1981 and applied for garage liability insurance coverage, the insured paid the agent $200 “to put a policy into effect,” the agent’s office manager and vice‑president gave the insured a receipt and told him that the insurance company insured him from that “moment on,” and the insured walked out of the agent’s office “thinking [that he] was insured.” Noisette v. Ismail (S.C.App. 1989) 299 S.C. 243, 384 S.E.2d 310, reversed in part 304 S.C. 56, 403 S.E.2d 122.

Trial court erred in determining the issue of uninsured motorist coverage in a declaratory judgment action brought by owner and insurer of a motorcycle seeking a determination as to whether the motorcycle which was involved in a collision with an automobile was being operated with a permission of the owner; the appellants, by reserving the right to argue issue later, made it clear that the issue of uninsured liability was not before the trial court, so, even though the issue was presented in respondents’ trial memorandum, this was insufficient to place before the trial court the uninsured motorist issue. Roland v. State Farm Ins. Co. (S.C. 1986) 289 S.C. 173, 345 S.E.2d 722. Declaratory Judgment 329

There are many cases reported where liability insurance companies and insured persons in automobile wreck cases have been permitted to use the Declaratory Judgments Act to determine whether coverage existed. Park v. Safeco Ins. Co. of America (S.C. 1968) 251 S.C. 410, 162 S.E.2d 709.

Under this section [former Code 1962 Section 10‑2002] and former Code 1962 Section 10‑2003 [see now Section 15‑53‑30], a declaratory judgment action is available to have determined the validity or priority of mortgages covering the same property. Bank of Augusta v. Satcher Motor Co. (S.C. 1967) 249 S.C. 53, 152 S.E.2d 676. Declaratory Judgment 189

Where the plaintiff had available actions for claim and delivery and to foreclose its chattel mortgage, nothing under the facts alleged, when tested by demurrer, indicated that they would be more effective or appropriate to settle the controversy between the parties than an action for declaratory judgment. Bank of Augusta v. Satcher Motor Co. (S.C. 1967) 249 S.C. 53, 152 S.E.2d 676. Declaratory Judgment 189

12. Federal courts

South Carolina Uniform Declaratory Judgments Act law did not govern determination as to whether insured contractor was nominal party in insurer’s action removed from South Carolina seeking declaratory judgment regarding each insurers’ respective share of settlement in underlying action and equitable contribution from other insurers to extent that plaintiff was found to have overpaid its share, since federal court treated state court declaratory action that was removed as invoking the Federal Declaratory Judgment Act. Hartford Fire Ins. Co. v. Harleysville Mut. Ins. Co. (C.A.4 (S.C.) 2013) 736 F.3d 255. Federal Courts 3045(4); Removal Of Cases 95; Removal Of Cases 114

13. Review

Inmate, who sought declaratory judgment that his kidnapping convictions did not include a criminal sexual offense and would not require him to register as a sex offender, had been denied a meaningful opportunity to be heard on whether his kidnapping offenses were sexual in nature, by circuit court’s and court of appeals’ failing to address the first declaration in their respective order and opinion, and only addressing inmate’s second declaration, warranting remand. Section 23‑3‑430. Thompson v. State (S.C. 2016) 415 S.C. 560, 785 S.E.2d 189. Declaratory Judgment 84; Declaratory Judgment 395; Mental Health 433(2)

**SECTION 15‑53‑30.** Determination of questions under deed, will, written contract, statute, municipal ordinance, contract or franchise.

 Any person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

HISTORY: 1962 Code Section 10‑2003; 1952 Code Section 10‑2003; 1948 (45) 2014.

CROSS REFERENCES

Declaratory judgments under South Carolina Rules of Civil Procedure, see Rule 57, SCRCP.

Estates and construction of documents creating estates, see Sections 27‑5‑10 et seq.

Legislative enactments, in general, see Sections 2‑7‑10 et seq., 2‑7‑210 et seq., 2‑7‑410 et seq.

Statutes of frauds, see Sections 32‑3‑10 and 32‑3‑20.

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17 ALR 5th 195 , Right of One Governmental Subdivision to Challenge Annexation Proceedings by Another Such Subdivision.

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S.C. Jur. Declaratory Judgments Section 5, Nature of Relief.

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LAW REVIEW AND JOURNAL COMMENTARIES

Practice and Procedure: Declaratory Judgment. 23 S.C. L. Rev. 620.

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1. In general

County administrators and registers of deeds were not entitled to declaratory relief under the Uniform Declaratory Judgment Act against Mortgage Electronic Registrations Systems, Inc. (MERS) and others arising out of the alleged recording of fraudulent documents in the county property records; none of the legal rights of the public officials were being abridged or would be abridged. Kubic v. MERSCORP Holdings, Inc. (S.C. 2016) 416 S.C. 161, 785 S.E.2d 595, rehearing denied. Declaratory Judgment 209

Quoted in Pharr v. Canal Ins. Co. (S.C. 1958) 233 S.C. 266, 104 S.E.2d 394.

Stated in Bank for Sav. and Trusts v. Towe (S.C. 1957) 231 S.C. 268, 98 S.E.2d 539.

Cited in Padgett v. Black (S.C. 1956) 229 S.C. 142, 92 S.E.2d 153.

An action brought under this section [former Code 1962 Section 10‑2003] to determine the validity of a statute must be brought by a person having a substantial interest in the subject matter of the litigation, and to establish such an interest, he must show that he will be directly affected by the enforcement of the statute questioned. Lee v. Clark (S.C. 1953) 224 S.C. 138, 77 S.E.2d 485. Declaratory Judgment 123; Declaratory Judgment 292; Declaratory Judgment 341.1

2. Sufficiency of complaint

To state a cause of action under South Carolina’s Declaratory Judgment Act, a party must demonstrate a justiciable controversy. Consignment Sales, LLC v. Tucker Oil Co. (S.C.App. 2010) 391 S.C. 266, 705 S.E.2d 73, rehearing dismissed. Declaratory Judgment 61

Where complaint stated facts from which it appeared that a justiciable controversy existed between parties as to rights under a will, question presented on demurrer was not whether construction advanced by respondents was correct, but whether they were entitled to have will construed. Foster v. Foster (S.C. 1954) 226 S.C. 130, 83 S.E.2d 752. Declaratory Judgment 313

One whose civil or political rights are directly affected by a statute may have the necessary interest to challenge the validity of the statute by a declaratory judgment proceeding. Lee v. Clark (S.C. 1953) 224 S.C. 138, 77 S.E.2d 485. Declaratory Judgment 292

A complaint for declaratory relief is legally sufficient if it sets forth facts showing the existence of an actual controversy relating to legal rights and duties of the respective parties under a contract and requests that these rights and duties be adjudged by the court, construing a former similar provision (former 1942 Code, Section 660). Southern Ry. Co. v. Order of Ry. Conductors of America (S.C. 1947) 210 S.C. 121, 41 S.E.2d 774. Declaratory Judgment 313

3. Wills

In declaratory judgment action to construe will, testimony of life tenant as to testator’s intent that life tenant’s adopted son inherit under the will was admissible in evidence under the dead man’s statute where testamentary language, although not specifically naming adopted grandson, left remainder to children living at time of death. Estes v. Ruff (S.C. 1976) 267 S.C. 396, 228 S.E.2d 671. Witnesses 172

Allegation that a will was revoked by a subsequent marriage under 1962 Code Section 19‑222 [1976 Code Section 21‑7‑220] does not present an issue of construction, but goes to the validity of the entire will, which matter was within the jurisdiction of the Probate Court whose judgment became final, and not subject to collateral attack under the guise of a declaratory action under this section. Jackson v. Cannon (S.C. 1976) 266 S.C. 198, 222 S.E.2d 494. Wills 698

An action to construe the meaning, intent and effect of a will is properly brought under the Declaratory Judgments Act. Henry v. Cottingham (S.C. 1969) 253 S.C. 286, 170 S.E.2d 387.

The Declaratory Judgments Act cannot be used as a vehicle for the nullification of a will nor a substitute or alternate method of contesting the validity of a will. Henry v. Cottingham (S.C. 1969) 253 S.C. 286, 170 S.E.2d 387. Declaratory Judgment 241

When a will has been admitted to probate in either common or solemn form, no issue as to the validity of the will itself is left for determination under the Declaratory Judgments Act, but such probate does not preclude inquiry into the validity or effect of any or all of the provisions of the will because these are matters for construction. Henry v. Cottingham (S.C. 1969) 253 S.C. 286, 170 S.E.2d 387. Declaratory Judgment 241; Wills 427; Wills 428

An action to construe meaning, intent and effect of a will is authorized by this section [Code 1962 Section 10‑2003]. Rikard v. Miller (S.C. 1957) 231 S.C. 98, 97 S.E.2d 257.

Suit for declaratory judgment to determine rights under will held to present actual controversy and not to be premature. Waller v. Waller (S.C. 1951) 220 S.C. 212, 66 S.E.2d 876.

4. Statutes and municipal ordinances

Testimony by county administrators that went beyond a narrow inquiry related to the specific contents of written determinations to use design‑build source for projects rather than traditional competitive sealed bidding procurement was material and probative, in trial of taxpayer’s action against county seeking declaration that county failed to comply with ordinances governing procurement of construction services on three design‑build public works projects; testimony was an important part of the trial court’s process of educating itself, as details of government procurement were unfamiliar territory to all but a few. Sloan v. Greenville County (S.C.App. 2003) 356 S.C. 531, 590 S.E.2d 338. Counties 196(7)

Declaratory judgment action brought by taxpayer against county, alleging county failed to comply with ordinances governing procurement of construction services on three design‑build public works projects, remained a justiciable controversy despite being rendered moot due to fact that all three projects were completed prior to beginning of trial, as issue of expenditure of public funds pursuant to a competitive bidding statute was of immense public importance, issue was capable of repetition, and it was improbable that similar challenges could navigate the litigation process before the question of became purely an academic one. Sloan v. Greenville County (S.C.App. 2003) 356 S.C. 531, 590 S.E.2d 338. Declaratory Judgment 209

A municipality and various taxpayers had standing to bring a declaratory judgment action to determine the validity of an ordinance initiated by registered voters and alleged by the municipality to be facially defective; since there was a question as to whether the municipality had a mandatory obligation to submit an invalid ordinance to the electorate, the town was entitled to a declaration of its legal rights. Town of Hilton Head Island v. Coalition of Expressway Opponents (S.C. 1992) 307 S.C. 449, 415 S.E.2d 801.

A landowner whose neighbor purchased public land from a municipality at a public sale, which was adjacent to his own and which he himself desired to purchase, did not have standing to bring a declaratory judgment action seeking to invalidate the municipal ordinance enacted for the purpose of authorizing the sale where the landowner was not a resident, landowner, or taxpayer of the municipality and was not a bidder at the sale, and he based his standing on the grounds that (1) he desired to purchase the property in question; and (2) he was a “feuding neighbor” of the purchaser, neither of which are grounds for a cognizable legal interest. Whittle v. Jeffcoat (S.C.App. 1992) 307 S.C. 90, 413 S.E.2d 865.

Residents of a subdivision which was annexed pursuant to Section 5‑3‑150(3) did not have standing under Section 5‑3‑150(3) or Section 15‑53‑30 to challenge the annexation, where none of the residents owned real property in the annexed portion of the subdivision. Additionally, the matter was not of such public importance as to confer standing where, though the residents challenged the method of annexation in seeking to have it declared void, they raised no claim that it was unauthorized by law. Quinn v. City of Columbia (S.C. 1991) 303 S.C. 405, 401 S.E.2d 165.

Declaratory judgment actions are especially appropriate where the meaning of a statute is in question. In addition, declaratory judgment actions are appropriate where enabling legislation contains no special review provisions. Ott v. Tindal (S.C. 1989) 297 S.C. 395, 377 S.E.2d 303.

An action by doctors against a hospital involving construction and constitutionality of legislative enactments, validity of county hospital regulations, and the propriety of certain charges to charity was a justiciable controversy requiring for its determination a hearing on the merits. Plenge v. Russell (S.C. 1960) 236 S.C. 473, 115 S.E.2d 177.

A taxpayer of a school district and a patron of the schools therein had sufficient interest in the controversy to bring an action under this section [former Code 1962 Section 10‑2003] to determine the validity of a statute dealing with the election of school trustees and to have the election of trustees pursuant to such statute declared null and void. Lee v. Clark (S.C. 1953) 224 S.C. 138, 77 S.E.2d 485. Declaratory Judgment 292

A taxpayer could not maintain a suit for a declaratory judgment to determine the validity of an act fixing fees for issuance of marriage licenses in a certain county and the rights of other persons in funds collected under the act, where he was not shown to be injuriously affected by the act. Manning v. Dillon County (S.C. 1953) 223 S.C. 240, 75 S.E.2d 250.

5. Workers’ compensation

Ordinarily, the courts should refuse to make a declaration of rights with respect to whether or not an injured employee is entitled to workers’ compensation, since the boards established for that purpose have exclusive jurisdiction. Williams Furniture Corp. v. Southern Coatings & Chemical Co. (S.C. 1949) 216 S.C. 1, 56 S.E.2d 576.

Under the provisions of this section [former Code 1962 Section 10‑2003], the court will not determine whether a company was included under the Workers’ Compensation Act where proceedings for claims by its employees had been instituted with the Industrial Commission. Williams Furniture Corp. v. Southern Coatings & Chemical Co. (S.C. 1949) 216 S.C. 1, 56 S.E.2d 576.

6. Contracts

In an action for a declaration of rights under a written contract by a railroad against a railroad union, the union contended that the State court was without jurisdiction over the action because the terms of the contract were without the scope of the Railway Labor Act. It was held on appeal to the United States Supreme Court that the South Carolina State court was without power to interpret such agreement between the railroad and its conductors where, as here, the dispute arising under the terms of the agreement was subsequently referred to the National Railroad Adjustment Board, and that, therefore, the declaratory judgment granted by the State court should be reversed. Order of Ry. Conductors of America v. Southern Ry. Co. (U.S.S.C. 1950) 70 S.Ct. 585, 339 U.S. 255, 94 L.Ed. 811.

The Declaratory Judgment Act provisions that provided courts of record the power to declare rights, status, and other legal relations, and to construe contract provisions, did not grant the circuit court the authority to hear ex‑husband’s case with regard to a divorce settlement agreement that had been incorporated into a family court divorce decree, regardless of whether or not the family court record was sealed; the agreement was part of the parties’ earlier divorce proceeding, over which the family court had exclusive jurisdiction, and by merging the agreement into the family court order, the family court transformed it from a contract between the parties into a decree of the court. Hammer v. Hammer (S.C.App. 2012) 399 S.C. 100, 730 S.E.2d 874, rehearing denied. Divorce 940

Assignor of gasoline supply contracts was an interested party under its contracts with assignor, and thus, had standing to maintain a declaratory judgment action in which it sought a declaration that assignee had an obligation to pay assignor a portion of net profits generated by supply contracts assigned and procured by assignor for the term of the contracts. Consignment Sales, LLC v. Tucker Oil Co. (S.C.App. 2010) 391 S.C. 266, 705 S.E.2d 73, rehearing dismissed. Declaratory Judgment 301

Because landowners and prospective purchaser of the land had pled that they had a contract with the town, they were entitled to seek declaratory relief under Declaratory Judgments Act to determine the town’s contractual duty to provide water and wastewater services to the land, which was outside the town’s territorial limits. HHHunt Corp. v. Town of Lexington (S.C.App. 2010) 389 S.C. 623, 699 S.E.2d 699. Declaratory Judgment 209; Declaratory Judgment 300

When the purpose of the underlying dispute is to determine whether coverage exists under an insurance policy, a declaratory judgment action is one at law. Auto‑Owners Ins. Co. v. Hamin (S.C.App. 2006) 368 S.C. 536, 629 S.E.2d 683, rehearing denied, certiorari granted, certiorari dismissed. Declaratory Judgment 253

The insured presented a justiciable controversy where her complaint sought a declaration that her insurance policy included underinsured motorist coverage, although the insured had not yet obtained a judgment in excess of the at‑fault driver’s liability limits and the insurance carrier denied coverage. Graham v. State Farm Mut. Auto. Ins. Co. (S.C. 1995) 319 S.C. 69, 459 S.E.2d 844.

The evidence was sufficient to support a trial court’s finding that an insurance company was obligated to provide garage liability coverage to an insured on February 14, 1982 where the insurance company entered into an agency agreement whereby the agent was authorized “to receive and accept proposals for insurance including binding authority, covering such...risks as [the insurance company] may...authorize to be insured,” garage liability was a risk that the insurance company had authorized the agent to insure, the insured went to the agent on November 20, 1981 and applied for garage liability insurance coverage, the insured paid the agent $200 “to put a policy into effect,” the agent’s office manager and vice‑president gave the insured a receipt and told him that the insurance company insured him from that “moment on,” and the insured walked out of the agent’s office “thinking [that he] was insured.” Noisette v. Ismail (S.C.App. 1989) 299 S.C. 243, 384 S.E.2d 310, reversed in part 304 S.C. 56, 403 S.E.2d 122.

A trial court’s determination that an individual was not an “employee” of a county, and therefore was not entitled to file a grievance under the county’s grievance procedure, was supported by the evidence where: (1) the individual was recruited and hired by the township’s director; (2) although the individual received his pay from the county, the county was reimbursed by the township pursuant to an agreement between the county and the township; and (3) the township’s director had the express power to terminate the individual’s employment and had control and supervision over his work performance. Felts v. Richland County (S.C.App. 1989) 299 S.C. 214, 383 S.E.2d 261, affirmed 303 S.C. 354, 400 S.E.2d 781. Counties 67; Public Employment 4

Under Code former 1962 Section 10‑2002 [see now Section 15‑53‑20]and this section, a declaratory judgment action is available to have determined the validity or priority of mortgages covering the same property. Bank of Augusta v. Satcher Motor Co. (S.C. 1967) 249 S.C. 53, 152 S.E.2d 676. Declaratory Judgment 189

A controversy between a patent holder and a licensee of the patent as to the construction of licensing contracts presented a proper case for declaratory relief. Taco Corp. v. Hudson (S.C. 1957) 231 S.C. 553, 99 S.E.2d 419, 114 U.S.P.Q. 363. Declaratory Judgment 235

7. Title to property

Landowner’s declaratory judgment action to obtain declaration of fee simple title to a tract of tidelands was a law case tried alone by a master‑in‑equity with direct appeal to the Supreme Court; as such, review by the Court of Appeals would be limited to correcting errors of law, and master’s factual findings would be affirmed if there was any evidence in the record that reasonably supported them. Lowcountry Open Land Trust v. State (S.C.App. 2001) 347 S.C. 96, 552 S.E.2d 778. Declaratory Judgment 253; Declaratory Judgment 392.1; Declaratory Judgment 393

8. Intent

In construing a contract, the primary objective is to ascertain and give effect to the intention of the parties. Southern Atlantic Financial Services, Inc. v. Middleton (S.C.App. 2002) 349 S.C. 77, 562 S.E.2d 482, rehearing denied, certiorari denied, certiorari granted, affirmed as modified 356 S.C. 444, 590 S.E.2d 27. Contracts 147(1)

9. “May”

Notice of default provision in promissory note stating that payee “may” send written notice did not clearly and unequivocally articulate whether note maker was entitled to notice of default and right to cure before payee could pursue acceleration and foreclosure, and thus promissory note was ambiguous, and issues of fact existed as to intent of parties. Southern Atlantic Financial Services, Inc. v. Middleton (S.C.App. 2002) 349 S.C. 77, 562 S.E.2d 482, rehearing denied, certiorari denied, certiorari granted, affirmed as modified 356 S.C. 444, 590 S.E.2d 27. Mortgages And Deeds Of Trust 1721

10. Acceleration clauses

Acceleration of an installment note is a harsh remedy, and because of the severity of the circumstances, a payee’s right to accelerate should therefore be clearly and unequivocally articulated within the agreement. Southern Atlantic Financial Services, Inc. v. Middleton (S.C.App. 2002) 349 S.C. 77, 562 S.E.2d 482, rehearing denied, certiorari denied, certiorari granted, affirmed as modified 356 S.C. 444, 590 S.E.2d 27. Bills And Notes 37; Bills And Notes 129(2)

11. Review

Issue of whether Miller two‑prong test of intent applied was not preserved for appellate review in insurer’s declaratory judgment action, which asserted that intentional‑loss exclusion in homeowners’ insurance policy precluded coverage for fire that was started in house by policyholder’s sister; trial court never explicitly ruled on second prong of test, and parties neither argued Miller test in their briefs nor raised issue on appeal until their reply argument before Court of Appeals. Auto‑Owners Ins. Co. v. Hamin (S.C.App. 2006) 368 S.C. 536, 629 S.E.2d 683, rehearing denied, certiorari granted, certiorari dismissed. Declaratory Judgment 392.1

A “preponderance of the evidence” review standard, rather than an “any evidence” standard of review, applied in county’s and taxpayer’s appeal of trial court’s findings in taxpayer’s action against county seeking declaration that county failed to comply with ordinances governing procurement of construction services on three design‑build public works projects; main purpose of action was to enjoin county from awarding contracts in a manner that taxpayer claimed was ultra vires rather than to construe written contracts, and was appropriately characterized as equitable. Sloan v. Greenville County (S.C.App. 2003) 356 S.C. 531, 590 S.E.2d 338. Declaratory Judgment 393

**SECTION 15‑53‑40.** Construction of contract before or after breach.

 A contract may be construed either before or after there has been a breach thereof.

HISTORY: 1962 Code Section 10‑2004; 1952 Code Section 10‑2004; 1948 (45) 2014.

CROSS REFERENCES

As to declaratory judgments under South Carolina Rules of Civil Procedure, see Rule 57, SCRCP.

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LAW REVIEW AND JOURNAL COMMENTARIES

Practice and Procedure: Declaratory Judgment. 23 S.C. L. Rev. 620.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Lumbermens Mut. Cas. Co. v. Quick (D.C.S.C. 1966) 257 F.Supp. 252.

Although an insurance contract may be construed either before or after a breach occurs, there must be a real or actual controversy between the litigants at the time of the institution of the declaratory judgment action. Auto‑Owners Ins. Co. v. Rhodes (S.C. 2013) 405 S.C. 584, 748 S.E.2d 781. Declaratory Judgment 161

Determination regarding insurance coverage for property damage, under commercial general liability (CGL) policy, based on physical injury to landowner’s real estate, costs to remove billboard signs installed by tort defendant, and landowner’s loss of use of signs, was not procedurally proper in declaratory judgment action, as resolution of issue was based on questions of fact that would be presented to jury on retrial, rather than issues of law, after verdict in underlying tort action had been reversed. Auto‑Owners Ins. Co. v. Rhodes (S.C. 2013) 405 S.C. 584, 748 S.E.2d 781. Declaratory Judgment 10; Declaratory Judgment 165

Doctrine of judicial estoppel did not apply to bar landowner from arguing in declaratory judgment action that owner/officer of insured corporation was acting on behalf of corporation and therefore, he qualified as an insured under the commercial general liability (CGL) policy, even though landowner conversely argued in underlying tort action that owner/officer was subject to individual liability for alleged negligent design, fabrication, and erection of outdoor advertising signs, as there was no privity of contract between landowner and insurer, and decision in the tort action had been reversed and, thus, the proceeding was vacated. Auto‑Owners Ins. Co. v. Rhodes (S.C. 2013) 405 S.C. 584, 748 S.E.2d 781. Estoppel 68(2)

Justiciable controversy was sufficient to implicate the Declaratory Judgment Act to determine whether commercial general liability (CGL) insurer had a duty to indemnify its insured, a sign company, despite reversal of judgment against insured in underlying tort action brought against insured by landowner for negligent design, fabrication, and erection of outdoor advertising signs; insured demanded insurer defend and indemnify claim, insurer denied portions of claim, definite and concrete issues existed regarding adverse interests of insurer and insured with respect to liability under the CGL policy, and the tort action was still pending. Auto‑Owners Ins. Co. v. Rhodes (S.C. 2013) 405 S.C. 584, 748 S.E.2d 781. Declaratory Judgment 165

If contract’s language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and the contract’s language determines the instrument’s force and effect. Southern Atlantic Financial Services, Inc. v. Middleton (S.C.App. 2002) 349 S.C. 77, 562 S.E.2d 482, rehearing denied, certiorari denied, certiorari granted, affirmed as modified 356 S.C. 444, 590 S.E.2d 27. Contracts 143(1)

Quoted Pharr v. Canal Ins. Co. (S.C. 1958) 233 S.C. 266, 104 S.E.2d 394.

**SECTION 15‑53‑50.** Rights under trust or estate of decedent, infant, lunatic or insolvent.

 Any person interested as or through an executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin or cestui que trust in the administration of a trust or of the estate of a decedent, infant, lunatic or insolvent may have a declaration of rights or legal relations in respect thereto:

 (1) To ascertain any class of creditors, devisees, legatees, heirs, next of kin or others;

 (2) To direct the executors, administrators or trustees to do or abstain from doing any particular act in their fiduciary capacity; or

 (3) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

HISTORY: 1962 Code Section 10‑2005; 1952 Code Section 10‑2005; 1948 (45) 2014.

CROSS REFERENCES

Appointment of guardian ad litem under South Carolina Rules of Civil Procedure, see Rule 17, SCRCP.

Declaratory judgments under South Carolina Rules of Civil Procedure, see Rule 57, SCRCP.

Detention, confinement, and transfer of confined persons, see Sections 44‑23‑210 et seq.

Guardian ad litem and decree against infants, see Probate Ct Rules of Practice, Rule 3.

Release, discharge, and reconfinement of mentally ill persons, see Sections 44‑17‑810 et seq.

LIBRARY REFERENCES

Westlaw Key Number Search: 118Ak141.

Declaratory Judgment 141.

C.J.S. Declaratory Judgments Section 56.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Declaratory Judgments Section 3, Jurisdiction.

S.C. Jur. Declaratory Judgments Section 5, Nature of Relief.

S.C. Jur. Wills Section 132, Declaratory Judgment.

Treatises and Practice Aids

Bogert ‑ the Law of Trusts and Trustees Section 559, Court Control‑Advice as to Extent of Powers.

LAW REVIEW AND JOURNAL COMMENTARIES

Practice and Procedure: Declaratory Judgment. 23 S.C. L. Rev. 620.

NOTES OF DECISIONS

In general 1

1. In general

Demurrer was properly granted where plaintiff seeking to invalidate will provision admitted in complaint that defendant was one and same person as legatee, whose name had been changed upon adoption, and therefore left no question for determination. Dismukes v. Carletta (S.C. 1977) 269 S.C. 110, 236 S.E.2d 421.

Stated in Bank for Sav. and Trusts v. Towe (S.C. 1957) 231 S.C. 268, 98 S.E.2d 539.

**SECTION 15‑53‑60.** Enumeration is no restriction on general powers.

 The enumeration in Sections 15‑53‑30 to 15‑53‑50 does not limit or restrict the exercise of the general powers conferred in Section 15‑53‑20 in any proceeding when declaratory relief is sought in which a judgment or decree will terminate the controversy or remove an uncertainty.

HISTORY: 1962 Code Section 10‑2006; 1952 Code Section 10‑2006; 1948 (45) 2014.

CROSS REFERENCES

Declaratory judgments under South Carolina Rules of Civil Procedure, see Rule 57, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 118Ak365.

Declaratory Judgment 365.

C.J.S. Declaratory Judgments Section 150.

LAW REVIEW AND JOURNAL COMMENTARIES

Practice and Procedure: Declaratory Judgment. 23 S.C. L. Rev. 620.

Attorney General’s Opinions

Municipalities may not use tax revenues to support local, non‑profit corporations as part of the GREAT TOWN program. 1976‑77 Op Atty Gen, No 77‑49, p 50.

**SECTION 15‑53‑70.** Declaratory judgment may be refused.

 The court may refuse to render or enter a declaratory judgment or decree when such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

HISTORY: 1962 Code Section 10‑2007; 1952 Code Section 10‑2007; 1948 (45) 2014.

CROSS REFERENCES

Declaratory judgments under South Carolina Rules of Civil Procedure, see Rule 57, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Searches: 118Ak365; 118Ak384.

Declaratory Judgment 365, 384.

C.J.S. Declaratory Judgments Sections 150, 157.

LAW REVIEW AND JOURNAL COMMENTARIES

Practice and Procedure: Declaratory Judgment. 23 S.C. L. Rev. 620.

NOTES OF DECISIONS

In general 1

Avoidance of piecemeal litigation 2

Test of complaint’s sufficiency; justiciable controversy 3

1. In general

As a general rule, courts will not entertain an action for declaratory judgment if there is pending, at the time the action is commenced, another action between the same parties in which the same issues presented in action for declaratory judgment can be adjudicated. Wessinger v. Rauch (S.C.App. 1986) 288 S.C. 157, 341 S.E.2d 643. Declaratory Judgment 45

The Declaratory Judgments Act itself contemplates that further litigation may ensue. Notios Corp. v. Hanvey (S.C. 1971) 256 S.C. 275, 182 S.E.2d 55.

It is always possible that after the granting of declaratory relief other contingencies and questions may arise. Notios Corp. v. Hanvey (S.C. 1971) 256 S.C. 275, 182 S.E.2d 55.

2. Avoidance of piecemeal litigation

Declaratory relief should not be accorded to try a controversy by piecemeal, or to try particular issues without settling the entire controversy. Williams Furniture Corp. v Southern Coatings & Chemical Co., 216 SC 1, 56 SE2d 576 (1949). Charleston & Western Carolina Ry. Co. v Joyce, 231 SC 493, 99 SE2d 187 (1957).

It could not be said that the court tried a case piecemeal where a contract was construed in the only respect deemed necessary by the parties, as was admitted by the pleadings. The dispute as to the meaning of a particular provision of the contract was the only issue for determination, and the defendant did not ask for any construction of any other provision. Charleston & W. C. Ry. Co. v. Joyce (S.C. 1957) 231 S.C. 493, 99 S.E.2d 187.

3. Test of complaint’s sufficiency; justiciable controversy

Judgement creditor’s declaratory judgment action seeking a writ of mandamus to compel sheriff to accept her non‑cash bid entered at a sheriff’s sale fell within exception to mootness doctrine, even though creditor withdrew her bid; issue of whether sheriff was required to accept non‑cash bid at a sheriff’s sale was capable of repetition, yet evaded review, and would affect the future conduct of parties and others attending public sales. Holden v. Cribb (S.C.App. 2002) 349 S.C. 132, 561 S.E.2d 634. Declaratory Judgment 209

Justiciable controversy permitting relief under state Declaratory Judgment Act was presented when atheist whose application to become notary public had been denied sought declaration that provisions of state constitution barring persons who deny existence of “Supreme Being” from holding public office violated federal constitution, even though such declaration would not terminate entire controversy, where Secretary of State’s office rejected application at least in part on basis of Supreme Being provisions and Governor testified that his office routinely “rubber stamped” notary applications which had been approved by Secretary of State’s office. Silverman v. Campbell (S.C. 1997) 326 S.C. 208, 486 S.E.2d 1. Declaratory Judgment 124.1

Where a bank erroneously paid a draft and sought a declaration of its rights, including a declaration that it was subrogated to the rights of either the drawer or the payee, an actual controversy existed sufficient to support a declaratory judgment action. Southern Bank and Trust Co. v. Harrison Sales Co., Inc. (S.C. 1985) 285 S.C. 50, 328 S.E.2d 66.

Where complaint seeking declaratory judgment is answered by demurrer, test of sufficiency is not whether complaint shows plaintiff is entitled to declaration of rights according to his theory, but whether he is entitled to declaration of rights at all. Dismukes v. Carletta (S.C. 1977) 269 S.C. 110, 236 S.E.2d 421. Declaratory Judgment 312.1

The complaint is not subject to demurrer for failure to state a cause of action for declaratory judgment if the facts alleged show the existence of a justiciable controversy between the parties. Notios Corp. v. Hanvey (S.C. 1971) 256 S.C. 275, 182 S.E.2d 55.

The general rule is that where plaintiff’s pleading, in an action for a declaratory judgment, sets forth an actual or justiciable controversy, or a bona fide justiciable controversy, it is not subject to demurrer, since it sets forth a cause of action. Notios Corp. v. Hanvey (S.C. 1971) 256 S.C. 275, 182 S.E.2d 55.

A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character. Notios Corp. v. Hanvey (S.C. 1971) 256 S.C. 275, 182 S.E.2d 55.

Where the question whether the trial court should enter a declaratory judgment, or refuse to do so on the ground that such would not terminate the uncertainty or controversy, was a question that would have to be determined upon the evidence, the contention that a demurrer to the complaint should have been sustained on the basis of this section [former Code 1962 Section 10‑2007] was rejected. Notios Corp. v. Hanvey (S.C. 1971) 256 S.C. 275, 182 S.E.2d 55.

The test of sufficiency of a complaint seeking declaratory judgment is not whether it shows that the plaintiff is entitled to a declaration of rights in accordance with his theory, but whether he is entitled to a declaration of rights at all. Hardwick v. Liberty Mut. Ins. Co. (S.C. 1963) 243 S.C. 162, 133 S.E.2d 71.

Where the complaint seeking a declaratory judgment sets forth a justiciable controversy, it is not subject to demurrer on the ground that it fails to state a cause of action. Hardwick v. Liberty Mut. Ins. Co. (S.C. 1963) 243 S.C. 162, 133 S.E.2d 71.

Even though the plaintiff is on the wrong side of the controversy, if he states the existence of a controversy which should be settled by the court under the declaratory judgment law, he has stated a cause of suit. Hardwick v. Liberty Mut. Ins. Co. (S.C. 1963) 243 S.C. 162, 133 S.E.2d 71.

**SECTION 15‑53‑80.** Parties.

 When declaratory relief is sought all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise the municipality shall be made a party and shall be entitled to be heard. If the statute, ordinance or franchise is alleged to be unconstitutional the Attorney General shall also be served with a copy of the proceeding and be entitled to be heard.

HISTORY: 1962 Code Section 10‑2008; 1952 Code Section 10‑2008; 1948 (45) 2014.

CROSS REFERENCES

Declaratory judgments under South Carolina Rules of Civil Procedure, see Rule 57, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Searches: 118Ak291 to 118Ak306.

Declaratory Judgment 291 to 306.

C.J.S. Declaratory Judgments Sections 123 to 135.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney General Section 16, Civil, Administrative and Special Proceedings.

S.C. Jur. Declaratory Judgments Section 5, Nature of Relief.

S.C. Jur. Equity Section 22, Declaratory Judgment.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual survey of South Carolina law, evidence. 42 S.C. L. Rev. 124 (Autumn 1990).

Practice and Procedure: Declaratory Judgment. 23 S.C. L. Rev. 620.

NOTES OF DECISIONS

In general 1

Necessary parties 2

Res judicata 3

1. In general

Applied in Lee v Clark, 224 SC 138, 77 SE2d 485 (1953). Bank for Savings & Trusts v Towe, 231 SC 268, 98 SE2d 539 (1957). Guimarin & Doan, Inc. v Georgetown Textile & Mfg. Co., 249 SC 561, 155 SE2d 618 (1967).

Cited in Dantzler v Callison, 230 SC 75, 94 SE2d 177 (1956), appeal dismissed in 352 US 939, 77 S Ct 263, 1 L Ed 2d 235 (1956). Rush v Thigpen, 231 SC 230, 98 SE2d 245 (1957).

County administrators and registers of deeds were not entitled to declaratory relief under the Uniform Declaratory Judgment Act against Mortgage Electronic Registrations Systems, Inc. (MERS) and others arising out of the alleged recording of fraudulent documents in the county property records; none of the legal rights of the public officials were being abridged or would be abridged. Kubic v. MERSCORP Holdings, Inc. (S.C. 2016) 416 S.C. 161, 785 S.E.2d 595, rehearing denied. Declaratory Judgment 209

The omission of a party who might be a proper party to the action does not render the complaint demurrable under Code 1962 Section 10‑642, unless that party is a necessary or indispensable one. Hardwick v. Liberty Mut. Ins. Co. (S.C. 1963) 243 S.C. 162, 133 S.E.2d 71. Parties 80(5); Parties 84(4)

2. Necessary parties

Distinction between necessary and proper parties apply. In considering a demurrer, the distinction between necessary and proper parties made in other cases should also apply in actions under the Uniform Declaratory Judgments Act. Hardwick v. Liberty Mut. Ins. Co. (S.C. 1963) 243 S.C. 162, 133 S.E.2d 71.

Parties are not necessary to a complete determination of a controversy unless they have rights which must be ascertained and settled before rights of parties to the suit can be determined. Hardwick v. Liberty Mut. Ins. Co. (S.C. 1963) 243 S.C. 162, 133 S.E.2d 71.

3. Res judicata

A trial court’s reliance upon a declaratory judgment action in ruling on a motion for summary judgment in a wrongful death action was prohibited by Section 15‑53‑80 where the plaintiff had not been a party to the declaratory judgment action; the use of the declaratory judgment, which held that an insurance policy excluded coverage for a city fire truck, was extremely prejudicial to the plaintiff because she could not maintain an action against the city unless it had insurance coverage. Rowe v. City of Columbia (S.C. 1989) 300 S.C. 447, 388 S.E.2d 789.

Where the insurer obtained judgment against the insured, declaring that the insurer was not legally obligated under its liability policy issued to insured because, after the accident, the latter failed to cooperate as required by the insurance contract, and persons injured by the insured were not made parties to the action for a declaratory judgment, such persons were not bound by the judgment, and it was not res judicata in their actions against insurer brought after failure of insured to pay their judgments recovered against him. Pharr v. Canal Ins. Co. (S.C. 1958) 233 S.C. 266, 104 S.E.2d 394.

**SECTION 15‑53‑90.** Determination of facts; jury trials.

 When a proceeding under this chapter involves the determination of an issue of fact such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending. All existing rights to jury trials are hereby preserved.

HISTORY: 1962 Code Section 10‑2009; 1952 Code Section 10‑2009; 1948 (45) 2014.

CROSS REFERENCES

Declaratory judgments under South Carolina Rules of Civil Procedure, see Rule 57, SCRCP.

General provisions for juries and jurors in Circuit Court, see Sections 14‑7‑10 et seq.

Issues in equity cases under South Carolina Rules of Civil Procedure, see Rule 39, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Searches: 118Ak365 to 118Ak369; 230k14(12.5).

Declaratory Judgment 365 to 369.

Jury 14(12.5).

C.J.S. Declaratory Judgments Sections 150 to 154.

C.J.S. Juries Section 52.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Declaratory Judgments Section 5, Nature of Relief.

LAW REVIEW AND JOURNAL COMMENTARIES

Practice and Procedure: Declaratory Judgment. 23 S.C. L. Rev. 620.

NOTES OF DECISIONS

In general 1

1. In general

The Declaratory Judgment Act provisions that provided courts of record the power to declare rights, status, and other legal relations, and to construe contract provisions, did not grant the circuit court the authority to hear ex‑husband’s case with regard to a divorce settlement agreement that had been incorporated into a family court divorce decree, regardless of whether or not the family court record was sealed; the agreement was part of the parties’ earlier divorce proceeding, over which the family court had exclusive jurisdiction, and by merging the agreement into the family court order, the family court transformed it from a contract between the parties into a decree of the court. Hammer v. Hammer (S.C.App. 2012) 399 S.C. 100, 730 S.E.2d 874, rehearing denied. Divorce 940

Where, in action for declaratory judgment to determine whether lease gave tenant right to operate dinner theater on premises, landlord’s introducing counterclaim introduced no right of jury trial into action basically equitable in nature. Redwood Food Corp. v. Baker (S.C. 1977) 269 S.C. 528, 238 S.E.2d 214.

The right to jury trial of issues of fact is preserved by this section [former Code 1962 Section 10‑2009]. Guimarin & Doan, Inc. v. Georgetown Textile & Mfg. Co. (S.C. 1967) 249 S.C. 561, 155 S.E.2d 618.

Where the issues are legal in nature, so that both parties would have a right to a jury trial, one party may not, by invoking declaratory procedure, deprive another party of his constitutional right to a jury trial. Legette v. Smith (S.C. 1955) 226 S.C. 403, 85 S.E.2d 576.

An issue that is essentially one at law is not transformed into an equitable one by virtue of the fact that declaratory, rather than investitive, relief is sought. Legette v. Smith (S.C. 1955) 226 S.C. 403, 85 S.E.2d 576. Declaratory Judgment 253

**SECTION 15‑53‑100.** Costs.

 In any proceeding under this chapter the court may make such award of costs as may seem equitable and just.

HISTORY: 1962 Code Section 10‑2010; 1952 Code Section 10‑2010; 1948 (45) 2014.

CROSS REFERENCES

Costs, generally, see Sections 15‑37‑10 et seq.

Declaratory judgments under South Carolina Rules of Civil Procedure, see Rule 57, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Searches: 102k2; 102k194.40.

Costs 2, 194.40.

C.J.S. Costs Sections 2 to 3, 8 to 9, 125.

C.J.S. Costs Sections 2 to 3, 8 to 9, 125.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Declaratory Judgments Section 5, Nature of Relief.

LAW REVIEW AND JOURNAL COMMENTARIES

Practice and Procedure: Declaratory Judgment. 23 S.C. L. Rev. 620.

NOTES OF DECISIONS

In general 1

1. In general

On appeal of trial court’s denial of developers’ request for attorney’s fees, developers failed to preserve for appeal their claim that section of development declaration addressing attorney’s fees entitled them to an award of fees based on homeowners’ attempts to gain control of homeowner’s association, dictate and limit the use of development amenities, and prevent future phases of development, and their claim for entitlement to attorney’s fees pursuant to the Declaratory Judgment Act; developers failed to present the arguments raised on appeal to the trial court. Cullen v. McNeal (S.C.App. 2010) 390 S.C. 470, 702 S.E.2d 378, rehearing denied, certification granted, certiorari dismissed as improvidently granted 411 S.C. 270, 768 S.E.2d 401. Appeal and Error 226(2)

A trial court may award costs in declaratory judgment actions as may seem equitable and just. South Carolina Elec. & Gas Co. v. Hartough (S.C.App. 2007) 375 S.C. 541, 654 S.E.2d 87, rehearing denied, certiorari denied. Costs 16.5

Contract for option to purchase land, permitting any prevailing party to seek attorney fees in an action to enforce any right under the contract, as well as optionee’s pleadings that requested attorney fees, sufficiently apprised optionor that optionee would be seeking a recovery of fees if successful in dispute over validity of option, even if optionee did not specifically plead the contract as the basis for its claim for attorney fees. South Carolina Elec. & Gas Co. v. Hartough (S.C.App. 2007) 375 S.C. 541, 654 S.E.2d 87, rehearing denied, certiorari denied. Costs 198

The fact that the same issues are presented by way of a declaratory judgment proceeding should not alter the obligation to pay attorneys’ fees under former Code 1962 Section 20‑112 [see now Section 20‑3‑120], if the court deems this appropriate. Darden v. Witham (S.C. 1972) 258 S.C. 380, 188 S.E.2d 776.

**SECTION 15‑53‑110.** Review of declaratory judgments.

 All orders, judgments and decrees under this chapter may be reviewed as other orders, judgments and decrees.

HISTORY: 1962 Code Section 10‑2011; 1952 Code Section 10‑2011; 1948 (45) 2014.

CROSS REFERENCES

Appeals to Supreme Court, see Sections 18‑9‑10 et seq.

Declaratory judgments under South Carolina Rules of Civil Procedure, see Rule 57, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Searches: 118Ak392.1 to 118Ak395.

Declaratory Judgment 392.1 to 395.

C.J.S. Declaratory Judgments Sections 160 to 162.

LAW REVIEW AND JOURNAL COMMENTARIES

Practice and Procedure: Declaratory Judgment. 23 S.C. L. Rev. 620.

The Scope of Judicial Review: A Continuing Dialogue. 31 S.C. L. Rev. 171.

NOTES OF DECISIONS

In general 1

1. In general

Landowner’s declaratory judgment action to obtain declaration of fee simple title to a tract of tidelands was a law case tried alone by a master‑in‑equity with direct appeal to the Supreme Court; as such, review by the Court of Appeals would be limited to correcting errors of law, and master’s factual findings would be affirmed if there was any evidence in the record that reasonably supported them. Lowcountry Open Land Trust v. State (S.C.App. 2001) 347 S.C. 96, 552 S.E.2d 778. Declaratory Judgment 253; Declaratory Judgment 392.1; Declaratory Judgment 393

**SECTION 15‑53‑120.** Granting of further relief based on declaratory judgment.

 Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree to show cause why further relief should not be granted forthwith.

HISTORY: 1962 Code Section 10‑2012; 1952 Code Section 10‑2012; 1948 (45) 2014.

CROSS REFERENCES

Declaratory judgments under South Carolina Rules of Civil Procedure, see Rule 57, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 118Ak391.

Declaratory Judgment 391.

C.J.S. Declaratory Judgments Section 159.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Declaratory Judgments Section 3, Jurisdiction.

S.C. Jur. Declaratory Judgments Section 13, Standard on Appeal.

LAW REVIEW AND JOURNAL COMMENTARIES

Practice and Procedure: Declaratory Judgment. 23 S.C. L. Rev. 620.

NOTES OF DECISIONS

In general 1

1. In general

Insurer, by bringing action in federal court for declaratory judgment that it need not defend or pay judgments against its insured, ignored Code 1962 Sections 10‑2002 and 10‑2012 [Code 1976 Sections 15‑53‑20 and 15‑53‑120], which would have given insurer an opportunity to bring an action for declaratory judgment and other relief in South Carolina courts. Independent Fire Ins. Co. v. Huggins (D.C.S.C. 1975) 404 F.Supp. 865.

Under the provisions of this section [former Code 1962 Section 10‑2012], a court, in a proceeding for declaratory relief, may grant consequential or incidental relief, that is, it may enter a judgment granting both declaratory and coercive relief, where the proper grounds for such relief appear from the pleadings and proof. Bank of Augusta v. Satcher Motor Co. (S.C. 1967) 249 S.C. 53, 152 S.E.2d 676.

Stated in Bank for Sav. and Trusts v. Towe (S.C. 1957) 231 S.C. 268, 98 S.E.2d 539.

**SECTION 15‑53‑130.** Chapter shall be construed liberally.

 This chapter is declared to be remedial. Its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations. It is to be liberally construed and administered.

HISTORY: 1962 Code Section 10‑2013; 1952 Code Section 10‑2013; 1948 (45) 2014.

CROSS REFERENCES

Declaratory judgments under South Carolina Rules of Civil Procedure, see Rule 57, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 118Ak26.

Declaratory Judgment 26.

C.J.S. Declaratory Judgments Section 10.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Declaratory Judgments Section 5, Nature of Relief.

LAW REVIEW AND JOURNAL COMMENTARIES

Practice and Procedure: Declaratory Judgment. 23 S.C. L. Rev. 620.

NOTES OF DECISIONS

In general 1

1. In general

The declaratory judgment statute should be liberally construed to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships without awaiting a violation of the rights or a disturbance of the relationships. Power v McNair, 255 SC 150, 177 SE2d 551 (1970). Government Employees Ins. Co. v Melton, 357 F Supp 416 (DC 1972).

The Uniform Declaratory Judgments Act is to be liberally construed and administered to achieve its intended purpose to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations. Auto‑Owners Ins. Co. v. Rhodes (S.C. 2013) 405 S.C. 584, 748 S.E.2d 781. Declaratory Judgment 2; Declaratory Judgment 26

Liberality in the construction and administration of the Declaratory Judgments Act is expressly enjoined by this section [Code 1962 Section 10‑2013]. Guimarin & Doan, Inc. v. Georgetown Textile & Mfg. Co. (S.C. 1967) 249 S.C. 561, 155 S.E.2d 618.

Stated in Bank for Sav. and Trusts v. Towe (S.C. 1957) 231 S.C. 268, 98 S.E.2d 539.

**SECTION 15‑53‑140.** Chapter intended to make uniform the laws of the states.

 This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact substantially identical legislation and to harmonize, as far as possible, with Federal laws and regulations on the subject of declaratory judgments and decrees.

HISTORY: 1962 Code Section 10‑2014; 1952 Code Section 10‑2014; 1948 (45) 2014.

CROSS REFERENCES

Declaratory judgments under South Carolina Rules of Civil Procedure, see Rule 57, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 118Ak23.1.

Declaratory Judgment 23.1.

C.J.S. Declaratory Judgments Section 10.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Declaratory Judgments Section 3, Jurisdiction.

S.C. Jur. Declaratory Judgments Section 5, Nature of Relief.

S.C. Jur. Declaratory Judgments Section 10, Comparison With State Practice.

S.C. Jur. Equity Section 22, Declaratory Judgment.

S.C. Jur. South Carolina Rules of Civil Procedure Section 57.0, Rule 57. Declaratory Judgments.

LAW REVIEW AND JOURNAL COMMENTARIES

Practice and Procedure: Declaratory Judgment. 23 S.C. L. Rev. 620.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Caine v. Griffin (S.C. 1958) 232 S.C. 562, 103 S.E.2d 37.