[Cite as *Bihary v. Cleveland State Univ.*, 2007-Ohio-655.]

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

NANCY J. BIHARY

Plaintiff

v.

CLEVELAND STATE UNIVERSITY

Defendant

Case No. 2006-05063-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶1} On May 27, 2006, plaintiff, Nancy J. Bihary, parked her automobile at a parking lot owned and operated by defendant, Cleveland State University ("CSU"). Plaintiff related she pulled into CSU's parking lot A about 10:20 a.m. on Saturday, May 27, 2006, and noticed the lot was nearly empty. Plaintiff further related, "I swung my car around and parked heading into the sidewalk at the front of the lot [and] as I was easing into the space I heard a scraping noise." Plaintiff immediately stopped upon hearing the noise and left her car to examine the vehicle. Apparently, the front bumper of plaintiff's car had caught on a piece of metal rebar spike protruding from the concrete parking block positioned at the end of the parking space. Metal rebar spikes are used to anchor the various concrete parking blocks placed in defendant's parking lot. Plaintiff recalled the front bumper of her automobile was "deformed" and the metal undercarriage of the vehicle was "dented" from striking the protruding rebar. Plaintiff then attempted to back her car away from the rebar but as she did the rebar caught on her vehicle's bumper and pulled the bumper completely from the vehicle. After this incident, plaintiff noted she looked around the CSU parking lot and estimated that 50% of the metal rebar anchoring spikes were protruding from the concrete parking blocks positioned around the lot.

{¶2} Plaintiff contended her property damage was proximately caused by negligence on the part of defendant in maintaining a hazardous condition on the CSU parking lot premises. Consequently, plaintiff filed this complaint seeking to recover $500.00, her insurance coverage deductible for automotive repair. Pursuant to R.C. 2743.02(D) and R.C. 3345.40(B)(2), plaintiff's damage claim for automotive repair costs is limited to her insurance coverage deductible.[1] The filing fee was paid.

{¶3} Defendant denied liability in this matter contending the protruding rebar anchoring spike was an open and obvious condition and therefore, CSU was not charged with any duty to protect plaintiff from such a condition. Photographs depicting the plaintiff's

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[1] R.C. 2743.02(D) states:

"(D) Recoveries against the state shall be reduced by the aggregate of insurance proceeds, disability award, or other collateral recovery received by the claimant. This division does not apply to civil actions in the court of claims against a state university or college under the circumstances described in section 3345.40 of the Revised Code. The collateral benefits provisions of division (B)(2) of that section apply under those circumstances."

R.C. 3345.40(B)(2) states in pertinent part:

"If a plaintiff receives or is entitled to receive benefits for injuries or loss allegedly incurred from a policy or policies of insurance or any other source, the benefits shall be disclosed to the court, and the amount of benefits shall be deducted from any award against the state university or college recovered by the plaintiff."

damaged automobile and the protruding rebar were submitted. After reviewing these photographs, the court finds the protruding rebar was not an open and obvious condition in respect to plaintiff's physical position as the driver of an automobile maneuvering into a parking space. From plaintiff's perspective, the protruding rebar condition was hidden from her view.

{¶4} Plaintiff was present on defendant's premises for such purposes which would classify her under law as an invitee. *Scheibel v. Lipton* (1985), 156 Ohio St. 308, 102 N.E. 2d 453. Consequently, defendant was under a duty to exercise ordinary care for the safety of invitees such as plaintiff and to keep the premises in a reasonably safe condition for normal use. *Presley v. City of Norwood* (1973), 36 Ohio St. 2d 29, 303 N.E. 2d 81. The duty to exercise ordinary care for the safety and protection of invitees such as plaintiff includes having the premises in a reasonably safe condition and warning of latent or concealed defects or perils which the possessor has or should have knowledge. *Durst v. VanGundy* (1982), 8 Ohio App. 3d 75, 455 N.E. 2d 1319; *Wells v. University Hospital* (1985), 85-01392-AD. As a result of plaintiff's status, defendant was also under a duty to exercise ordinary care in providing for plaintiff's safety and warning her of any condition on the premises known by defendant to be potentially dangerous. *Crabtree v. Shultz* (1977), 57 Ohio App. 2d 33, 384 N.E. 2d 1294.

{¶5} Additionally, it has been previously held "the liability of an owner or occupant to an invitee for negligence in failing to render the premises reasonably safe for the invitee, or in failing to warn him of dangers thereon, must be predicated upon a superior knowledge concerning the dangers of the premises to persons going thereon." 38 American Jurisprudence, 757, Negligence, Section 97, as cited in *Debie v. Cochran Pharmacy Berwick, Inc.* (1967), 11 Ohio St. 2d 38, 40, 227 N.E. 2d 603, 605.

{¶6} "The knowledge of the condition removes the sting of unreasonableness from any danger that lies in it, and obviousness may be relied on to supply knowledge. Hence, the obvious character of the condition is incompatible with negligence in maintaining it. If plaintiff happens to be hurt by the condition, he [she] is barred from recovery by lack of defendant's negligence towards him [her], no matter how careful plaintiff himself [herself] may have been." 2 Harper and James, Law of Torts (1956), 1491, as cited in *Sidle v. Humphrey* (1968), 13 Ohio St. 2d 45, 48, 233 N.E. 2d 589, 591-592. "In short, if the condition or circumstances are such that the invitee has knowledge of the condition in

advance, there is no negligence." *Debie*, at 11 Ohio St. 2d 38, 41, 227 N.E. 2d 603, 606.

{¶7} In the instant case, it is not obvious or apparent plaintiff had any knowledge of the protruding anchor rebar and displaced parking block. Considering a driver's position in a vehicle, and the position of the protruding rebar on the ground, it is probable the rebar was never seen as plaintiff entered the parking. Therefore, the court finds defendant had superior knowledge of the hazardous condition and failed to warn plaintiff of the condition or remove it. See *21st Century Leasing, Inc. v. Ohio Dept. of Natural Resources* (1999), 98-08994-AD; *Gallagher v. Columbus State Community College*, 2005-09588-AD, 2006-Ohio-367; *Meinking v. E. Fork State Park*, 2005-10071-AD, 2006-Ohio-1015.

{¶8} Defendant was charged with a duty to exercise reasonable care for the protection of plaintiff's property. In regard to the facts of this claim, negligence on the part of defendant has been shown. *Jackson v. The University of Akron* (2001), 2001-04026-AD. Consequently, defendant is liable to plaintiff for the loss claimed, $500.00, 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* (1990), 62 Ohio Misc. 2d 19, 587 N.E. 2d 990.

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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 plaintiff in the amount of $525.00, which includes the filing fee. Court costs are assessed against defendant. 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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RDK/laa
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