

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

RICARDO SANCHEZ

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2009-05617-AD

Deputy Clerk Daniel R. Borchert

ENTRY OF DISMISSAL

{¶ 1} On June 15, 2009, plaintiff, Ricardo Sanchez, filed a complaint against defendant, Department of Transportation. Plaintiff alleges on June 5, 2009 at approximately 8:00 a.m., while his 2010 Toyota Corolla LE was parked at space #387 of Lot #15 owned by Parking Company of America at 601 Sentinel Street in Cincinnati, Ohio, which is located underneath the I-71 overpass, pieces of concrete fell from I-71 damaging his vehicle. Plaintiff seeks damages in the amount of \$500.00, his insurance deductible as the result of negligence on the part of defendant. Plaintiff submitted the filing fee with the complaint.

{¶ 2} Defendant filed a motion to dismiss. In support of the motion to dismiss, defendant stated in pertinent part:

{¶ 3} "Defendant has performed an investigation of this site and I-71 bounded by Eggleston Avenue, Sentinel Street and Culvert Street falls under the maintenance jurisdiction of the City of Cincinnati (See Attached Map and Maintenance Agreement). In the Agreement, this particular lot is designated as "Air Rights Area 8". Sections 9 and

12 stipulate that the State is held harmless from any and all claims arising from dropping of paint and/or objects from the highway structure for damage to property, or injury to, or death of, any person, entering upon same with his consent, expressed or implied. As such, this section of roadway is not within the maintenance jurisdiction of the defendant.”

{¶ 4} Plaintiff has not responded to defendant’s motion to dismiss. The site of the damage-causing incident was located in the City of Cincinnati.

{¶ 5} Ohio Revised Code Section 5501.31 in pertinent part states:

{¶ 6} “Except in the case of maintaining, repairing, erecting traffic signs on, or pavement marking of state highways within villages, which is mandatory as required by section 5521.01 of the Revised Code, and except as provided in section 5501.419 of the Revised Code, no duty of constructing, reconstructing, widening, resurfacing, maintaining, or repairing state highways within municipal corporations, or the bridges and culverts thereon, shall attach to or rest upon the director . . .”

{¶ 7} The Maintenance Agreement in pertinent part states:

{¶ 8} “THIS AGREEMENT, entered into this 16th day of April, 2003 at Lebanon, Ohio, by and between the Director of Transportation of the State of Ohio hereinafter called the STATE and the City of Cincinnati, hereinafter called the LESSEE.

{¶ 9} “That the STATE, for and in consideration of the covenants, conditions, agreements and stipulations of the LESSEE expressed, does hereby agree that the ground surface of those certain premises situated in the City of Cincinnati, County of Hamilton, State of Ohio, on State of Ohio projects HAM-71-1.30, HAM-75-0.04, HAM-471-8.08 and HAM-471-0.30, part of various parcels as shown on plans on file in the Offices of the Ohio Department of Transportation, said parcels redesignated as Air Rights Areas 2, 3, 7, 8, 9, 10, 11, 14A, 14B and 20 may be used by the LESSEE for a term of five (5) years (subject to an economic rent review after each five year period) the same to continue on a five year renewable basis in accordance with the terms and

conditions hereinafter stated.

{¶ 10} “(1) The premises shall be used during the tenancy hereof exclusively for the purpose of a parking area for employees, agents or invitees of the LESSEE.

{¶ 11} “(9) Lessee agrees that it shall be liable for all losses, costs, expenses and liabilities that may arise out of claims for bodily injury and/or property damage by anyone claiming by, through, or under Lessee, unless the same is caused by a negligent or willful act or omission of the State. Additionally, Lessee shall cause any sub-lessee to indemnify the State for any such acts.

{¶ 12} “(12) The LESSEE shall occupy and use said premises at its own risk and expense and shall save the STATE, the officers, agents and employees, harmless from any and all claims, including any which may arise from the dropping of paint and/or other objects from the highway structure for damage to property, or injury to, or death of, any person, entering upon same with his consent, expressed or implied.”

{¶ 13} The site of the damage-causing incident was not the maintenance responsibility of defendant. Consequently, plaintiff’s case is dismissed.

{¶ 14} Having considered all the evidence in the claim file and, for the reasons set forth above, defendant’s motion to dismiss is GRANTED. Plaintiff’s case is DISMISSED. The court shall absorb the court costs of this case.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Ricardo Sanchez
9553 Lake View Drive
Loveland, Ohio 45140

Jolene M. Molitoris, Director
Department of Transportation
1980 West Broad Street

Case No. 2009-05617-AD

- 4 -

ENTRY

Columbus, Ohio 43223

DRB/laa
Filed 1/20/10
Sent to S.C. reporter 5/7/10