



{¶ 5} It is not disputed that plaintiff owns and operates a thrift store located at 4360 State Route (SR) 32 in Batavia, Ohio. Plaintiff alleges that defendant interfered with its business and caused a loss of income by closing the Winding Creek Drive exit from SR 32 in Batavia, Ohio. In the complaint plaintiff alleges that defendant has impaired sales and permanently diminished the value of the store.

{¶ 6} In *Bowles v. Ohio Department of Transportation* (1993), 63 Ohio Misc.2d 373, this court held that in order for a business owner to recover from the state for interference with the right of ingress and egress, the business owner must prove by a preponderance of the evidence that there was substantial, material, and unreasonable interference amounting to an absolute cutting off of access to the property. *Id.* at 376. This court has consistently held that a business owner does not have a cause of action merely because the Ohio Department of Transportation causes a road to be closed, which in turn makes it more difficult for patrons to have access to the business establishment. See, e.g., *Noble dba BJ's Market v. Ohio Dept. of Transp.* (Mar. 20, 1990), Court of Claims No. 90-01427; *Clinton R. Dibble dba A Motor Sales v. Ohio Dept. of Transp.* (Sept. 26, 1989), Court of Claims No. 89-09134.

{¶ 7} In support of its motion for summary judgment, defendant submitted the affidavit of District 8 Traffic Planning Engineer, Jay Hamilton, who stated that he has personal knowledge of the road construction project referenced in plaintiff's complaint; that the project at issue "eliminated one (1) Right In Only lane from Route 32 to Winding Creek Road"; and that two alternate exit routes provide public access to plaintiff's store from SR 32. Plaintiff submitted the affidavit of Larry See, who has been employed by plaintiff for 34 years and who oversees the operation of five of plaintiff's thrift stores, including the Batavia, Ohio store. In his affidavit, See acknowledges that access to the thrift store is still available but that each of the alternate routes from SR 32 requires potential customers to travel an additional 1.25 miles to reach the store. See nevertheless states that this additional travel has limited impulse and drive-by purchases, which resulted in a 15 to 20 percent yearly revenue loss. The court finds that See's affidavit testimony is insufficient to create a genuine issue of material fact under *Bowles*, *supra*.

{¶ 8} Based on this undisputed evidence, the court finds that reasonable minds can only conclude that there was not a substantial, material, and unreasonable interference with plaintiff's

right of ingress and egress amounting to an absolute cutting off of access to plaintiff's business. Accordingly, there are no genuine issues of material fact and defendant is entitled to judgment as a matter of law.

{¶ 9} Defendant's motion for summary judgment shall be granted and judgment shall be rendered in favor of defendant.

**IN THE COURT OF CLAIMS OF OHIO**

SALVATION ARMY	:	
Plaintiff :		CASE NO. 2004-04094
		Judge Joseph T. Clark
v.	:	
		<u>JUDGMENT ENTRY</u>
THE DEPARTMENT OF	:	
TRANSPORTATION OF THE STATE	:	
OF OHIO	:	
Defendant :		
.....		

A non-oral hearing was conducted in this case upon defendant's motion for summary judgment. For the reasons set forth in the decision filed concurrently herewith, defendant's motion for summary judgment is GRANTED and 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.

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JOSEPH T. CLARK  
Judge

Entry cc:

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