

MSC Opinion: Shay v. Aldrich

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In an opinion released after the Michigan Supreme Court's July 31 end of term, the Court reinvigorated the latent-ambiguity doctrine by holding that the word "all" in a liability release did not actually mean "all" where extrinsic evidence demonstrated that the parties to the release meant less than "all."

Plaintiff Shay alleged that he was assaulted by police officers from Melvindale, and that the inaction of additional officers from Allen Park amounted to gross negligence. Following the acceptance of case-evaluation awards, the two Allen Park officers were dismissed from the case, and a trial date was set for the three Melvindale officers. Shay executed two releases, one with each of the Allen Park officers, purporting to release not only the two officers, but "all other persons." Two months later, the Melvindale officers moved for summary disposition, asserting that the language "all other persons" contained in the releases effectively released them as well. The officers relied heavily on *Romska v. Opper*, 594 N.W.2d 853 (Mich. Ct. App. 1999), in which the Court of Appeals held that the language "all other parties" in a release was unambiguous and, therefore, there was no need to look beyond the language of the release to determine its scope. The trial court denied the officers' motion, but the Court of Appeals reversed, relying on *Romska*.

The Michigan Supreme Court reversed, holding that courts may consider extrinsic evidence of the intended scope of a release when an unnamed party seeks to enforce third-party-beneficiary rights based on the broad released language, but the evidence presented establishes that an ambiguity exists with respect to the intended scope of the release. Although the release language was facially unambiguous, the Court reiterated that extrinsic evidence may be used to show that a latent ambiguity exists. Here, Shay presented extrinsic evidence to support his argument that the release language was ambiguous, thus precluding the grant of summary disposition in favor of the Melvindale officers. Justices Markman, Corrigan, and Young dissented, observing that parol evidence under the guise of a claimed latent ambiguity is not permissible to vary, add to, or contradict the plainly expressed terms of a writing, or to substitute a different contract for it, to show an intention or purpose not therein expressed. The opinion can be found [here](#).