

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

WAREHAM FREE LIBRARY, et al	. CIVIL ACTION NO. 07-11807-RGS
Plaintiffs	.
V.	. BOSTON, MASSACHUSETTS
	. AUGUST 3, 2009
TOWN OF WAREHAM, et al	.
Defendants	.
.

TRANSCRIPT OF SETTLEMENT AGREEMENT
BEFORE THE HONORABLE LEO T. SOROKIN
UNITED STATES MAGISTRATE JUDGE

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P R O C E E D I N G S

CASE CALLED INTO SESSION

THE COURT: This is Magistrate Judge Sorokin. We've just finished the mediation in Wareham Free Library, et al v. Town of Wareham, 07CV11807. We don't have the members of the Board of Selectmen because one by one they had some commitments, and I let them go and the last ones left but after the issues with the town were resolved. So while the - what I'm about to say is subject to two, the agreement I'm about to describe is subject to two caveats. The first caveat is that on behalf of the town it has to be formally approved by the Board of Selectmen and while counsel expects - (inaudible - #6:41:29) - with that it's not done until it's formally approved. And the second caveat is the plaintiffs requested, and I agree it makes sense and the other parties are content with that, that till the end of close of business tomorrow to decide which of two options to accept that I'm going to describe. And plaintiffs' counsel will call, he'll call the other counsel and let him know as to which option you've taken and, Mr. Gallitano, I'll designate you to contact me once that's done to let me know it's settled and which of the two options.

The terms of the settlement are as follows. The Library Corporation will be dissolved with the execution of the agreement if it's a global settlement and if it's a, the

1 declaratory judgment action is preserved, it'll be dissolved
2 once the declaratory judgment action is finally resolved, but
3 all other terms I'm about to describe will be the same either
4 way. The Town of Wareham Library trustees will be appointed
5 pursuant to the town charter which everyone understands at the
6 present moment would be by the Board of Selectmen. The monies
7 that are held by the present, for lack of a better term,
8 plaintiffs, the library trustees as well as the funds that are
9 in the foundation will remain with the foundation except that
10 the plaintiffs will issue a check or checks in the amount of
11 \$50,000 to an account designated by the defendants to the,
12 under the control of the library, the new library trustees
13 appointed by the town for purposes of library trustees and the
14 manager of the public library.

15 The foundation will amend its bylaws to provide that
16 all of the present money that it has after disclosing the
17 \$50,000 will be earmarked or used solely for the purposes of
18 the public library of Wareham which is presently understood to
19 mean the one existing library in Wareham that's a public
20 library. If in the future the Spinney Library becomes a
21 library of the town of Wareham, a public library under the
22 jurisdiction of the trustees, the town's library trustees, or
23 any other branches ever opened at any time in the future as a
24 library, then those funds that are earmarked for the public
25 library of Wareham can be used for not only the named branch

1 but these other branch or branches. But until such time those
2 funds cannot be.

3 The \$75,000 with the Friends stays with the Friends.
4 The future donations will work as follows, any donations to the
5 foundation will be to the foundation for its use and purposes
6 for any purpose that it wishes consistent with the intent of
7 the donor. The, if there are donations to the Wareham Free
8 Library or the Trustees of the Wareham Library or the like,
9 whenever the will was written, those donations that are
10 received after today I suppose will be for the Trustees of the
11 Public Library appointed pursuant to the town charter.

12 The Foundation, as is obvious I think, will have no
13 formal advisory authority with respect to the library. And the
14 attorneys' fees of the plaintiffs will be resolved in the
15 following fashion; either the plaintiffs will accept a \$40,000
16 payment from the defendants toward their attorneys' fees in
17 which case this is a global resolution of all claims of the
18 parties or they will decline to accept any funds from the
19 defendants in settlement of attorneys' fees, in which case this
20 is a settlement of all claims and parties accept a third party
21 claim against MIIA, in which case that declaratory judgment
22 action will proceed to its normal resolution and all the rest
23 of the case and parties with all the other claims are settled.
24 They'll be releases and stipulations of dismissal with
25 prejudice of all the claims and releases of all the parties

1 either globally if plaintiffs elect the global resolution or
2 in all regards except with respect to the declaratory judgment
3 action between those parties to the declaratory judgment action
4 if they elect that option. And plaintiffs will, plaintiffs'
5 counsel will let all other counsel know as to what they're
6 going to do by close of business tomorrow?

7 MR. BEAUREGARD: Yes.

8 THE COURT: All right. Mr. Gallitano, then if you'll
9 then if you let me know by the next day what resolution was
10 reached, I will then advise Judge Stearns to do one of two
11 things. If it's a global resolution, issue a 60-day settlement
12 order of dismissal with respect to everything, or issue a 60-
13 day settlement order of dismissal with respect to everything
14 other than the third party complaint against MIA.

15 Yes?

16 MR. BEAUREGARD: Just two quick small points. The
17 formal approval of the Board of Selectmen will be forthcoming I
18 take it by the end of tomorrow?

19 MR. MONTGOMERY: They do have a scheduled meeting
20 tomorrow, we're going to do I best. I don't think it's going
21 to be a problem though.

22 MR. BEAUREGARD: Okay.

23 THE COURT: That's why I said 60 days--

24 MR. MONTGOMERY: We had all five of them here and
25 they're all on board.

1 THE COURT: If some reason it took time, then and if
2 it unwound it would be within 60 days under the settlement. I
3 don't expect any issues, but if there are I'm happy to see
4 everybody here.

5 MR. MONTGOMERY: Well the expectation is that they
6 know everything and that it's not unwinding. We--

7 THE COURT: Right.

8 MR. BEAUREGARD: We're relying on the fact that this-

9 THE COURT: Yeah, no I'm not expecting it to unwind
10 either.

11 MR. BEAUREGARD: Okay. And the second thing is when
12 we talked about the funds that would come into the foundation
13 in the future, the earmark does not apply to those.

14 THE COURT: No. The funds that come to the
15 foundation, the earmark applies to those funds that were done
16 issuing as now.

17 MR. MONTGOMERY: Yes.

18 THE COURT: And anything that comes into the
19 foundation is for whatever the foundation chooses on its own
20 discretion or in negotiation with whoever gave the money.

21 MR. MONTGOMERY: Exactly.

22 MR. BEAUREGARD: Your Honor, has this been - are we
23 live?

24 THE COURT: Yes.

25 MR. BEAUREGARD: Okay. So in the event

1 notwithstanding all our note taking there is any--

2 THE COURT: You can order a transcript.

3 MR. BEAUREGARD: --disagreement we can order--

4 THE COURT: Yes.

5 MR. BEAUREGARD: --a transcript of--

6 THE COURT: Call Ms. Simeone and she can get a
7 transcript.

8 All right, everybody who is counsel agree that those
9 are the terms of the settlement to the extent that it's fully
10 executed and not to the extent it's not?

11 MR. MONTGOMERY: Agreed, Your Honor.

12 THE COURT: All right.

13 MS. RANDAZZO: Agreed, Your Honor.

14 MR. MARAVELIS: Agreed, Your Honor.

15 THE COURT: Okay.

16 MR. BEAUREGARD: Agreed.

17 MR. GALLITANO: Agreed for the Friends.

18 THE COURT: Okay. All right.

19 MR. MARAVELIS: Your Honor, just for the record can
20 we agree that Mr. Beauregard will either, will let me know
21 tomorrow by the close of business.

22 MR. BEAUREGARD: I will call you.

23 MR. MARAVELIS: Right.

24 MR. BEAUREGARD: You can be sure.

25 MR. MARAVELIS: Thank you.

CERTIFICATION

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I, Maryann V. Young, court approved transcriber, certify that the foregoing is a correct transcript from the official digital sound recording of the proceedings in the above-entitled matter.

/s/ Maryann V. Young

September 11, 2009