

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

MARK ROSARIO

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION, DISTRICT 4

Defendant

Case No. 2008-01537-AD

Deputy Clerk Daniel R. Borchert

ENTRY OF DISMISSAL

{¶ 1} On January 23, 2008, plaintiff, Mark Rosario, filed a complaint against defendant, Department of Transportation. Plaintiff asserted the roof of his 2005 Hyundai Sonata was damaged when a tree limb from property owned by defendant fell on his vehicle. Plaintiff asserts he sustained damages in the amount of \$2,186.45 as a result of the alleged negligence of defendant in not removing the tree.

{¶ 2} Defendant filed a motion to dismiss. In support of the motion to dismiss, defendant stated in pertinent part:

{¶ 3} “During the pendency of this complaint, Defendant has learned that plaintiff no longer has possession of his vehicle; apparently it has been repossessed by the bank. A certified letter was sent out on May 6, 2008, for plaintiff to sign so that such an affirmation could be made by the plaintiff directly and sent to the Court of Claims to be included with this Motion. Unfortunately, said letter has not been returned, and defendant did not wish to delay its response to the Court further. (See Exhibit A)

{¶ 4} “Given that plaintiff no longer has an interest in the vehicle and has spent

no money in its repair, Defendant moves this court do dismiss plaintiff's cause of action for failure to state a claim upon which relief can be granted."

{¶ 5} Civ. R. 17(A) in pertinent part states:

{¶ 6} "Every action shall be prosecuted in the name of the real party in interest."

{¶ 7} The facts indicate that plaintiff has suffered no damages as the result of this incident. His vehicle was repossessed and he did not pay for any repair.

{¶ 8} Plaintiff has not responded to defendant's motion to dismiss.

{¶ 9} Having considered all the evidence in the claim file and, for the reasons set forth above, defendant's motion to dismiss is GRANTED. Plaintiff's case is DISMISSED. The court shall absorb the court costs of this case.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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DRB/laa
12/9
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