

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. CV-2018-525

JOSHUA BROWN,
Plaintiff,

v.

NORTRAX, INC., CODY CRAIG,
and MAINE TURNPIKE
AUTHORITY,
Defendants.

**ORDER ON DEFENDANT MAINE
TURNPIKE AUTHORITY'S
MOTION FOR SUMMARY
JUDGMENT**

Before the Court is Defendant Maine Turnpike Authority's ("MTA") Motion for Summary Judgment. The motion is opposed by Plaintiff Joshua Brown and Defendants Nortrax, Inc. ("Nortrax") and Cody Craig (Nortrax and Mr. Craig collectively, "the Nortrax Defendants"). For the following reasons, the Court grants MTA's motion.

I. Facts

The following facts are drawn from the parties' Joint Stipulation of Undisputed Facts and the parties' statements of material facts. Denials and qualifications are noted when relevant.

This matter arises from a motor vehicle accident that occurred in the vicinity of Exit 48 of the Maine Turnpike ("the Turnpike") on January 20, 2017 ("the Accident"). (J.S.U.F. ¶¶ 1, 3.) On the day of the Accident, an independent contractor, CLT, was working adjacent to the Turnpike in the vicinity of Exit 48. (Def. MTA's S.M.F. ¶¶ 26, 30,

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32.)¹ Specifically, CLT was clearing trees within a hundred feet of the center line of the Turnpike. (Def. MTA's S.M.F. ¶ 27.) The right lane and acceleration lane had to be closed to allow the movement of equipment to and from the site. (Nortrax Defs.' Add. S.M.F. ¶ 16.)² Accordingly, MTA employees had set up a lane closure on the northbound side of the Turnpike, in the vicinity of Exit 48, earlier that morning. (J.S.U.F. ¶ 2.) MTA's work at the site consisted of placing appropriate signs, cones, and a truck-mounted attenuator on the Turnpike, and directing traffic. (Def. MTA's S.M.F. ¶¶ 33, 36-37.)³

The purposes of CLT's work were to remove obstructions from the "clear zone" next to the Turnpike and allow more sunlight to reach the road, which increases visibility of animals near the roadway and decreases the amount of salt needed. (Def. MTA's S.M.F. ¶ 31.) Additionally, the tree clearing was the first stage in a project to widen the Turnpike. (Nortrax Defs.' Add. S.M.F. ¶ 5.)

Shortly before the Accident, Mr. Brown was driving in the right lane on the Turnpike. (Def. MTA's S.M.F. ¶ 7.)⁴ He moved to the left lane after seeing traffic cones and signs warning drivers of the lane closure. (Def. MTA's S.M.F. ¶ 8.) Once in the left lane, a car in front of Mr. Brown's car stopped, so Mr. Brown stopped. (Def. MTA's S.M.F. 9.) He was stopped for about twenty to thirty seconds. (Nortrax Defs.' Add. S.M.F. ¶ 8.) In his mirror, he saw a truck approaching from behind. (Def. MTA's S.M.F. ¶ 10.) To

¹ Mr. Brown denies paragraphs 25-32 of MTA's Statements of Material Fact. However, the record citations provided do not contain evidence refuting the statements of material fact. Accordingly, each of those facts is deemed admitted. M.R. Civ. P. 56(h)(4).

² In the same statement of material fact, the Nortrax Defendants also stated that the lane needed to be closed to allow removal of trees and brush from the project. However, this portion of the statement was not properly supported by the cited portions of the record.

³ Mr. Brown responds to paragraphs 36-44 of MTA's Statements of Material Fact with qualifications that are unsupported by citation to the record. Accordingly, each of those facts is deemed admitted by Mr. Brown. M.R. Civ. P. 56(h)(4).

⁴ Mr. Brown responds to paragraphs 6-24 of MTA's Statements of Material Fact with qualifications that are unsupported by citation to the record. Accordingly, each of those facts is deemed admitted by Mr. Brown. M.R. Civ. P. 56(h)(4).

avoid collision, Mr. Brown steered his vehicle to the right, but the truck driver also steered to the right and collided with the rear of Mr. Brown's vehicle. (Def. MTA's S.M.F. ¶¶ 15-16.) The driver of the truck was Mr. Craig, and the owner of the truck was Mr. Craig's employer, Nortrax. (Def. MTA's S.M.F. ¶¶ 18-19.)

When the Accident occurred, MTA employees were in the process of taking down the lane closure. (J.S.U.F. ¶ 3.) CLT swept the roadway clean. (Nortrax Defs.' Add. S.M.F. ¶¶ 17-18; MTA's Resp. Nortrax Defs.' Add. S.M.F. ¶ 18.)⁵ An MTA employee drove an MTA vehicle in reverse in the closed right lane, picking up cones. (Def. MTA's S.M.F. ¶ 38.) At the time of the Accident, the MTA truck was in the right lane (which was still closed), and the MTA attenuator vehicle was on the right shoulder. (Def. MTA's S.M.F. ¶ 39.) Mr. Craig did not hit either of the MTA vehicles in the right lane before he hit Mr. Brown's vehicle. (Def. MTA's S.M.F. ¶42.)

Two employees of MTA testified that they had no reason to disagree with characterizing the area in which the Accident occurred as an "active work zone," and a construction and engineering expert retained by the Nortrax Defendants testified that, in his opinion, the Accident happened in an "active construction zone." (Pl.'s Add. S.M.F. ¶¶ 1-2.)

Mr. Brown filed this suit for personal injuries he sustained as a result of the Accident. In Count III of his Complaint, Mr. Brown alleges that MTA "improperly set up signage and warnings of construction," leading to the Accident. (Compl. ¶¶ 12-13.) The Nortrax Defendants filed a cross-claim against MTA for contribution and/or

⁵ Although the Nortrax Defendants' statements of material fact specify that brush was being removed by the sweeping equipment, the cited portion of the record does not state what was being swept from the lane. As qualified by MTA and as reflected in the cited portion of the record, CLT operated the sweeping equipment.

indemnification. MTA moves for summary judgment on the grounds that it is immune from suit under the Maine Tort Claims Act, 14 M.R.S. §§ 8101-8118 (“the MTCA”).

II. Legal Standard

A party is entitled to summary judgment when review of the parties’ statements of material facts and the record to which the statements refer demonstrates that there is no genuine issue as to any material fact in dispute, and that the moving party is entitled to judgment as a matter of law. M.R. Civ. P. 56(c); *Dyer v. Dep’t of Transp.*, 2008 ME 106, ¶ 14, 951 A.2d 821. A contested fact is material if it could potentially affect the outcome of the case. *Dyer*, 2008 ME 106, ¶ 14, 951 A.2d 821. A genuine issue of material fact exists if the claimed fact would require a factfinder to “choose between competing versions of the truth.” *Id.* (quoting *Farrington’s Owners’ Ass’n v. Conway Lake Resorts, Inc.*, 2005 ME 93, ¶ 9, 878 A.2d 504). The evidence offered in support of a genuine issue of material fact “need not be persuasive at that stage, but the evidence must be sufficient to allow a fact-finder to make a factual determination without speculating.”⁶ *Est. of Smith v. Cumberland County*, 2013 ME 13, ¶ 19, 60 A.3d 759.

When deciding a motion for summary judgment, the court reviews the evidence in the light most favorable to the non-moving party. *Dyer*, 2008 ME 106, ¶ 14, 951 A.2d 821. To survive a motion for summary judgment, a plaintiff must establish a prima facie case for each element of his or her claims. *Tri-Town Marine, Inc. v. J.C. Milliken Agency, Inc.*, 2007 ME 67, ¶ 7, 924 A.2d 1066. “Summary judgment is appropriate when a defendant is immune from tort liability.” *Day’s Auto Body, Inc. v. Town of Medway*, 2016 ME 121, ¶ 7, 145 A.3d 1030 (quoting *Grossman v. Richards*, 1999 ME 9, ¶ 3, 722 A.2d 371).

⁶ Each party’s statements must include a reference to the record where “facts as would be admissible in evidence” may be found. M.R. Civ. P. 56(e). A party’s opposing statement of material facts “must explicitly admit, deny or qualify facts by reference to each numbered paragraph, and a denial or qualification must be supported by a record citation.” *Stanley v. Hancock Cnty. Comm’r*, 2004 ME 157, ¶ 13, 864 A.2d 169.

III. Discussion

“The MTCA expressly provides that, as a general rule, governmental entities are immune from suit on any and all tort claims seeking recovery of damages.” *Klein v. Univ. of Me. Sys.*, 2022 ME 17, ¶ 8, ___ A.3d ___; see 14 M.R.S. § 8103(1). The MTCA does provide for limited exceptions to immunity, which the Law Court has described as “a cautious waiver of sovereign immunity by the Legislature in certain carefully circumscribed circumstances.” *Searle v. Town of Bucksport*, 2010 ME 89, ¶ 27, 3 A.3d 390; see 14 M.R.S. § 8104-A. Courts must construe exceptions “strictly in order to adhere to the Legislature’s directive that immunity for a governmental entity remains the general rule.” *Klein*, 2022 ME 17, ¶ 8, ___ A.3d ___; see *Est. of Fortier v. City of Lewiston*, 2010 ME 50, ¶ 8, 997 A.2d 84 (“In construing section 8104-A, we recognize that the MTCA employs an exception-to-immunity approach rather than an exception-to-liability approach.” (quotation marks omitted)).

As a governmental entity, MTA is immune from suit on any and all tort claims seeking recovery of damages unless an exception applies. The only exception at issue here is 14 M.R.S. § 8104-A(4), which reads in pertinent part:

A governmental entity is liable for its negligent acts or omissions arising out of and occurring during the performance of construction, street cleaning or repair operations on any highway, town way, sidewalk, parking area, causeway, bridge, airport runway or taxiway, including appurtenances necessary for the control of those ways including, but not limited to, street signs, traffic lights, parking meters and guardrails.

The Nortrax Defendants and Mr. Brown argue that the exception is applicable because MTA negligently posted improper signage of the lane closure and (1) tree clearing is “construction” or “repair operations,” or (2) the sweeping of the roadway in preparation for reopening the right lane was “street cleaning.”

A. Tree Clearing

The MTCA does not define “construction” or “repair.” Accordingly, the terms “must be given their plain and natural meaning and should be construed according to their natural import in common and approved usage.” *Goodine v. State*, 468 A.2d 1002, 1004 (Me. 1983).

The Law Court has not interpreted “construction” or “repair” in the context of section 8104-A(4). Interpreting an insurance contract, the Law Court has said that “repair” is commonly understood to mean “to restore to sound condition after damage or injury.” *Hall v. Acadia Ins. Co.*, 2002 ME 110, ¶ 7, 801 A.2d 993. Clearing trees from within one hundred feet of the centerline of the Turnpike allows more sunlight to reach the road, which increases visibility of animals near the roadway and decreases the amount of salt needed. Plainly, the work did not “repair” any damaged element of the Turnpike.

Nor did the tree clearing constitute “construction.” Black’s Law Dictionary (11th ed. 2019) defines “construction” as: “The act of building by combining or arranging parts or elements; the thing so built.” As the Nortrax Defendants argue, later stages of the project to widen the Turnpike are likely to involve “construction.” However, the only stage of the project relevant to this matter is the stage in which MTA’s negligent acts or omissions allegedly occurred. *See Rivard v. Lewiston*, 516 A.2d 555, 556 (Me. 1986) (“[T]he plain meaning of this statute requires that both the negligence and the bodily injury must arise out of and occur during construction, street cleaning or repairs.”).

At the time of the Accident, MTA controlled traffic and maintained a lane closure while CLT cleared trees. The work did not involve “building,” “combining,” or

“arranging.” It was not “construction.”⁷ See *Bethanis v. Inhabitants of Readfield*, Nos. CV-98-193 & CV-98-284, 2000 Me. Super. LEXIS 143, at *4 (June 27, 2000) (“This court concludes that if the Law Court did not afford application of the exception in *Goodine* and *King* [*v. Town of Monmouth*, 1997 ME 151, 697 A.2d 837], it is not likely that they would apply it to a case involving tree trimming, albeit within the Town’s right of way and for the safety of those using the Town roads.”).

B. Sweeping

The Law Court has defined “street cleaning” as follows: “The term ‘street cleaning’ is commonly understood to mean the removal of debris which is generated by pedestrian and vehicle traffic at all times of the year.” *Goodine*, 468 A.2d at 1004 (discussing similar language of 14 M.R.S. § 8104(4) (1980), a previous version of section 8104-A(4)).

At some point before the Accident, CLT swept the right lane in preparation for its reopening. The parties’ statements of material fact and cited portions of the record do not identify the material being swept. However, regardless of the material swept, MTA’s alleged negligence in posting signs of the lane closure cannot reasonably be said to have arisen out of CLT’s sweeping of the lane. It is undisputed that the right lane was closed to allow for movement of equipment to and from the work site—not for street cleaning purposes. Because MTA’s negligent acts must have “aris[en] out of *and* occur[ed] during” street cleaning for liability to attach, CLT’s sweeping of the lane does not bring MTA’s acts within the exception of section 8104-A(4). See *Rivard*, 516 A.2d at 556.

⁷ Mr. Brown places much weight on the fact that two MTA employees and an engineer agreed that the area in which the Accident occurred could be characterized as a “work zone” or “construction zone.” However, the common meaning of the terms must guide the Court’s interpretation, not the opinion of a select few.

A strict construction of the MTCA's exceptions to immunity, which the Court must employ, does not encompass the work being performed at the time of the Accident. Thus, MTA is immune from suit.

IV. Conclusion

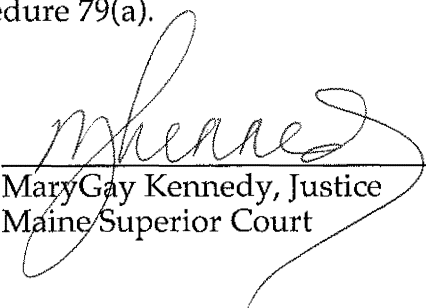
For the foregoing reasons, no dispute of material fact exists, and the undisputed facts demonstrate that MTA is immune from suit on Mr. Brown's claims. Accordingly, MTA is entitled to summary judgment.

The entry is:

Defendant Maine Turnpike Authority's Motion for Summary Judgment is GRANTED.

The Clerk is directed to incorporate this Order and Judgment into the docket by reference pursuant to Maine Rule of Civil Procedure 79(a).

Dated: March 29, 2022



MaryGay Kennedy, Justice
Maine Superior Court

Entered on the Docket: 03/29/2022