COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT

2012-J-0059
(Essex Probate & Family Ct.
No. ES09E0094QC)

ALEXANDER B.C. MULHOLLAND, JR., et al.[1],
Plaintiffs

v.

ATTORNEY GENERAL
OF THE COMMONWEALTH, et al.[2],
Defendants

MEMORANDUM AND ORDER

1. Introduction. Douglas J. DeAngeles, Catherine T.J. Howe, Jacqueline Phypers, Jonathan Phypers, Peter Buletza, Kenneth Swenson, Robert Weatherall, Jr., Joanne Delaney, Caras Doran, Andrew Brengle, Susan Brengle, Michele Wertz, Jason Weertz, Clark Ziegler, and Carol Nylen, as residents of the Town of Ipswich, individually and on behalf of their minor children, assert standing and seek intervener status to request a stay of the judgment of the Probate and Family Court Department (Sahagian, J.) dated December 23, 2011 and docketed on January 12, 2012 approving a settlement of a civil action. The case in

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[1] The other plaintiffs are Peter Foote, Donald Whiston, James Foley, Elizabeth Kilcoyne, Patrick McNally, and Ingrid Miles as they are the Feoffees of the Grammar School in the Town of Ipswich.

[2] The other defendants are the Ipswich School Committee and Ronald Korb as he is the Superintendent of School in the Town of Ipswich.

question is Essex Probate and Family Court docket No. ES09E0094QC brought by the above plaintiffs as the Feoffees of the Grammar School in the Town of Ipswich against the Attorney General of the Commonwealth and the School Committee and Superintendent of Schools of the Town of Ipswich. The settlement which the Probate Court approved as a judgment has the effect of deviating from the terms of a testamentary trust that was created by William Payne aka William Paine (hereafter "Mr. Paine") who died in 1660. It is undisputed that Mr. Paine's will devised a spit of land consisting of approximately twenty-six acres and known as "Little Neck" "unto the free scoole of Ipswich" and declared that the land "is to bee and remaine to the benefitt of the said scoole of Ipswich for ever as I have formerly Intended and therefore the sayd land not to be sould nor wasted."[3]

2. Brief background. Some brief background about the litigation that has preceded the request for a stay of execution of the judgment of the Probate and Family Court will be useful to an understanding of the discussion that follows. Prior to the agreement for judgment, which is at the heart of the dispute in this case between the proposed interveners and the other parties,

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[3] Mr. Paine acquired the land in 1649. During the next 250 years, it was used primarily as a pasture for grazing animals. "A portion of it has been cultivated some of the time as a farm, and in recent years many cottages have been erected upon it along the shore, which are occupied by summer residents." Feoffees of Grammar School in Ipswich v. Proprietors of Jeffreys' Neck Pasture, 174 Mass. 572, 574 (1899).

and based on the terms of Mr. Paine's original testamentary trust and legislation enacted in the eighteenth century there are a number of undisputed facts: (i) "Little Neck," the land in question, was not owned by the Town of Ipswich, (ii) the feoffees[4] administered the land as trustees of a charitable trust within the meaning of G. L. c. 12, § 8, (iii) the feoffees were authorized to appoint successors and to charge and collect rents from those who own or occupy cottages or otherwise use the land, (iv) the feoffees held title to the land for the benefit of the Ipswich public schools, (v) at the present time there are approximately 167 privately owned cottages located on the land in question, twenty-four of which are available for year round use and the remaining 143 for seasonal use, (vi) some of the Little Neck residents (about 33 in number) have signed leases with the feoffees but others have refused to do so, and (vii) two of the tenants have filed a civil action in the Essex County Superior Court (captioned Lonergan et al. v. Foley et al., Docket No. ESSC 2006-02328D) in their individual capacity and as representatives of about 80% of the cottage owners seeking damages from the

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[4] Feoffees are fiduciaries appointed by a property owner to hold legal title to property in trust for the benefit of others. See, e.g., Feoffees of Grammar School in Town of Ipswich v. Andrews, 8 Metc. 584, 592-93 (1844). According to Black's Law Dictionary (9th ed. 2009), a "feoffee" is defined as "[a] person to whom land is conveyed for the use of a third party (called a cestui que use); one who holds legal title to land for the benefit of another."

trust. Under the terms of an interlocutory stipulation, some rents, taxes and other payments are being made by the residents of Little Neck who have not signed leases which are being used in part for ongoing maintenance costs of infrastructure associated with Little Neck with other funds going into escrow. As a result, the feoffees have not made any payments to the beneficiaries of the trust-the Ipswich schools since 2006.

3. It also appears from the record (in particular, from the allegations contained in the complaint brought by the feoffees) that until 2006, the feoffees collected rents from seasonal and year round users and distributed net rental income to the Ipswich schools. The amount of that net income in 2006 was approximately 1.4 million dollars. The Ipswich schools also received approximately 60% of the real estate tax revenue generated by the land and buildings thereon as well.[5] Around this same time the feoffees, in a separate civil action, Essex County Probate and Family Court No. 05E-0026-GC1, secured the permission of the court, with the assent of the Attorney General and the Ipswich Public Schools, to borrow in excess of 7 million dollars from a

[5] The record indicates that the principal reason why beginning in the 1930s the Feoffees allowed cottages to be constructed on Little Neck was to increase the value of the land (which historically had been used for pasturage) and to create an income stream based on real estate taxes that would benefit the Ipswich schools. The existence of the cottages, however, is at the core of the concerns that has led the parties to reach a settlement. See text and note 6, infra.

commercial lender, secured by a conditional assignment of leases and rents and other income streams, in order to comply with the terms of an Administrative Consent Order by the Massachusetts Department of Environmental Protection to construct an upgrade to the electrical distribution network on Little Neck. The construction of this project is complete.[6]

4. The present lawsuit was brought by the feoffees in order to obtain an order from the Probate and Family Court for equitable deviation from the terms of Mr. Paine's testamentary trust to permit the feoffees to move ahead with a plan to sell the land consisting of Little Neck by creating a condominium form of ownership and the sale of condominium units. The basis for the request was to enable the feoffees to meet their obligations to the commercial lender, to bring an end to the pending

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[6] The existence of the 167 cottages on Little Neck is at the heart of the issues in this case and the pending Superior Court case. Without digressing too far from the issues before me, suffice it to say that the parties in this case were required to weigh and assess the potential for the Paine trust to be effectively destroyed as a result of the Superior Court case. That case in which approximately 80% of the cottage owners are challenging the effort by the feoffees to use rental fees to offset expenses incurred by the feoffees due to the need to comply with state and federal laws relating to water treatment and related issues. If there was a judgment against the trust in that case, there is no income available to the feoffees with which to pay the judgment. If the feoffees win that lawsuit, there is legal authority which indicates they could be required to pay the owners of the cottages market value for their cottages, and that the total cost could be substantially in excess of the highest appraisal estimate of the value of Little Neck.

litigation in the Superior Court and the associated risks that could make the trust liable to the owners of the cottages (see note 6) for the value of those structures depending on the outcome of the litigation before the Superior Court, and to diversify the trust asset so as to free them from future obligations to maintain the land and enable them to create a steady income stream for the beneficiaries. See Proposed Interveners R.A. at 8 et seq.

5. The feoffes and the school committee entered a settlement agreement which resolved the case while the trial was ongoing. The terms of the settlement agreement was approved by both the Attorney General and the trial judge. Under the terms of the settlement agreement, Little Neck is to be converted into a condominium and sold to the tenants who had brought the lawsuit against Mr. Paine's trust for a price of $29,150,000 plus $2,400,000 for the use and occupancy of certain tenants prior to the sale. Some of this money will go to resolving various debts incurred in paragraph three (3), while the remainder is to be invested. The returns from that investment will be for the benefit of the Ipswich public school.[7] The schools also will benefit over time from the income stream that results from

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[7] The settlement also resolves a concern of the School Committee by changing the governance of Mr. Paine's trust from one consisting of a majority of privately appointed trustees to a public body, primarily appointed by public officials.

property taxes paid by the owners.

6. Beyond the propositions set forth in paragraph two (2), three (3), four (4), and five (5), there are numerous points of disagreement between the proposed interveners and the parties. The proposed interveners take issue with the competence of the feoffees and accuse them of being conflicted between their personal interests (some of them own some of the Little neck cottages) and their duties as fiduciaries of the trust. The proposed interveners question the risks (present and future) of the litigation now pending before the Superior Court and challenge the judgment of the parties that those risks and other uncertain potential liabilities are significant enough to justify a deviation from the terms of Mr. Paine's testamentary trust. The proposed interveners believe that the land in question is worth more than the value contained in several of the appraisals and that it will continue to increase in value and could generate income in the future that is greater than the rate of return of a the assets of the new trust fund that will be created under the terms of the settlement with the proceeds of the sale of Little Neck. Finally, the proposed interveners challenge the lawfulness of the agreement for judgment in this case on grounds that it violates the rule that an equitable deviation cannot alter the predominant charitable purpose of a trust (which they assert in this case is that "Little Neck" not be sold or wasted), and, in

any case, that it is not supported by adequate findings and rulings by the trial court. The parties, on the other hand, vigorously dispute the allegations made by the proposed interveners. The parties and the proposed interveners have filed comprehensive written briefs, compiled a complete record of the proceedings below, and participated in a ninety minute oral argument in which they outlined their positions with clarity, conciseness and considerable forensic skill.

7. Discussion. A judge of the Probate and Family Court Department has the equitable power to change the terms of a charitable trust based on the doctrine of reasonable deviation which is sometimes referred to as "cy pres." "The court will direct or permit the trustee of a charitable trust to deviate from a term of the trust if it appears to the court that compliance is impossible or illegal, or that owing to circumstances not known to the settlor and not anticipated by him compliance would defeat or substantially impair the accomplishment of the purposes of the trust." Restatement (Second) of Trusts § 381 (1959). See Museum of Fine Arts v. Beland, 432 Mass. 540, 544 (2000); Trustees of Dartmouth College v. Quincy, 357 Mass. 521, 531 (1970). For the reasons stated in the remainder of this opinion, it is neither necessary nor appropriate for me, as the Single Justice, to decide whether there was an error of law or an abuse of discretion in the

decision made by the lower court in this case to approve the settlement.[8]

8. One important preliminary issue concerns a specific charge made by the proposed interveners about the manner in which the trial judge exercised her responsibilities in this case. The proposed interveners allege that the trial judge made remarks at the outset of what was to be a multi-day trial in this case and before the settlement was reached that indicated that she had prejudged the matter and that she pressured the parties to reach

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[8] It is important to note, however, that counsel for both the Feoffees, the School Committee and the Attorney General, explained at length, during the oral argument, the deliberate process that led them to reach a settlement. The settlement agreement was reached only after a lengthy summary judgment proceeding as a result of which the trial judge became familiar with the issues. The parties actually commenced the trial which included the court taking a view and the introduction of more than 160 exhibits and some trial testimony. The record before the trial judge who approved the settlement was extensive. See Memorandum of Plaintiff Feoffees at 1 n. 2. It is also important to note that the position of the defendant School Committee and the Attorney General has evolved over time from initial support for a sale of the land in 2008, to a position of opposition to the proposed sale in 2009, and finally to a position of support for the Agreement for Judgment in December, 2011. The ultimate settlement was described as the result of evidence that the plan to condominiumize the cottages and the land will yield a total of 31.45 million dollars (sale price and back rent), compared to a substantially lower proposed sale price when the litigation began. Only after the School Committee and the Attorney General (1) determined that the current sale price is in line with most of the appraisals, (2) made an assessment of the risks associated with the outcome of the pending Superior Court case, and (3) engaged in two intense days of negotiations, was a settlement reached. It should also be noted that the Ipswich Town Meeting has previously authorized the sale of the land top resolve the lawsuits. See Supplemental Record Appendix 45.

a settlement. Based on my review of the various affidavits submitted on this point and my consideration of the arguments of counsel, I find no basis for such claims, and no evidence that the trial judge failed to act impartially and independently.

9. In their motion to stay judgment, the proposed interveners allege that (1) that the lower court erred in ruling that they lack standing to intervene in this case pursuant to Mass.R.Civ.P. 24(a) because they have a personal stake in the outcome and are the only putative party which represents the public interest, (2) the agreement for judgment in this case is contrary to the express terms of Mr. Paine's will and not within the scope of the doctrine that authorizes courts to deviate from the terms of a testamentary trust on equitable grounds, (3) that they will suffer irreparable harm unless the motion for a stay is granted, and (4) that a consideration of public policy weighs in favor of granting the motion for a stay. Under the legal framework that governs proceedings before a Single Justice of the Appeals Court, I must address the first of these four questions before addressing any of the other issues in this case.

10. Intervention. A. The legal standard. The question whether the plaintiffs should be permitted to intervene is governed by settled principles of law. A "proposed intervener as of right [under Mass.R.Civ.P. 24(a)] must satisfy four criteria: (1) the application [to intervene] must be timely; (2) the

applicant must claim an interest relating to the . . . transaction which is the subject of the litigation in which the applicant wishes to intervene; (3) the applicant must show that, unless able to intervene, the disposition of the action may, as a practical matter, impair or impede his ability to protect the interest he has; and (4) the applicant must demonstrate that his interest in the litigation is not adequately represented by existing parties." Bolden v. O'Connor Café of Worcester, Inc., 50 Mass.App.Ct. 56, 61 (2000). Alternatively, when intervention is sought as a matter of discretion, see Mass.R.Civ.P. 24(b), the proposed intervener must demonstrate, at least, an interest in the dispute that is not adequately represented by the existing parties. See Planned Parenthood League of Mass., Inc. v. Attorney General, 424 Mass. 586, 599 (1997). The common denominator to motions under Rule 24(a) and Rule 24(b) is that the proposed intervener must demonstrate that his interest is not adequately represented by the existing parties.

11. B. Review of decision to deny motion to intervene. This is not a case in which the Single Justice is authorized to act as a trial judge would and to decide the case anew based on my understanding of the law and the competing interests at stake. The standard of review I must apply to the decision below to deny the motion to intervene and for a stay is that it must be affirmed unless the plaintiffs demonstrate that the court abused

its discretion. See Cosby v. Department of Social Servs., 32 Mass.App.Ct. 392, 395 (1992). "In assessing whether a judge has abused his discretion, we do not simply substitute our judgment for that of the judge, rather, we ask whether the decision in question rest[s] on whimsy, caprice, or arbitrary or idiosyncratic notions." Massachusetts Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 266 (2001). See also Greenleaf v. Massachusetts Bay Transp. Authy., 22 Mass.App.Ct. 426, 429 (1986) (abuse of discretion is an "arbitrary determination, capricious disposition, whimsical thinking, or [an] idiosyncratic choice").

12. C. Timeliness, interest in the dispute and risk of impairment. I will assume, for purposes of this proceeding, that as residents of the Town of Ipswich and parents of school children attending the public schools of Ipswich, the proposed intervenors have a sufficient interest in the dispute to qualify for intervention under Rule 24. I also will assume that the plaintiffs' motion to intervene was filed in a timely manner in view of the fact that they had every reason to believe the underlying lawsuit would proceed on the merits until after the trial commenced. See Johnson Turf & Golf Mgmt., Inc. v. Beverly, 60 Mass.App.Ct. 386, 389 (2004) (explaining why sometimes a would-be intervener's interest does not arise until after the action has begun or, in some cases, judgment has entered).

13. D. Whether the interest of the proposed interveners will be impaired if they are not allowed to intervene and whether their interests are adequately represented by the parties. It might seem at first blush that the answer to these questions is a simple and straightforward "no" because the proposed interveners are opposed to the agreement for judgment and the sale of the land while the existing parties all favor it. However, that is not the correct way to determine the adequacy of the representation of their interests in this context. The legal test to be applied is not whether the existing parties in the case adequately represent the point of view taken by the proposed interveners, but rather whether one of two circumstances exist: First, is there an adversity or conflict of interest between the Proposed Interveners and the existing parties, in particular the Attorney General of the Commonwealth, and the School Committee and Superintendent of Schools of the Town of Ipswich;[9] Second, is there evidence that those parties have failed for any reason to diligently, honestly, and independently represent the public interest and the interest of the beneficiaries namely, the Ipswich public schools. See Attorney General v. Brockton Ag. Sc., 390 Mass. 431, 435 (1983).

14. [I] The conduct of the Attorney General. The Supreme

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[9] Stated more simply this question asks whether there is a legally recognizable interest represented by the proposed interveners that is not represented by these parties.

Judicial Court has declared that the Attorney General is the sole and exclusive authority charged with the representation of the public interest in connection with charitable trusts. See, e.g., Ames v. Attorney General, 332 Mass. 246, 249 (1955).[10] At the oral argument in this case, counsel for the proposed interveners conceded that they do not have standing to assert the public interest in place of or in competition with the Attorney General.

15. [ii] The conduct of the School Committee and Superintendent of Schools. The remaining consideration, therefore, in determining whether the proposed interveners have demonstrated standing and a basis for intervention is that they have a genuine interest as people who will benefit from Mr. Paine's testamentary trust that is not adequately represented by the School Committee and Superintendent of School of the Town of Ipswich. On the record before me, it is evident that the proposed interveners do not have an legally protectable interest in the trust established by Mr. Paine that is distinct from that of the residents of Ipswich, including all those families in the

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[10] See also G.L. c. 12, § 8. "[I]t is the exclusive function of the Attorney General to correct abuses in the administration of a public charity by the institution of proper proceedings. It is h[er] duty to see that the public interests are protected and . . . to proceed as those interests may require." Lopez v. Medford Community Center, Inc., 384 Mass. 163, 167(1981), quoting from Ames v. Attorney Gen., supra, 332 Mass. at 246, 250-251. The authority of the Attorney General encompasses both charitable "assets" as well as charitable "funds." See Weaver v. Wood, 425 Mass. 270, 275 (1997).

town with children in the public schools or who might at some point have children who will attend the public schools. See Maffei v. Roman Catholic Archbishop of Boston, 449 Mass. 235, 245 (2007). The proposed interveners were not elected to represent the residents of Ipswich, and do not claim to speak for all of the residents of Ipswich.

16. Apart from the fact that the proposed interveners represent only a subset of the people who benefit from Mr. Paine's testamentary trust and therefore cannot claim to represent the interests of all the members of that indefinitely large class of people, there is a more fundamental problem with their argument - the only entity with both a legal right and a legal duty to protect the interests of the beneficiary of Mr. Paine's testamentary trust is the School Committee. See G.L. c. 71, §§ 37 and 68; G.L. c. 44, § 53. See also Molinari v. City of Boston, 333 Mass. 394 (1955); Parents Council, Inc. v. City of Boston, 27 Mass.App.Ct. 739 (1989). Chapter 71 of the General Laws, within a broader framework of local and state regulatory authority, gives the school committee the authority and the responsibility for the content of public education, the hiring of teachers and other school personnel, and the erection and maintenance of school buildings and facilities. It is the local school committee which is charged by law with a fiduciary duty to safeguard public funds and charitable funds appropriated or set

aside for the benefit of the public schools. Members of the school committee are elected by the people of Ipswich and are directly answerable to the voters. In this case, the school committee voted to endorse the settlement after initially supporting a sale, and later expressing opposition to the sale. Only after voluminous discovery, the beginning of a trial, and intensive negotiations, with input from counsel and a consideration of the independent voice of the Attorney General, did the school committee and superintendent of schools reach an agreement with the feoffees to sell the land. There is no evidence in the record before me that the agreement that led to the settlement was endorsed by the school committee because they caved in to pressure from the court or another party. Instead, the parties and proposed interveners agreed during the argument before me that the school committee was prepared to try this case to a conclusion. What changed, according to attorney Perry, counsel for the school committee and school superintendent, was the cost-benefit analysis he and the Attorney General's Office undertook based on the land appraisals and the risk associated with the case pending in the Superior Court. According to the Office of the Attorney General, that lawsuit posed a grave and serious risk of harm to the viability of the Paine trust, i.e., to the ownership and control of Little Neck for the benefit of the Ipswich schools, as a result of the potential for a

catastrophic damage award that could force the feoffees to sell Little Neck on terms fare less favorable than those that now make up the settlement. As Attorney Perry put it during the oral argument in this case, "the settlement was forged in the crucible of litigation."

17. The distinction between those who benefit from a charitable trust and the beneficiaries of a charitable trust is not merely a matter of semantics. An essential characteristic of a charitable trust is its design to benefit a broad community of interests. See Jackson v. Phillips, 96 Mass. 539, 556 (1867) (a charitable trust benefits an indefinite number of people). Mr. Paine's testamentary trust was specifically and unequivocally created to benefit a public school (and today a municipal school system) which has and will serve in the future to benefit an indefinite number of people. The proposed interveners do not have an interest in the Ipswich public schools that is "personal, specific and exist[s] apart from any broader community interest." Maffei, supra.

18. Whether the Attorney General and the School Committee have acted independently and honestly. A remaining argument advanced by the proposed interveners is that even if they do not meet the legal requirement for standing, they should nonetheless be allowed to intervene because the Ipswich School Committee and the Attorney General have not acted diligently, honestly and

independently in agreeing to the settlement and the terms of the deviation from Mr. Paine's testamentary trust. The proposed interveners have intimated that an improper and unlawful bargain was struck between the feoffees, the School Committee, the Attorney General, and the trial judge in this case to advance the interests of the feoffees and that such collusion was the source of the Attorney General and School Committee's alleged abandonment of their duties. Quite to the contrary, the record reveals a hard fought litigation that ended in a settlement which the defendant Attorney General, as representative of the public interest, and the School Committee and superintendent of schools, as the beneficiary, thought was fair, reasonable and prudent based on a calculation of likelihood of success and the risks. See Sniffin v. Prudential Ins. Co., 395 Mass. 415, 421 (1985) ("[T]he essence of a settlement is compromise . . . Because the settlement of . . . any litigation[] is basically a bargained exchange between the litigants, the judiciary's role is properly limited to the minimum necessary to protect the interests of the [parties] and the public") quoting from Armstrong v. School Directors of Milwaukee, 616 F.2d 305, 313 (7th Cir. 1980). Even outside of that deficiency, the proposed interveners have offered no credible evidence to support their hypothesis of collusion and

among the parties.[11] The proposed interveners have thus not shown that the Attorney General has abandoned her role as the elected representative of the public or that the school committee has abandoned its role as the elected representative of the Ipswich schools. The mere fact that, as private parties, the proposed interveners disagree with the Attorney General and the school committee's decisions as public representatives does not render those decisions unlawful or unreasonable.

19. Standing is not a technicality. The proposed interveners' position that the doctrine of standing should be subordinated to the overriding public policy concerns they seek to raise warrants a comment. Standing is not merely a procedural technicality but, rather, it is a necessary requirement to the exercise of a court's jurisdiction over the subject matter. Standing also makes it possible for disputes to proceed to a trial or a settlement in an orderly and efficient manner. If the proposed interveners were allowed to participate as a party in this case simply on the basis of their claim that they are a class of people with an interest in the case and a point of view that is at odds with the other parties, it would open the floodgates to participation in litigation involving issues of

[11] It is worth noting that the Attorney General allowed the proposed interveners to submit an amicus brief in the lower court to ensure that the lower court had the benefit of their views of the case.

public concern by a multitude of persons and organizations who could similarly claim a legitimate interest in the outcome of the case. It would transform the judicial process into something resembling the process followed by an Executive Branch agency or Legislative Committee which is not a workable method for resolving legal disputes. The proposed interveners are absolutely correct in their assertion that this is not an ordinary lawsuit in which parties should be permitted to reach a settlement free from public scrutiny. Both the Supreme Judicial Court and the Legislature have addressed the concern voiced by the Proposed Interveners that there are weighty issues of public policy at stake in cases involving equitable deviation from the terms of a charitable trust, especially one like the testamentary trust established by Mr. Paine in this case which is described as the oldest land trust in the United States, that cannot be left to the judgment of the feoffees and the school committee alone. Under both Massachusetts common law and the terms of G.L. c. 12, § 8, there is one neutral party with standing to represent the interests of the public, namely the Attorney General, a statewide officeholder and the highest law enforcement officer in the Commonwealth:

> [T]he law has provided a suitable officer to represent those entitled to the beneficial interests in a public charity. It has not left it to individuals to assume this duty or even the court to select a person for its performance. Nor can it be doubted that such a duty can be more satisfactorily performed by one acting under official

> responsibility than by individuals, however honorable their character and motives may be.

Ames v. Attorney General, 332 Mass. at 251, quoting from Burbank v. Burbank, 152 Mass. 254, 256 (1890). Furthermore, even after the Attorney General does her due diligence and approves the terms of a settlement, it must be approved, as it was in this case, by a neutral, impartial and independent judge.

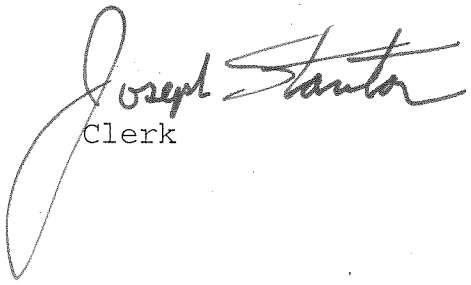
20. Motion for a stay pending final adjudication of the question of standing and intervention. Finally, the proposed interveners argue that even though the trial judge and this court have rejected their claim that they have standing, I should nonetheless reach the merits and grant a stay of any further action pending the final resolution of all other avenues of appeal because this litigation involves "questions of pressing public importance" which touch on the public policy of the Commonwealth and "the issues have been fully briefed." Memorandum of Proposed Interveners at 2, citing School Committee of Boston v. Board of Education, 352 Mass. 693, 697 (1967). Courts must proceed with caution when a public policy concern and not a legally cognizable right is presented as the basis for invoking the court's jurisdiction. Apart from the fact that there is already a party in this case, the Attorney General, who has the duty to represent the public interest and who could, if she deemed it advisable and necessary, appoint a Special Assistant Attorney General to advocate against the settlement,

judges are not nearly as well equipped as the elected representatives of the other branches of government to ascertain what is or what is not in the public interest. It has been observed that public policy "is a very unruly horse, and once you get astride it you never know where it will carry you. It may lead you from sound law." Richardson v. Mellish, 130 Eng. Rep. 294, 303 (1824). Suffice it to say that a Single Justice of the Appeals Court does not have the authority to exercise the discretionary jurisdiction requested by the Proposed Interveners.

ORDER

For the above reasons, the motion for a stay of the Agreement for Judgment and the motion to intervene are DENIED.

By the Court (Agnes, J.)



Clerk

Entered: March 12, 2012