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When is a stipulation not a stipulation?

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Entering into stipulations is an extremely common occurrence in litigation. The recent case of Goddard v. Goucher, et al., however, suggests that there is one question you should ask yourself before deciding to enter into that stipulation: Am I stipulating to a "legal conclusion" that the court can, sua sponte, choose to ignore?

In Goucher, the Appeals Court held that "parties may not stipulate to the legal conclusions to be reached by the court … [and] we therefore do not hold ourselves 'bound to accept, as controlling, stipulations as to questions of law.'"

The plaintiff in Goddard sought to enforce a purchase and sale agreement to sell a parcel of land in Dover, despite the fact that the parties did not execute a written P&S (see, e.g., McCarthy v. Tobin, 429 Mass. 84 (1999)).

In May 2007, the plaintiff sent a proposed P&S, signed by the plaintiff, to the defendant, who in turn showed it to his attorney, made some changes, and returned the amended version to the plaintiff, signed by the defendant. The plaintiff never signed the amended agreement.

The case was tried in Superior Court, and shortly before trial the parties entered into the following pre-trial stipulation: "The purchase and sale Agreement ... dated May 2007, signed by Scott Goddard and Richard Goucher as attorney-in-fact for Barbara B. Goucher, Trustee of the Salt Marsh Farm Trust, was a valid and enforceable contract at the time it was entered into by the parties."

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The trial judge rejected the stipulation to the extent that it stated the legal conclusion that an enforceable contract was created. After taking evidence on the issue, the judge concluded that no such agreement was entered into, and thereupon entered judgment against the plaintiff, who appealed.

On appeal, the plaintiff argued that the trial judge "simply ignored" the stipulation that the May 2007 agreement constituted a valid and enforceable contract.

In rejecting that argument, the Appeals Court reasoned that the stipulation was both one of fact and law. The court observed that the trial judge properly parsed the language of the stipulation, accepting it to the extent the parties agreed to facts, and properly disregarding it to the degree it stated conclusions of law.

The Appeals Court held that issues of law are the province of courts, not parties to a lawsuit, noting that "the court cannot be controlled by agreement of counsel on a subsidiary question of law."

In support of its decision, the Appeals Court cited federal cases rejecting a stipulation that a corporate reorganization plan was fair and equitable and that federal credit unions are governmental units, and Massachusetts case law rejecting parties' stipulation regarding jurisdiction (a proposition that likely stands on different grounds) and a stipulation that a writ of mandamus should issue.

Finally, the court observed (in footnote 12) that it may have been preferable for the judge to notify the parties that he was considering disregarding the stipulation. Nevertheless, the court concluded that the judge was well within his authority to reject the stipulation without prior notice to the parties.

So the next time you consider entering into a stipulation, remember to consider whether you are taking a risk that it will not be enforced by the court because you are stipulating to "legal conclusions." MLW

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