

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

COUNTY MATERIALS CORPORATION,

Plaintiff,

v.

ALLAN BLOCK CORPORATION,

Defendant.

ORDER

05-C-675-S

On November 16, 2005 plaintiff County Materials Corporation commenced this declaratory judgment action against defendant Allan Block Corporation. In its complaint, plaintiff sought a declaration that the covenant not to compete contained within its 1993 production agreement was unenforceable. On December 9, 2005 defendant filed its answer which stated in relevant part as follows: "Allan Block prays that judgment be entered dismissing County Materials' Complaint with prejudice, and awarding such other relief as the Court deems just and equitable."

On February 1, 2006 plaintiff filed an amended complaint. However, the declaration sought by plaintiff in its original complaint remained the same. On February 13, 2006 defendant responded by filing an amended answer. However, the judgment defendant prayed for in its original answer remained the same. Accordingly, defendant failed to counterclaim for declaratory relief in either its answer or its amended answer. Additionally, it failed to counterclaim for declaratory relief throughout the pendency of this action.

On May 12, 2006 the Court granted defendant's motion for summary judgment and ordered that judgment be entered in favor of defendant against plaintiff dismissing the action and all claims contained therein with prejudice and costs. Judgment was entered accordingly on May 15, 2006. On May 19, 2006 plaintiff filed a timely motion to alter or amend the judgment pursuant to Federal Rule of Civil Procedure 59(e) which the Court denied on June 29, 2006. On July 5, 2006 plaintiff filed a notice of appeal.

On July 20, 2006 defendant filed a motion under 28 U.S.C. § 2202 for a permanent injunction as well as a motion for leave to conduct limited discovery regarding damages. The Court denies defendant's motions because a declaratory judgment was never entered in this action. Accordingly, the Court cannot grant defendant any relief under 28 U.S.C. § 2202.

When a prevailing party is entitled to a declaratory judgment a court must draft and enter such a judgment. Am. Inter-Fidelity Exch. v. Am. Re-Ins. Co., 17 F.3d 1018, 1020 (7th Cir. 1994) (citations omitted). Additionally, such a judgment must appear on a "separate piece of paper-separate, that is, from the court's opinion." Alpine State Bank v. Ohio Cas. Ins. Co., 941 F.2d 554, 558 (7th Cir. 1991) (citations omitted). The Court did not draft and enter such a judgment in this action because defendant never asked it to do so. Defendant failed to counterclaim for declaratory relief in either its answer or its amended answer. Additionally, defendant failed to counterclaim for declaratory

relief throughout the pendency of this action. Accordingly, when the Court granted defendant's motion for summary judgment it ordered that judgment be entered in favor of defendant against plaintiff dismissing the action and all claims contained therein with prejudice and costs which was the exact relief requested by defendant.

28 U.S.C. § 2202 states in relevant part as follows: "[f]urther necessary or proper relief based on a declaratory judgment or decree may be granted...against any adverse party whose rights have been determined by such judgment." Because the Court never entered a declaratory judgment in this action it cannot grant either the permanent injunction or the leave to conduct discovery that defendant now seeks under 28 U.S.C. § 2202 as further necessary or proper relief.

Accordingly,

ORDER

IT IS ORDERED that defendant Allan Block Corporation's motion under 28 U.S.C. § 2202 for a permanent injunction as well as its motion for leave to conduct limited discovery regarding damages is DENIED.

Entered this 25th day of July, 2006.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge