

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

JOE TOMBA

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION, DISTRICT 12

Defendant

Case No. 2010-11315-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶ 1} Plaintiff, Joe Tomba, filed this action against defendant, Department of Transportation (ODOT), contending that ODOT should bear responsibility for paint damage to his 1996 Dodge Ram 1500. Plaintiff recalled he was traveling on State Route 84 in Lake County on September 30, 2010 when his paint damage incident occurred. In his complaint, plaintiff offered the following narrative recollection of the paint damage occurrence noting he was traveling “at least four cars behind a state contracted vehicle that was striping the berm and painting white lines on the road. Traffic on RT 84 was extremely heavy and I was forced to remain behind the state contracted (vehicle) and hug the yellow line for approximately 8 to 10 miles until I reached my residence. Once arriving at my (residence), I parked my vehicle in the garage until the next afternoon.” Plaintiff indicated he discovered white paint on the right side of his truck when he approached the parked vehicle on October 1, 2010. Plaintiff submitted photographs depicting white paint splatter all along the lower right side of his truck. Plaintiff requested damages in the amount of \$1,416.30, the cost of

removing paint from his truck and car rental expenses. The \$25.00 filing fee was paid and plaintiff requested reimbursement of that cost along with his damage claim.

{¶ 2} Defendant explained ODOT contractor, Dura Mark, Inc. was conducting operations on State Route 84 on September 30, 2010. Defendant further explained white edge lines were painted between mileposts 19.10 to 24.0 with painting operations starting at 5:30 p.m. and finishing at approximately 6:30 p.m. In his complaint, plaintiff estimated his damage incident occurred at approximately 3:45 p.m. Defendant denied operations on State Route 84 in Tuscarawas County on May 13, 2010. Defendant denied liability in this matter based on the contention “that neither ODOT nor Dura Mark, Inc. had notice of wet paint on SR 84 prior to plaintiff’s incident.” Defendant asserted plaintiff failed to offer evidence to prove his property damage was attributable to conduct on either the part of ODOT or Dura Mark, Inc. Defendant further asserted plaintiff failed to produce evidence to establish ODOT negligently maintained the roadway.

{¶ 3} Plaintiff filed a response reasserting his property damage was caused by painting operations on State Route 84 conducted by Dura Mark, Inc. Plaintiff recalled he did not observe any signs posted to advise motorists of the painting operation. Plaintiff insisted his property damage incident occurred at approximately 3:45 p.m. on

September 30, 2010.

{¶ 4} The evidence conclusively shows plaintiff's vehicle received paint damage from paint that had been applied by ODOT contractor Dura Mark, Inc. This court has previously held that ODOT cannot be held liable for any alleged negligence on the part of a contractor in conducting painting operations on state roadways. ODOT may delegate its duty of care in situations where an independent contractor such as Dura Mark, Inc. undertakes roadway painting operations. See *Henderson v. Ohio Dept. of Transp.*, Ct. of Cl. No. 2003-11496-AD, 2004-Ohio-1839, adopting the rationale of *Gore v. Ohio Dept. of Transp.*, Franklin App. No. 02AP-996, 2003-Ohio-1648; also *Henning v. Dept. of Transp.* (2006), 2006-04369-AD; *Treadway v. Ohio Dept. of Transp.*, Ct. of Cl. No. 2009-08811-AD, 2010-Ohio-3637; *Madison v. Ohio Dept. of Transp.*, Ct. of Cl. No. 2009-08616-AD, 2010-Ohio-3636. ODOT is not the proper party defendant in this action and therefore, this claim is dismissed.

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Case No. 2006-03532-AD

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MEMORANDUM DECISION

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ENTRY OF ADMINISTRATIVE DETERMINATION

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Joe Tomba
29 Paradise Road
Painesville, Ohio 44077

Jerry Wray, Director
Department of Transportation
1980 West Broad Street
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RDK/laa
2/2
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