

SHALL WE FIGHT or MAKE A DEAL????

By: Scott Freedman, Esq.

(For more info contact Scott at scott@zulpc.com)

While our job is to represent you in court, trial comes with great, and often unavoidable, results. The outcome of every lawsuit is unpredictable. This is why, as a litigator, I regularly counsel my clients to settle their claims before trial - wherever possible. Compare the following examples:

Two former co-owners of a piece of property - "Bob" and "Mary" - disputed the right to the profit from a sale of the property. Bob offers Mary the right to take 50% of the proceeds. Mary insists she is owed more due to past improvements to the property performed at her own expense. The fight is on!! While settlement discussions are required by the court in all lawsuits filed, the parties do not settle. Evidence at trial then reveals additional reasons to grant the proceeds to Bob, and the judge awards Bob all of the proceeds!! Mary, for her insistence in taking all of the proceeds, is left with nothing.

Two neighbors - "David" and "Paula" - dispute the right to use a small strip of land between their homes. David hires a surveyor who confirms the strip is, indeed, his property. Paula, nonetheless, argues she has acquired a right to use the land and should be able to make free use of that strip without interference from David. Evidence produced during the case reveals that despite David's seemingly strong position, both parties' claims to the land are imperfect. The parties settle, and agree to share use of the land.

I have often heard the most successful settlements leave all parties a little unhappy. As demonstrated by the above examples, and to avoid the complete dissatisfaction caused in Mary's situation, settlements become all the more attractive.

Trial is far from a guaranteed, WINNING proposition. Pre-trial settlements, on the other hand, whereby the parties are able to RESOLVE THE DISPUTE and proceed with the other, more important goals of life, are as sure a thing as one can hope for in litigation.