[Cite as *Boyer v. Ohio Dept. of Transp., Dist. 2*, 2008-Ohio-4933.]

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

JAMES BOYER

Plaintiff

v.

OHIO DEPT. OF TRANSPORTATION, DIST. 2

Defendant

Case No. 2007-09402-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶ 1} Plaintiff, James Boyer, filed this complaint against defendant, Department of Transportation ("DOT"), asserting he sustained damage to his shoe allegedly caused by a hazardous condition at the rest stop premises on State Route 2 near Port Clinton, a facility maintained by DOT. Plaintiff recalled the damage to his shoe occurred on Wednesday, November 28, 2007, at approximately 12:30 a.m., when he attempted to open the door to enter the rest stop building. Plaintiff stated, "[t]he vestibule glass doors at the rest stop on Rt. 2 near Port Clinton were very difficult to pull open." Plaintiff pointed out he had to use both of his hands and had to brace his feet on the ground to pull the door open. According to plaintiff, when he succeeded in opening the glass door the bottom of the door scrapped "on the side of my right shoe making cut marks on the soft leather." Plaintiff related that after the described incident he "asked the (rest stop) attendant if they knew the door would bearly pull open" [sic] and pointed out he received an affirmative response to this inquiry. Essentially, plaintiff contended he was told by a DOT rest stop attendant that defendant had prior knowledge of a problem with the rest stop building doors being difficult to open. Plaintiff noted he returned to the same rest stop on December 1, 2007, and the condition of the door remained unchanged. Plaintiff has implied the damage to his shoe was proximately caused by negligence on the part of DOT in maintaining a known hazardous condition on the rest stop premises.

Consequently, plaintiff filed this complaint seeking to recover $160.00, the total cost of a pair of replacement shoes. The filing fee was paid.

{¶ 2} Defendant denied any liability in this matter. Defendant argued plaintiff failed to produce evidence proving his property damage was the result of any negligent act or omission on the part of DOT staff. Defendant offered that plaintiff, as a user of the roadside rest area, was classified under the law as a licensee and DOT, therefore, owed him a duty to only refrain from willful or wanton conduct causing injury. *Provencher v. Ohio Dept. of Transp.* (1990), 49 Ohio St. 3d 265, 551 N.E. 2d 1257. Defendant contended the doors "in question . . . are in proper alignment and lubrication." Defendant acknowledged, "[t]he only known problem with the vestibule doors is that when heating/cooling units are on, there is a slight vacuum on the doors that could cause you to pull slightly harder to open them." Defendant submitted photographs depicting the vestibule doors. In examining the photographs of the doors no physical defect is apparent. Defendant argued the vacuum problem with the doors when the heating/cooling units are in operation does not constitute actionable negligence in a claim of this type.

{¶ 3} Defendant also denied any individuals working at the rest area had any knowledge of the door condition. Defendant noted, DOT, as the entity in control of the rest area premises, is not "liable to a licensee for injury caused to the licensee by ordinary negligence of the land owner. *Light v. Ohio University* (1986), 28 Ohio St. 3d 66. Rather:

{¶ 4} 'A possessor of land is subject to liability for physical harm cause to licensees by a condition on the land if, but only if, *** (a) the possessor knows or has reason to know of the condition and should realize that it involved an unreasonable risk of harm to such licensees, and should expect that they will not discover or realize the danger, and *** (b) he fails to exercise reasonable care to make the condition safe, or to warn the licensee of the condition and the risk involved, and *** (c) the licensees do not know or have reason to know of the condition and the risk involved. 2 Restate of the

Law 2d, Torts (1965), Section 342.'"

{¶ 5} Defendant insisted that prior to plaintiff's complaint no DOT personnel had any knowledge that the vestibule doors were hard to open under any circumstances. Defendant asserted plaintiff has failed to prove the necessary elements to establish liability based on the facts of this claim.

{¶ 6} Plaintiff filed a response again purporting "defendant did have knowledge the doors were difficult to open." Plaintiff reported he spoke with two employees at the rest stop and both informed him that DOT District 2 maintenance personnel were aware of the situation with the doors. Plaintiff stated, that due to the "vacuum issue, the doors had been hard to open for at least a year." Plaintiff further stated, "[a]t times the doors pull very hard to open."

{¶ 7} Ohio law classifies an individual using a public roadside rest area as a licensee. *Provencher*, 49 Ohio St. 3d 265, 551 N.E. 2d 1257, at the syllabus. Accordingly, plaintiff was a licensee while at defendant's rest area. Therefore, defendant generally owed plaintiff a duty to refrain from wanton and willful conduct which might result in injury to him. *Provencher* at 266.

{¶ 8} Under existing case law, a licensor does not owe a licensee any duty except to refrain from wilfully injuring him and not to expose him to any hidden danger, pitfall, or obstruction. If the licensor knows such a danger is present, the licensor must warn the licensee of this danger which the licensee cannot reasonably be expected to discover. *Salemi v. Duffy Construction Corporation* (1965), 3 Ohio St. 2d 169, 32 O.O. 2d 171, 209 N.E. 2d 566. *Hannan v. Ehrlich* (1921), 102 Ohio St. 176, 131 N.E. 504, at paragraph four of the syllabus.

{¶ 9} "A possessor of land is subject to liability for physical harm caused to licensees by a condition on the land if, but only if, *** (a) the possessor knows or has reason to know of the condition and should realize that it involved an unreasonable risk of harm to such licensees, and should expect that they will not discover or realize the danger, and *** (b) he fails to exercise reasonable care to make the condition safe, or to

warn the licensees of the condition and the risk involved., and *** (c) the licensees do not know or have reason to know of the condition and the risk involved." 2 Restatement of the Law 2d, Torts (1965), Section 342.

{¶ 10} In the instant claim, evidence tends to indicate defendant did have knowledge of the vacuum problem with the vestibule doors making the doors more difficult to open. However, once plaintiff attempted to open the door he became well aware himself of the difficulty in opening the doors. Plaintiff immediately realized the risk of harm involved with opening the doors. Consequently, since any danger posed by the vacuum problem with the doors was immediately discoverable defendant was under no duty to protect or warn plaintiff of the condition. Furthermore, the court determines the condition of the doors was not particularly hazardous or dangerous to any person exercising reasonable care for his own safety or safety of his personal property. Plaintiff has failed to prove defendant's acts or omissions amounted to actionable negligence and therefore, this claim is denied.

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OHIO DEPT. OF TRANSPORTATION,
DIST. 2

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Case No. 2007-09402-AD

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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:

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RDK/laa
5/1
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