

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

LIVIU SANDU

Plaintiff

v.

THE OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2008-02606-AD

Deputy Clerk Daniel R. Borchert

ENTRY OF DISMISSAL

{¶ 1} On February 28, 2008, Liviu Sandu, filed a complaint against defendant, Department of Transportation. Plaintiff alleges on February 13, 2008, while driving his 2006 Hyundai Tiburan southbound on I-77 approximately a half mile before the intersection with I-76 a plow truck traveling in the opposite direction threw “snow, dirt and ice over the cement divider” striking his vehicle. Plaintiff asserts defendant’s agent was operating the vehicle. Plaintiff seeks damages in the amount of \$1,463.00.

{¶ 2} On March 14, 2008, defendant filed a motion to dismiss. On July 10, 2008, this court issued an entry denying defendant’s motion to dismiss since defendant asserted the damage was caused by a pothole which defendant had no responsibility to repair.

{¶ 3} On July 24, 2008, defendant filed a motion for leave to file an amended motion to dismiss. In support of the amended motion to dismiss, defendant stated in pertinent part:

{¶ 4} “Defendant asserts it is not responsible for the routine maintenance of

southbound I-77, approximately one-half mile before the intersection with I-76 within the City of Akron. On July 1, 2007, the Ohio Department of Transportation entered into an Interstate Lane Mile and Maintenance Agreement with the City of Akron for routine maintenance services. (See Exhibit A and map) The area of I-77 and I-76 are mentioned in Section 3.2 of the Agreement. Also, this Agreement at Section 1.2 states, in pertinent part:

{¶ 5} 'In the interest of public safety and convenience, it is the desire of the parties hereto that the CITY shall perform routine maintenance and repair of the interstate highway system using its own labor forces, equipment and materials, or by contracting for these items, with reimbursement from the STATE.'

{¶ 6} "Routine maintenance includes snow and ice control under this agreement. The City of Akron also agrees to hold defendant harmless for any damage to property arising out of the City's performance of routine maintenance. (See Section 14.1)"

{¶ 7} Plaintiff has not responded to defendant's amended motion to dismiss.

{¶ 8} The Interstate Lane Mile and Maintenance Agreement in pertinent part states:

{¶ 9} "This AGREEMENT is made by and between the State of Ohio, acting through the Director of the Ohio Department of Transportation, hereinafter referred to as the STATE, 1980 West Broad Street, Columbus, Ohio 43223, and the City of Akron, Ohio, acting by and through the Director of Public Service, hereinafter referred to as the CITY, 1436 Triplett Blvd., Akron, Ohio 44306.

{¶ 10} "1.2 In the interest of public safety and convenience, it is the desire of the parties hereto that the CITY shall perform routine maintenance and repair of the interstate highway system using its own labor forces, equipment and materials, or by contracting for these items, with reimbursement from the STATE.

{¶ 11} "2.2 Routine Maintenance" means the act of preserving and keeping

each type of roadway, roadside, structure, or facility, within the right-of-way as nearly as possible in its original condition as constructed or as subsequently improved, to provide satisfactory and safe highway transportation. Routine maintenance shall include, but shall not be limited to: snow and ice control . . .

{¶ 12} “11.1 This Agreement shall commence on July 1, 2007 and shall terminate on June 30, 2009.

{¶ 13} “14.0 The STATE shall not be liable, for injury to person or damage to property arising out of the CITY’s performance of routine, extraordinary, lighting, or pump station maintenance which are the subject to this Agreement.”

{¶ 14} Defendant’s agent did not operate the snow plow in question and accordingly, defendant is not the proper party to sue in this action.

{¶ 15} Having considered all the evidence in the claim file and, for the reasons set forth above, defendant’s motion for leave and amended motion to dismiss are GRANTED. Plaintiff’s case is DISMISSED. The court shall absorb the court costs of this case.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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Thomas P. Pannett
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ENTRY

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