

STATE OF MICHIGAN
IN THE SUPREME COURT

(ON APPEAL FROM THE COURT OF APPEALS AND CIRCUIT COURT FOR THE
COUNTY OF WAYNE)

THOMAS JOHN SHAY,

Supreme Court No. 138908

Plaintiff-Appellant,

COA No. 282550

vs.

L.C.C. No. 06-608275-NZ

MELVINDALE POLICE OFFICERS JOHN ALDRICH,
WILLIAM PLEMONS AND J. MILLER,

Defendants-Appellees,

AND

ALLEN PARK POLICE OFFICERS ALLBRIGHT, and
LOCKLEAR,

Dismissed/Released Defendants.

138908 /
DFAE's SUPP

**SUPPLEMENTAL BRIEF OF DEFENDANTS-APPELLEES, MELVINDALE
POLICE OFFICERS JOHN ALDRICH, WILLIAM PLEMONS AND J. MILLER
IN OPPOSITION TO APPLICATION FOR LEAVE TO APPEAL**

PROOF OF SERVICE

FILED

NOV 25 2009

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STATEMENT OF FACTS

A. Introduction.

On October 14, 2009, this Court issued its Order containing the following directive:

“The parties shall submit supplemental briefs within 42 days of the date of this order addressing whether *Romska v Opper*, 234 Mich App 512 (1999), was correctly decided. The parties should not submit mere restatements of their application papers.”

While Plaintiff notes, correctly so, at the outset of his Supplemental Brief that this Court directed that the parties’ Supplemental Briefs shall address the issue of whether *Romska v Opper, supra*, was correctly decided, he persists in including irrelevant facts and mentioning the other issues raised and arguments made in his Application for Leave to Appeal.

This Supplemental Brief will restate the undisputed¹ facts which are relevant² and material³ to the issue presented in this appeal and will demonstrate that *Romska v Opper, supra*, was correctly decided.

¹ Even when some (assumed) factual disputes are present, summary disposition may be granted if resolution of the disputed facts in favor of the party opposing the motion does not alter the controlling legal question. *General Motors Corp v City of Detroit*, 372 Mich 234; 126 NW2d 108 (1964); *Whittenberg v Carnegie*, 328 Mich 125; 42 NW2d 900 (1950).

² Relevant facts are defined as those having a legitimate tendency to establish or disprove any fact that is of consequence to the determination of the action. *Stroh v Hinchman*, 37 Mich 490, 497 (1887); *Dacon v Transue*, 441 Mich 315; 490 NW2d 369 (1992); MRE 401.

B. Facts.

On March 21, 2006, Plaintiff, Thomas Shay, filed a Complaint against the Defendants arising out of his arrest for disorderly conduct, resisting arrest and obstructing justice on September 8, 2004. Plaintiff named as Defendants, Melvindale Police Officers, John Aldrich, William Plemons and J. Miller, and Allen Park Police Officers, Wayne Allbright and Kevin Locklear. The case proceeded through pre-trial proceedings until Plaintiff settled with the Allen Park Police Officers. On July 24, 2007, Plaintiff signed two separate documents both entitled: “Release of All Claims and Indemnity Agreement for Derivative Claims.” Those two Releases stated that Plaintiff discharged the Allen Park Police Officers “together with all other persons . . . from any and all claims, demands and actions which I have now or may have arising out of any and all damages, expenses, and any loss or damage resulting from an incident occurring on September 8, 2004.”

(Underling supplied.) See **Exhibits A and B**, attached hereto. On August 31, 2007, the lower court entered its Order for Dismissal with Prejudice as to Defendants, Allen Park Police Officer Allbright and Allen Park Police Officer Locklear, only and the Allen Park Police Officers were dismissed with prejudice from the case.

The two Releases were not provided to counsel for Defendants until two months later, in October, 2007. On October 19, 2007, the Melvindale Police Officers filed their

(Continued from previous page.)

³ Material facts for summary disposition purposes, are only those facts that might affect the outcome of the action under governing law. *Anderson v Liberty Lobby, Inc*, 477 US 242, 248; 106 S Ct 2505, 2510; 91 L Ed2d 202 (1986).

Motion for Summary Disposition pursuant to MCR 2.116(C)(7) based on the Releases that Plaintiff had executed in connection with the resolution of his case against the Allen Park Police Officers. The Release signed by Plaintiff regarding Kevin Locklear⁴ provides in relevant part:

“For the sole consideration of TWELVE THOUSAND FIVE HUNDRED AND NO/100 (\$12,500.00) DOLLARS to me in hand paid by **Michigan Municipal Liability and Property Pool** do for ourselves, executors, administrators, successors, and assigns, discharge, **ALLEN PARK POLICE OFFICER KEVIN LOCKLEAR** and **Michigan Municipal Liability and Property Pool, Insurer, together with all other persons, firms and corporations, from any and all claims, demands and actions which I have now or may have arising out of any and all damages, expenses, and any loss or damage resulting from an incident occurring on September 8, 2004.**” (Underlining supplied.) See Exhibit A, attached hereto.

The Motion was heard and denied by Wayne County Circuit Court Judge Prentis Edwards on November 9, 2007. Judge Edwards determined that a defendant may only rely on releases which are entered into prior to the filing of the plaintiff’s complaint and, conversely, may not rely on releases which are executed by plaintiffs during the course of the litigation. Tr., 11/9/07, pp 9-10. The implementing Order was entered on the same date.

On November 21, 2007, Defendants filed their Motion for Reconsideration pointing out the legal and logical absurdity of the circuit court’s determination that a defendant may

⁴ The “Release of All Claims and Indemnity Agreement” relating to Wayne Allbright is identical and they will be treated identically.

not rely on a release which is executed during the course of litigation. At the same time, Defendants filed their Motion to Amend Affirmative Defenses in order to include the defense of release -- which, obviously, did not even exist at the time they filed their original Answer.

The Motion for Reconsideration was simply denied without affording the Defendants oral argument. That order is dated November 26, 2007.

Defendants' Motion to Amend Affirmative Defenses was heard on November 30, 2007. Apparently recognizing that his original reason for denying summary disposition had absolutely no legal basis, Judge Edwards addressed the substantive merits of the Motion for Summary Disposition, disregarded the clear and unambiguous⁵ language extending the scope of the Releases to "all other persons" and ultimately held that amendment would be futile because summary disposition was not warranted. Opinion and Order dated December 6, 2007, p 7.

The Order denying leave to amend based on the determination to reaffirm the denial of Defendants' Motion for Summary Disposition was entered on December 6, 2007. Defendants filed their Application for Leave to Appeal within 21 days of the November 26, 2007 Order Denying their Motion for Reconsideration. On January 7, 2008, the Court of

⁵ In his November 2, 2007 Response to Melvindale Defendants' Motion for Summary Disposition at p 19, Plaintiff conceded that:

"The Release, by itself, is unambiguous, and the intention of the parties thereto is clear." (Underlining supplied.)

Appeals granted leave to appeal and stayed further proceedings pending resolution of this appeal.

On March 5, 2009, following briefing and arguments, the Court of Appeals issued its unanimous decision reversing the denial of summary judgment and remanding the case to the Wayne County Circuit Court for entry of judgment in favor of the Defendants. The Court of Appeals determined, first, that the two Releases were unambiguous, that, therefore, they must be applied as written and that the two Releases extended to and encompassed the Defendants. Plaintiff's Motion for Rehearing was denied by the Court of Appeals on April 10, 2009.

Thereafter, Plaintiff filed his Application for Leave to Appeal in this Court. On June 8, 2009, Defendants filed their Brief in Opposition. Defendants argued that the Court of Appeals correctly determined that the two Releases executed by Plaintiff - - with the assistance of counsel -- are unambiguous and, therefore, intent must be discerned solely and exclusively from the language set forth in the Releases. Defendants argued that the law in Michigan was, is and should be that unambiguous words are reflective of intent as a matter of law. On October 14, 2009, this Court issued its Order directing the parties to file supplemental briefs addressing the issue of whether the foregoing principle, as stated and applied by the Court of Appeals in *Romska v Opper, supra*, was correct. This Supplemental Brief is filed accordingly.

ARGUMENT I

ROMSKA V OPPER, SUPRA, WAS CORRECTLY DECIDED. IT PROPERLY HELD THAT UNAMBIGUOUS WORDS IN AN AGREEMENT ARE REFLECTIVE OF INTENT AS A MATTER OF LAW.

A. Introduction.

In its October 14, 2009 Order, this Court did not direct the parties to brief the issue of whether *Romska v Opper* was distinguishable from the present case. It only directed the parties to brief the issue of whether *Romska v Opper, supra*, was correctly decided. Despite that limitation, and despite the fact that Plaintiff argued that *Romas v Opper, supra*, was distinguishable in his Application -- and Defendants responded to that argument in their Brief in Opposition -- Plaintiff has, in effect, submitted a restatement of his Application on this point. Nothing said by Plaintiff in his Application and nothing said by him in his Supplemental Brief on this topic warrants any response beyond that which Defendants included in their Brief in Opposition.

B. Romska v Opper, supra, was Correctly Decided Because it is Consistent with Decisions of this Court which Pre- and Post-Date that Decision.

It has been the rule in Michigan for well over 100 years that the first and foremost principle of contractual analysis is that when the language of an agreement is clear and unambiguous, judicial construction or interpretation is unnecessary and is, therefore, precluded. *Juif v Dillman*, 287 Mich 35; 282 NW 892 (1938); *Elliott v Cheney*, 183 Mich 561; 150 NW 163 (1914); *Forbes v Darling*, 94 Mich 621; 54 NW 385 (1893); *In re Ortman*, 80 Mich 67; 45 NW 63 (1890).

Michigan law has consistently held that the intent of the parties to an agreement must be discerned from the words used in the instrument itself. In other words, unambiguous words are reflective of the parties' intent as a matter of law. This principle was restated and reaffirmed in *Michigan Chandelier Co v Morse*, 297 Mich 41, 49; 297 NW 64 (1941):

“Whatever may be the inaccuracy of expression or the ineptness of the words used in an instrument in a legal view, if the intention of the parties can be clearly discovered, the court will give effect to it and construe the words accordingly. It must not be supposed, however, that an attempt is made to ascertain the actual mental processes of the parties to a particular contract. The law presumes that the parties understood the import of their contract and that they had the intention which its terms manifest. It is not within the function of the judiciary to look outside of the instrument to get at the intention of the parties and then carry out that intention regardless of whether the instrument contains language sufficient to express it; but their sole duty is to find out what was meant by the language of the instrument.”

We must look for the intent of the parties in the words used in the instrument. This court does not have the right to make a different contract for the parties or to look to extrinsic testimony to determine their intent when the words used by them are clear and unambiguous and have a definite meaning.”
(Underlining supplied.)

This Court has consistently applied this legal principle. See, *Grosse Pointe Park v Michigan Municipal Liab & Prop Pool*, 473 Mich 188, 198; 702 NW2d 106 (2005). *Quality Products & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 375; 666 NW2d 251 (2003); *Rory v Continental Ins Co*, 473 Mich 457, 491, 703 NW2d 23 (2005), holding

that unambiguous contractual provisions are reflective of the parties' intent as a matter of law and unambiguous contracts must be enforced as written.

Just recently, this Court, in *Zahn v Kroger Co of Michigan*, 483 Mich 34; 764 NW2d 207 (2009) a decision authored by Justice Hathaway, acknowledged and applied the rule that:

“Courts may not make a new contract for parties under the guise of a construction of the contract, if doing so will ignore the plain meaning of words chosen by the parties. *Lintern v Michigan Mut Liability Co*, 328 Mich 1, 4; 43 NW2d 42 (1950).” *Zahn, supra* at p 41.

The foregoing demonstrates what the law in Michigan is. The following discussion will demonstrate why the objective standard of intent -- which holds that unambiguous contractual provisions are reflective of intent as a matter of law -- is the correct one and should be retained.

C. The Holding of *Romska v Opper* -- that Intent Must be Discerned Solely and Exclusively from the Language Set Forth in an Agreement -- is Correct and Should be Retained.

Defendants-Appellees contend that the contract-general principle⁶ and the release-specific principle that unambiguous contractual provisions reflect intent as a matter of law - - and the fact that the parties may have had a different, undisclosed intent is legally irrelevant and immaterial - - should remain the law in Michigan.

⁶ In his Supplemental Brief, Plaintiff acknowledges, and correctly so, that the issue before this Court applies to contracts and agreements generally and not just to release agreements.

This is a necessary and fair rule and should continue to be applied by this Court. In order to effectively exchange ideas, it is necessary that the meaning of words be the same in the minds of all persons.⁷ The meaning of words must be the same for everyone and danger inevitably follows when the objective, lexicographic meanings of words are ignored. “When words lose their meaning, people lose their liberty.” *The Analects of Confucius*, XIII, 3.

“One does not have ‘liberty of contract’ unless organized society both forbears and enforces, forbears to penalize him for making his bargain and enforces it for him after it is made.” 15 Corbin, *Contracts* (Interim ed), ch 79, §1376, p 17 cited with approval in . *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 51-52; 664 NW2d 776 (2003). See also, Const. 1963, Art 1, §10.

⁷ However, some people, in the use of words, purport to stipulate their own meaning and fail to tell others about it.

“I don't know what you mean by "glory," Alice said. Humpty Dumpty smiled contemptuously. 'Of course you don't- till I tell you. I meant "there's a nice knock-down argument for you!'" 'But 'glory' doesn't mean "a nice knock-down argument,"' Alice objected. 'When I use a word,' Humpty Dumpty said, in rather a scornful tone, 'it means just what I choose it to mean- neither more nor less.' 'The question is,' said Alice, 'whether you can make words mean so many different things.' 'The question is,' said Humpty Dumpty, 'which is to be master- that's all.'”
(Lewis Carroll, 1832-98, *Through the Looking-Glass*, Ch. VI.)
(Underlining supplied.)

Mr. Carroll clearly recognized that language should always bear the same meaning.

The question presented is whether words themselves when used in contracts, with their known objective meanings, are the masters of the contracts they constitute or whether the users of those words, with potentially as many different intentions as there are persons, are the masters. The answer is that the words themselves are the masters of their meanings. Any other result would have the effect of eliminating the ability to rely on the written word as the basis for one's rights and obligations since every contractual dispute would devolve into a veracity contest where people would say "I know what was written. I just didn't mean it."⁸ Beware! As Confucius' pupil said, "[F]or one word a man is often deemed to be wise and for one word he is often deemed to be foolish. We should indeed be careful what we say."⁹

A principled commitment to the sanctity of the written word supports the rule that intent must be discerned from the words used in an unambiguous agreement itself, even if that produces a seemingly harsh result in a particular case. Implementation of a fair system for those careful enough to read their written agreements means tolerating what may seem to be cases of situational inequity. It is more important that there be reliable and

⁸ Such a drastic change in Michigan law, would, of course, require a reversal of the foregoing decisions of this Court and others, specifically, *Komraus Plumbing & Heating, Inc v Cadillac Sands Motel, Inc*, 387 Mich 285, 290; 195 NW2d 865 (1972), where this Court stated:

"This court has many times held that one who signs a contract will not be heard to say, when enforcement is sought, that he did not read it, or that he supposed it was different in its terms."

objective rules to guide diligent persons than for there to be exceptions for those who do not act to protect themselves. The refusal to “bail out” the careless creates an incentive for everyone to take their right to contract seriously and to utilize the requisite level of care when they do. Contractual security and predictability are enhanced if courts restrict themselves to rulings based on the objective meanings of the words used in contracts.

This Court’s message should be clear and unmistakable: “Be careful of what you sign. You will be held to the terms of the agreement.” The rule that intent must be discerned from the words used in an unambiguous agreement itself should not be changed to save a represented party from the consequences of his lawyer’s mistake in permitting him, twice, to sign unambiguous Releases which, by their clear, unmistakable and unambiguous terms, extend to and enure to the benefit of all other persons. When all is said and done it is the duty of parties to agreements -- and their attorneys -- to be sure that documents are consistent with their intent.

The Releases in this case cannot possibly be clearer. If such a release can be nullified or circumvented, then every written release and every written contract or

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⁹ *The Analects of Confucius* (Arthur Waley trans., Vintage Books/Random House 1989) (1938).

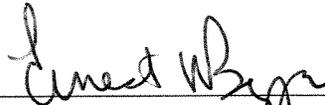
agreement of any kind,¹⁰ no matter how clear and all-inclusive, can be set aside. It would be a mockery of the English language and the law to permit these Releases to be circumvented. Acceptance of Plaintiff's assertion that the unstated actual intent of the parties to an agreement controls would be tantamount to the adoption of a rule that every release must invariably specify every party to be discharged or the transaction will be at risk of later unraveling, that however sophisticated the matter, however informed and counseled the Plaintiff and however plain the words of a document, there can never be a release that truly puts an end to a disputed matter. This is not the law in Michigan, nor should it be.

¹⁰ This Court's resolution of this case will necessarily extend to all contracts and to all disputes relating to contracts whether they be between the parties to the contract or third parties. There cannot be one rule which applies to disputes between parties and another that applies to disputes involving third-parties. This is so because under MCL 600.1405, a third-party beneficiary has the same right to enforce a promise that he would have had if the promise had been made directly to him.

CONCLUSION

Based on the foregoing analyses and citations to authority and on those set forth in their Brief in Opposition dated June 8, 2009, Melvindale Police Officers, John Aldrich, William Plemons and J. Miller, contend that this Court should deny Plaintiff's Application for Leave to Appeal.

PLUNKETT COONEY

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(313) 983-4798

Dated: November 24, 2009

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Ex A

**RELEASE OF ALL CLAIMS AND INDEMNITY AGREEMENT
FOR DERIVATIVE CLAIMS**

For the sole consideration of TWELVE THOUSAND FIVE HUNDRED AND NO/100 (\$12,500.00) DOLLARS to me in hand paid by **Michigan Municipal Liability and Property Pool** do for ourselves, executors, administrators, successors, and assigns, discharge, **ALLEN PARK POLICE OFFICER WAYNE ALBRIGHT** and **Michigan Municipal Liability and Property Pool**, insurer, together with all other persons, firms and corporations, from any and all claims, demands and actions which I have now or may have arising out of any and all damages, expenses, and any loss or damage resulting from an incident occurring on September 8, 2004.

IT IS FURTHER UNDERSTOOD that the damages and the legal liability therefore are disputed and denied, and that this release is to compromise and terminate all claims for both known and unknown injuries and damages of whatever nature, including all future developments thereof, in any way growing out of or connected with or which may hereafter grow out of or be connected with said incident and that all agreements and understandings between the parties in reference thereto are embodied herein.

IT IS FURTHER AGREED that in the event the parties herein released may be liable, by way of contribution, indemnity, lien or otherwise, to any other parties as a result of this incident, that the execution of this agreement shall operate as a satisfaction of my claims against such other parties to the extent that such other parties are or may be entitled to recover, by way of contribution, indemnity, lien or otherwise, from the parties herein released.

IT IS FURTHER AGREED that the undersigned agrees to indemnify and save harmless the parties herein released from all further claims or demands, costs or expense arising out of the damages sustained.

The undersigned further specifically agrees for and in consideration of the payment made hereunder that the undersigned shall indemnify and hold harmless the above-named released and discharged parties, and/or their executors, administrators, successors, assigns, heirs, agents, employers, firms, employees, corporations, partnerships from and for any and all damages, liens,

legal fees or expenses, fees and costs, actual attorney fees, judgments, verdicts or awards, demands, rights, causes for action, losses and claims.

The parties further acknowledge that the obligation to pay the recited consideration of TWELVE THOUSAND FIVE HUNDRED AND NO/100 (\$12,500.00) DOLLARS is solely that of Michigan Municipal Liability and Property Pool and not ALLEN PARK POLICE OFFICER WAYNE ALBRIGHT and ALLEN PARK POLICE OFFICER WAYNE ALBRIGHT assumes no obligation, contractual or otherwise to guarantee or pay the consideration of TWELVE THOUSAND FIVE HUNDRED AND NO/100 (\$12,500.00) DOLLARS.

I hereby order that the above sum be paid by the payor directed to: THOMAS JOHN SHAY and His Attorneys, ROBINSON & ASSOCIATES, P.C.

In Witness Whereof, I have hereunto set my hand and seal this 24 day of July, 2007.

WITNESS:

[Signature]

SIGNED:

[Signature]
THOMAS JOHN SHAY

STATE OF MICHIGAN)
)SS:
COUNTY OF Oakland)

ON THIS 24th DAY OF July, 2007, BEFORE ME PERSONALLY APPEARED THOMAS JOHN SHAY, KNOWN TO BE THE PERSON DESCRIBED HEREIN, AND WHO EXECUTED THE FOREGOING RELEASE OF ALL CLAIMS AND INDEMNITY AGREEMENT FOR DERIVATIVE CLAIMS AND WHO ACKNOWLEDGED THAT HE VOLUNTARILY EXECUTED SAME.

[Signature]
Notary Public, Wayne County, MI

Acting in Oakland, County, MI

My Commission Expires: 7-31-2012

800
309



RELEASE OF ALL CLAIMS AND INDEMNITY AGREEMENT
FOR DERIVATIVE CLAIMS

Ex B

For the sole consideration of TWELVE THOUSAND FIVE HUNDRED AND NO/100 (\$12,500.00) DOLLARS to me in hand paid by Michigan Municipal Liability and Property Pool do for ourselves, executors, administrators, successors, and assigns, discharge, ALLEN PARK POLICE OFFICER KEVIN LOCKLEAR and Michigan Municipal Liability and Property Pool, insurer, together with all other persons, firms and corporations, from any and all claims, demands and actions which I have now or may have arising out of any and all damages, expenses, and any loss or damage resulting from an incident occurring on September 8, 2004.

IT IS FURTHER UNDERSTOOD that the damages and the legal liability therefore are disputed and denied, and that this release is to compromise and terminate all claims for both known and unknown injuries and damages of whatever nature, including all future developments thereof, in any way growing out of or connected with or which may hereafter grow out of or be connected with said incident and that all agreements and understandings between the parties in reference thereto are embodied herein.

IT IS FURTHER AGREED that in the event the parties herein released may be liable, by way of contribution, indemnity, lien or otherwise, to any other parties as a result of this incident, that the execution of this agreement shall operate as a satisfaction of my claims against such other parties to the extent that such other parties are or may be entitled to recover, by way of contribution, indemnity, lien or otherwise, from the parties herein released.

IT IS FURTHER AGREED that the undersigned agrees to indemnify and save harmless the parties herein released from all further claims or demands, costs or expense arising out of the damages sustained.

The undersigned further specifically agrees for and in consideration of the payment made hereunder that the undersigned shall indemnify and hold harmless the above-named released and discharged parties, and/or their executors, administrators, successors, assigns, heirs, agents, employers, firms, employees, corporations, partnerships from and for any and all damages, liens,

legal fees or expenses, fees and costs, actual attorney fees, judgments, verdicts or awards, demands, rights, causes for action, losses and claims.

The parties further acknowledge that the obligation to pay the recited consideration of TWELVE THOUSAND FIVE HUNDRED AND NO/100 (\$12,500.00) DOLLARS is solely that of Michigan Municipal Liability and Property Pool and not ALLEN PARK POLICE OFFICER KEVIN LOCKLEAR and ALLEN PARK POLICE OFFICER KEVIN LOCKLEAR assumes no obligation, contractual or otherwise to guarantee or pay the consideration of TWELVE THOUSAND FIVE HUNDRED AND NO/100 (\$12,500.00) DOLLARS.

I hereby order that the above sum be paid by the payor directed to: *THOMAS JOHN SHAY and His Attorneys, ROBINSON & ASSOCIATES, P.C.*

In Witness Whereof, I have hereunto set my hand and seal this 24 day of July, 2007.

WITNESS:

Stephen Ross

SIGNED:

Thomas J Shay
THOMAS JOHN SHAY

STATE OF MICHIGAN)
)SS:
COUNTY OF Oakland)

ON THIS 24 DAY OF July, 2007, BEFORE ME PERSONALLY APPEARED THOMAS JOHN SHAY, KNOWN TO BE THE PERSON DESCRIBED HEREIN, AND WHO EXECUTED THE FOREGOING RELEASE OF ALL CLAIMS AND INDEMNITY AGREEMENT FOR DERIVATIVE CLAIMS AND WHO ACKNOWLEDGED THAT HE VOLUNTARILY EXECUTED SAME.

R. Andrew Witt
Notary Public, Warne County, MI

Acting in Oakland, County, MI

My Commission Expires: 7-31-2012

STATE OF MICHIGAN

IN THE SUPREME COURT

(ON APPEAL FROM THE COURT OF APPEALS AND CIRCUIT COURT FOR THE
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THOMAS JOHN SHAY,

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PROOF OF SERVICE

ERNEST R. BAZZANA, deposes and states that he is a Partner with the law firm of Plunkett Cooney and that he caused to be served a copy of the attached Supplemental Brief of Defendants-Appellants, Melvindale Police Officers John Aldrich, William Plemons and J. Miller and this Proof of Service upon all parties to the above cause by serving each of the attorneys of record herein at their respective addresses disclosed in the pleadings on the 24th day of November, 2009, as follows:

Via U.S. Mail

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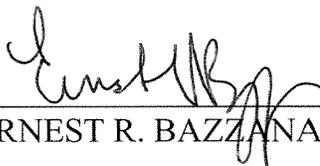
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I declare my statements are true and accurate to the best of my knowledge, information and belief.



ERNEST R. BAZZANA