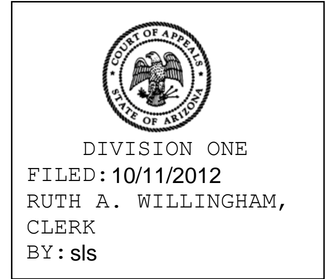
NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 10/11/2012
RUTH A. WILLINGHAM, CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

WORLD RESOURCES COMPANY, Plaintiff/Appellant, v. ROOSEVELT IRRIGATION DISTRICT, a political subdivision of the State of Arizona; GALLAGHER & KENNEDY, P.A., an Arizona professional corporation; and DAVID P. KIMBALL, III, and MARGARET A. KIMBALL, husband and wife, Defendants/Appellees.	)	1 CA-CV 10-0868 DEPARTMENT D **MEMORANDUM DECISION** (Not for Publication – Rule 28, Arizona Rules of Civil Appellate Procedure)

Appeal from the Superior Court in Maricopa County

Cause No. CV2009-038029

The Honorable John Christian Rea, Judge

AFFIRMED

Bolliger Law Offices — Phoenix
By Scott T. Ashby
Attorneys for Appellant

Gallagher & Kennedy, P.A. — Phoenix
By Michael K. Kennedy
and Shannon L. Clark
and Bradley J. Glass
Attorneys for Appellees

K E S S L E R, Judge

¶1 World Resources Company ("World Resources") appeals from the trial court's dismissal of its complaint based on the pre-litigation privilege to defame and denial of its motion for new trial. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 Roosevelt Irrigation District ("RID"), a political subdivision of the State of Arizona, supplies irrigation water via wells, pipelines, and canals. RID retained Gallagher & Kennedy, P.A. ("Attorneys") to identify potentially responsible parties ("PRPs") liable to RID under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601 to 9657 (2006), for groundwater pollution impacting RID's wells.

¶3 RID and Attorneys (collectively "Defendants") relied on a 2008 Draft Remedial Investigation Report ("Draft RI") prepared for the Arizona Department of Environmental Quality ("ADEQ") in identifying PRPs. The report provides that soil samples from World Resources contained hazardous chemicals commonly known as TCA and TCE "at concentrations slightly greater than the detection limits in soil sample collected during Phase I investigation but less than concentrations detected in background samples." World Resources was listed as a facility which "conducted investigational soil and/or soil gas

work," but was "not required to conduct further groundwater investigations."

¶4 Defendants prepared a draft complaint and demand letters for over 100 PRPs, including World Resources, alleging liability to RID for its environmental response costs associated with cleaning up the contamination in RID's wells. The demand letters invited all PRPs to a meeting on September 16, 2009 to discuss remediation, early response action, and potential settlement between the parties.[1] World Resources, through its counsel, requested clarification and specific documentation to support the allegations against them. Attorneys responded, stating that additional information regarding World Resources's specific liability would be provided at the meeting on September 16, and suggested requesting a copy of the Draft RI from ADEQ's Record Department to aid in preparation.

¶5 At the September 16 meeting, RID provided background information on the groundwater contamination, its basis for identifying the PRPs included in the draft complaint, and a cost benefit analysis outlining how settlement could save costs, expedite environmental response, and promote public safety.[2]

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[1] RID stated that only identified PRPs were invited to the meeting on September 16. World Resources, on the other hand, claimed that RID invited individuals and entities not included on the draft complaint and the meeting was open to the public.

[2] The settlement proposal was also available to PRPs on the internet and accessible only with a password.

Each PRP representative received individualized documents detailing the source of liability alleged in the draft complaint. *See supra* ¶ 3. World Resources asserted that Attorneys indicated the draft complaint would not be filed and was for settlement purposes only.[3]

¶6 After the meeting, World Resources, through counsel, wrote to Defendants outlining their defamatory actions and demanding a published retraction and apology. No response was received.

¶7 In December 2009, World Resources filed a complaint against Defendants for defamation, defamation *per se*, wrongful interference with contractual relations, aiding and abetting, and declaratory relief. In February 2010, Defendants filed a CERCLA suit in federal court against those PRPs who failed to settle with RID. World Resources was a named defendant. Defendants also moved to dismiss World Resources's complaint based in part on the pre-litigation privilege to defame. The trial court granted Defendant's motion. World Resources's subsequent motion for reconsideration and new trial was denied, and judgment dismissing the complaint was entered in October 2010.

¶8 World Resources timely appealed. We have jurisdiction

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[3] At the meeting, Attorneys also indicated that they could not act as counsel adverse to some of the PRPs as they were either current or former clients.

pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(A)(1) and (A)(5)(a) (Supp. 2011).[4]

ISSUES AND STANDARD OF REVIEW

¶9 "In various settings, Arizona courts have applied the absolute privilege to defame in connection with judicial proceedings." *Green Acres Trust v. London*, 141 Ariz. 609, 613, 688 P.2d 617, 621 (1984). These defamatory statements must be made in furtherance of litigation that is contemplated in good faith and under serious consideration. *Id.* at 613-14, 615, 688 P.2d at 621-22, 623.

¶10 World Resources argues that the trial court erred in granting Defendants' motion to dismiss based on the pre-litigation privilege to defame because: (1) Defendants' defamatory statements were published to entities not connected with the proposed litigation; (2) Defendants' defamatory statements made during settlement discussions fell outside the scope of the privilege; (3) Defendants published defamatory materials when litigation was not contemplated in good faith or under serious consideration; (4) the complaint alleged a valid cause of action for intentional interference with contractual relations; and (5) the complaint stated a valid cause of action

[4] We cite the current version of the applicable statute when no revisions material to this decision have since occurred.

for declaratory relief and was filed prior to Defendants' federal suit.

¶11 We review the dismissal of a complaint under Arizona Rule of Civil Procedure 12(b)(6) *de novo*. *Coleman v. City of Mesa*, 2012 WL 3870531, at *2, ¶ 7 (Ariz. 2012). "In reviewing the trial court's decision to dismiss for failure to state a claim, we assume as true the facts alleged in the complaint and affirm the dismissal only if, as a matter of law, the plaintiff would not be entitled to relief on any interpretation of those facts." *Doe ex rel. Doe v. State*, 200 Ariz. 174, 175, ¶ 2, 24 P.3d 1269, 1270 (2001). "The existence and scope of a privilege are questions of law for the court that we review *de novo*." *Advanced Cardiac Specialists, Chartered v. Tri-City Cardiology Consultants, P.C.*, 222 Ariz. 383, 386, ¶ 6, 214 P.3d 1024, 1027 (App. 2009).

DISCUSSION

I. PRE-LITIGATION PRIVILEGE

¶12 The Restatement (Second) of Torts (1977) provides that parties to judicial proceedings enjoy an absolute privilege to actions for defamation under certain circumstances:

> A party to a private litigation . . . is absolutely privileged to publish defamatory matter concerning another in communications preliminarily to a proposed judicial proceeding, or in the institution of or during the course and as a part of, a judicial proceeding in which he

> participates, if the matter has some relation to the proceeding.

Restatement (Second) of Torts § 587 (1977); *see also Green Acres Trust*, 141 Ariz. at 613-15, 688 P.2d at 620-23; *Hall v. Smith*, 214 Ariz. 309, 312, ¶ 8, 152 P.3d 1192, 1195 (App. 2007). The purpose of the pre-litigation privilege is to ensure "the fearless prosecution and defense of claims which leads to complete exposure of pertinent information for a tribunal's disposition." *Green Acres Trust*, 141 Ariz. at 613, 688 P.2d at 621. "The defense is absolute in that the speaker's motive, purpose or reasonableness in uttering a false statement do not affect the defense." *Id*. To qualify within the privilege the defamatory statement "must relate to, bear on or be connected with the proceeding." *Id*. In addition, the defamatory statements must be made in furtherance of litigation that is contemplated in good faith and under serious consideration. *Id*. at 613-14, 615, 688 P.2d at 621-22, 623. "Courts have routinely rejected privilege claims when the recipient of the allegedly defamatory communication had no relation to the litigation and the communication would merely serve to 'achieve an advantage in litigation.'" *Hall*, 214 Ariz. at 315, ¶ 18, 152 P.3d at 1198 (citation omitted).

¶13 World Resources first argues that the pre-litigation privilege does not apply because the defamatory statements were

published to parties with no direct interest in the litigation, specifically, to parties that were eventually omitted from the draft complaint. RID argues that those parties who received the draft complaint and settlement communications were connected with the proposed litigation at that time, and their omission from the later lawsuit is irrelevant.[5]

¶14 For the pre-litigation privilege to apply, the recipient of the defamatory communications must have a direct interest or close relationship to the proposed litigation. *Hall*, 214 Ariz. at 313, ¶ 13, 152 P.3d at 1196. "Exactly how close or direct that relationship must be can only be determined on a case-by-case basis, with a focus on the underlying principle that the privilege should be applied to 'promote candid and honest communication between the parties and their counsel in order to resolve disputes.'" *Id*. (citation omitted). The record supports, based on the nature of the complex litigation, that the potential parties had a direct relationship to the proposed litigation, regardless of whether they were ultimately included in the lawsuit, and their receipt of alleged defamatory statements does not destroy the pre-litigation privilege. To hold otherwise would hamper communications

[5] RID further argues "[t]here may be many reasons why litigation is not pursued against potential defendants, including settlement, newly-learned information or economic considerations."

between prospective parties and their counsel as well as between prospective litigants attempting to settle a dispute.[6]

¶15 World Resources also argues that the trial court erred in granting Defendants' motion to dismiss based on the pre-litigation privilege to defame because Defendants' defamatory statements fell outside the scope of the privilege. Specifically, World Resources argues that exploring settlement is insufficient to invoke the privilege and cites to *Edwards v. Centex Real Estate Corporation* to support that proposition. 53 Cal.App.4th 15, 33 (Cal. Ct. App. 1997) ("The strong public policy favoring settlement and the resolution of disputes without resort to litigation, with which we agree, is simply unrelated to the rationale of encouraging free access to the courts on which the privilege is based."). We reject this argument for two reasons. First, the Arizona Supreme Court has already confirmed that the privilege extends to pre-litigation settlement communications: "The various applications of the

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[6] The contrast between two cases underscores our conclusion that there was not excess publication. In *Green Acres Trust*, the Arizona Supreme Court held defendants were not absolutely privileged to publish defamatory communications to a newspaper reporter. 141 Ariz. at 616, 688 P.2d at 624. The reporter had no relationship with the litigation. In *Hall*, we found an employee's defamatory letter sent to its parent company, a separate corporate entity, was protected under the privilege. 214 Ariz. at 315-16, ¶ 21, 152 P.3d at 1198-99. The facts alleged in the complaint here are more like *Hall* because each of the proposed defendants had a direct interest or close relationship to the proposed litigation.

absolute privilege to pre-proceeding communications include a demand letter sent to representative of plaintiff's insurer, a letter sent to potential defendant, a letter sent to investors which sought information relating to prospective proceeding, and a printed list of questions prepared in anticipation of proceeding." *Green Acres Trust*, 141 Ariz. at 615-16, 688 P.2d at 623-24 (citations omitted). Second, California relies on its statutory definition of the privilege, codified at Cal. Civ. Code § 47 (2005), which differs from the Restatement, which Arizona follows.[7] *See Hall*, 214 Ariz. at 313 n.2, ¶ 8, ¶ 9, 152 P.3d at 1196 n.2.

¶16 Other jurisdictions that have adopted the Restatement have also found that the privilege extends beyond statements made in the initiation of a lawsuit or in the course of litigation. *See Mansfield v. Bernabei*, 727 S.E.2d 69, 75 (Va. 2012) ("The Restatement approach facilitates the legitimate investigation and settlement of claims. The countervailing

[7] California's statute provides that a publication is privileged if made "[i]n any (1) legislative proceeding, (2) judicial proceeding, (3) in an other official proceeding authorized by law, or (4) in the initiation or course of any other proceeding authorized by law." Cal. Civ. Code § 47(b). *But cf.* Restatement (Second) of Torts § 587 ("A party to a private litigation . . . is absolutely privileged to publish defamatory matter concerning another in communications *preliminarily to a proposed judicial proceeding*, or in the institution of or during the course and as a part of, a judicial proceeding in which he participates, if the matter has some relation to the proceeding." (emphasis added)).

legitimate concern . . . that extension of absolute privilege to pre-filing communications may prompt defamatory statements without meaningful restraint, is addressed by the Restatement requirements that the proposed judicial proceeding must be 'contemplated in good faith and under serious consideration,' and the communication must relate to that anticipated proceeding."); *Messina v. Krakower*, 439 F.3d 755, 760 (D.C. Cir. 2006) ("In particular, the privilege applies to written correspondence between parties' counsel concerning threatened lawsuits, statements relating to threats of litigation, including statements analogous to those that are often contained in demand letters, and statements made during settlement discussions." (internal citations and punctuation omitted)); *Daystar Residential, Inc. v. Collmer*, 176 S.W.3d 24, 27 (Tex. App. 2004) ("The privilege not only extends to statements made during litigation, but also to statements made in contemplation of and preliminary to judicial proceedings."); *Arundel Corp. v. Green*, 540 A.2d 815, 819 (Md. Ct. Spec. App. 1988) ("We find the Restatement position persuasive. It promotes the longstanding policy in [Maryland] of extending the absolute privilege to attorneys engaged in judicial proceedings because otherwise they might be deterred in their role in the judicial process by the fear of suits for defamation. It also recognizes the importance of the attorney's functions prior to commencement of a suit on

behalf of a client. Investigation and evaluation of facts upon which the anticipated litigation is to be based are an essential part of the attorney's duties to his or her client and to the court.").[8]

¶17 "The law favors the compromise and settlement of disputed claims and will sustain such settlements if fairly made, because it is to the interest of the state that there should be an end to litigation." *Phillips v. Musgrave*, 23 Ariz. 591, 594, 206 P. 164, 165 (1922) (citation omitted); *see also Shelton v. Grubbs*, 116 Ariz. 230, 230, 568 P.2d 1128, 1128 (App. 1977) ("A compromise and settlement has long been favored in Arizona."); *Dansby v. Buck*, 92 Ariz. 1, 11, 373 P.2d 1, 8 (1962) ("It has always been the policy of the law to favor compromise

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[8] World Resources also argues that the appropriate remedy in this case was under Arizona Rule of Civil Procedure 56, and not Rule 12(b)(6). In the complaint, World Resources asserted that the defamatory material was made publicly available on the internet. In its motion to dismiss, RID attached printed images from its website to show access must be requested to obtain entry to the restricted PRP section of the site. Under the "incorporation by reference" doctrine, the court may "take into account documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the plaintiff's pleading." *Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005) (citation and internal punctuation omitted). This doctrine applies equally to printed material and internet pages. *Id.*; *see also ELM Retirement Ctr., L.P. v. Callaway*, 226 Ariz. 287, 289, ¶ 7, 246 P.3d 938, 940 (App. 2010) (holding that consideration of a document not attached to the complaint that was central to the claim does not convert a motion to dismiss into one for summary judgment). Moreover, this issue was waived as no objection was raised below. *State v. Hanson*, 138 Ariz. 296, 300-01, 674 P.2d 850, 854-55 (App. 1983).

and settlement; and it is especially important to sustain that principle in this age of voluminous litigation . . . ."); *Messina v. Fontana*, 260 F.Supp.2d 173, 179 (D.C. Cir. 2003) ("Private and amicable resolution of disputes is to be encouraged, not discouraged, as would happen if every lawyer's letter could provoke a defamation suit.").

¶18 Thus, we are not only bound by the Arizona Supreme Court's application of the privilege to settlement discussions and demand letters, as in this case, but reaffirm the sound policy upon which the application is based. Extending the pre-litigation privilege to settlement discussions helps to promote open communication between parties and the legitimate settlement of claims without fear of suits for defamation. In addition, any concerns that such an extension would prompt defamatory statements without restraint is addressed by the requirements set forth in the Restatement.

¶19 World Resources further argues that the pre-litigation privilege does not apply because RID published defamatory materials when litigation was not contemplated in good faith or under serious consideration. As we understand World Resources's argument, it claims that the proposed CERCLA suit was a sham, and the settlement negotiation was merely a "stick-up" meant to coerce PRPs into assisting RID with funds to solve RID's financial problems. To support its claim, World Resources

asserts that RID failed to file a CERCLA complaint immediately after the statements were made, subjecting them to harm with no adequate way to respond.

¶20 RID sent the initial letter and draft complaint to PRPs on August 19, 2009, held the informational meeting on September 16, 2009, and filed its complaint with the federal court on February 9, 2010. We cannot say that five months is an excessive time period given the complex nature of the litigation and the multiplicity of potential parties. Furthermore, whether the suit was filed immediately following the statements is irrelevant. As discussed in the Restatement, a complaint does not even need to be filed to invoke the protection of the privilege: "It applies to communications made by a client to his attorney with respect to proposed litigation . . . *whether or not the information is followed by a formal complaint or affidavit*." Restatement (Second) of Torts § 587 cmt. b. (emphasis added). "An actual outbreak of hostilities is not required, so long as litigation is truly under serious

consideration." *Krakower*, 439 F.3d at 760 (citation omitted). We therefore find World Resources's argument to be unpersuasive.[9]

¶21 Here, the defamatory statements fell inside the scope of the privilege, were published to entities with a direct

[9] To require an actual outbreak of litigation fails to take into account various reasons why parties may elect not to file a lawsuit including settlement, financial concerns, and the availability or presentation of new information. To require litigation could essentially lead to an increase in unnecessary lawsuits as every plaintiff who failed to settle with all named defendants could be liable for defamation to those still involved in the litigation.

relationship to the proposed litigation,[10] and there are no well-pleaded allegations that RID published the materials when

[10] As we discussed above, *supra* ¶¶ 13-14, publication as to the later unnamed defendants is immaterial as those entities were considered potential putative defendants at the time the materials were distributed, and as a result, had a direct interest or close relationship to the proposed litigation. World Resources, however, also claims that the September 16 meeting was "open to the public." In its complaint, World Resources stated that "the Defendants invited individuals and entities—other than the Defendants themselves and the putative defendants on the draft complaint—to the September 16, 2009 meeting, including [ADEQ], which regulates World Resource Company's operations." In the next paragraph, however, World Resources states that "[b]y virtue of [RID's] publication of the unfiled draft complaint *to those named as defendants therein*, [RID] informed each of the attendees . . . that [World Resources] was responsible or partially responsible for the acts and omissions set forth in the draft." (Emphasis added.) Furthermore, a letter from World Resources's counsel to RID states the following:

> RID and its agents [Attorneys] invited all or almost all of the defendants that are named in the unfiled draft complaint to the September 16, 2009 meeting. Many of the businesses listed in the unfiled draft complaint and attending that meeting are clients or prospective clients of World Resources Company. By virtue of RID's [and Attorneys] publication of the unfiled draft complaint to those named as defendants therein, each of the recipients learned of the statements made about the bad acts and liability of potentially responsible parties . . . .
>
> During the September 16, 2009 meeting, RID and its agents made a presentation in which they alleged that all of the defendants listed on the draft complaint . . . were liable to RID . . . .

litigation was not contemplated in good faith or under serious consideration. The well-pleaded facts in World Resources's complaint were that RID named World Resources in a draft complaint and settlement discussions did not resolve the dispute. World Resources's legal conclusion that the complaint was a sham and the settlement discussion a mere "stick-up" are not well pleaded. *See Jeter v. Mayo Clinic Ariz.*, 211 Ariz. 386, 389, ¶ 4, 121 P.3d 1256, 1259 (App. 2005) ("[W]e do not accept as true allegations consisting of conclusions of law, inferences or deductions that are not necessarily implied by well-pleaded facts, unreasonable inferences or unsupported conclusions from such facts, or legal conclusions alleged as facts"; only well-pleaded facts are accepted as true, not inferences not necessarily implied by such facts or legal conclusions in the form of factual allegations (citations omitted)).

¶22 Thus, the complaint did in fact contain sufficient facts to invoke the protection of the privilege.

> . . . By publicly making those statements, RID and its agents publicly stated and implied that they had evidence demonstrating that World Resources Company had committed CERCLA violations.

Although the statements were made "publicly," the only specific entities alleged to have been at the meeting are the PRPs and ADEQ.

II. INTENTIONAL INTERFERENCE

¶23 World Resources argues that the trial court erred in granting Defendants' motion to dismiss based on the pre-litigation privilege to defame because the complaint alleged a valid cause of action for intentional interference with contractual relations. In the complaint, World Resources alleged that: (1) "[i]t was wrongful and actionable to print and publish falsehoods in the unfiled draft complaint and in the September 16, 2009 public meeting"; (2) RID's actions "were malicious, willful and in reckless disregard of [World Resources's] rights and were made without any basis in fact"; and (3) "[i]f any of [its clients] believes that its byproducts are being recycled in a manner that violates CERCLA, they will no doubt immediately cease doing business with World Resources."

¶24 To establish a *prima facie* case of intentional interference, a plaintiff must show "the existence of a valid contractual relationship or business expectancy; the interferer's knowledge of the relationship or expectancy; intentional interference inducing or causing a breach or termination of the relationship or expectancy; and resultant damage to the party whose relationship or expectancy has been disrupted." *Wallace v. Casa Grande Union High Sch. Dist. No. 82 Bd. of Governors*, 184 Ariz. 419, 427, 909 P.2d 486, 494 (App. 1995). "If the interferer is to be held liable for committing a

wrong, his liability must be based on more than the act of interference alone. Thus, there is ordinarily no liability absent a showing that defendant's actions were improper as to motive or means." *Neonatology Assocs., Ltd. v. Phoenix Perinatal Assocs. Inc.*, 216 Ariz. 185, 187-88, ¶ 8, 164 P.3d 691, 693-94 (App. 2007) (citation omitted). This "improper" element is generally "determined by weighing the social importance of the interest the defendant seeks to advance against the interest invaded." *Id.* at 188, ¶ 8, 164 P.3d at 694 (citation omitted).[11]

¶25 Here, RID made the statements in anticipation of litigation and to facilitate settlement. In reviewing the record, we see no evidence of improper non-speech conduct. *See Safeway Ins. Co. v. Guerrero*, 210 Ariz. 5, 14 n.16, ¶ 31, 106 P.3d 1020, 1029 n.16 (2005) ("Because we find nothing improper in the lawyers' non-speech conduct, such a privilege might be

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[11] The Restatement (Second) of Torts § 767 provides the following factors should be considered in determining whether conduct is improper:

> (a) the nature of the actor's conduct, (b) the actor's motive, (c) the interests of the other with which the actor's conduct interferes, (d) the interests sought to be advanced by the actor, (e) the social interests in protecting the freedom of action of the actor and the contractual interests of the other, (f) the proximity or remoteness of the actor's conduct to the interference and (g) the relations between the parties.

relevant to determining whether the lawyers acted 'improperly' . . . ."). Thus the absence of misconduct and the application of the absolute pre-litigation privilege to defame supports the justification of the means. In other words, if the speech was absolutely protected from liability, it was not improper. Based on the record presented, the court did not err in dismissing the intentional interference claim.

III. DECLARATORY RELIEF

¶26 World Resources argues the trial court erred in granting RID's motion to dismiss and denying World Resources's motion for reconsideration when the complaint stated a valid cause of action for declaratory relief and was filed prior to RID's federal suit. In that claim, World Resources asked the trial court to declare that the statements made by RID were false. RID argues that the intention behind the Uniform Declaratory Judgment Act, A.R.S. §§ 12-1831 to -1846 (2003), is still served because the truth or falsity of the statements will be resolved in the federal suit, and the fact that World Resources's claim was filed first is immaterial.

¶27 The trial court dismissed World Resources's declaratory action without prejudice because the issue would be addressed in RID's CERCLA claim filed with the federal court:

> The merit of RID's CERCLA claims against [World Resources] is at issue in the Federal District Court case. Although this case was

> filed before the CERCLA action, the Court finds the ruling in *Merritt-Chapman & Scott Corp. v. Frazier*, 92 Ariz. 136, 139, [375 P.2d 18, 19] (1962), to be applicable here: "It was never intended that the relief to be obtained under the Declaratory Judgment Act should be exercised for the purpose of trying issues involved in cases already pending."

¶28 The Uniform Declaratory Judgment Act is remedial in nature and intended to be liberally construed. *Elkins v. Vana*, 25 Ariz. App. 122, 126, 541 P.2d 585, 589 (1975). "One purpose of actions for declaratory judgment is to provide a means by which rights and obligations may be adjudicated in cases involving an actual controversy that has not reached the stage at which either party may seek a coercive remedy." *Id*. Such an action is intended "to relieve litigants of the common law rule that no declaration of right may be judicially adjudged until that right has been violated, and to permit adjudication of rights or status without the necessity of a prior breach." *Id*. "To vest the court with jurisdiction . . . the complaint must set forth sufficient facts to establish that there is a judiciable controversy. A 'justiciable controversy' arises where adverse claims are asserted upon present existing facts, which have ripened for judicial determination." *Planned Parenthood Ctr. of Tucson, Inc. v. Marks*, 17 Ariz. App. 308, 310, 497 P.2d 534, 536 (1972) (citations omitted).

¶29 A declaratory judgment, however, "is not a substitute for an ordinary cause of action, nor is it a proper means of trying a case. . . . Whether relief . . . should be granted is a matter resting in the sound discretion of the trial court, and such relief ought not ordinarily be granted where another adequate remedy is at hand." *City of Fort Smith v. Didicom Towers, Inc.*, 209 S.W.3d 344, 348 (Ark. 2005).

¶30 In the present case, the federal suit was not pending at the time World Resources filed its complaint. The fact that the federal suit was brought after the state-court action does not mean the court erred in dismissing the declaratory judgment action. *See id.* at 348-49. Section 12-1836 provides that "[t]he court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding." Resolving the defamation claim necessarily turns on the application of CERCLA. As that issue would need to be decided in federal court, and there was no other justiciable controversy in the trial court, the trial court did not abuse its discretion in dismissing the declaratory relief claim in favor of allowing the federal court to settle the issue of truthfulness. *See Didicom Towers*, 209 S.W.3d at 350.

CONCLUSION

¶31 For the foregoing reasons, we affirm the trial court's judgment.

/s/

DONN KESSLER, Judge

CONCURRING:

/s/

MICHAEL J. BROWN, Presiding Judge

/s/

ANDREW W. GOULD, Judge