

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

JACQUELINE VILINES

Plaintiff

v.

OHIO DEPT. OF TRANSPORTATION

Defendant

Case No. 2009-05625-AD

Deputy Clerk Daniel R. Borchert

ENTRY OF DISMISSAL

{¶ 1} On June 15, 2009, plaintiff, Jacqueline Vilines, filed a complaint against defendant, Department of Transportation. Plaintiff alleges while parked under the I-71 bridge in Cincinnati, Ohio, concrete fell from the bridge damaging her vehicle. Plaintiff asserts that this crumbling condition was caused by the negligence of defendant. Plaintiff seeks damages in the amount of \$1,025.00. 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 Streets 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 under the maintenance responsibility of the City of Cincinnati.

{¶ 5} The Agreement between the State of Ohio and the City of Cincinnati dated April 16, 2003, in pertinent part states:

{¶ 6} “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-471-0.08 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 . . . 8 . . . may be used by the LESSEE for a term of five (5) years.

{¶ 7} “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.

{¶ 8} “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.”

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

{¶ 10} “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 5501.49 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 . . .”

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

{¶ 12} 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:

Jacqueline Vilines
6355 Corbly Road, Unit 9
Cincinnati, Ohio 45230

Thomas P. Pannett
Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223

DRB/laa
8/6
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