

I Do Declare! A Cautionary Tale About Declaratory Judgments for Cities.

Loren B. Smith

OLSON & OLSON LLP

Worham Tower, Suite 600
2727 Allen Parkway
Houston, Texas 77019
(713) 533-3800
www.olsonlp.com



Sovereign Immunity

- Sovereign immunity protects the state from lawsuits for monetary damages
- Two principles:
 - Immunity from suit
 - Immunity from liability
- Designed to keep from shifting tax resources away from their intended purposes toward defending lawsuits and paying judgments

Waiver of Sovereign Immunity

- In order to institute suit against a governmental entity, at least for the payment of monetary damages, there must be a waiver of sovereign immunity.
- Common areas where a waiver of sovereign immunity has been found are:
 - Contracts
 - Eminent domain and regulatory takings
 - Texas Tort Claims Act

Uniform Declaratory Judgment Act

- The Texas Legislature adopted in 1985 the Uniform Declaratory Judgment Act (UDJA)
- Contained in Chapter 37 of the Texas Civil Practice & Remedies Code
- The UDJA provides a mechanism to present actual controversies to a court to have a court determine legal rights and duties.

§ 37.004(a) of Texas Civil Practice & Remedies Code

- A 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.

§ 37.004(a) of Texas Civil Practice & Remedies Code

- A 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.

UDJA & Sovereign Immunity

- SEVERAL Courts have wrestled with the question whether the doctrine of sovereign immunity protects governmental entities from suit under the UDJA
- In so doing, the courts attempted to ferret out claims which were simply attempting to “circumvent” sovereign immunity by characterizing claims for money damages as a declaratory judgment action.

Sanders v. City of Grapevine, 218 S.W.3d 772 (Tex. App. – Fort Worth 2007, review denied)

UDJA & Sovereign Immunity

- The Texas Supreme Court ultimately held in *Texas Education Agency v. Leeper*, 893 S.W.2d 432 (Tex. 1994), referring to the relief specifically permitted by the UDJA:

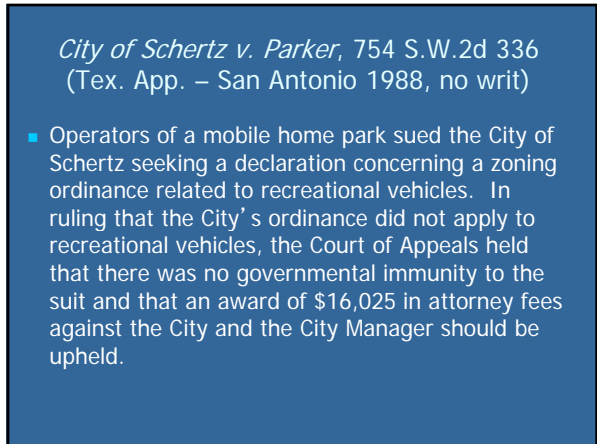
“We conclude that by authorizing declaratory judgment actions to construe the legislative enactments of governmental entities and authorizing awards of attorney fees, the DJA necessarily waives governmental immunity for such awards.”

Attorney Fees Under the UDJA

- § 37.009 provides that, in any declaratory judgment action, “the court may award costs and reasonable and necessary fees as are equitable and just.”
- The trial court has the sole discretion whether to award attorney fees
- An award of attorney fees may be removed on appeal only upon a showing of a clear abuse of discretion.







Continental Homes of Texas, L.P. v. City of San Antonio, 275 S.W.3d 9 (Tex. App. – San Antonio, review denied)

- The City of San Antonio filed an action for permanent injunction to prohibit a developer from removing trees in violation of the City's tree preservation ordinance. The developer counterclaimed seeking a declaratory judgment that it had complied with the ordinance. On appeal, the San Antonio Court of Appeals ruled that the developer's declaratory judgment claim was not barred by sovereign immunity and it was entitled to attorney fees under the UDJA.



City of San Benito v. Ebarb, 88 S.W.3d 711 (Tex. App. – Corpus Christi 2002, review denied)

- Employees brought an action against the City of San Benito alleging that the City failed to compensate them in accordance with an ordinance and seeking a declaratory judgment that they were entitled to compensation according to the ordinance. The Corpus Christi Court of Appeals ultimately ruled that the complaint amounted to a claim for money damages and was, therefore, barred by the doctrine of sovereign immunity. In the process, however, the Court determined that the employees' failure to exhaust their administrative remedies provided by the Civil Service Act did not deprive the Court of jurisdiction to hear the UDJA claim related to the construction of the City's ordinance.



City of Harlingen v. Alvarez, 204 S.W.3d 452 (Tex. App. – Corpus Christi 2005, review granted, judgment vacated)

- A firefighter brought a declaratory judgment action against the City of Harlingen asserting that the City failed to promote him as required by the Civil Service Act and seeking attorney fees. The Corpus Christi Court of Appeals again held that the employee did not need to exhaust his administrative remedies under the Civil Service Act to be permitted to bring a declaratory judgment action. The Court specifically determined that the claim for declaratory relief required construction of the Civil Service Act and a declaration of his rights under the statute – all as expressly allowed under § 37.004 of the UDJA. Accordingly, the Court allowed his claim for attorney fees even though he had no ability to recover such costs under the Civil Service Act.



Krier v. Navarro, 952 S.W.2d 25 (Tex. App. – San Antonio 1997, review denied)

- Bexar County Commissioners Court voted to terminate its Election Administrator. The Election Administrator brought suit seeking, among other things, a declaratory judgment that the Commissioners Court wrongfully terminated him and seeking attorney fees pursuant to the UDJA. The trial court granted the declaratory relief and awarded attorney fees. On appeal, the County argued that a provision of the Local Government Code requiring a person to present a claim to the commissioners court before bringing suit against a county prevented the trial court from exercising jurisdiction over the case. The San Antonio Court of Appeals disagreed, holding that the statute in question only applied to suits for monetary damages, not actions for declaratory judgments, and upheld the award of attorney fees.

City of Holliday v. Wood, 914 S.W.2d 175 (Tex. App. – Fort Worth 1996, no review)

- In *Holliday*, the City sued members of the volunteer ambulance service seeking a declaration concerning and recovery of certain payments made to the ambulance service's account. After ruling in favor of the volunteers, the trial court entered an award of attorney fees and costs against the City on the basis of its own action under the UDJA.

Conclusion

- UDJA is a useful remedy that may need to be used by cities to define their rights
- Cities may also find themselves in a declaratory judgment action related to a regulation they have adopted
- We need to keep in mind, in advising our clients, that certain actions may leave our clients open to a declaratory judgment action and an award of attorney fees.
