

[Cite as *Gramza v. Ohio Dept. of Transp., District 2*, 2004-Ohio-2106.]

IN THE COURT OF CLAIMS OF OHIO

JIM GRAMZA	:	
Plaintiff	:	
v.	:	CASE NO. 2003-10830-AD
OHIO DEPARTMENT OF TRANSPORTATION, DISTRICT 2	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
	:	

FINDINGS OF FACT

{¶1} Plaintiff, Jim Gramza, stated he was driving north on Interstate 280 in Lucas County on or about October 1, 2003, when a liquid substance hit the rear of his automobile. According to plaintiff, the substance which fell upon his car apparently removed the paint from the vehicle. Plaintiff located the area of Interstate 280 where his automobile was struck by the liquid substance as a construction zone. Plaintiff did not submit any evidence to show the liquid substance emanated from or was produced by roadway construction activity. However, plaintiff asserted defendant, Department of Transportation ("DOT"), is responsible for the property damage he sustained. Consequently, plaintiff filed this complaint seeking to recover \$586.55, the cost of automotive repair incurred resulting from the October 1, 2003 incident.

{¶2} DOT denied any liability in this matter. Defendant explained the roadway area where plaintiff claimed his property damage occurred was in a roadway construction zone under the

control of DOT's contractor, Fru-Con Construction Corporation (Fru-Con). Defendant asserted Fru-Con, by contractual agreement, assumed responsibility for maintaining the roadway within the construction zone. Therefore, DOT argued Fru-Con is the proper party defendant in this action. Defendant implied all duties, such as the duty to inspect, the duty to warn, the duty to maintain, and the duty to repair, were delegated when an independent contractor takes control over a particular section of roadway.

{¶3} Furthermore, defendant acknowledged Fru-Con personnel were working in the area where plaintiff's car was damaged on October 1, 2003. However, Fru-Con denied performing any work that would result in any kind of over spray falling on cars. Plaintiff did not submit sufficient proof to establish his car was damaged as the proximate result of construction activity on the part of DOT's contractor.

CONCLUSIONS OF LAW

{¶4} 1) The duty of DOT to maintain the roadway in a safe drivable condition is not delegable to an independent contractor involved in roadway construction. DOT may bear liability for the negligent acts of an independent contractor charged with roadway construction. See *Cowell v. Ohio Dept. of Transp.* (2004), 2003-09343-AD, jud.

{¶5} 2) Defendant has the duty to maintain its highway in a reasonably safe condition for the motoring public. *Knickel v. Ohio Dept. of Transp.* (1976), 49 Ohio App. 2d 335. However, defendant is not an insurer of the safety of its highways. See *Kniskern v. Somerford Twp.* (1996), 112 Ohio App. 3d 189; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723.

{¶6} 3) Plaintiff has not shown, by a preponderance of the evidence, that defendant failed to discharge a duty owed to plaintiff, or that plaintiff's injury was proximately caused by

defendant's negligence. Plaintiff failed to show that the damage-causing substance was connected to any conduct under the control of defendant, that defendant was negligent in maintaining the construction area, or that there was any negligence on the part of defendant or its agents. *Taylor v. Transp. Dept.* (1998), 97-10898-AD; *Weininger v. Dept. of Transp.* (1999), 99-10909-AD; *Witherell v. Ohio Dept. of Transp.* (2000), 2000-04758-AD. Consequently, plaintiff's claim is denied.

{¶7} 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. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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Plaintiff, Pro se

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For Defendant

RDK/laa
3/18
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