

[Cite as *Reese v. Cleveland State Univ.*, 2005-Ohio-3248.]

IN THE COURT OF CLAIMS OF OHIO

MARGARET REESE :
Plaintiff :
v. : CASE NO. 2004-10493-AD
CLEVELAND STATE UNIVERSITY : MEMORANDUM DECISION
Defendant :

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FINDINGS OF FACT

{¶ 1} On October 12, 2004, at approximately 4:45 p.m., plaintiff, Margaret Reese, suffered property damage to her truck while exiting a parking lot owned and operated by defendant, Cleveland State University ("CSU"). Specifically, the hood and fender of plaintiff's truck were scratched when the vehicle was struck by a traffic gate arm located at the exit of Parking Lot Z on defendant's premises. Plaintiff implied the gate arm malfunctioned and fell upon her truck. A written report of the incident compiled by Officer Daniel Grispino of the Cleveland State University Police, noted plaintiff stated she was following a vehicle out of defendant's parking lot when the traffic gate arm came down and hit her vehicle. As a result of the October 12, 2004, incident plaintiff filed this complaint seeking to recover \$634.28, the cost of repairing her truck. The \$25.00 filing fee was paid.

{¶ 2} Defendant denied the gate arm at the exit to the CSU parking facility malfunctioned on October 12, 2004. Defendant suggested plaintiff's vehicle was damaged as a proximate cause of plaintiff's own negligence in attempting to rush through the lot

exit area instead of waiting for the traffic gate arm to descend on cycle and raise on cycle. Defendant asserted plaintiff closely followed a preceding vehicle through the lot exit area not waiting for the automatic gate to lower and raise for a safe exit. Defendant maintained plaintiff's rushing driving maneuver was the sole cause of her property damage. Plaintiff has not submitted any evidence to show the traffic gate arm at defendant's parking lot was malfunctioning on October 12, 2004.

CONCLUSIONS OF LAW

{¶ 3} 1) The traffic gate and mechanism which governs it is under the exclusive control of defendant. Thus, defendant will be liable for any malfunction which causes damages. *Han v. Traffic Department, Ohio State University* (1981), 81-04575-AD.

{¶ 4} 2) However, plaintiff has the burden of proving, by a preponderance of the evidence, that the particular traffic gate malfunctioned during normal and intended use. *Saunders v. The Ohio State University* (1993), 93-05245-AD., To make such a showing, plaintiff must produce sufficient evidence or documentation to satisfy the trier of fact. *Id.*

{¶ 5} 3) If plaintiff produces sufficient evidence which furnishes a basis for only a guess, among different possibilities, the claim is insufficient. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82, 99. Rather, plaintiff must establish a reasonable basis for substantiating all essential issues in the claim. *Id.*

{¶ 6} 4) Plaintiff has failed to prove her truck was damaged by a malfunctioning traffic gate arm under the control of defendant. See *Quaiser v. Cleveland State University* (1999), 99-02035-AD; *Watson v. University of Toledo* (2001), 2001-02635-AD.

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CLEVELAND STATE UNIVERSITY : ENTRY OF ADMINISTRATIVE
Defendant : DETERMINATION

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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. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
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