

**IN THE COURT OF CLAIMS OF OHIO**

SHAVONNE SMITH

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2015-00084-AD

Clerk Mark H. Reed

**MEMORANDUM DECISION**

{¶1} This matter is before the Court as a result of a complaint filed by Shavonne Smith on February 2, 2015 against the Ohio Department of Transportation (hereinafter “ODOT”). In her complaint, Ms. Smith alleges that her home located at 10108 Harvard Avenue, Cleveland, Cuyahoga County, Ohio was damaged as a result of construction work done near her residence from January 10, 2014 to August 6, 2014. This construction project was undertaken by the Terrace Construction Company pursuant to a contract with ODOT.

{¶2} The plaintiff alleges that her property was damaged by Terrace Construction Company during this project in a variety of ways, to wit:

{¶3} Wires were knocked off her house.

{¶4} The windshield to her van was broken.

{¶5} A tire and rim on her car were destroyed.

{¶6} Her driveway was negligently repaired without drainage and her basement flooded as a result.

{¶7} The water to her home was turned off without her consent or any notice to her, and when it was turned back on a pipe burst as a result of the turn off.

{¶8} As a result of these actions, the plaintiff alleges that she has damages that

total \$2,500.00.

{¶9} In an Investigation Report filed by ODOT on April 8, 2015, the Defendant contends that neither the Agency nor the Contractor, Terrace Construction Company, caused the damages to plaintiff's property as she set out in her complaint.

{¶10} Regarding the wires being ripped off of plaintiff's home, the contractor Terrace Construction admits that during the construction process some cable wires were ripped off a telephone pole on the street where plaintiff resides. However, this pole was not on plaintiff's property. When asked by the contractor to provide proof that her cable company had billed her for the damaged wire, the plaintiff could not produce any such evidence.

{¶11} As to the damage done to her van, including the windshield, tire and rim, a Terrace representative indicated that this is the first they have heard about vehicle damage. This is in spite of the fact that they reported having almost daily contact with the plaintiff during the period that the construction was ongoing. Plaintiff submitted no repair bills to the Court for the van and the only information she provided to the Court regarding a motor vehicle was a copy of the title to a 2001 Pontiac Bonneville.

{¶12} The claim regarding the driveway, causing flooding, is likewise disputed by the Defendant ODOT. The contractor contends that the new driveway was installed as per ODOT specifications for that project. While repair to specifications is in and of itself not evidence of the absence of negligence, plaintiff did not submit any evidence of insurance claims or other documentary proof of damage. Nor was she able to furnish the Court with any evidence to show that the driveway was repaired in a negligent manner.

{¶13} Finally, regarding the water being turned off to plaintiff's residence, ODOT denies that Terrace ever turned the water off as the contractor did no water line work near plaintiff's residence. Thus, the contractor did not have any reason to turn off her water. Terrace representatives allege that the plaintiff revealed to them that her water, as well as her gas and electric, had been turned off for some time after non-payment.

Plaintiff, in her response filed April 21, 2015, disputes this. However, the utility bills provided by plaintiff in support of her position show significant arrearages as well as shut-off notices.

{¶14} Whenever a civil complaint is filed with a court, before proceeding on to the question of whether a Defendant is legally responsible for the plaintiff's alleged damages, the Court must first be persuaded that the plaintiff's version of the facts are at least fifty-one (51) percent true. The laws call this meeting the burden of proof. In this case, plaintiff's version of the facts are just too inconsistent, too lacking in logic, and too incomplete for the Court to believe her at the necessary level of fifty-one (51) percent and thus finding that she has met the legally required burden of proof. Having established that plaintiff failed to meet the burden of proof, the Court must therefore DISMISS the complaint filed by the plaintiff on February 2, 2015.

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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.

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MARK H. REED  
Clerk

Entry cc:

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