

[Cite as *Salvation Army v. Ohio Dept. of Transp.*, 2004-Ohio-5451.]

**IN THE COURT OF CLAIMS OF OHIO**

SALVATION ARMY :

Plaintiff :

v. :

THE DEPARTMENT OF :  
TRANSPORTATION OF THE STATE :  
OF OHIO :

CASE NO. 2004-04094  
Judge Joseph T. Clark

DECISION

Defendant :  
: : : : : : : : : : :

{¶ 1} On July 15, 2004, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). On August 19, 2004, plaintiff filed a response. The case is now before the court for a non-oral hearing on the motion for summary judgment. Civ.R. 56(C) and L.C.C.R. 4.

{¶ 2} Civ.R. 56(C) states, in part, as follows:

{¶ 3} “\*\*\* Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party’s favor. \*\*\*”

{¶ 4} See, also, *Williams v. First United Church of Christ* (1974), 37 Ohio St.2d 150; *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶ 5} It is not disputed that plaintiff owns and operates a thrift store located at 4360 State Route (SR) 32 in Batavia, Ohio. Plaintiff alleges that defendant interfered with its business and caused a loss of income by closing the Winding Creek Drive exit from SR 32 in Batavia, Ohio. In the complaint plaintiff alleges that defendant has impaired sales and permanently diminished the value of the store.

{¶ 6} In *Bowles v. Ohio Department of Transportation* (1993), 63 Ohio Misc.2d 373, this court held that in order for a business owner to recover from the state for interference with the right of ingress and egress, the business owner must prove by a preponderance of the evidence that there was substantial, material, and unreasonable interference amounting to an absolute cutting off of access to the property. *Id.* at 376. This court has consistently held that a business owner does not have a cause of action merely because the Ohio Department of Transportation causes a road to be closed, which in turn makes it more difficult for patrons to have access to the business establishment. See, e.g., *Noble dba BJ's Market v. Ohio Dept. of Transp.* (Mar. 20, 1990), Court of Claims No. 90-01427; *Clinton R. Dibble dba A Motor Sales v. Ohio Dept. of Transp.* (Sept. 26, 1989), Court of Claims No. 89-09134.

{¶ 7} In support of its motion for summary judgment, defendant submitted the affidavit of District 8 Traffic Planning Engineer, Jay Hamilton, who stated that he has personal knowledge of the road construction project referenced in plaintiff's complaint; that the project at issue "eliminated one (1) Right In Only lane from Route 32 to Winding Creek Road"; and that two alternate exit routes provide public access to plaintiff's store from SR 32. Plaintiff submitted the affidavit of Larry See, who has been employed by plaintiff for 34 years and who oversees the operation of five of plaintiff's thrift stores, including the Batavia, Ohio store. In his affidavit, See acknowledges that access to the thrift store is still available but that each of the alternate routes from SR 32 requires potential customers to travel an additional 1.25 miles to reach the store. See nevertheless states that this additional travel has limited impulse and drive-by purchases, which resulted in a 15 to 20 percent yearly revenue loss. The court finds that See's affidavit testimony is insufficient to create a genuine issue of material fact under *Bowles*, *supra*.

{¶ 8} Based on this undisputed evidence, the court finds that reasonable minds can only conclude that there was not a substantial, material, and unreasonable interference with plaintiff's

right of ingress and egress amounting to an absolute cutting off of access to plaintiff's business. Accordingly, there are no genuine issues of material fact and defendant is entitled to judgment as a matter of law.

{¶ 9} Defendant's motion for summary judgment shall be granted and judgment shall be rendered in favor of defendant.

**IN THE COURT OF CLAIMS OF OHIO**

SALVATION ARMY	:	
Plaintiff :		CASE NO. 2004-04094
		Judge Joseph T. Clark
v.	:	
		<u>JUDGMENT ENTRY</u>
THE DEPARTMENT OF	:	
TRANSPORTATION OF THE STATE	:	
OF OHIO	:	
Defendant :		
: : : : : : : : : : : :		

A non-oral hearing was conducted in this case upon defendant's motion for summary judgment. For the reasons set forth in the decision filed concurrently herewith, defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

\_\_\_\_\_  
JOSEPH T. CLARK  
Judge

Entry cc:

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Filed September 24, 2004/To S.C. reporter October 12, 2004