

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

PAUL B. CUMMINGS

Plaintiff

v.

DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2010-05030-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Paul B. Cummings, filed this complaint against defendant, Department of Transportation (ODOT), alleging that he suffered property damage to a 1995 BMW sedan as a proximate cause of negligence on the part of ODOT in maintaining a hazardous condition on US Route 23 in Columbus. Plaintiff related that the vehicle he was driving struck a pothole “after turning onto Rt. 23 South from Lazelle Road.” Plaintiff recalled that the incident occurred on March 13, 2010 at approximately 2:00 p.m. Plaintiff seeks recovery of damages in the amount of \$550.00, the cost of replacement parts and related repair expenses he incurred as a result of the vehicle striking the pothole. The filing fee was paid.

{¶ 2} 2) Defendant filed an investigation report requesting plaintiff’s claim be dismissed due to the fact that the City of Columbus and not ODOT bears the maintenance responsibility for the section of US Route 23 where plaintiff’s incident occurred. Defendant advised that, “the City of Columbus takes care of this section of US 23.” Defendant stated that, “[i]n sum, the City of Columbus is responsible for the

maintenance of the roadway upon which plaintiff's incident occurred (and) [a]s such, the City of Columbus is the proper party to plaintiff's claim." The site of the damage incident was not on a roadway area maintained by ODOT.

{¶ 3} 3) Plaintiff did not respond.

CONCLUSIONS OF LAW

{¶ 4} Ohio Revised Code Section 5501.31 in pertinent part states:

{¶ 5} "Except in the case of maintaining, repairing, erecting traffic signs on, or pavement marking of state highways within villages, which is mandatory as required by section 5521.01 of the Revised Code, and except as provided in section 5501.49 of the Revised Code, no duty of constructing, reconstructing, widening, resurfacing, maintaining, or repairing state highways within municipal corporations, or the bridges and culverts thereon, shall attach to or rest upon the director, but he may construct, reconstruct, widen, resurface, maintain, and repair the same with or without the cooperation of any municipal corporation, or with or without the cooperation of boards of county commissioners upon each municipal corporation consenting thereto."

{¶ 6} The site of the damage-causing incident was not in the maintenance jurisdiction of defendant. Consequently, plaintiff's case is dismissed.

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

PAUL B. CUMMINGS

Plaintiff

v.

DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2010-05030-AD

Deputy Clerk Daniel R. Borchert

ENTRY OF ADMINISTRATIVE DETERMINATION

Having considered all the evidence in the claim file and, for the reasons set forth above, plaintiff's case is DISMISSED. The court shall absorb the courts costs of this case.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Paul B. Cummings
4030 N. High Street
Apt. 27
Columbus, Ohio 43214

Jolene M. Molitoris, Director
Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223

RDK/laa
8/12
Filed 9/15/10
Sent to S.C. reporter 12/29/10