

No. 27756 - Louis J. Kopf, Jr., v. Scott Lacey

FILED

December 5, 2000

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RELEASED

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Maynard, Chief Justice, dissenting:

I dissent because I agree with the circuit court that the appellant unambiguously released any claims which he had against Scott Lacey.

The language of the release is simple and straightforward. It discharges Patrick and Barbara Lacey and all persons acting on their behalf as to all claims asserted with respect to the May 19, 1997 incident in which the appellant was injured. Scott Lacey was acting on behalf of Barbara and Patrick Lacey when he allegedly caused the appellant's injury. Therefore, Scott Lacey is also discharged as to all claims.

The majority, however, finds a "latent ambiguity" in the release. In other words, the majority believes that a collateral matter makes the clear language of the release uncertain. According to the majority, the collateral matter is that the appellant settled with Patrick and Barbara Lacey, filed a civil action against Scott Lacey, and then executed the release. The majority concludes from this that the appellant could not possibly have intended to release Scott Lacey from all claims since his claim against Scott Lacey was pending when he executed the release.

I disagree with the Court's analysis. A collateral matter which gives rise to a latent ambiguity consists of a fact or circumstance, extrinsic to the language of a contract, which makes the meaning of the otherwise unambiguous contractual language unclear. Inherent in this concept is that the alleged latent ambiguity is not created by a party to the contract at issue. In this case, however, the appellant's own conduct created the alleged latent ambiguity. For unknown reasons, the appellant acted inconsistently with his execution of the release, to his own injury, and now he desires to extract himself from the agreement. He should not be allowed to do so.

The general rule is that unambiguous contractual language expresses the intent of the parties and extrinsic evidence will not be admitted to contradict the unambiguous language. This general rule should be applied to the facts of this case. By applying the latent ambiguity exception to the instant facts, I fear that the majority has unwittingly created a whole new way to attack valid contracts. Accordingly, I dissent.