

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD R. COOCH
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 N. KING STREET, SUITE 10400
WILMINGTON, DELAWARE 19801
(302) 255-0664

Robert C. McDonald, Esquire
Silverman & McDonald
1010 N. Bancroft Parkway
Wilmington, Delaware 19805
Attorney for Plaintiff

Aaron R. Goldstein, Esquire
Assistant City Solicitor
City/County Building, 9th Floor
800 French Street
Wilmington, Delaware 19801
Attorney for Defendant

Re: *Roshawn Gattis v. City of Wilmington*
C.A. No. 02C-12-075 RRC

Submitted: March 11, 2003
Decided: March 17, 2003

Upon Defendant's Motion to Dismiss. **GRANTED.**

Dear Counsel:

Currently pending is a Motion to Dismiss filed by defendant City of Wilmington ("the City") in which the City seeks dismissal of the Complaint filed by plaintiff Roshawn Gattis ("Gattis") on grounds of statutory immunity. Because the City is immune from any suit for damages predicated upon "[a]ny defect [or] lack of repair...in an highway, townway, sidewalk, parking area...or taxiway, including appurtenances necessary for

the control of such ways...,”¹ and no exceptions otherwise apply, Gattis could not prevail on any set of facts inferable from the pleadings.

Accordingly, the City’s Motion to Dismiss is **GRANTED**.

FACTS AND CONTENTIONS

According to the Complaint, “[o]n or about February 12, 2001 at approximately 3:15 p.m.,” Gattis “attempted to cross the street within the 600 block of N[orth] Market Street to the 500 block of N[orth] Market Street when he stepped into an unguarded hole....”² Gattis averred that this caused him “severe injury to his right leg and a contusion to the left side of his head.”³ Gattis further averred that his fall “was the direct and proximate result of the negligence of the...[City], its agents and/or employees,”⁴ and that as a “proximate result” of the City’s “negligent conduct,” he “suffered pain, mental anguish and serious injuries to his person....”⁵

The City responded through the current motion, in which it argued that “[a]ssuming all of the facts alleged...[to be] true, the Complaint must [still] be dismissed because the City is immune from suit in accordance

¹ DEL. CODE ANN. tit. 10, § 4011(b)(6) (1999).

² Compl. ¶ 3.

³ Id.

⁴ Id. ¶ 5.

⁵ Id. ¶ 6.

with...10 Del. C. § 4011(b)(6).⁶ In its motion, the City further argued that “[t]he Complaint fails to allege any statutory exception to the immunity provided...[therein].”⁷ Finally, the City contended that “a negligence complaint...as is the case here[]is fatally deficient because it fails to conform to the heightened pleading standards set forth in Superior Court Civil Rule 9(b).”⁸

Gattis conceded that he “does not fit into any of the limited [statutory] exceptions” to section 4011(b)(6), but he nevertheless argues that “there is a reasonable certainty that...[he] can prove a set of facts that would entitle him to relief....”⁹

STANDARD OF REVIEW

If a plaintiff may recover under any reasonably conceivable set of circumstances, a motion to dismiss must be denied.¹⁰ “Only if a court can say that the plaintiff could prevail on no set of facts inferable from the pleadings may it dismiss the complaint...[for failure to state a claim].”¹¹

⁶ Def.’s Mot. to Dismiss ¶ 3.

⁷ Id. ¶ 5.

⁸ Id.

⁹ Pl.’s Resp. ¶ 5.

¹⁰ Spence v. Funk, 396 A.2d 967 (Del. 1978).

¹¹ Ramunno v. Cawley, 705 A.2d 1029, 1034 (Del. 1998) (en banc) (citation omitted).

***GATTIS IS STATUTORILY PRECLUDED FROM SUING THE CITY
FOR DAMAGES AND NO EXCEPTIONS APPLY***

Title 10, section 4011(b)(6) of the Delaware Code provides that “notwithstanding § 4012... a governmental entity shall not be liable for any damage claim which results from: [a]ny defect [or] lack of repair...in any highway, townway, sidewalk, parking area...or taxiway, including appurtenances necessary for the control of such ways...”¹² Section 4012 provides exceptions to the immunity granted by section 4011 (*i.e.*, a governmental entity will be liable) for: 1) motor vehicle/equipment violations; 2) public building construction/operation; and 3) sudden discharge of toxic/waste materials.¹³ Thus, “[s]ubject to certain exceptions, [s]ection 4011...provides, generally, that [governmental entities] are immune from suit on all tort claims seeking recovery of damages.”¹⁴ Moreover, “[g]iven the language of the legislation, it is clear that the General Assembly intended to reestablish sovereign immunity with respect to... municipalities, subject to certain exceptions set forth therein.”¹⁵

¹² DEL. CODE ANN. tit. 10, § 4011(b)(6) (1999).

¹³ See DEL. CODE ANN. tit. 10, § 4012 (1999).

¹⁴ Sussex County v. Morris, 610 A.2d 1354, 1357 (Del. 1992) (en banc) (citation omitted).

¹⁵ Moore v. Wilmington Hous. Auth., 619 A.2d 1166, 1168 (Del. 1993) (en banc) (citation omitted).

Here, Gattis has named only the City as a defendant, so title 10, section 4011(c) (under which a governmental employee may be personally liable under certain circumstances not barred by § 4011(b))¹⁶ does not apply. With that in mind, and according to the language of § 4011(b)(6) itself, Gattis must initially make a showing that his claim fits within a statutory exception to the general grant of immunity of section 4011.¹⁷ Given that Gattis has conceded that he “does not fit into any of the [three] limited exceptions under...§ 4012,”¹⁸ there is no way he could recover “under any reasonably conceivable set of circumstances” pursuant to section 4011(b)(6). Accordingly, the City of Wilmington’s Motion to Dismiss must be **GRANTED.**¹⁹

IT IS SO ORDERED.

Very truly yours,

/jkk

oc: Prothonotary

¹⁶ “An employee may be personally liable for acts or omissions causing...bodily injury...in instances in which the governmental entity is immune..., but only for those acts which were not within the scope of employment or which were performed with wanton negligence or willful and malicious intent.” DEL. CODE ANN. tit. 10, § 4011(c) (1999).

¹⁷ See Heany v. New Castle County, 672 A.2d 11 (Del. 1995) (holding that to sue a governmental entity for damages, a plaintiff’s “claim must (1) fit within a statutory exception to the general grant of immunity and (2) not result from a discretionary duty or function”).

¹⁸ Pl.’s Resp. ¶ 5.

¹⁹ Given the Court’s ruling on statutory immunity, it need not reach the City’s argument that the Complaint fails to conform to Rule 9(b).