

[Cite as *Mast v. Cleveland State Univ.*, 2015-Ohio-5665.]

IN THE COURT OF CLAIMS OF OHIO

DAVID L. MAST

Plaintiff

v.

CLEVELAND STATE UNIVERSITY

Defendant

Case No. 2015-00769-AD

Clerk Mark H. Reed

MEMORANDUM DECISION

{¶1} On September 1, 2015, David Mast (hereinafter “plaintiff”) filed a claim in this Court against Cleveland State University (hereinafter “CSU”). In his complaint the plaintiff alleged the following:

- a) “On (July 27, 2015), I took my wife and two friends to a concert at the CSU Convocation Center. I paid \$20 to park in CSU’s lot on Prospect Avenue (“The Prospect Garage”), a brand new facility right next to brand new dorms. Upon reaching the 3rd floor I began backing into a parking space only to have a metal drain pipe that was sticking straight out from the wall, hit and fracture my rear window.”

{¶2} In support of his claim, plaintiff included photographs to show the position of the pipe and of his vehicle in its parking space on the day of the accident. Plaintiff now seeks damages in the amount of \$100.00 for his collision insurance deductible already paid to replace the rear glass of his vehicle. The remaining balance of his damages were covered by his insurance.

{¶3} On November 2, 2015, defendant CSU filed an investigation report in response to plaintiff’s claim. In this report, CSU did not dispute the essential facts of the case as set out in plaintiff’s complaint. Instead CSU argues that as the plaintiff was a

business invitee under Ohio law, that same law does not require CSU to warn an invitee against any open and obvious danger, which would by necessity include hazards like the pipe in the Prospect Garage. It is CSU's position that the pipe was in plain view of the plaintiff as he was backing his vehicle into the parking space and that his failure to stop soon enough to avoid striking the pipe was in fact due to his own negligence rather than any act of negligence committed by CSU.

{¶4} In the claim submitted the Court is persuaded, especially after looking at the photographs submitted by the plaintiff himself, that the pipe struck by the plaintiff was clearly an open and obvious hazard as defined under Ohio law, and one that a reasonably cautious driver could and should have avoided. Plaintiffs' damages are in fact the result of his own failure to stop his vehicle timely and not by any act of negligence on the part of CSU. To find for the plaintiff would require this Court to act contrary to established Ohio law. That is a step that this Court is unwilling to take.

DAVID L. MAST

Plaintiff

v.

CLEVELAND STATE UNIVERSITY

Defendant

Case No. 2015-00769-AD

Clerk Mark H. Reed

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 the defendant. Court costs are assessed against plaintiff.

MARK H. REED
Clerk

Entry cc:

David L. Mast
3276 Nagel Road
Avon, Ohio 44011

Sonali B. Wilson, General Counsel
Cleveland State University
2121 Euclid Avenue, Suite 327
Cleveland, Ohio 44115

Filed 12/8/15
Sent to S.C. Reporter 3/2/16