[Cite as *Koster v. Ohio Dept. of Transp.*, 2014-Ohio-5895.]

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

EDWARD KOSTER

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2014-00143-AD

Interim Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} In his complaint against defendant, Ohio Department of Transportation ("ODOT"), plaintiff, Edward Koster, claimed his vehicle was damaged by a gate located on the property of defendant. An employee of defendant, he was called in to work at approximately 11:50 p.m. on January 5, 2014. When he arrived, he had to stop and exit his vehicle to open a security gate and enter the premises. He contended, as he passed through the gate, the wind blew it closed and it struck the driver side door of his vehicle, causing damage. He provided an estimate for repair totaling $720.72, his total claim amount. He paid the $25.00 filing fee.

{¶2} Defendant filed an investigation report denying liability for plaintiff's damages based on the contention that plaintiff was responsible for his own damages by failing to use a safety mechanism, a latch, provided by defendant. Defendant did not deny that this incident occurred. However, it asserted: "[m]anagement went to the site the day after the incident and successfully secured the gate with the latch. Therefore, management provided the necessary safety equipment that would have prevented the damage, but because of Mr. Koster's lack of utilizing the mechanism the incident

occurred."

{¶3} Plaintiff filed a response to defendant's investigation report and included a copy of a memo from defendant's Transportation Administrator, Christopher W. Nizol, which addressed the condition of the latch mechanism the day after plaintiff's incident. Mr. Nizol went to the location of the gate, accompanied by another employee of defendant, Barry Gampp, and "noticed that the pole was indeed bent over and did not latch properly. I proceeded to open the gate; the latch mechanism did not latch on the pole but did latch on the fence if you pushed back far enough. I feel that if Mr. Koster had pushed the gate back far enough that it would have latched on the fence like it did for me. Did the gate mechanism latch correctly? NO. Did the fence latch to the gate mechanism? YES." In this same memo, Mr. Nizol also stated that management did not have notice of this defective latch prior to plaintiff's incident, and plaintiff did not deny that the latch mechanism was repaired in a timely manner after he informed defendant.

CONCLUSIONS OF LAW

{¶4} The traffic gate and the mechanism which governs it is under the exclusive control of defendant. Thus, defendant will be liable for any malfunction which causes damage. *Han v. Traffic Department, Ohio State University*, 81-04575-AD (1981). While this case does not involve the standard traffic gate, often used at the entrance of a parking garage, as in the *Han* case, the basic tenants of law apply. Defendant was in control of the gate and latch mechanism on its own property, and is potentially liable for any malfunction which causes damage.

{¶5} Plaintiff's cause of action is grounded in negligence. In order to prevail, he must establish: 1) a duty on the part of defendant to protect him from injury; 2) a breach of that duty; and 3) injury proximately resulting from the breach. *Huston v. Konieczny*, 52 Ohio St. 3d 214, 214, 556 N.E. 2d 505 (1990); *Jeffers v. Olexo*, 43 Ohio St. 3d 140, 142, 539 N.E. 2d 614 (1989); *Thomas v. Parma*, 88 Ohio App. 3d 523, 527, 624 N.E. 2d 337 (8th Dist. 1993); *Parsons v. Lawton Co.*, 57 Ohio App. 3d 49, 50, 566 N.E. 2d 698 (5th Dist.

1989).

{¶6} Based on plaintiff's status as an employee of defendant, he is classified as an invitee and defendant owed him a duty to exercise reasonable care in keeping the premises in a safe condition and warning him of any latent or concealed dangers which defendant had knowledge. *Perry v. Eastgreen Realty Company*, 53 Ohio St. 2d 51, 52-53, 372 N.E. 2d 335 (1978); *Presley v. Norwood*, 36 Ohio St. 2d 29, 31, 303 N.E. 2d 81 (1973); *Sweet v. Clare-Mar Camp, Inc.*, 38 Ohio App. 3d 6, 9, 526 N.E. 2d 74 (8th Dist. 1987). However, a property owner is generally under no duty to protect an invitee plaintiff from hazards which are so obvious and apparent that the plaintiff is reasonably expected to discover and protect against them himself. *Sidle v. Humphrey*, 13 Ohio St. 2d 45, 233 N.E. 2d 589 (1968), at paragraph one of the syllabus; *Paschal v. Rite Aid Pharmacy*, 18 Ohio St. 3d 203, 480 N.E. 2d 474 (1985).

{¶7} An unreasonably dangerous condition does not exist in situations where persons who are likely to encounter a condition may be expected to take good care of themselves without exercising any further precautions. *Baldauf v. Kent State Univ.*, 49 Ohio App. 3d 46, 48, 550 N.E. 2d 517 (10th Dist. 1988).

{¶8} After review of the plaintiff's complaint, the defendant's investigation report and other evidence in the case file, the court makes the following determination. The court concludes plaintiff has proven his vehicle was damaged by a malfunctioning traffic gate arm located on the premises of defendant. That was not a type of condition which might be considered open and obvious. *Consortium Communications, Inc. v. Ohio Department of Youth Services*, 2002-01420-AD (2002). Further, even if this condition were open and obvious, plaintiff could not and should not be expected to exercise the further precaution of discovering another method for engaging the latch. Plaintiff was called to defendant's location late at night, in preparation of an impending snow and ice storm. He could not reasonable be expected to wait at the entrance of defendant's property after opening the gate and discovering the faulty latch. His actions were

reasonable considering the circumstances. Therefore, plaintiff has met his burden of proving by a preponderance of the evidence that the defendant is liable for his damages, and is hereby awarded $720.72, 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*, 62 Ohio Misc. 2d 19, 587 N.E. 2d 990 (Ct. of Cl. 1990).

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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 $745.72, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Interim Clerk

Entry cc:

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DJM/laa
Filed 6/19/14
Sent to S.C. Reporter 9/11/15