

Order

Michigan Supreme Court
Lansing, Michigan

September 11, 2020

160809-10

CITY OF WAYNE RETIREES ASSOCIATION,
CHRISTOPHER JOHNSON, TIMOTHY
REYNOLDS, ROBERT ENGLISH, EDMUND
ROTHFELDER, DANIEL HAMANN, and
CHERYL FISHER, on behalf of themselves and
all others similarly situated,
Plaintiffs-Appellants,

v

CITY OF WAYNE,
Defendant-Appellee.

SC: 160809; 160810
COA: 343522; 343916
Wayne CC: 17-009118-CK

Bridget M. McCormack,
Chief Justice

David F. Viviano,
Chief Justice Pro Tem

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

On order of the Court, the application for leave to appeal the October 15, 2019 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

MCCORMACK, J., (*concurring*).

I concur in this Court's order denying leave to appeal because, as the Court of Appeals recognized, the outcome in this case is resolved by our decision in *Kendzierski v Macomb Co*, 503 Mich 296 (2019).

The issue in *Kendzierski* was whether retiree healthcare benefits provided through the parties' collective-bargaining agreements (CBAs) were vested, i.e., unalterable for the plaintiff-retirees' lifetimes, or were instead time-limited promises that did not survive the expiration of those CBAs.

As I explained in my dissent, I believe the CBAs in *Kendzierski* were ambiguous and that the plaintiffs should have been allowed to present extrinsic evidence to resolve that ambiguity. *Kendzierski*, 503 Mich at 327 (MCCORMACK, C.J., dissenting). But this Court disagreed, concluding that the benefits were unambiguously time-limited and that the defendant was, therefore, entitled to summary disposition for that reason. *Id.* at 326 (opinion of the Court).

Plaintiffs in this case have offered arguments for ambiguity that are similar to those the Court considered and rejected in *Kendzierski*. While I find these arguments to be persuasive, plaintiffs have not asked us to reconsider our decision in *Kendzierski*. For that reason, I concur in this Court's order denying leave to appeal.

BERNSTEIN, J., joins the statement of MCCORMACK, C.J.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 11, 2020

A handwritten signature in black ink, appearing to read "Larry S. Royster", written over a horizontal line.

Clerk