

## Mass. Appeals Court Says No To Legal Stipulations

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The Massachusetts Appeals Court's recent decision in *Goddard v. Goucher*, 89 Mass. App. Ct. 41 (Feb. 2, 2016) is an important reminder to practitioners that stipulations containing legal conclusions may not have the binding and conclusive effect that parties intend or assume. In *Goddard*, the parties stipulated that they had entered into a valid and enforceable contract. The Appeals Court rejected the stipulation, finding that the parties had never finalized an enforceable agreement and holding that courts are not obligated to accept stipulations as to questions of law or the legal effect of admitted facts. *Goddard* serves as a warning that, despite complete agreement among all parties, a court may reject and refuse to enforce legal conclusions to which the parties agree by stipulation.



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### Underlying Dispute

In 2007, Richard Goucher offered to sell to Scott Goddard a piece of property for \$1 plus the payment of back real estate taxes. Goddard's counsel drafted a purchase and sale agreement, which Goddard signed and sent to Goucher. Goucher's counsel amended the agreement by, among other things, adding a provision making clear that Goddard, as the buyer, agreed to assume any and all encumbrances on the property, as well as past, present and future taxes. Goucher signed the amended agreement and sent it back to Goddard. Meanwhile, the real estate taxes went unpaid, and the town of Dover secured a judgment foreclosing on the property.



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Goddard filed a complaint against Goucher in Superior Court alleging breach of contract. He sought a declaration that the purchase and sale agreement was a valid and enforceable contract and requested specific performance, i.e., that the court order Goucher to obtain valid title from the town and convey the property to Goddard. The town was allowed to intervene and filed cross claims and counterclaims.

### Agreement Rejected

Prior to trial, Goddard, Goucher and the town all entered into a stipulation that stated, "The purchase and sale agreement ... was a valid and enforceable contract at the time it was entered into by the parties." They also stipulated that "[i]f the court finds that [Goucher] breached the terms of the [agreement], [Goddard] is not entitled to and shall not be awarded any monetary damages."

The trial judge, however, rejected the stipulation, concluding that the parties' dealings "never progressed from imperfect negotiations into an enforceable contract." He found that the evidence

regarding the events that took place after Goucher's counsel amended the agreement was unclear and ultimately concluded, based on credibility determinations, that Goucher's counsel's amendments caused Goddard to forgo signing the amended agreement. A judgment was entered against Goddard, and Goddard appealed.

### **Rejection Affirmed on Appeal**

The main issue on appeal was whether the trial judge erred in concluding that Goddard and Goucher had failed to enter into a valid and enforceable purchase and sale agreement despite the parties' pretrial stipulation to the contrary. Specifically, Goddard argued that the trial judge's finding was clearly erroneous because it directly contradicted the parties' stipulation. The Appeals Court disagreed with Goddard, and affirmed.

The Appeals Court explained that stipulations as to matters of fact are treated very differently than stipulations as to matters of law. Under both Massachusetts and federal law, it is well-settled that fact stipulations are binding on the parties and respected by the courts, unless they are "improvident or not conducive to justice." In contrast, and pursuant to longstanding precedent, legal stipulations are not binding and may be readily rejected by courts. See, e.g., *Estate of Sanford v. Commissioner*, 308 U.S. 39, 50–51 (1939); *Warner v. Taunton*, 253 Mass. 116, 117–18 (1925).

The Appeals Court concluded that the stipulation that the agreement "was a valid and enforceable contract" was "a stipulation of law seeking to bind the court regarding the legal effect of the admitted facts." It found that the trial judge's conclusion that Goddard never agreed to Goucher's amendments was supported by a reasonable view of the evidence. Therefore, because there were incomplete and misleading facts and the stipulation appeared "self-serving," the Appeals Court concluded that the parties' agreement and incorrect application of legal principles had no binding effect.

Interestingly, the Appeals Court, in footnote 12, observed that the trial judge had not notified the parties that he was considering disregarding their stipulation and thus failed to give them an opportunity to offer different or additional proof to support their position at trial. Although the Appeals Court thought it would have been "preferable" for the trial judge to warn the parties that he was considering disregarding the stipulation, it recognized that, on appeal, Goddard had not been able to identify any other proof he would have offered at trial. Further, the Appeals Court stated that "the gaps, contradictions and questionable legal conclusions reflected therein should have put the parties on notice that the stipulation would not be dispositive. ... In our view, the judge was well within his authority to reject this highly problematic stipulation of law."

### **Lessons and Warnings**

Although Goddard fits within a long line of precedent recognizing that courts may reject legal stipulations, it is interesting for several reasons. First, the stipulation at issue in Goddard is distinguishable from the types of legal stipulations most easily rejected by judges. Often legal stipulations attempt to address a court's subject-matter jurisdiction, a party's standing, the justiciability of a dispute or the legal definition of a statutory term. See, e.g., *Sanford*, 308 U.S. at 50–51; *Texas Instruments Federal Credit Union v. DelBonis*, 72 F.3d 921, 928 (1st Cir. 1995); *Warner*, 253 Mass. at 117–18; *Sprogis v. Zoning Board of Appeals of Fall River*, No. A97-01495, 1999 Mass. Super. LEXIS 270, at \*19 (July 22, 1999). These types of legal issues are so obviously within the sole province of the judiciary to decide that courts are extremely reluctant to allow parties to remove these questions from the courts' authority.

In contrast, the stipulation in *Goddard* addressed the parties' manifestations of intent to enter into a binding contract. Courts in other contexts appear to have taken such stipulations at face value, without subjecting them to scrutiny. See, e.g., *In re McCabe*, 411 Mass. 436, 438, 449 (1991) (accepting stipulation that a "contract is legal and enforceable" and "was breached by the defendant"). What apparently drew the Appeals Court's ire in *Goddard*, however, was the existence of evidence contradicting the factual and legal basis for the parties' stipulation, which the court could not ignore. Thus, although courts may not always reject legal stipulations, such stipulations are potentially vulnerable and subject to scrutiny, and in cases like *Goddard* where defects were evident, parties should beware.

Second, it appears that the parties in *Goddard* could have accomplished the result they desired by forgoing a legal stipulation and opting for an alternative procedural mechanism. For example, the parties could have stipulated to facts that would have required the trial court to reach the desired legal conclusions. Or one party could have chosen not to proffer evidence at trial which was inconsistent with the stipulation. The parties also could have endeavored to stipulate as to liability or settle at least a portion of the case and enter into a settlement agreement that framed the issues remaining for judicial resolution. If, for whatever reason, a stipulation as to issues of law was needed, the parties could have presented the stipulation to the court for acceptance and entry as an order of the court, which would have caused the issue to be resolved, one way or another, in the trial court.

In sum, *Goddard* offers important reminders for practitioners. In order to avoid the outcome the parties faced in *Goddard*, counsel should be wary of drafting stipulations containing legal conclusions. By limiting stipulations to matters of fact, counsel and parties will ensure their agreements will be binding and enforceable. To the extent resolution of a legal issue is desired, counsel should consider other procedural mechanisms that could achieve an enforceable result. Finally, if a legal stipulation is necessary, parties would be best served to ensure that their agreement is factually supportable and legally sound. Is the stipulation simply a means to streamline the issues and reach a more efficient resolution, or is it a way for the parties to avoid a contrary judicial outcome? If the stipulation were rejected, would the parties be able to offer facts and law to support their position? Additionally, attempts should be made to have the court enter the stipulation as an order of the court. Although a legal stipulation is always vulnerable to partial or total rejection, a stipulation that is generally consistent with the law and the facts of the case is most likely to be adopted by the court.

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