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SUPREME COURT OF ALABAMA

SPECIAL TERM, 2021

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Ciro Alcantara-Angeles

v.

Birmingham Water Works Board

**Appeal from Jefferson Circuit Court
(CV-20-902687)**

BRYAN, Justice.

Ciro Alcantara-Angeles appeals from a judgment of the Jefferson Circuit Court ("the circuit court") dismissing a complaint he filed against the Birmingham Water Works Board ("the Board"). We reverse and remand.

Background

In July 2020, Alcantara-Angeles filed in the circuit court a "complaint for declaratory judgment and motion to compel" against the Board. In relevant part, Alcantara-Angeles alleged that, in June 2019, he visited the Board's office to inquire about having water service installed at a parcel of real property he owns. According to Alcantara-Angeles, he paid a deposit of \$375 to have water service connected to his property. He alleged that the Board gave him a quote of \$1,739, in addition to his deposit, to have water service connected, which he said he attempted to pay. However, according to Alcantara-Angeles, he was instructed to wait for a letter from the Board before making payment. Alcantara-Angeles further alleged that the Board gave him a new quote of \$15,025 in July 2019, stating that the pipeline system supplying Alcantara-Angeles's parcel and the adjacent parcel was corroded and needed to be replaced at his expense.

Alcantara-Angeles's complaint alleged that the Board had failed to properly maintain the pipeline system at issue, which he contended was located on city property. He requested a judgment declaring that he was

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required to pay only the additional \$1,739, as allegedly originally quoted by the Board, to have water service connected to his parcel and that the Board was obligated to bear the cost of replacing the corroded pipelines to establish the water service. Alcantara-Angeles further requested an order directing the Board to begin work on the pipeline system to make the necessary repairs. Alcantara-Angeles attached several exhibits to his complaint. See Rule 10(c), Ala. R. Civ. P. ("A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.").

The Board filed a motion to dismiss Alcantara-Angeles's complaint pursuant to, it said, Rule 12(b)(6), Ala. R. Civ. P. In its motion, the Board argued that Alcantara-Angeles's complaint failed to adequately allege a justiciable controversy and that Alcantara-Angeles's complaint failed to adequately allege a

"legal relationship with the parties to establish any obligation by this Honorable Court to decide a legal issue as set out in ... § 6-6-223[, Ala. Code 1975.¹] ... [Alcantara-Angeles] has not

¹Section 6-6-223 provides:

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entered into a contract with the [Board] and is not alleging that the policy and procedure established by the [Board] is an ordinance or a statute set out by a Municipality or the State."

Thus, the Board argued that the circuit court lacked jurisdiction because, it said, there is no justiciable controversy and that the circuit court lacked "jurisdiction to hear this case for the failure to state a claim in this matter."

With the circuit court's permission, Alcantara-Angeles thereafter filed an amended complaint. Among other things, the amended complaint added allegations that the Board had a regulatory and statutory duty to maintain the pipeline system at issue and that the Board had breached that duty by permitting the pipelines to corrode and become unusable. Alcantara-Angeles attached several exhibits to his amended complaint,

"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."

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one of which was the document containing the \$15,025 quote the Board had sent to him.

The Board filed an amended motion to dismiss the amended complaint, adding to its original arguments an argument that the document containing the \$15,025 quote was not a contract because Alcantara-Angeles had not signed the document under a section labeled therein as "Acceptance." Had Alcantara-Angeles signed the document, the Board argued, it "would have been the document for the court to make a declaratory judgment about the parties' rights."

Alcantara-Angeles thereafter filed a written response to the Board's amended motion to dismiss, arguing, among other things, that he "does not need to rely on [§] 6-6-223 as a basis for this declaratory[-]judgment action." Alcantara-Angeles argued that his action could properly proceed under § 6-6-222, Ala. Code 1975. Alcantara-Angeles also included additional discussion and citations to authority in support of his argument that the Board had breached a duty to maintain the pipeline system at issue; he argued that the duty was imposed by statute, caselaw, and

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regulatory rules. Alcantara-Angeles also argued that the Board had breached a contractual duty owed to him by virtue of the Board's conduct.

After conducting a hearing, the circuit court entered an order on October 28, 2020, granting the Board's amended motion to dismiss, without specifying the reason for its decision. Alcantara-Angeles appealed.

Standard of Review

"A ruling on a motion to dismiss is reviewed without a presumption of correctness. Nance v. Matthews, 622 So. 2d 297, 299 (Ala. 1993). This Court must accept the allegations of the complaint as true. Creola Land Dev., Inc. v. Bentbrooke Housing, L.L.C., 828 So. 2d 285, 288 (Ala. 2002). We must also view the allegations of the complaint most strongly in the pleader's favor to determine whether it appears the pleader could prove any set of circumstances that would entitle the pleader [to] relief. Nance, 622 So. 2d at 299. Furthermore, we will not consider whether the pleader will ultimately prevail on the complaint but whether the pleader may possibly prevail. Id.

"For a declaratory-judgment action to withstand a motion to dismiss there must be a bona fide justiciable controversy that should be settled. Anonymous v. Anonymous, 472 So. 2d 640, 641 (Ala. Civ. App. 1984); Smith v. Alabama Dry Dock & Shipbuilding Co., 293 Ala. 644, 309 So. 2d

424, 427 (1975). The test for the sufficiency of a complaint seeking a declaratory judgment is whether the pleader is entitled to a declaration of rights at all, not whether the pleader will prevail in the declaratory-judgment action. Anonymous, 472 So. 2d at 641.

"The lack of a justiciable controversy may be raised by either a motion to dismiss or a motion for a summary judgment. Smith, [293 Ala. at 649,] 309 So. 2d at 427. See also Rule 12, Ala. R. Civ. P.; Rule 56, Ala. R. Civ. P. However, a motion to dismiss is rarely appropriate in a declaratory-judgment action. Wallace v. Burleson, 361 So. 2d 554, 555 (Ala. 1978). If there is a justiciable controversy at the commencement of the declaratory-judgment action, the motion to dismiss should be overruled and a declaration of rights made only after an answer has been submitted and evidence has been presented. Anonymous, 472 So. 2d at 641. However, if there is not a justiciable controversy, a motion to dismiss for failure to state a claim should be granted. Curjel v. Ash, 263 Ala. 585, 83 So. 2d 293, 296 (1955).'

"Harper v. Brown, Stagner, Richardson, Inc., 873 So. 2d 220, 223 (Ala. 2003)."

Muhammad v. Ford, 986 So. 2d 1158, 1161-62 (Ala. 2007)(emphasis added).

Analysis

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On appeal, Alcantara-Angeles argues that the circuit court had authority to consider his complaint under at least one of two possible statutes found in the Declaratory Judgments Act, codified at §§ 6-6-220 through -232, Ala. Code 1975. Specifically, Alcantara-Angeles argues that his action can proceed under § 6-6-222 or, alternatively, under § 6-6-223.

Sections 6-6-223 through 6-6-225, Ala. Code 1975, list specific types of issues that are proper subjects of a declaratory-judgment action. Alcantara-Angeles points out, however, that § 6-6-226, Ala. Code 1975, provides that the specific issues listed in §§ 6-6-223 through 6-6-225 are not the only types of issues that can be properly resolved via a declaratory-judgment action.² Specifically, § 6-6-226 states: "The enumeration in Sections 6-6-223, 6-6-224, and 6-6-225 does not limit or restrict the exercise of the general powers conferred in Section 6-6-222 in

²In his principal appellate brief, Alcantara-Angeles actually cites § 6-6-229, Ala. Code 1975, but quotes the pertinent language from § 6-6-226. In his reply brief, he clarifies that he intended to cite § 6-6-226 in his principal appellate brief but mistakenly cited § 6-6-229.

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any proceeding where declaratory relief is sought in which a judgment will terminate the controversy or remove an uncertainty."

Therefore, Alcantara-Angeles first argues that his action against the Board may proceed under § 6-6-222, even if the issues he raises do not fall within one of the categories explicitly listed in §§ 6-6-223 through 6-6-225. Section 6-6-222 is entitled "Power of courts of record; form and effect of declarations" and provides:

"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 is requested. The declaration may be either affirmative or negative in form and effect, and such declarations shall have the force and effect of a final judgment."

In MacKenzie v. First Alabama Bank, 598 So. 2d 1367, 1370 (Ala. 1992), this Court stated:

"Section 6-6-221[, Ala. Code 1975,] includes the legislature's statements that the declaratory judgment article is intended to 'afford relief from uncertainty and insecurity' and that the article should be construed to that end so long as such a construction is consistent with other state law and federal law. Section 6-6-222 also authorizes the circuit court to 'declare rights, status and other legal relations.' 'All that is required for a declaratory judgment action is a bona fide justiciable

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controversy.' Gulf South Conference v. Boyd, 369 So. 2d 553, 557 (Ala.1979) (citation omitted).

"To be justiciable, the controversy must be one that is appropriate for judicial determination. It must be a controversy which is definite and concrete, touching the legal relations of the parties in adverse legal interest, and it must be a real and substantial controversy admitting of specific relief through a decree. "A controversy is justiciable when there are interested parties asserting adverse claims upon a state of facts which must have accrued wherein a legal decision is sought or demanded." Anderson, Actions for Declaratory Judgments, Volume 1, § 14.'

"Copeland v. Jefferson County, 284 Ala. 558, 561, 226 So. 2d 385, 387 (1969)."

According to the allegations in Alcantara-Angeles's amended complaint, the Board has informed him that the pipeline system necessary to establish a water-service connection to his parcel of real property is corroded and has become unusable. To provide water service to Alcantara-Angeles's property, the pipeline system has to be repaired, and, according to the quote provided by the Board, the necessary repairs will cost \$15,025, less the \$375 Alcantara-Angeles has already paid as a deposit.

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Alcantara-Angeles has further alleged that it is the Board's position that he is financially responsible for funding the necessary repairs to the pipeline system if he wishes to have the Board connect water service to his property. Alcantara-Angeles has taken the position that the Board has a legal duty to make the necessary repairs and that he is financially responsible for only \$1,739, in addition to the \$375 deposit he already paid, which represents the amount allegedly originally quoted by the Board to establish a water-service connection to Alcantara-Angeles's property. Alcantara-Angeles cites decisions of this Court and a statute that he says impose upon the Board the duty he describes. He also argues that he and the Board entered into a contract and that the Board breached that contract.

We express no opinion regarding the propriety of Alcantara-Angeles's contention that the Board has a duty to repair or maintain the pipeline system at issue or whether the Board has breached a contract with Alcantara-Angeles. At this stage in the proceedings, the question before us is "'not whether [Alcantara-Angeles] will prevail in the declaratory-judgment action.'" Muhammad, 986 So. 2d at 1161. The only

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question at this time is whether Alcantara-Angeles is "'entitled to a declaration of rights at all.'" Id. On that point, "'[a]ll that is required for a declaratory judgment action is a bona fide justiciable controversy.'" MacKenzie, 598 So. 2d at 1370.

Based on Alcantara-Angeles's amended complaint, it is clear that he has alleged the existence of a controversy that is "'definite and concrete, touching the legal relations of the parties in adverse legal interest, and [that it is] a real and substantial controversy admitting of specific relief through a decree.'" MacKenzie, 598 So. 2d at 1370. Specifically, Alcantara-Angeles has alleged that he has asked the Board to connect water service to his property, that the Board has refused to do so without his agreement to finance the required repairs to the essential pipeline system, and that Alcantara-Angeles has taken the adverse position that the Board is under a legal duty to make the necessary repairs to the pipeline system near his property without his financial contribution, apart from the cost of connecting the ultimately repaired pipeline system to his property. Further, Alcantara-Angeles's amended complaint contends that

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the circuit court could resolve the controversy by providing the following relief:

"WHEREFORE, [Alcantara-Angeles] brings this action against the [Board] and prays that this Honorable Court provide general relief to [Alcantara-Angeles] and/or compel [the Board] to make repairs, at its own cost and restore the water system in order that [Alcantara-Angeles] may connect and begin water service.

"WHEREFORE, [Alcantara-Angeles] prays that this Honorable Court compels [the Board] to begin work to complete the pipe work and other repairs, beneath city property in such a way that would facilitate [Alcantara-Angeles's] ability to connect to the city water system."

Thus, it is clear that Alcantara-Angeles's complaint has satisfied the elements necessary to adequately allege a bona fide justiciable controversy under § 6-6-222. See MacKenzie, 598 So. 2d at 1370. Therefore, the circuit court had the authority to consider his complaint.

Conclusion

In light of the foregoing, the circuit court's judgment is due to be reversed, and the cause is remanded for further proceedings. Because the circuit court had the authority to consider Alcantara-Angeles's complaint under § 6-6-222, we need not specifically decide, as a separate issue,

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whether Alcantara-Angeles's allegations fall within one of the particular categories listed in § 6-6-223, and we express no opinion concerning that issue. See § 6-6-226. Moreover, we emphasize that nothing in our decision should be construed as expressing an opinion regarding the legal merits of Alcantara-Angeles's position against the Board. We conclude only that he has adequately alleged a justiciable controversy that the circuit court has authority to consider in a declaratory-judgment action.

REVERSED AND REMANDED.

Parker, C.J., and Shaw, Mendheim, and Mitchell, JJ., concur.