

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

MONICA T. WILLIS,

Plaintiff,

v.

THE WILMINGTON PARKING  
AUTHORITY,

Defendant.

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) C.A. No. N17C-08-126 FWW  
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Submitted: October 19, 2017

Decided: January 31, 2018

Upon Defendant The Wilmington Parking Authority’s Motion to Dismiss  
**GRANTED.**

**ORDER**

Brian S. Legum, Esquire, Kimmel, Carter, Roman & Peltz, P.A., 56 W. Main Street,  
Fourth Floor, Plaza 273, Newark, DE, 19702; Attorney for Plaintiff.

Sarah B. Cole, Esquire, Marshall Dennehey Warner Coleman & Goggin, 1007 N.  
Orange Street, Suite 600, P.O. Box 8888, Wilmington, Delaware 19899-8888;  
Attorney for Defendant The Wilmington Parking Authority.

WHARTON, J.

This 31st day of January, 2018, upon consideration of Defendant The Wilmington Parking Authority's ("WPA") Motion to Dismiss and Plaintiff Monica T. Willis' ("Willis") response in opposition, it appears to the Court that:

1. On August 10, 2017, Willis filed a Complaint against WPA. She claims that WPA was negligent and careless in the operation and maintenance of the exit gate arm of a surface parking lot.<sup>1</sup> Willis seeks damages for her personal injuries.<sup>2</sup>

2. Specifically, the Complaint alleges that on July 8, 2016, Willis sustained personal injuries when a parking lot exit gate arm, located at the WPA lot at 801 N. Orange Street, Wilmington, Delaware, struck her in the head.<sup>3</sup>

3. On September 8, 2017 WPA filed its Motion to Dismiss.<sup>4</sup> WPA asserts that it is immune from Willis' personal injury claim because 10 *Del. C.* § 4011(a) and § 4011(b)(6) grant immunity from suit for governmental entities.<sup>5</sup>

4. Willis responded in opposition.<sup>6</sup> Willis argues that despite the broad immunity of § 4011(a), 10 *Del. C.* § 4012 grants exceptions by which WPA could be exposed to liability.<sup>7</sup> Willis' opposition does not address WPA's claim of immunity under § 4011(b)(6).

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<sup>1</sup> *Id.*

<sup>2</sup> *Id.* at 3-4

<sup>3</sup> Pl. Compl., D.I. 1, at ¶ 1.

<sup>4</sup> Def. Mot. To Dismiss, D.I. 5, at 1.

<sup>5</sup> *Id.*

<sup>6</sup> Pl. Resp., D.I. 7, at 1.

<sup>7</sup> *Id.* at ¶ 2.

5. A motion to dismiss will not be granted if the “plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint.”<sup>8</sup> The Court’s review is limited to the well-pled allegations in the complaint.<sup>9</sup> In ruling on a motion to dismiss, the Court “must draw all reasonable factual inferences in favor of the party opposing the motion.”<sup>10</sup> Dismissal is warranted “only if it appears with reasonable certainty that the plaintiff could not prove any set of facts that would entitle him to relief.”<sup>11</sup>

6. WPA first argues that it is immune from Willis’ claims under 10 *Del. C. § 4011(a)*, therefore Willis’ Complaint should be dismissed. In particular, 10 *Del. C. § 4011(a)* provides that “[e]xcept as otherwise expressly provided by statute, all governmental entities and their employees shall be immune from suit on any and all tort claims seeking recovery of damages.” A “[g]overnmental entity’ means...any parking authority created pursuant to Chapter 5 of Title 22...”<sup>12</sup> WPA is such a parking authority and therefore a “governmental entity” within the scope of § 4011(a). Additionally, Willis’ claims fall within the scope § 4011(a) because she asserts a negligence tort claim seeking recovery for damages. WPA is correct, therefore, that it would be immune from suit under § 4011(a), absent any exceptions

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<sup>8</sup> *Browne v. Robb*, 583 A.2d 949, 950 (Del. 1990).

<sup>9</sup> *Doe v. Cahill*, 884 A.2d 451, 458 (Del. 2005).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> 10 Del. C. § 4010(2).

to that immunity “expressly provided by statute.”

7. Willis, however, argues that despite § 4011(a), WPA is still subject to liability because 10 *Del. C.* § 4012 enumerates exceptions to § 4011(a)’s broad grant of immunity. In pertinent part, § 4012 provides that:

[a] governmental entity shall be exposed to liability for its negligent acts or omissions causing property damage, bodily injury or death in the following instances: (1) In its ownership, maintenance or use of any motor vehicle, special mobile equipment, trailer, aircraft or other machinery or equipment, whether mobile or stationary.

Machine is defined as a mechanically, electrically, or electronically operated device for performing a task.<sup>13</sup> In considering whether something is “machinery or equipment” within § 4012 important factors include: whether something is a necessary piece of equipment for the use of some operation or activity<sup>14</sup> and whether the governmental entity is responsible for design, construction, and maintenance of the machinery or equipment.<sup>15</sup> Here, both factors are present. The parking lot gate is an electrically operated device necessary for control of the parking lot and collection of fees. Additionally, WPA is responsible for the operation and/or maintenance of the parking lot gate. Therefore, the parking lot gate is machinery/equipment within the scope of § 4012. As a result, WPA, a governmental

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<sup>13</sup> *Machine*, Merriam-Webster Online Dictionary.

<sup>14</sup> *Ritger v. City of Rehoboth Beach*, 655 F. Supp. 1101, 1104 (D. Del. 1987).

<sup>15</sup> *Smith v. Comm. of Dewey Beach*, 685 F. Supp. 433, 435 (3d. Cir. Del. 1988).

entity, may not claim immunity under § 4011(a).

8. However, WPA next argues that, by virtue of § 4011(b)(6), it remains immune from Willis' claim, despite § 4012. Section 4011(b)(6) provides:

**(b) Notwithstanding § 4012 of this title**, a governmental entity shall not be liable for any damage claim which results from...(6) [a]ny defect, lack of repair or lack of sufficient railing in any highway, townway, sidewalk, parking area, causeway, bridge, airport runway or taxiway, including appurtenances necessary for the control of such ways including but not limited to street signs, traffic lights and controls, parking meters and guardrails. (Emphasis added.)

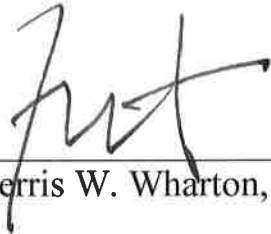
Indeed, § 4011(b) immunity applies “notwithstanding” the exceptions to § 4011(a) immunity found in § 4012. In other words, if § 4011(b)(6) immunity applies, the exceptions to immunity found in § 4012 do not.

9. The instrumentality of Willis' claimed harm is a parking lot exit gate arm. The dispositive question then is whether the exit gate arm is an appurtenance necessary for the control of the parking area. It is clear to the Court that the exit gate arm was an appurtenance that was necessary to control egress from the parking area. Therefore, it is an appurtenance within the scope of § 4011(b)(6)'s immunity provision. Accordingly, WPA, as a government entity, is not liable for any damage claim resulting from defect or lack of repair of the exit gate arm. Here, the gravamen of Willis' claim is that the exit gate arm was defective or in disrepair. “Defendant was responsible for the ownership, maintenance, or use of the parking lot exit gate,

which led to Plaintiff's injuries."<sup>16</sup> Consequently, although the exit gate arm is both "machinery" under § 4012 and an "appurtenance" under § 4011(b)(6), § 4011(b)(6) provides WPA with immunity notwithstanding § 4012.

**THEREFORE**, Defendant The Wilmington Parking Authority's Motion to Dismiss is hereby **GRANTED**.

**IT IS SO ORDERED.**

  
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Ferris W. Wharton, J.

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<sup>16</sup> Pl. Resp., D.I. 7, at 6.