[Cite as *Stolarsky v. Ohio Dept. of Transp.*, 2020-Ohio-2840.]

MARC STOLARSKY Plaintiff v. OHIO DEPARTMENT OF TRANSPORTATION Defendant	Case No. 2019-00996AD Deputy Clerk Daniel R. Borchert MEMORANDUM DECISION

{¶1} Marc Stolarsky ("plaintiff") filed this claim against the Ohio Department of Transportation ("ODOT"), to recover damages which occurred on September 16, 2019, when his 2013 Hyundai Sonata struck "a light fixture and attached pole or arm" which was lying in the left lane of Interstate Route ("IR") 90, between exits East 185th and East 200th Street, in Cuyahoga County, Ohio. This road is a public road maintained by ODOT. Plaintiff's vehicle sustained damages in the amount of $5,588.00. However, plaintiff seeks only reimbursement of the $250.00 deductible since the rest of the damage was paid for by his insurance carrier, State Farm Insurance. Plaintiff submitted the $25.00 filing fee and he wishes to be reimbursed for this amount.

{¶2} In order to recover on a claim for roadway damages against ODOT, Ohio law requires that a motorist/plaintiff prove *all* of the following:

That the plaintiff's motor vehicle received damages as a result of coming into contact with a dangerous condition on a road maintained by ODOT.

That ODOT knew or should have known about the dangerous road condition.

That ODOT, armed with this knowledge, failed to repair or remedy the dangerous condition in a reasonable time.

{¶3} In this claim, the court finds that the plaintiff did prove that his vehicle received damages and that those damages occurred as a result of the plaintiff's vehicle coming into contact with a dangerous condition on a road maintained by ODOT.

{¶4} In the Investigation Report, ODOT indicated that the location of the incident was on IR 90 in Cuyahoga County, near mile marker 183.0. This section of the roadway has an average daily traffic count of 118,273 vehicles. Despite this volume of traffic, ODOT had received "zero (0) notice of debris/light fixtures on IR 90 in the area of plaintiff's incident." Accordingly, defendant asserted it should not be responsible for the damage sustained to plaintiff's vehicle since it had no notice of the falling light fixture. Furthermore, defendant has presented no information that the light fixture fell due to the negligent conduct of a third party. Within the past six months, ODOT had conducted one thousand four hundred twenty-three (1,423) maintenance operations on IR 90 in Cuyahoga County, where the incident occurred. If the downed light fixture was present for any appreciable length of time, it is probable that it would have been discovered by ODOT's work crews. It is thus likely that the light fixture fell only shortly before plaintiff struck it with his vehicle.

{¶5} Plaintiff filed a response to defendant's Investigation Report. Plaintiff stated he was not in violation of the law when he struck the light fixture. Plaintiff asserted ODOT should be responsible for the damage caused to his vehicle and pay the $250.00 deductible.

{¶6} A review of the Maintenance History for IR 90 in Cuyahoga County reveals ODOT personnel conducted the following operations in the area of plaintiff's damage-causing incident: August 28, 2019, Clearing and Grubbing; August 28, 2019 and September 10, 2019, Pavement patching; September 11, 2019, Cleaning drainage structures; September 11 & 12, 2019, Sweeping; and, September 14, 2019, Litter bags. Accordingly, defendant's personnel were in the area of plaintiff's incident on many occasions prior to the event.

{¶7} After review of plaintiff's complaint, defendant's Investigation Report, and other evidence in the case file, the court makes the following determination: The circumstances of plaintiff's injury raises the doctrine of *res ipsa loquitur* to support

allegations that defendant breached its duty of care. The doctrine warrants an inference of negligence. Such inference, however, may always be rebutted by defendant. *Taxi Cabs of Cincinnati, Inc. v. Kohler*, 111 Ohio App. 225, 165 N.E.2d 244, syllabus (1st Dist. 1959).

{¶8} *Res ipsa loquitur* is a rule of evidence, not a rule of substantive law, and the court must analyze such evidence, along with all the other evidence offered in a case to determine liability. *Hake v. Wiedeman Brewing Co.*, 23 Ohio St.2d 65, 66, 262 N.E.2d 703 (1970).

> To warrant application of a rule, a plaintiff must adduce evidence in support of two conclusions: (1) that the instrumentality causing the injury was, at the time of the injury, or at the time of the creation of the condition causing the injury, under the exclusive management and control of the defendant; and (2) that the injury occurred under such circumstances that in the ordinary course of events, it would not have occurred if ordinary care had been observed. (Citations omitted.)
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> Whether sufficient evidence has been adduced at trial to warrant application of the rule is a question of law to be determined *** by the trial court ***.

Hake at 66-67. See also, 70 *Ohio Jurisprudence 3d* (1986), 300-301, *Negligence*, Section 159. Therefore, the court is required to consider the facts and circumstances surrounding the situation to determine if *res ipsa loquitur* is applicable. See *Howard v. Pennsylvania Rd. Co*., 43 Ohio App. 96, 182 N.E. 663 (6th Dist. 1930).

{¶9} The facts of this case concisely presented are: 1) plaintiff's vehicle was damaged by a falling light fixture under defendant's control; and 2) light fixtures do not normally fall unless negligence is involved. Defendant does not assert that the light fixture was struck by a third party which would relieve ODOT of liability. See *Nusbaum v. Department of Transportation*, 2006-03702-AD (2006); *Trivisondoli v. Ohio Department of Transportation,* 2008-09198-AD (2009); and *Hawk v. Ohio Department of Transportation*, *District 10*, 2010-02391-AD, 2010-Ohio-5829.

{¶10} The doctrine of *res ipsa loquitur*, with its inference of negligence, applies under the facts of the instant claim. The inference of negligence remains and plaintiff is not required to exclude all possible causes of the accident. See *Fink v. New York C.R. Co.*, 144 Ohio St. 1, 56 N.E.2d 456 (1944); *Nanashe v. Lemmon*, 9th Dist. No. 4747, 162 N.E.2d 569 (1958).

> The doctrine of *res ipsa loquitur* is one of necessity, applicable where the agency or place of the accident is accessible only to the defendant and under his control, and raises an inference of negligence requiring the defendant to explain the accident, if he can, on grounds other than his negligence, when its nature is such as to make it probable that it would ordinarily not have happened except for his negligence. The doctrine is regarded as a qualification of the rule that negligence is not presumed or inferred from the mere fact of injury, and there is no necessity of establishing knowledge where the doctrine applies.
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> The doctrine of *res ipsa loquitur* is founded on an absence of specific proof of acts or omissions constituting negligence, and the particular justice of the doctrine rests upon the foundation that the true cause of the occurrence, whether innocent or culpable, is within the knowledge or access of the defendant and not within the knowledge or access of the plaintiff.

(Citations omitted.) (Emphasis added.) 70 *Ohio Jurisprudence 3d*, 296-297, *Negligence*, Section 157 (1986).

{¶11} Upon review of the circumstances concerning plaintiff's injuries, and in viewing the evidence most favorably to plaintiff, as the court must do in determining whether *res ipsa loquitur* applies (*Howard v. Pennsylvania Rd. Co.*, 43 Ohio App. 96, 182 N.E. 663, 6th Dist. 1930). The court finds that said doctrine is applicable in the instant action.

{¶12} It is the opinion of this court that it may be inferred that plaintiff's property damages were related to defendant's maintenance of the light. The court finds that the

instrumentality involved, under the circumstances, *i.e*., was under the exclusive control of defendant and that the property damage occurred under such conditions that if proper precautions were observed, such an event would not have occurred. Plaintiff has no specific proof of acts or omissions to demonstrate defendant's negligence, however, the fact remains that the incident causing said property damage did occur. Therefore, the doctrine of *res ipsa loquitur* has been utilized in evaluating the evidence and given the proper weight it deserves. Defendant has failed to provide any evidence sufficient to rebut the inference of negligence provided by *res ipsa loquitur*. Consequently, the doctrine of *res ipsa loquitur* applies to the instant action and defendant is liable to plaintiff for his property damage in the amount of $250.00, plus the $25.00 filing fee, which may be reimbursed as compensable damages pursuant to the holding in *Bailey v. Ohio Department of Rehabilitation and Correction*, 62 Ohio Misc.2d 19, 587 N.E.2d 990 (Ct. of Cl. 1990).

MARC STOLARSKY Plaintiff v. OHIO DEPARTMENT OF TRANSPORTATION Defendant	Case No. 2019-00996AD Deputy Clerk Daniel R. Borchert ENTRY OF ADMINISTRATIVE DETERMINATION

{¶13} 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 the plaintiff in the amount of $275.00, which includes reimbursement of the $25.00 filing fee. Court costs are assessed against the defendant.

DANIEL R. BORCHERT
Deputy Clerk

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