Circuit Court for Baltimore County
Case No. C-03-CV-21-000311

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 457

September Term, 2021

MAYOR AND CITY COUNCIL OF BALTIMORE

v.

JASON GREGORY GUEST

Berger,
Arthur,
Reed,

JJ.

Opinion by Arthur, J.

Filed: May 23, 2022

This case concerns an automobile accident in which the driver suffered extensive injuries, allegedly as a result of the negligence of two joint tortfeasors: Baltimore County and Baltimore City. The driver reached an agreement to settle his claim against Baltimore County for $380,000. The driver then brought a negligence action against Baltimore City. Those two parties jointly agreed to dismiss the negligence case without prejudice, in order to pursue a declaratory judgment regarding the maximum amount of Baltimore City's liability.

The declaratory judgment action concerned the interaction of two statutes: the Local Government Tort Claims Act (LGTCA) and the Maryland Uniform Contribution Among Joint Tort-Feasors Act (UCATA). The LGTCA states that the liability of a local government may not exceed $400,000 for an individual tort claim. Under the UCATA, a release of one joint tortfeasor reduces the claim against other joint tortfeasors in the amount of consideration paid for the release or in any amount or proportion stated in the release, if greater than the consideration paid.

In this case, Baltimore City contended that the amount of any damages first must be reduced to the $400,000 limit from the LGTCA and then further reduced to account for the $380,000 settlement, resulting in a maximum liability of $20,000. The driver contended that the amount of his damages first should be reduced to account for the joint tortfeasor settlement and then limited to $400,000 only if the resulting amount exceeded the LGTCA liability limit.

The Circuit Court for Baltimore County concluded that the driver's proposed

method was correct and declared that he may recover as much as $400,000 from Baltimore City. Thereafter, Baltimore City noted this appeal.

We shall vacate the judgment, because the circuit court was required to refrain from issuing a declaratory judgment involving a discrete issue in a related and unresolved dispute. Under well-established case law in the State of Maryland, the parties must ask a court to decide that issue within the context of Mr. Guest's tort claim against Baltimore City. They cannot excise an issue from the tort claim, dismiss the tort claim without prejudice, and procure an advisory opinion in the guise of a declaratory judgment.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Underlying Factual Allegations

On January 14, 2018, Jason Guest was driving on Gwynnbrook Avenue in Baltimore County. He unexpectedly encountered ice that had accumulated on the road. The ice caused him to lose control of his car and crash into a house. As a result of the accident, Mr. Guest suffered serious injuries.

Mr. Guest alleges that the ice that caused the accident resulted from "a broken water main that had been spewing water into the street for several days" before the accident. According to Mr. Guest, Baltimore County was responsible for maintaining the roadway on which the accident occurred. He alleges that Baltimore City was responsible "for the care, maintenance, and repair of the water main."

Baltimore County and Baltimore City each fall within the definition of a "[l]ocal government" as that term is used in the Local Government Tort Claims Act (LGTCA).

Md. Code (1974, 2020 Repl. Vol.), § 5-301(d)(1), (d)(4) of the Courts and Judicial Proceedings Article ("CJP"). The LGTCA establishes procedural requirements for a tort action against a local government or its employees and limits the liability of the local government in such an action. *See, e.g.*, *Johnson v. Mayor & City Council of Baltimore*, 233 Md. App. 43, 53 (2017). In accordance with the LGTCA, Mr. Guest sent timely written notices of his claim to the County Attorney for Baltimore County and to the City Solicitor for Baltimore City. *See* CJP § 5-304(b) (providing that a claimant may not bring an action for unliquidated damages against a local government unless the claimant gives written notice to the local government within one year after the injury).

B. Settlement Agreement with Baltimore County

On May 19, 2020, Mr. Guest reached a settlement agreement with Baltimore County. As part of the settlement, Mr. Guest agreed to release his claims against Baltimore County. In exchange, Baltimore County agreed to pay Mr. Guest the sum of $380,000. The agreement did not discharge any potential claim against Baltimore City arising out of the accident.

The settlement agreement expressed the intention to relieve Baltimore County from liability for contribution to other joint tortfeasors in accordance with the Maryland Uniform Contribution Among Joint Tort-Feasors Act, Maryland Code (1974, 2020 Repl. Vol.), §§ 3-1401 to -1409 of the Courts and Judicial Proceedings Article ("CJP"). The Act provides that "[a] release by the injured person of one joint tort-feasor . . . reduces the claim against the other tort-feasors in the amount of the consideration paid for the release

or in any amount or proportion by which the release provides that the total claim shall be reduced, if greater than the consideration paid." CJP § 3-1404. Under the Act, "[a] release by the injured person of one joint tort-feasor does not relieve the joint tort-feasor from liability to make contribution to another joint tort-feasor unless the release . . . [p]rovides for a reduction, to the extent of the pro rata share of the released tort-feasor, of the injured person's damages recoverable against all other tort-feasors." CJP § 3-1405(2).

Paragraph 7 of the settlement agreement was titled "Joint Tortfeasor Reduction." That paragraph stated that, in the event that Mr. Guest might recover damages from "anyone other than the Released Parties" for injuries or damages arising out of the accident, he agreed that "any judgment for such damages shall be reduced under the provisions of the Maryland Uniform Contribution Among Joint Tort-Feasors Act, . . . to the extent of the *pro rata* shares of each of the Released Parties or by the amount paid for this Release, whichever is greater." The agreement explained: "This provision is intended to relieve the Released Parties . . . from any liability for contribution or indemnity to any person, firm, partnership, or corporation, consistent with [CJP] § 3-1405."

Mr. Guest agreed that "the Released Parties shall be deemed joint tortfeasors with any other tortfeasors liable to [Mr. Guest] for damages arising out of the [accident] to the same extent as if they were adjudicated to be joint tortfeasors by a final judgment of a court of record after trial on the merits." He further agreed that, in the event that he

might "file[] a claim or lawsuit against someone other than the Released Parties seeking recovery of damages" in connection with the accident, the agreement may be offered as "evidence of: (a) the consent of [Mr. Guest] to have any judgment in his favor reduced by the statutory share(s) of the Released Parties; and (b) the irrevocable deeming of joint tortfeasor status as set forth in Paragraph 7."

In sum, the settlement agreement: established Baltimore County's status as a joint tortfeasor with any other tortfeasors who might be liable to Mr. Guest in connection with the accident; and required that any judgment for damages against other tortfeasors in connection with the accident be reduced by the amount of consideration paid for the release ($380,000) or by Baltimore County's pro rata share of the damages, whichever amount is greater.

C. The Initial Tort Action Against Baltimore City

On August 27, 2020, Mr. Guest filed a complaint in the Circuit Court for Baltimore County against the Mayor and City Council of Baltimore, the name of the municipal corporation that is composed of the inhabitants of Baltimore City. Baltimore City Charter art. I, § 1. The complaint included a single count for negligence. Mr. Guest alleged that he suffered severe injuries in the accident on January 14, 2018, as a result of Baltimore City's failure to maintain the water main near Gwynnbrook Avenue. He sought to recover compensatory damages in excess of $75,000.

Baltimore City filed an answer in which it generally denied the allegations in the complaint and raised several affirmative defenses.

During discussions between the attorneys for Mr. Guest and Baltimore City, a disagreement emerged regarding the maximum amount of Baltimore City's potential liability. The Local Government Tort Claims Act states that "the liability of a local government may not exceed $400,000 per an individual claim . . . for damages resulting from tortious acts or omissions[.]" CJP § 5-303(a)(1). Mr. Guest asserted that this provision limits the liability of each local government individually. He asserted, therefore, that the LGTCA would permit him to recover a maximum of $400,000 from Baltimore City, even though he had already received $380,000 from Baltimore County.

Baltimore City disputed the assertion that it might be liable for as much as $400,000 in damages. Baltimore City invoked the terms of Mr. Guest's settlement agreement with Baltimore County, in which he agreed that, if he were to recover damages from another joint tortfeasor, "any judgment for such damages shall be reduced under the provisions of the Maryland Uniform Contribution Among Joint Tort-Feasors Act . . . to the extent of the *pro rata* shares of each of the Released Parties or by the amount paid for th[e] Release, whichever is greater." Baltimore City asserted that any damages awarded to Mr. Guest *first* must be reduced to no more than $400,000 and *then* must be further reduced by $380,000, to account for the joint tortfeasor settlement. According to Baltimore City, therefore, its maximum liability was only $20,000.

On January 11, 2021, Mr. Guest and Baltimore City filed a joint stipulation of dismissal of the negligence action under Md. Rule 2-506(a)(2). The parties stipulated to the dismissal of the complaint without prejudice, "subject to a tolling agreement."

Although the tolling agreement is not part of the record, Baltimore City informs us that the City agreed to toll "any statute of limitations applicable to Mr. Guest's claims until 30 days after a final appellate decision in [a] declaratory judgment action" concerning the extent of Baltimore City's potential liability.

D. The Declaratory Judgment Action

On January 28, 2021, Mr. Guest filed a complaint for a declaratory judgment in the Circuit Court for Baltimore County. He asked the circuit court to issue a declaration concerning the extent of Baltimore City's liability for damages in connection with the accident.

In his complaint, Mr. Guest alleged that a controversy existed between the two parties regarding the application of the Local Government Tort Claims Act. According to Mr. Guest, this controversy concerned CJP § 5-303(a)(1), which states that "the liability of a local government may not exceed $400,000 per an individual claim[.]" According to Mr. Guest, Baltimore City had asserted that, under the LGTCA, "Baltimore City's liability combined with Baltimore County's liability cannot exceed $400,000[.]" Mr. Guest disagreed, asserting that the LGTCA limits "the liability of *a* local government" individually, rather than all local governments collectively. (Emphasis in original.) Mr. Guest asked the court to "declare that the maximum combined liability of Baltimore City and Baltimore County to Mr. Guest is $800,000."

Baltimore City filed an answer to the declaratory judgment complaint, along with what it called a "motion" for a declaratory judgment. As an exhibit, Baltimore City

included a copy of the settlement agreement, in which Mr. Guest had agreed to release his claim against Baltimore County for the amount of $380,000. Baltimore City asserted: "Any judgment [Mr. Guest] may recover from the City in this matter should be reduced by the amount [Mr. Guest] has already received via the Settlement Agreement and therefore the maximum amount [Mr. Guest] should be able to recover from the City should be capped at $20,000." Baltimore City asked the court to declare "that any judgment against the Mayor and City Council of Baltimore is limited to $20,000.00."

Mr. Guest moved for summary judgment in the declaratory judgment action. Baltimore City opposed that motion and asserted its own cross-motion for summary judgment. Both parties agreed that the controversy strictly involved questions of law, rather than any disputes of fact. Mr. Guest argued that he was entitled to a declaratory judgment stating that he could recover as much as $400,000 from Baltimore City. Baltimore City argued that it was entitled to a declaratory judgment stating that its potential liability is limited to $20,000.

E. Judgment of the Circuit Court

On May 7, 2021, the circuit court held a hearing on the cross-motions for summary judgment in the declaratory judgment action.

Before addressing the merits of the motions, the court asked the parties to explain why they were pursuing a declaratory judgment regarding Baltimore City's maximum liability, rather than litigating the City's liability in a tort case. The court noted that "declaratory judgments are appropriate when they conclude the controversy" and that the

declaration requested by the parties "w[ould] not conclude the matter" between the parties. The court suggested that the parties should "proceed with the [tort] case . . . and then deal with the application of the joint tortfeasor release and the cap" afterwards.[1]

The court said that it "guess[ed]" that, if Baltimore City were to obtain a ruling establishing that its potential liability was either $400,000 or $20,000, then Baltimore City "would probably write a check and be done with it." In response, Baltimore City's attorney said that the court's explanation was "correct . . . basically[.]" Mr. Guest's attorney added that, if a court determined that Mr. Guest's potential recovery was only $20,000, then it would not be "worthwhile" for Mr. Guest to spend "tens of thousands of dollars" on expert witnesses and to "engage in a multi-day trial that could consume significant judicial resources."

During the hearing, the court sought clarification on certain aspects of the parties' arguments. The court said that, as it understood the written submissions, Baltimore City did not dispute the assertion that the LGTCA "applies the cap of $400,000 to each governmental unit" individually. The court remarked that, to its understanding, Baltimore City would agree that, if Mr. Guest had not reached a settlement with Baltimore County, then he would be free to "pursue $400,000 against the city and another $400,000 against the county." Baltimore City's attorney told the court that this

[1] From the record, it is unclear whether the circuit court was aware that Mr. Guest had previously brought a negligence action against Baltimore City, which the parties had agreed to dismiss without prejudice subject to a tolling agreement. Neither party mentioned those facts in their various pleadings, motions, and responses in the declaratory judgment action.

description of the City's argument was correct.[2]

In response to later questioning, Baltimore City's attorney acknowledged that, under a "plain reading" of the LGTCA, a plaintiff ordinarily may recover as much as $400,000 from each local government if more than one local government is liable for the same claim. Baltimore City's attorney argued, however, that because Mr. Guest had settled his claim against Baltimore County for $380,000, the maximum amount that he could recover from Baltimore City should now be limited to $20,000.

The court asked Mr. Guest's attorney to explain his client's position on the effect of the joint tortfeasor settlement on a hypothetical damages award against Baltimore City. Mr. Guest's attorney asserted that, for the purpose of any judgment against Baltimore City, the City would be entitled to a reduction of the damages (either a reduction of $380,000 or a pro rata reduction of half the damages) based on Baltimore County's status as a joint tortfeasor. Mr. Guest's attorney argued that, after calculating this joint tortfeasor reduction, the remaining damages should be limited, if necessary, to the liability limit of $400,000 set forth in the LGTCA.

After considering the parties' arguments, the court explained that it perceived the main issue as "when and to what amount" the court should calculate the joint tortfeasor

[2] At first, the City tried to hedge its position, telling the circuit court that Mr. Guest could "claim" the right to recover $400,000 from each local government or "argue" that he was entitled to recover $400,000 from each. When pressed by the court, however, the City agreed that, "[u]nder the plain reading of the statute," Mr. Guest could recover $400,000 from each.

reduction.[3] The court said that Mr. Guest believed that the court should "apply the reduction . . . to the total judgment or verdict." The court added that Baltimore City sought to calculate the reduction "to the cap of $400,000, regardless of what judgment or verdict might be rendered against the [C]ity."

The court observed that the purpose of the LGTCA "is not to limit the Plaintiff's claim" but "to limit the local government's liability." The court noted that the "purpose of the Joint Tortfeasor Act is to prevent . . . a double recovery" by the plaintiff. The court reasoned that Baltimore City's proposed "method of applying the joint tortfeasor" reduction would fail to "serve the purpose of the Joint Tortfeasor Act" and would "limit[] the liability of the local government much more than what was legislated" by the LGTCA. The court concluded that "the method argued by [Mr. Guest] to apply the reduction . . . to the judgment or the verdict and then apply the cap is the correct method."

On May 25, 2021, the circuit court entered an order titled "Declaratory Judgment." The order granted Mr. Guest's motion for summary judgment and denied Baltimore City's cross-motion for summary judgment. The court declared:

> . . . [Mr. Guest] may recover up to $400,000 from the City under the LGTCA. The provisions of the Joint Tort-Feasors Act and the Release are first applied to reduce any verdict by the amount of consideration paid by Baltimore County or the *pro rata* share of the released party, whichever is greater, and then the limit of liability under the LGTCA ($400,000) is applied to the claim.

[3] Put differently, this dispute concerns the "minuend" for the joint tortfeasor reduction. "The mathematical operation of subtraction involves the deduction of a *subtrahend*, the amount being taken away, from the *minuend*, the total." *Diaz v. Jones*, 215 So.3d 121, 122 (Fla. Dist. Ct. App. 2017) (emphasis in original)..

> By way of example, if a verdict is rendered in the amount of $900,000, it is reduced by one-half to $450,000 and then the limit of liability under the LGTCA ($400,000) is applied to the claim. If a verdict is returned in the amount of $600,000, it is reduced by the amount of consideration paid by Baltimore County, $380,000, and the City is liable for $220,000.

Baltimore City noted a timely appeal from the circuit court's declaratory judgment.

DISCUSSION

In this appeal, Baltimore City contends that the declaratory judgment is incorrect as a matter of law. The City asks this Court to reverse the judgment and direct the circuit court to issue a declaration stating that "the cap in the LGTCA must be applied first to a tort judgment against a local government" and that the amount of consideration received "from a joint tortfeasor must be deducted from the already capped judgment." In its appellate brief, Baltimore City presents a single issue, which we quote:

> Whether the Circuit Court erred in concluding that a plaintiff can recover up to $400,000 from a local government defendant despite the existence of a settlement agreement between plaintiff and a joint tortfeasor, and the Effect of Release provisions of the Maryland Uniform Contribution Among Joint Tort-Feasors Act.

For his part, Mr. Guest contends that the circuit court's declaration is correct and therefore should be affirmed.

After the parties submitted their appellate briefs, this Court directed the parties to file supplemental briefs to address the propriety of using a separate declaratory judgment action to decide an issue that could have been adjudicated in the negligence action that Mr. Guest brought against Baltimore City. In response, Baltimore City and Mr. Guest

argued that the circuit court did not abuse its discretion in issuing a declaratory judgment under the circumstances. For the reasons discussed below, we conclude that the circuit court was required to abstain from issuing a declaration under the circumstances presented.

The purpose of the Maryland Uniform Declaratory Judgments Act is "to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations." Md. Code (1974, 2020 Repl. Vol.), § 3-402 of the Courts and Judicial Proceedings Article ("CJP"). The Act specifies that the court may grant declaratory relief "notwithstanding a concurrent common-law, equitable, or extraordinary legal remedy[.]" CJP § 3-409(c).

"In other words, under the Declaratory Judgments Act, a party may seek a definitive statement of the 'correct answer' to a disputed question without asking that the court also enforce its decision by, for example, awarding monetary damages to the prevailing party or by ordering another party to act (or refrain from acting) in a certain way." *Hanover Investments, Inc. v. Volkman*, 455 Md. 1, 15 (2017).

Generally, "a party is not precluded from seeking declaratory relief simply because that party has the option of pursuing some other remedy." *Id.* (citing *Falls Road Cmty. Ass'n, Inc. v. Baltimore County*, 437 Md. 115, 136 n.20 (2014)); *see also Baltimore City Police Dep't v. Esteppe*, 247 Md. App. 476, 505 (2020). Nevertheless, a trial court may be required to abstain from issuing declaratory relief under some circumstances. *Hanover Investments, Inc. v. Volkman*, 455 Md. at 16-17.

Ordinarily, for example, "a declaratory judgment will not serve a useful purpose when the same issues to be resolved in the declaratory judgment action will be decided in pending litigation between the parties." *Polakoff v. Hampton*, 148 Md. App. 13, 27 (2002). In other words, "once [a] common law remedy is actually invoked to provide relief in the controversy, and the common law action is still pending," the parties ordinarily may not "institute a second lawsuit and obtain a declaratory judgment to resolve the same matter." *Haynie v. Gold Bond Bldg. Prods.*, 306 Md. 644, 650 (1986); *see also Turnpike Farm Ltd. P'ship v. Curran*, 316 Md. 47, 49 (1989) (per curiam) (stating that, "[w]here there exists a pending action presenting an issue, a party to that action ordinarily may not obtain a resolution of the issue by filing a separate declaratory judgment action").

Thus, "[a]s a general rule, courts will not entertain a declaratory judgment action if there is pending, at the time of the commencement of the action for declaratory relief, another action or proceeding involving the same parties and in which the identical issues that are involved in the declaratory action may be adjudicated." *Waicker v. Colbert*, 347 Md. 108, 113 (1997). '"The rule precluding a declaratory judgment to resolve an issue when there is pending another action in which the same issue can properly be resolved[] is neither jurisdictional nor absolute." *Haynie v. Gold Bond Bldg. Prods.*, 306 Md. at 652. Nevertheless, "when the circuit court exercises its discretion to affirmatively render . . . a declaration while another similar action involving the same parties and same issues is pending, we are to reverse the judgment absent 'unusual and compelling

circumstances.'" *Volkman v. Hanover Investments, Inc.*, 225 Md. App. 602, 618 (2015) (quoting *Waicker v. Colbert*, 347 Md. at 113), *aff'd*, 455 Md. 1 (2017).

"[S]trong policy considerations" support "the principle that a court should decline to issue a declaratory judgment in deference to a pending action." *Hanover Investments, Inc. v. Volkman*, 455 Md. at 17. Those policy considerations include "conserving judicial resources, avoiding conflicting judgments, and preventing evasion of the final judgment requirement for appeal." *Id*. (footnotes omitted). "Were this rule not followed, 'almost any pending action could be interrupted and held at bay until the determination, in one or more subsequently instituted declaratory judgment actions, of issues culled out of the pending action.'" *Id.* at 17-18 (quoting *Waicker v. Colbert*, 347 Md. at 115). "Conceivably," in a tort case where the defendant might raise several defenses, "each separate disputed issue in the tort case could be made the subject of a separate declaratory judgment action" and a separate appeal. *Haynie v. Gold Bond Bldg. Prods.*, 306 Md. at 653. "[O]verlooking the inappropriate procedure might result in litigants misusing the declaratory judgment statute in order to circumvent the policy against appeals from interlocutory orders and against piecemeal appeals." *Id.* Maryland has a strong presumption against piecemeal appeals because they are inefficient and costly and can create significant delays, hardship, and procedural problems. *See, e.g.*, *Miller Metal Fabrication, Inc. v. Wall*, 415 Md. 210, 227 (2010).

Before oral argument in this case, this Court directed the parties to explain why we should not vacate the declaratory judgment and direct the circuit court to dismiss the

declaratory judgment action under the principles discussed in *Hanover Investments, Inc. v. Volkman* and the cases cited therein. In response, Baltimore City made two separate arguments. First, Baltimore City argued that the general rule discussed in those cases "does not apply here" because, at the time when Mr. Guest filed the declaratory judgment complaint, there was "no other *pending* action involving the same parties[.]" (Emphasis added.) Alternatively, Baltimore City argued that this appeal involves "unusual and compelling circumstances," which justify an exception from the general rule. Mr. Guest adopted Baltimore City's arguments.

Without question, this declaratory judgment involves an issue that could have been resolved in the previous tort case between the same parties. As recounted earlier, Mr. Guest initially filed a complaint against Baltimore City seeking to recover damages for negligence. Rather than litigate Baltimore City's liability in that action, however, the parties jointly agreed to dismiss the action without prejudice and to toll the period of limitations for the negligence claim until the final resolution of a declaratory judgment action concerning Baltimore City's maximum potential liability. Mr. Guest then filed the separate declaratory judgment complaint a few weeks after the parties had filed the joint stipulation of dismissal in the negligence case.

Baltimore City observes that the general rule precluding a declaratory judgment on issues involved in other actions between the same parties is reserved for circumstances where the other action is still "pending." Baltimore City interprets the word "pending," as used by the courts in this context, to mean formally unresolved on a court's docket.

Baltimore City asserts that "a dismissal of the plaintiff's entire complaint 'without prejudice' does not mean that the case is still pending in the trial court[,]" but rather that "the case is fully terminated in the trial court." *Moore v. Pomory*, 329 Md. 428, 432 (1993). According to Baltimore City, because the negligence case terminated in a dismissal without prejudice, no other case was "pending" between the parties by the time that Mr. Guest initiated the declaratory judgment action.

We are not persuaded that this formal distinction, by itself, resolves the question of whether issuing a declaratory judgment was appropriate. Nor are we persuaded that litigants can avoid the general rule precluding a declaratory judgment on issues involved in other actions between the same parties through the simple expedient of dismissing a tort claim without prejudice and reviving it as soon as the declaration has been obtained.

The rule at issue here is designed to identify situations where it is "'unwise and unnecessary to permit a new petition for a declaration to be initiated by the defendant or the plaintiff[.]'" *Haynie v. Gold Bond Bldg. Prods.*, 306 Md. at 651 (quoting Edwin M. Borchard, *Declaratory Judgments* 350 (2d ed. 1941)). The Court of Appeals has treated an earlier tort action as "pending" where the tort action had been "stayed by agreement of the parties" during the litigation of a separate declaratory judgment action. *See Waicker v. Colbert*, 347 Md. at 112-13. The parties to the present case, by jointly stipulating to a dismissal of the tort action without prejudice, while also agreeing to toll limitations on the tort claim until the resolution of the declaratory judgment action, have engineered the equivalent of a stay. Moreover, the Court of Appeals has formulated the rule more

broadly to state that it applies where "a common law remedy" has been "invoked to resolve a dispute" (*Hanover Investments, Inc. v. Volkman*, 455 Md. at 18), which has certainly occurred here. Finally, even though Mr. Guest's claims are not currently "pending" in a court, they are still "pending" in the sense that they remain unresolved or undecided.

It is not appropriate for a court to issue a declaratory judgment on a single issue in a tort case merely because the parties have agreed to conclude the tort case, temporarily, with every intention of litigating an identical tort case once the declaratory judgment action is resolved. *Cf. Miller & Smith at Quercus, LLC v. Casey PMN, LLC*, 412 Md. 230, 248-53 (2010) (holding that parties could not transform an interlocutory ruling into an appealable final judgment by dismissing all other claims and counterclaims without prejudice). The declaratory judgment proceedings at issue here appear to be "a near approximation of the improper use of the declaratory judgment proceedings hypothesized by the Court [of Appeals] in *Haynie*." *Polakoff v. Hampton*, 148 Md. App. at 31. Permitting parties to obtain a declaratory judgment as a matter of course, under circumstances such as these, would "allow[] the parties, by consent, to bypass the final judgment requirement." *Haynie v. Gold Bond Bldg. Prods.*, 306 Md. at 654.

Baltimore City argues that, even if the general rule established in this line of cases reaches the present circumstances, this declaratory judgment action falls within a recognized exception. The Court of Appeals has held that the general rule "precluding a duplicative declaratory judgment action" in light of "an earlier-filed, pending action"

should be "followed 'absent very unusual and compelling circumstances.'" *Hanover Investments, Inc. v. Volkman*, 455 Md. at 18-19 (quoting *A. S. Abell Co. v. Sweeney*, 274 Md. 715, 721 (1975)). The Court of Appeals "has reiterated, on several occasions, the exception to the general rule for 'unusual and compelling circumstances,' but has not found that exception applicable in the cases presented to it to date." *Hanover Investments, Inc. v. Volkman*, 455 Md. at 19 (citing *Waicker v. Colbert*, 347 Md. at 113-15; *State v. 91st Street Joint Venture*, 330 Md. 620, 630 (1992); *Haynie v. Gold Bond Bldg. Prods.*, 306 Md. at 652).[4]

The relevant Maryland case law "do[es] not articulate the precise definition of the words 'unusual and compelling[.]'" *Volkman v. Hanover Investments, Inc.*, 225 Md. App. at 625. This Court has said that "a circumstance may be unusual and compelling when judicial economy is not offended by the exercise of jurisdiction, when principles of comity do not require deference to be afforded to the court first exercising jurisdiction,

[4] As Baltimore City points out, this Court invoked the "unusual and compelling circumstances" exception in *Harpy v. Nationwide Mutual Fire Insurance Co.*, 76 Md. App. 474 (1988). There, an insurer sought a declaratory judgment that its duty to insure a homeowner against claims alleging "negligent personal acts" did not obligate the insurer to defend or indemnify him in an action alleging that he sexually abused his child. *Id.* at 475-76. This Court held that it was appropriate to issue a declaratory judgment because the dispute concerned an issue (whether the homeowner had acted negligently) that would not be decided in the pending intentional tort case. *Id.* at 482. This Court also said that it thought that the case involved "'unusual and compelling circumstances' justifying declaratory relief." *Id.* Because the Court did not elaborate on its alternative holding that the case involved "unusual and compelling circumstances," the *Harpy* opinion is of minimal utility here. The *Harpy* scenario is unlikely to reoccur in light of the Court of Appeals' decision in *Allstate Insurance Co. v. Atwood*, 319 Md. 247 (1990), which recognized a limited right for an insurer to intervene in a tort action like the one in *Harpy*.

and when there is no concern with one party inappropriately controlling the litigation." *Id.* at 625 (citations omitted). Similarly, the Court of Appeals has explained that "policy considerations[,]" such as "judicial economy, discouragement of forum shopping, [and] consistency in rulings[,]" are "relevant to the question whether there are 'unusual and compelling circumstances' in a particular case[.]" *Hanover Investments, Inc. v. Volkman*, 455 Md. at 22-23.

Baltimore City argues that considerations of judicial economy strongly favor the use of the declaratory judgment remedy in this case because it may facilitate the resolution of Mr. Guest's tort claim. Yet, when pressed at oral argument, the City pointedly refused to state whether it conceded that it was even liable to Mr. Guest. Consequently, it remains possible that a factfinder will rule in the City's favor on the issue of liability and, thus, that the question of the City's maximum exposure will never become ripe for any judicial decision. A party may not use the declaratory judgment remedy to decide questions that may never arise. *See, e.g.*, *State v. G & C Gulf, Inc.*, 442 Md. 716, 721 (2015).

In addition, even if the factfinder rules in Mr. Guest's favor on the issue of liability, it remains possible that the question of the City's maximum exposure may not become ripe for any judicial decision. If, for example, the factfinder awards $380,000 or less, both parties agree that Mr. Guest can recover nothing from the City. Under Mr. Guest's theory, the verdict (of $380,000 or less) would be reduced by the amount paid by the County for the joint tortfeasor release ($380,000), yielding a recovery of $0 from the

City. Under the main theory advanced in the City's opening brief,[5] it would be unnecessary to reduce the verdict to account for the LGTCA cap (because the verdict does not exceed the $400,000 cap), but the verdict would be reduced by the amount paid by the County for the joint tortfeasor release ($380,000), yielding a recovery of $0 from the City.

Similarly, if the factfinder awards no more than $400,000, both parties agree that Mr. Guest can recover, at most, $20,000 from the City. Under Mr. Guest's theory, the $400,000 would be reduced by the amount paid by the County for the joint tortfeasor release ($380,000), yielding a recovery of $20,000 from the City. Under the main theory advanced in the City's opening brief, it would be unnecessary to reduce the award to account for the LGTCA cap (because it does not exceed the cap), and the $400,000 would be reduced by the amount paid by the County for the joint tortfeasor release ($380,000), yielding a recovery of $20,000 from the City.

In short, if the parties had pursued the tort action to a final judgment, the issue in this declaratory judgment action might never come to fruition. The factfinder might have found that the City is not liable. Or the factfinder might have awarded damages in an amount insufficient to trigger the complicated analysis concerning the interplay between the LGTCA and the UCATA. For both of these reasons, the circuit court should not have

[5] We say the "main theory," because the City's reply brief introduced a variety of new theories, including one that City seemed to have disavowed in the circuit court – the theory that, under the LGTCA, if plaintiffs have claims against multiple local governments, the most that the plaintiffs can receive from all of the local governments, combined, is $400,000.

exercised its discretion to decide the unripe question in this declaratory judgment action. *See, e.g.*, *State v. G & C Gulf, Inc.*, 442 Md. at 721.

The parties persuaded the circuit court to declare their rights by representing that a declaration would facilitate the settlement of Mr. Guest's tort claim against the City. In this Court, Mr. Guest continues to insist that a decision on the merits will further judicial economy because, he says, the parties will be able to resolve the tort claim once they have a judicial determination about the limits of the City's exposure. The City, by contrast, was decidedly less optimistic than Mr. Guest about the prospects of settlement. At oral argument, counsel for the City would say only that it was "likely" but not "certain" that the negligence claim would be resolved through a settlement if the parties obtained a declaration concerning the City's exposure.

In general, we doubt that it would be appropriate for a court to declare the parties' rights on an issue in a separate and unresolved tort action even if both parties told a court that the declaratory judgment would lead to a settlement. In our judgment, the prospect that a declaration might lead to a settlement in a separate but related dispute does not give rise to the "unusual and compelling circumstances" that would justify a departure from the general rule that a court should not declare the parties' rights when they have excised a discrete issue from a pending or unresolved tort claim. Were we to decide otherwise, the exception would swallow the general rule, as parties would be able to obtain a declaratory judgment on a question in a pending or unresolved tort claim merely because

it would be useful to the parties if the courts (including the appellate courts) were to advise them of the answer.

Maryland Rule 2-502 sets forth "the authorized procedure" for obtaining the resolution of a question that is within the court's sole province to decide, *Haynie v. Gold Bond Bldg. Prods.*, 306 Md. at 653, such as the question in this case. Rule 2-502 states:

> If at any stage of an action a question arises that is within the sole province of the court to decide, whether or not the action is triable by a jury, and if it would be convenient to have the question decided before proceeding further, the court, on motion or on its own initiative, may order that the question be presented for decision in the manner the court deems expedient. In resolving the question, the court may accept facts stipulated by the parties, may find facts after receiving evidence, and may draw inferences from these facts. The proceedings and decisions of the court shall be on the record, and the decisions shall be reviewable upon appeal after entry of an appealable order or judgment.

In Mr. Guest's tort claim against Baltimore City, he and the City could have used Rule 2-502 to obtain a decision on the legal issue of the City's maximum exposure under the LGTCA and the UCATA. They opted not to pursue that remedy because the court's decision would have been an interlocutory order and would not have been a final judgment from which the aggrieved party could take an immediate appeal. Instead, they stripped the issue out of the tort case, put the tort case in suspended animation, and pursued a single-issue declaratory judgment action, with the hope of obtaining an advisory opinion from an appellate court. Maryland law does not permit them to make an

end-run around the general prohibition against appeals from interlocutory orders. *Polakoff v. Hampton*, 148 Md. App. at 31.[6]

In the federal system, civil litigants have a mechanism to obtain appellate review of interlocutory orders on issues like the one in this case. Under 28 U.S.C. § 1292(b) when a federal district judge is "of the opinion" that an interlocutory order "involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation," the judge "shall so state in writing in such order." The appellate court, "in its discretion," may then "permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order[.]" *Id.*

The federal courts have used § 1292(b) to decide interlocutory appeals concerning the extent of a defendant's damages. *See, e.g.*, *Vaughan v. Anderson Reg. Med. Ctr.*, 849 F.3d 588, 590 (5th Cir. 2017) (accepting an interlocutory appeal under 28 U.S.C. § 1292(b) to decide whether a plaintiff may recover punitive damages and damages for pain and suffering under the Age Discrimination in Employment Act); *In re Air Crash Disaster at Warsaw, Poland, on March 14, 1980*, 705 F.2d 85, 86 n.2 (2d Cir. 1983) (accepting an interlocutory appeal under 28 U.S.C. § 1292(b) to decide whether an airline could rely on the limits of liability under the Warsaw Convention for the Unification of

[6] Unlike the declaratory judgment remedy, Rule 2-502 does not require that an issue be ripe before a court may decide it. In its discretion, however, a court may decline to decide an issue under Rule 2-502 if the court perceives that the issue is unlikely to require a decision.

Certain Rules Relating to International Transportation by Air); *see generally Katz v. Carte Blanche Corp.*, 496 F.2d 747, 755 (3d Cir. 1974) (stating that a question of law is "controlling," within the meaning of 28 U.S.C. § 1292(b), when it is "serious to the conduct of the litigation, either practically or legally").

"Maryland," however, "has no statute or rule comparable to § 1292(b)." *Snowden v. Baltimore Gas & Elec. Co.*, 300 Md. 555, 563 n.7 (1984). It is up to the General Assembly to decide whether to create a mechanism for appellate review like § 1292(b). Litigants cannot fabricate an exception and bypass the statutory final-judgment rule by removing a legal issue from a pending or unresolved dispute, obtaining a declaratory judgment on it, and asking the appellate court to advise them about the correctness of the declaratory judgment.

Accordingly, we conclude that this case does not involve the unusual and compelling circumstances that might justify a departure from the principles that preclude the use of a separate declaratory judgment action to resolve an issue presented in a pending or unresolved dispute between the parties. The circuit court was required to abstain from issuing a declaratory judgment and to dismiss the declaratory judgment action.[7]

[7] Mr. Guest moved to strike the City's reply brief, in which it introduced a number of new legal theories that it did not present to the circuit court or this Court in its opening brief. Because we do not reach the merits of the appeal, it is unnecessary to decide the motion to strike.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY VACATED. CASE REMANDED TO THE CIRCUIT COURT FOR BALTIMORE COUNTY WITH DIRECTIONS TO DISMISS THE DECLARATORY JUDGMENT ACTION. COSTS TO BE EVENLY DIVIDED BETWEEN THE PARTIES.