

# Court of Claims of Ohio

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65 South Front Street, Third Floor  
Columbus, OH 43215  
614.387.9800 or 1.800.824.8263  
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JORDAN HOUGHTON

Plaintiff

v.

THE OHIO STATE UNIVERSITY, et al.

Defendants

Case No. 2012-06955

Judge Patrick M. McGrath  
Magistrate Holly True Shaver

## ENTRY GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

{¶1} On September 5, 2014, defendants filed a motion for summary judgment pursuant to Civ.R. 56(B). On September 22, 2014, plaintiff filed a response. Defendants' motion is now before the court for a non-oral hearing pursuant to L.C.C.R. 4(D).

{¶2} Civ.R. 56(C) states, in part, as follows:

{¶3} "Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor." See also *Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean*

*United, Inc.*, 50 Ohio St.2d 317 (1977).

{¶4} On October 18, 2010, plaintiff, who was a student at The Ohio State University's (OSU) Newark Campus, exited a classroom and proceeded down a hallway toward a set of double doors at an entrance of Founders Hall. The double doors had full-length panels of glass inside of them. When plaintiff reached for the metal horizontal bar to exit the doors, he began to experience lightheadedness and vertigo. He extended his hand forward, lost his balance, and his open palm contacted a glass panel, which shattered. Plaintiff sustained severe injuries to his right hand and arm as a result of his arm going through the glass. It is undisputed that the glass in the door was plate glass, which was not shatter resistant.

{¶5} Plaintiff asserts that defendant, OSU, was negligent when it allowed a dangerous condition to exist on its premises; namely, that the plate glass panel was not shatter-resistant, in violation of the Ohio Building Code and the United States Consumer Product Safety Codes. Plaintiff further asserts that defendants knew or should have known that the glass did not meet code standards and that defendants' knowledge constitutes notice of a dangerous condition on the premises. Defendants assert that the glass met the requirements at the time that it was installed and that OSU had no notice of any defective condition of the door prior to plaintiff's accident. Defendant, Department of Administrative Services, also asserts that it does not maintain control over the premises in question and, thus, plaintiff has failed to state a claim against it as a matter of law.

{¶6} In order for plaintiff to prevail upon his claim of negligence, he must prove by a preponderance of the evidence that defendants owed him a duty, that defendants' acts or omissions resulted in a breach of that duty, and that the breach proximately caused his injuries. *Armstrong v. Best Buy Co., Inc.*, 99 Ohio St.3d 79, 81, 2003-Ohio-2573, citing *Menifee v. Ohio Welding Products, Inc.*, 15 Ohio St.3d 75, 77 (1984).

{¶7} Under Ohio law, the duty owed by an owner or occupier of premises generally depends on whether the injured person is an invitee, licensee, or trespasser. *Gladon v. Greater Cleveland Regional Transit Auth.*, 75 Ohio St.3d 312,315, 1996-Ohio-137. Plaintiff was on campus for purposes that would classify him as an invitee, defined as a person who comes “upon the premises of another, by invitation, express or implied, for some purpose which is beneficial to the owner.” *Baldauf v. Kent State Univ.*, 49 Ohio App.3d 46, 47 (1988). An owner or occupier of premises owes its invitees “a duty of ordinary care in maintaining the premises in a reasonably safe condition and has the duty to warn its invitees of latent or hidden dangers.” *Armstrong, supra*, at 80.

{¶8} In support of its motion, OSU filed the deposition of James Woolard, Director of Facilities Planning and Operations for the OSU campus in Newark. Woolard testified that he has been the facilities manager of the Newark campus for 30 years, and that he is familiar with the building standards that apply to glass doors. Woolard stated that Founders Hall was built in 1968, prior to glass standard specifications changing in the 1970s. Woolard noted that a local building inspector inspected the building twice per year and that, to his knowledge, no one ever recommended that the doors in Founders Hall be replaced. According to Woolard, replacement of a glass panel is not required unless a repair necessitates replacement, and 16 similar type of doors remain on the Newark Campus. Woolard testified that in the 30 years that he has worked at the Newark campus, approximately six glass entry or exit doors were replaced as a result of three separate incidents: a wind storm that tore doors off of the building; a rock being thrown from a weed-eater into a glass door; and an incident when a custodian struck a glass door with a floor polishing machine. Woolard estimated that thousands of students have used the doors without incident.

{¶9} The issue before the court is whether defendants breached their duty of ordinary care in maintaining the premises in a reasonably safe condition by not

replacing the plate glass in the doors with shatter-resistant glass prior to plaintiff's accident.

{¶10} Ohio Administrative Code 4101:1-1-01, section 102.7, existing structures, states: "The provisions of Chapter 34 shall control the alteration, repair, addition, maintenance, and change of occupancy of any existing structure.

{¶11} "The occupancy of any structure currently existing on the date of adoption of this code shall be permitted to continue without change provided there are no orders of the building official pending, no evidence of fraud, or no serious safety or sanitation hazard. When requested, such approvals shall be in the form of a 'Certificate of Occupancy for an Existing Building' in accordance with section 111.2.

{¶12} "Buildings constructed in accordance with plans which have been approved prior to the effective date of this code are existing buildings."

{¶13} Ohio Admin. Code section 3401.4.1, existing materials, states:

{¶14} "Materials already in use in a building in compliance with requirements or approvals in effect at the time of their erection or installation shall be permitted to remain in use unless determined by the building code official to be dangerous to life, health or safety. Where such conditions are determined to be dangerous to life, health or safety, they shall be mitigated or made safe."

{¶15} Violations of administrative rules, such as Ohio's Building Code, can be admissible as evidence of negligence. *Lang v. Holly Hill Motel, Inc.*, 122 Ohio St.3d 120, 125, 2009-Ohio-2495. However, plaintiff has not brought forth evidence to rebut Woolard's testimony that the doors were inspected twice annually and were not found to be unsafe. Plaintiff has brought forth no evidence that a defect existed with regard to the doors, other than the fact that the glass in the doors was not shatter resistant. Given the fact that the doors complied with applicable standards at the time that they were installed, that the building code allows for such existing materials to remain until they are found to be unsafe, and no inspector found that they were unsafe, the only

reasonable conclusion is that the doors of Founders Hall were “existing materials” and, as such, did not constitute a violation of the Ohio Building Code. Plaintiff argues that the fact that similar glass had been broken in the past is evidence that defendant had notice of the unsafe condition of the doors at Founders Hall. However, none of the instances of broken glass testified to by Woolard were caused by someone using the doors as intended. Furthermore, none of the instances resulted in personal injury.

{¶16} Civ.R. 56(E) states, in relevant part: “When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party’s pleadings, but the party’s response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.”

{¶17} Construing the evidence most strongly in favor of plaintiff, the court finds that there is no issue of material fact that the doors at Founders Hall were an existing material as defined under the building code and that no building code official or other inspector found them to be a danger to safety. In addition, plaintiff has brought forth no evidence to show that the glass doors had any defect or hazardous condition other than the fact that they were made of plate glass and that glass is subject to breaking. Accordingly, defendants did not breach any duty they owed to plaintiff, and defendants’ motion for summary judgment shall be granted and judgment shall be rendered in favor of defendants.

{¶18} On another matter, Woolard testified that defendant Department of Administrative Services does not oversee the maintenance of the Founders Hall. Plaintiff has failed to present any evidence to rebut Woolard’s testimony on this issue. Therefore, defendant, Department of Administrative Services, is entitled to judgment as a matter of law on the additional basis that it did not own, occupy, or control the premises on which plaintiff sustained injury.

{¶19} Accordingly, defendants' motion for summary judgment is GRANTED and judgment is rendered in favor of defendants. All previously scheduled events are VACATED. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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PATRICK M. MCGRATH  
Judge

cc:

Christopher P. Conomy  
Assistant Attorney General  
150 East Gay Street, 18th Floor  
Columbus, Ohio 43215-3130

Ronald E. Plymale  
250 Civic Center Drive, Suite 600  
Columbus, Ohio 43215

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