

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

MICHAEL JAMES ZWICK

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2010-10939-AD

Deputy Clerk Daniel R. Borchert

ENTRY OF DISMISSAL

{¶ 1} On September 29, 2010, plaintiff, Michael Zwick, filed a complaint against defendant, Department of Transportation. Plaintiff asserts on September 16, 2010 at approximately 12:30 p.m., while traveling northbound on State Route 128 underneath the I-275/I-74 overpass his vehicle struck a series of metal plates causing damage. Plaintiff seeks reimbursement for tire damage in the amount of \$141.83. The filing fee was paid.

{¶ 2} On November 22, 2010, defendant filed a motion to dismiss. In support of the motion to dismiss, defendant stated in pertinent part:

{¶ 3} “Duke Energy was working in this area by permit to relocate two aerial lines into two buried flex ducts along SR 128 under I-74. They were working on a utility relocation project and ODOT’s permit was issued on September 2, 2010. The permit has language that states ‘*The permittee shall save harmless the State of Ohio and all of its representatives from all suits, actions, or claims of any character brought on account*

of any injuries or damages sustained by any person or property in consequence of any neglect or on account of any act or omission as a result of the issuance of this permit (See Exhibit A). This permit mentions that Duke Energy was doing **work associated with ODOT Project HAM-74-7.76** but this project will not be sold until November 18, 2010 and the utility company is doing the relocation work in advance of the construction project.”

{¶ 4} Plaintiff has not responded to defendant’s motion to dismiss.

{¶ 5} Defendant was not responsible for the work being performed at the site of plaintiff’s incident. Accordingly, defendant is not the appropriate party to sue. Therefore, defendant’s motion to dismiss is GRANTED. Plaintiff’s case is DISMISSED and the court shall absorb the court costs of this case in excess of the filing fee.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Michael James Zwick
8214 West Mill Street, Apt. 416
Cleveland, Ohio 45002

Chester T. Lyman, Jr.
Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223

DRB/laa
Filed 1/21/11
Sent to S.C. reporter 4/8/11