ZARELLA, J., with whom SULLIVAN, C. J., joins, dissenting. I disagree with the majority's conclusion that, even though the plaintiff, Steven Wallerstein, accepted an offer of judgment of $15,000, and the trial court rendered judgment for that amount plus costs, the plaintiff is entitled to open that judgment to obtain attorneys' fees under General Statutes § 52-240a.

The plaintiff filed a complaint in this action on March 14, 1996. In his claim for relief, the plaintiff stated: ''The plaintiff claims monetary damages, including common law punitive damages and statutory punitive damages pursuant to . . . General Statutes § 52-240b, *and* [*attorneys*'] *fees* pursuant to . . . § 52-240a . . . in excess of [$15,000.00].'' (Emphasis added.) Thereafter, on September 12, 1997, the plaintiff, in an attempt to settle with the defendant, Stew Leonard's Dairy, made an offer of judgment, which provided in relevant part: ''Pursuant to Practice Book §§ [346 through 348] and General Statutes § 52-192a, the plaintiff . . . offers to stipulate to a judgment settling his claims in this action against the defendant . . . for the sum of $30,000.00.'' The defendant did not accept the plaintiff's offer and, on January 12, 2000, made a counteroffer, pursuant to General Statutes § 52-193, to ''stipulate for judgment in

the amount of [$15,000] . . . .'' On January 21, 2000, the plaintiff accepted the defendant's offer of judgment of $15,000 and submitted his bill of costs. On February 4, 2000, the trial court rendered judgment in accordance with the plaintiff's acceptance of the defendant's offer of $15,000. On March 2, 2000, the plaintiff filed a motion seeking to open the trial court's judgment pursuant to Practice Book § 17-4 (a)[1] to ''include an award of . . . attorneys' fees . . . .'' The trial court denied the plaintiff's motion on April 3, 2000, and the plaintiff appealed from the trial court's denial of that motion.

The crucial issue raised in this appeal is not, as the majority states, whether the plaintiff was the prevailing party for purposes of § 52-240a but, rather, whether the court abused its discretion in denying the plaintiff's motion seeking to open the judgment.[2] I conclude that the court did not abuse its discretion.

It is well settled that, because the decision to open a stipulated judgment falls within the trial court's discretion, this court's review is limited to a determination of whether the trial court abused its discretion or reached an unreasonable result. E.g., *Housing Authority* v. *Lamothe*, 225 Conn. 757, 767, 627 A.2d 367 (1993) (''a decision to open or not to open a judgment falls within the trial court's discretion and will be overturned on appeal only if such discretion was abused or if an unreasonable result was reached''); *Gillis* v. *Gillis*, 214 Conn. 336, 337, 572 A.2d 323 (1990) (trial court's denial of motion to open or set aside stipulated judgment is reviewed for ''clear abuse of its wide discretion in determining such matters''). ''In determining whether the trial court abused its discretion, this court must make every reasonable presumption in favor of its action. . . . The manner in which [this] discretion is exercised will not be disturbed so long as the court could reasonably conclude as it did.'' (Citations omitted; internal quotation marks omitted.) *Gillis* v. *Gillis*, supra, 340–41.

The majority asserts that, ''unless a party fashions its offer of judgment explicitly to preclude an award of attorneys' fees, the court may not read such a preclusion into the offer.'' The majority evidently believes that the trial court reasonably could not have concluded as it did. I maintain that, under the circumstances of this case, the trial court could do no more than render judgment with costs as the parties had agreed because the terms of the settlement were incorporated in a stipulated judgment.

A stipulated judgment constitutes a ''contract of the parties acknowledged in open court and ordered to be recorded by a court of competent jurisdiction.'' *Bryan* v. *Reynolds*, 143 Conn. 456, 460, 123 A.2d 192 (1956). A stipulated judgment allows the parties to avoid litigation by entering into an agreement that will settle their differences once the court renders judgment on the

basis of the agreement. *Gillis* v. *Gillis*, supra, 214 Conn. 339–40. A stipulated judgment, although obtained through mutual consent of the parties, is binding to the same degree as a judgment obtained through litigation. See, e.g., id., 340. "It necessarily follows that if the judgment conforms to the stipulation it cannot be altered or set aside without the consent of all the parties, *unless it is shown that the stipulation was obtained by fraud, accident or mistake*." (Emphasis added.) *Bryan* v. *Reynolds*, supra, 460–61; accord *Gillis* v. *Gillis*, supra, 340; see also *Housing Authority* v. *Lamothe*, supra, 225 Conn. 767 ("[a] stipulated judgment, although obtained by the consent of the parties is binding to the same degree as a judgment obtained through litigation, and . . . it can be set aside only if obtained by fraud, accident or mistake" [internal quotation marks omitted]).

In the present case, the defendant objected to the plaintiff's motion. The plaintiff never suggested to the trial court that the stipulated judgment, to which he had agreed with the defendant and which was rendered by the court, was obtained by fraud, accident or mistake. Accordingly, the trial court did not abuse its discretion in denying the plaintiff's motion seeking to open the judgment.

I also disagree with the majority's conclusion that, because the defendant did not explicitly state that its offer of judgment included attorneys' fees, that issue remained unresolved. When the plaintiff accepted the defendant's offer of judgment, the acceptance was an agreement to enter into a stipulation for judgment. See generally *Gionfriddo* v. *Avis Rent A Car System, Inc.*, 192 Conn. 301, 305, 472 A.2d 316 (1984); see also 1 E. Stephenson, Connecticut Civil Procedure (2d Ed. 1970) § 159, pp. 642–43 ("[t]he rules say judgment shall be rendered 'as upon default' but the situation is more similar to a judgment by stipulation, the agreement being reached by formal offer and acceptance through the court rather than informally"). "A stipulated judgment is not a judicial determination of any litigated right. . . . It may be defined as a contract of the parties acknowledged in open court and ordered to be recorded by a court of competent jurisdiction. . . . [It is] the result of a contract and its embodiment in a form which places it and the matters covered by it beyond further controversy. . . . The essence of the judgment is that the parties to the litigation have voluntarily entered into an agreement setting their dispute or disputes at rest and that, upon this agreement, the court has entered judgment conforming to the terms of the agreement." (Citations omitted; internal quotation marks omitted.) *Gillis* v. *Gillis*, supra, 214 Conn. 339–40.

Thus, when the plaintiff accepted the defendant's offer, the parties simply entered into a contract to resolve their differences for $15,000. By virtue of the

existence of a stipulated judgment, ''it is usually presumed that the parties intended to settle all aspects of the controversy, *including all issues raised by the papers comprising the record*.'' (Emphasis added.) *Gagne* v. *Norton*, 189 Conn. 29, 34, 453 A.2d 1162 (1983); accord *Connecticut Water Co.* v. *Beausoleil*, 204 Conn. 38, 49, 526 A.2d 1329 (1987). In his complaint, the plaintiff sought attorneys' fees as well as compensatory and punitive damages. The defendant made an offer of judgment that is presumed to have been intended to settle all of the plaintiff's demands; see, e.g., *Connecticut Water Co.* v. *Beausoleil*, supra, 49; which the plaintiff unconditionally accepted.[3]

Furthermore, the language of General Statutes §§ 52-193 and 52-194 is consistent with the notion that the acceptance of an offer of judgment is presumed to have been intended to settle all aspects of the controversy. General Statutes § 52-193, which covers the procedure for an offer of judgment by a defendant, provides that the defendant is ''offering to allow the plaintiff to take judgment *for the sum named in* [*a written*] *notice*.'' (Emphasis added.) General Statutes § 52-194, which explains the procedure for the plaintiff's acceptance of the defendant's offer of judgment, instructs the court, upon the plaintiff's acceptance of the defendant's offer, to ''*render judgment* against the defendant as upon default *for the sum so named* and for the costs accrued at the time of the defendant's giving the plaintiff notice of the offer.'' (Emphasis added.)

Accordingly, I respectfully dissent.

[1] Practice Book § 17-4, which is entitled ''Setting Aside or Opening Judgments,'' provides in relevant part: ''(a) Unless otherwise provided by law and except in such cases in which the court has continuing jurisdiction, any civil judgment or decree rendered in the superior court may not be opened or set aside unless a motion to open or set aside is filed within four months succeeding the date on which notice was sent. The parties may waive the provisions of this subsection or otherwise submit to the jurisdiction of the court. . . .''

[2] The issue on appeal cannot be whether the plaintiff was the ''prevailing party,'' as that term is used in § 52-240a, because the trial court did not deny the plaintiff's motion for award of attorneys' fees on that ground. Specifically, the court concluded: ''[I]f the plaintiff wanted attorneys' fees, then [he] should not have accepted the offer. The court finds the acceptance to conform with the offer. Fifteen thousand dollars is fifteen thousand dollars, not fifteen thousand dollars plus attorneys' fees.'' Had the plaintiff filed a motion for articulation pursuant to Practice Book § 66-5 as to the issue of whether he was the prevailing party, perhaps this court would have had an adequate record to decide that issue. In the absence of such a record, however, we should not presume the basis of the court's decision.

What is clear from the trial court's decision and the record before this court is that the trial court determined that the plaintiff accepted an offer of judgment in the amount of $15,000, not an offer of $15,000 plus attorneys' fees. I conclude, therefore, that the only remaining issue properly before this court is, as the plaintiff's attorney articulated at oral argument, ''how the plaintiff's acceptance of an offer of judgment affects the plaintiff's right to seek . . . attorneys' fees under [an] attorney's fees statute, such as [§] 52-240a, [and] in actuality, under all of Connecticut's fee shifting attorney's fees statutes.'' For the reasons articulated in this dissenting opinion, I would conclude that the unqualified acceptance of an offer of judgment that results in a stipulated judgment, as in the present case, precludes the accepting party from seeking statutorily based attorney's fees after the court renders judgment.

[3] I would note that there were several days between the date on which the defendant made its offer and the date on which the plaintiff accepted and submitted his bill of costs, and several more days after the plaintiff's acceptance until the court rendered judgment. If the plaintiff believed that he was entitled to attorneys' fees, then one would expect that he would have raised this issue before the trial court rendered judgment as he had ample time within which to do so.