

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

DREW FISHER

Plaintiff

v.

OHIO UNIVERSITY

Defendant

Case No. 2010-02197-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Drew Fisher, a resident student attending defendant, Ohio University (OU), filed this action contending defendant should bear responsibility for the loss of his property that was stolen from his dormitory room at sometime while he was on winter break from November 23, 2009 to January 3, 2010. Plaintiff explained that when he returned to his room at James Hall on January 3, 2010, he discovered his Nike gym shoes, four tee shirts, camera, speaker system, sunglasses, and several DVDs were missing and had presumably been stolen. Plaintiff noted, “[s]omeone apparently had access to the building, was able to enter our locked room (no forced entry), and stole a substantial amount of property.” Plaintiff further noted OU, “maintenance personnel have recently inspected our door lock and confirmed that the ‘anti-pick’ device on the lock was not properly installed.” Plaintiff requested damages in the amount of \$959.00, the stated replacement cost of his stolen property items. The filing fee was paid.

{¶ 2} 2) Defendant filed an investigation report stating, “Ohio University does not contest this claim.” Defendant pointed out plaintiff carries insurance coverage for theft with a \$1,000.00 deductible.

{¶ 3} 3) Plaintiff filed a response expressing his agreement with defendant’s investigation report. Plaintiff submitted a copy of the declarations page from his insurance carrier regarding his parent’s homeowners insurance policy. From a review of the submitted insurance declarations page, it appears plaintiff does not have insurance coverage for theft of property from his OU dormitory room. The declarations page shows insurance coverage bears a \$1,000.00 deductible amount.

CONCLUSIONS OF LAW

{¶ 4} 1) Sufficient evidence has been offered to establish liability on the part of defendant who exercised control over the locking mechanism on plaintiff’s dormitory room door. *Chetsko v. Miami Univ.*, Ct. of Cl. No. 2007-03960-AD, 2007-Ohio-4395; *Smith v. Miami Univ.*, Ct. of Cl. No. 2008-10501-AD, 2009-Ohio-2418.

{¶ 5} 2) R.C. 2743.02(D) provides:

{¶ 6} “(D) Recoveries against the state shall be reduced by the aggregate of insurance proceeds, disability award, or other collateral recovery received by the claimant. This division does not apply to civil actions in the court of claims against a state university or college under the circumstances described in section 3345.40 of the Revised Code. The collateral benefits provisions of division (B)(2) of that section apply under those circumstances.”

{¶ 7} Also, R.C. 3345.40(B)(2) states in pertinent part:

{¶ 8} “If a plaintiff receives or is entitled to receive benefits for injuries or loss allegedly incurred from a policy or policies of insurance or any other source, the benefits shall be disclosed to the court, and the amount of the benefits shall be deducted from any award against the state university or college recovered by plaintiff.”

{¶ 9} 3) Defendant is liable to plaintiff in the amount of \$959.00, plus the \$25.00 filing fee which may be reimbursed as compensable costs pursuant to R.C. 2335.19. See *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62

Ohio Misc. 2d 19, 587 N.E. 2d 990.

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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 \$984.00, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
3/31
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