

**ORIGINAL**

FILED  
COURT OF CLAIMS  
OF OHIO

2014 AUG -8 PM 3:09

IN THE COURT OF CLAIMS OF OHIO

WILLIAM ANDREW CAMPBELL

Plaintiff,

v.

OHIO DEPARTMENT OF NATURAL  
RESOURCES

Defendant.

:  
: Case No. 2013-00502  
:  
: Judge Patrick M. McGrath  
:  
: Magistrate Anderson M. Renick  
:  
:  
:  
:

**DEFENDANT OHIO DEPARTMENT OF NATURAL RESOURCES' MOTION FOR  
LEAVE TO FILE REPLY BRIEF AND  
REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Defendant, Ohio Department of Natural Resources (ODNR), respectfully requests this Court, for leave, pursuant to L.C.C.R. 4(C), to file a reply brief in response to *Plaintiff's Response to Defendant's Motion to Dismiss*. Such a reply brief is necessary to point the failings of plaintiff response and to respond to the new opinion evidence presented by plaintiff not available to ODNR prior to the initial filing of its motion. Defendant has also filed its reply brief along with this motion and asks that it be filed instanter.

The reasons supporting this Reply are explained fully in the accompanying Memorandum.

Respectfully submitted,

MIKE DeWINE  
Ohio Attorney General



\_\_\_\_\_  
BRIAN M. KNEAFSEY, JR. (0061441)  
Assistant Attorney General  
Court of Claims Defense Section  
150 E. Gay St., 18th Floor  
Columbus, Ohio 43215

**ON COMPUTER**

(614) 466-7447  
(877) 588-5474 fax  
[brian.kneafsey@ohioattorneygeneral.gov](mailto:brian.kneafsey@ohioattorneygeneral.gov)  
COUNSEL FOR DEFENDANT

“ Q. If Mr. Campbell had never placed his hand near this drive shaft for the seeder, this accident never would have occurred, correct?

A. If his hands had never gotten in proximity to the rotating universal joint, I would agree that the incident would not have occurred.”

Thomas Huston, P.E., plaintiff's expert<sup>1</sup>

## I. INTRODUCTION

Mr. Campbell's accident, while very tragic, was just that—an accident. It was an accident that was unforeseeable, but preventable if plaintiff had not placed himself in position of known danger. Plaintiff's primary argument is that the driveshaft operating the seeder (where plaintiff placed his hand) was dangerous because one of the guards was missing. This argument ignores several critical facts. First, there is no evidence that any ODNR supervisor deliberately removed an equipment safety guard. Second, if Mr. Campbell had followed proper safety procedures his accident would not have occurred regardless of whether the guard was present or not. Every person with knowledge of the operation of the type of machinery used by plaintiff, has testified that standard procedure is to never go near a moving Power Take Off (PTO). Lastly, and perhaps most important, Mr. Campbell's supervisor never instructed, Mr. Campbell to unnecessarily enter the area between the seeder and tractor to remove dirt. Consequently, Plaintiff's recovery is limited to the workers' compensation system. The court should follow the reasoning it used in deciding a very similar case, *Higgins v. Oracle*, 2013-00134-PR (Dec. 11, 2013 entry attached) and dismiss plaintiff's claim.

---

<sup>1</sup> See Thomas Huston Depo. at pg. 50.

## II. LAW & ARGUMENT

### A. Plaintiff Is Not Entitled To A Presumption Of Intent Because ODNR Did Not Deliberately Remove An “Equipment Safety Guard.”

Because Plaintiff does not have any evidence that ODNR acted with the deliberate intent to cause an injury, he relies solely upon R.C. 2745.01(C), which provides, in pertinent part:

“(C) Deliberate removal by an employer of an **equipment safety guard**...creates a rebuttable presumption that the removal...was committed with the intent to injure another if an injury...occurs as a direct result.”

R.C. 2745.01(C)(emphasis added). The Ohio Supreme Court has recently adopted the definition of “equipment safety guard” to mean “a device that is designed to shield the operator from exposure or injury by a dangerous aspect of the equipment.” *Hewitt v. L.E. Myers Co.* (2012), 134 Ohio St. 3d 199, 2012 Ohio 5317, ¶26 (citing *Fickle v. Conversion Tech. Int’l, Inc.* (Ohio App. 6th Dist.), 2011 Ohio 2960, ¶43. The Ohio Supreme Court adopted this definition from the Sixth Appellate District’s analysis set forth in *Fickle*, supra at ¶43. In *Fickle*, the plaintiff’s hand and arm were caught in a roller on an adhesive-coating machine. *Id.* at ¶2. The plaintiff alleged that an emergency stop cable, and a jog switch that would stop the roller when not depressed, were safety guards that were deliberately removed by her employer. *Id.* at ¶6.

The court, however, held that the emergency stop cable and jog switch were not “equipment safety guards” because they were not devices “placed on equipment to prevent an employee from being drawn into or injured by that equipment.” *Id.* at ¶41. The court noted that examples of “equipment safety guards” include screens over moving belts or pull-back mechanisms, because these devices shield the employee from injury by keeping them out of the

danger zone during the operating cycle. *Id.* at ¶¶41-42. The court further recognized that the “General Assembly did not make the presumption applicable upon the deliberate removal of any safety-related device, but only of an equipment safety guard....” *Id.* at ¶42 (citations omitted).

Here, seat switches are similar to a jog switch or an emergency stop cable. A seat switch does not “guard” anything and it does not shield an employee from placing his hand near a moving driveshaft. Thus, while a seat switch may be a safety-related device, it is not an “equipment safety guard” under R.C. 2745.01(C). Moreover, Plaintiff’s argument that bypassing the seat switch eliminated Mr. Campbell ability to prevent the tractor (and PTO) from automatically shutting down is patently false. Mr. Campbell could—and should have—prevented the PTO/tractor from operating by merely either disengaging the PTO or turning off the ignition to the tractor.

Consequently, because a seat switch is not an “equipment safety guard,” Plaintiff is not entitled to a presumption that ODNR intended to injure Mr. Campbell. And since Plaintiff has no evidence that ODNR intended to injury Mr. Campbell, summary judgment should be granted.

**B. Even If Seat Switches Are Safety Guards, They Were Not “Deliberately Removed” By Oracle.**

The Ohio Supreme Court in *Kaminski v. Metal & Wire Prods. Co.* (2010), 125 Ohio St.3d 250, 927 N.E.2d 1066, set forth that an intentionally committed act cannot be “accidental.” *Kaminski*, *supra*, at FN 16 (citation omitted). Indeed, the word “deliberate” as used in R.C. 2745.01(C) is “characterized by or resulting from careful and thorough consideration—a deliberate decision.” *Forwerck v. Principle Business Ents., Inc.*, 2011 Ohio 489, ¶21 (Ohio App. 6th Dist.) (quoting Merriam-Webster’s Collegiate Dictionary (10 Ed. 1996) 305. There must be evidence that the employer “acted with a conscious, careful consideration of the consequences, that is, injuries, that could occur by requiring its employees to nullify” a safety measure before

R.C. 2745.01(C) becomes applicable. *Id.* Conversely, a presumption does not arise if a safety guard is removed for a legitimate purpose but inadvertently not replaced. *Conley v. Endres Processing Ohio, LLC* (Ohio App. 3d Dist.), 2013 Ohio 419; *see also Fickle*, *supra*, at ¶45.

Here, Plaintiff cannot establish that ODNR “deliberately removed” the seat switches or the driveshaft joint guard. Even if the pit switches were safety guards, which ODNR denies, there is no evidence that a supervisor knew that the seat switch was bypassed at the time of Mr. Campbell’s accident. (Bourne depo., pp. 25-26). The same is true of the driveshaft joint guard. There is no evidence to suggest that a failure to replace driveshaft joint guard was anything more than an inadvertent accident. Further, there is no evidence to show that the seat switch was deliberately removed by (or pursuant to an order of) a supervisor of ODNR.

Thus, while Plaintiff focuses on the “removal” of a seat switch and/or driveshaft joint guard, he ignores the qualifier that the removal must be “deliberate.” Because there is no evidence that ODNR made a conscious and deliberate decision to remove or alter these items, Plaintiff is not entitled to a presumption of intent.

**C. There Is No Presumption Of Intent Because Mr. Campbell’s Accident Was The Direct Result Of His Failure To Comply With ODNR’s Safety Policies And Procedures.**

Plaintiff selectively ignores that a rebuttable presumption of intent, under R.C. 2745.01(C) arises only “*if* an injury...occurs as a *direct result*” of the employer’s deliberate removal of an equipment safety guard. R.C. 2745.01(C) (emphasis added). Courts applying R.C. 2745.01(C) have declined to extend a presumption of intent when an employee’s injury is the direct and proximate result of his or her failure to properly follow safety procedures. *See Roberts v. RMB Ents., Inc.* (Ohio App. 12th Dist.), 2011 Ohio 6223, ¶25; *see also Forwerck*, *supra* at ¶27. The same was true under the less stringent common-law standard. *See Spurlock v.*

*Buckeye Boxes, Inc.* (Ohio App. 10th Dist.), 2006 Ohio 6784, ¶10 (“When safety devices or rules are available but are ignored by employees, the requisite knowledge of the employer is not established.”)(citations omitted); *see also Sanek v. Duracote Corp.* (1989), 43 Ohio St. 3d 169, 172 (employer did not know that the worker would decide on his own to fail to follow company procedures)<sup>2</sup>.

In this case, Mr. Campbell’s failure to follow safety procedures is undisputed. Matthew Bourne, plaintiff’s supervisor testified that he and all others operating the tractor should disengage the PTO prior to exiting the tractor. (Id. p. 51) Plaintiff’s exhibit 6 (Bourne depo.) shows that on May 23, 2011, plaintiff was trained on tractors. Plaintiff admits to signing this training sheet. (Campbell depo. p. 10) Specifically, the training sheet discusses operation of the PTO: **“NEVER stand close or over the PTO shaft while it is engaged. Always disengage PTO and turn of (sic) the tractor before working on the PTO shaft or piece of equipment.”** Campbell knew how PTOs worked on tractors since he has owned beginning in 2001 or 2002 (and still owns) a John Deere tractor, (Model 4210) a smaller tractor than that he used at the time of his accident in 2011. His personal tractor also has a PTO like the tractor involved in his accident. (Id. p. 26-27) The testimony of plaintiff’s own expert, Thomas Huston, independently corroborates that Mr. Campbell accident was a direct result of his failure to follow elevator safety procedures. (Huston depo. p. 50).

In fact, Plaintiff does not dispute that each of the aforementioned safety procedures would have prevented Mr. Campbell’s accident irrespective of whether the switch was operational or the driveshaft guard was present.

---

<sup>2</sup> Mr. Campbell’s failure to follow safety procedures further serves as evidence that ODNR did not intend to cause injury. Contrary to Plaintiff’s arguments, deciding whether the intent-to-injure presumption has been rebutted does not “necessarily” require the weighing of evidence. *Rudisill v. Ford Motor Company*, 709 F.3d 595, 606 (6th Cir. 2013).

As such, there is no dispute that the direct cause of Mr. Campbell's accident was the failure to follow proper safety procedures. If Mr. Campbell followed these procedures his accident would have occurred regardless of whether the seat switch was bypassed or the driveshaft guard was present.

**D. There Is No Presumption Of Intent Because Mr. Campbell Was Not Instructed To Enter The Area Between the Tractor and Seeder.**

Plaintiff further ignores that entering the area where the PTO was located while it was running was unnecessary for the job that Mr. Campbell was performing. (Bourne depo. pg.51). Factually, Plaintiff's argument fails because it is undisputed that Mr. Campbell's supervisor never anticipated that he would enter the area where the PTO and driveshaft are located without turning off the PTO. (Id.).

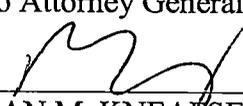
There is simply no evidence that that Mr. Campbell was instructed to enter the area between the tractor and the seeder, particularly with the PTO operating. As such, ODNR did not require Mr. Campbell to expose himself to a potential hazard and, therefore, summary judgment is appropriate. *See Shanklin v. McDonald's USA, LLC* (Ohio App. 5th Dist.), 2009-Ohio-251.

**III. CONCLUSION**

For the reasons stated above, this Court should grant summary judgment on Plaintiff's intentional tort claim as a matter of law.

Respectfully submitted,

MICHAEL DeWINE  
Ohio Attorney General

  
BRIAN M. KNEAFSEY, JR. (0061441)  
Assistant Attorney General  
Court of Claims Defense Section  
150 E. Gay St., 18th Floor  
Columbus, Ohio 43215

(614) 466-7447  
(877) 588-5474 fax  
[brian.kneafsey@ohioattorneygeneral.gov](mailto:brian.kneafsey@ohioattorneygeneral.gov)  
COUNSEL FOR DEFENDANT

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Defendant Ohio Department of Natural Resources' Motion for Leave....* was sent by regular U.S. Mail, postage prepaid, this 8<sup>th</sup> day of August, 2014 to:

Mark B. Weisser  
Weisser & Wolf  
600 Vine Street, Suite 1920  
Cincinnati, Ohio 45202



---

BRIAN M. KNEAFSEY, JR. (0061441)  
Assistant Attorney General



# 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

NADIA HIGGINS, Admr., etc.

Plaintiff

v.

ORACLE ELEVATOR COMPANY

Defendant/Cross-Claim  
Defendant

and

CAMPUS PARTNERS FOR  
COMMUNITY URBAN  
REDEVELOPMENT

Defendant/Cross-Claim  
Plaintiff/Third-Party Plaintiff

v.

THE OHIO STATE UNIVERSITY

Third-Party Defendant

Case No. 2013-00134-PR

Judge Patrick M. McGrath

DECISION

2013 DEC 11 PM 12:09

FILED  
COURT OF CLAIMS  
OF OHIO

On March 6, 2013, defendant/cross-claim defendant, Oracle Elevator Company (Oracle), filed a motion for summary judgment pursuant to Civ.R. 56(B). On March 18, 2013, defendant/cross-claim plaintiff/third-party plaintiff, Campus Partners for Community Urban Redevelopment (Campus Partners), filed a memorandum contra. Oracle filed a reply on March 26, 2013. With leave of court, plaintiff filed a memorandum contra on July 1, 2013. On July 29, 2013, Oracle filed a reply.

On March 11, 2013, Campus Partners filed a motion for summary judgment pursuant to Civ.R. 56(B). With leave of court, plaintiff filed a response on July 22, 2013.

2013 DEC 11 PM 12:09

Case No. 2013-00134-PR

- 2 -

DECISION

On August 2, 2013, Campus Partners filed a reply. The motions are now before the court for a non-oral hearing in accordance with L.C.C.R. 4(D).

Civ.R. 56(C) states, in part, as follows:

“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).

This case arises out of a tragic accident that occurred on April 13, 2009. Plaintiff’s decedent, James Higgins, an Oracle employee, and coworker Sean Taylor reported to work at a building owned by Campus Partners and leased to third-party defendant, The Ohio State University (OSU). OSU was in the process of converting the building, formerly a hotel, into a dormitory and had hired Oracle to service several of the building’s elevators. Higgins and Taylor were assigned the task of removing the interior wood paneling of the elevator cars.

In order to remove the wood paneling, Higgins and Taylor began removing the handrails on the interior of the elevator car. Taylor began the process by unscrewing the handrail from a cylinder that is attached to the wall; however, the bolt inside the cylinder “kept spinning and spinning.” Taylor Deposition, pg. 11. Higgins went to investigate whether anything was on the exterior of the elevator car preventing removal of the bolt. Higgins then accessed the second elevator pit. Taylor continued working to remove the handrail when he heard the elevator abruptly stop. Taylor peered through a crack in the

2013 DEC 11 PM 12:09

Case No. 2013-00134-PR

- 3 -

DECISION

elevator doors and saw that the elevator car was on top of Higgins. Higgins was subsequently pronounced dead.

Oracle moves for summary judgment as to plaintiff's claim for employer intentional tort and Campus Partners' cross-claim for contribution. Oracle argues that it did not act with the specific intent to cause an injury and that Higgins' own negligence proximately caused the accident.

Employers who comply with the workers' compensation law found in R.C. 4123.35 are entitled to civil immunity for injuries of an employee that occur during the course of employment. R.C. 4123.74. Oracle was a participant in the program and plaintiff received workers' compensation benefits. However, plaintiff alleges that Oracle committed an intentional tort. Such employer immunity does not extend to employer intentional torts. *Kaminski v. Metal & Wire Prods. Co.*, 125 Ohio St.3d 250, 2010-Ohio-1027.

R.C. 2745.01 provides:

"(A) In an action brought against an employer by an employee, or by the dependent survivors of a deceased employee, for damages resulting from an intentional tort committed by the employer during the course of employment, the employer shall not be liable unless the plaintiff proves that the employer committed the tortious act with the intent to injure another or with the belief that the injury was substantially certain to occur.

"(B) As used in this section, 'substantially certain' means that an employer acts with deliberate intent to cause an employee to suffer an injury, a disease, a condition, or death.

"(C) Deliberate removal by an employer of an equipment safety guard or deliberate misrepresentation of a toxic or hazardous substance creates a rebuttable presumption that the removal or misrepresentation was committed with intent to injure another if an injury or an occupational disease or condition occurs as a direct result."

There is no dispute that Higgins' injury occurred during the course of his employment with Oracle. Oracle argues that plaintiff cannot demonstrate that it intentionally caused Higgins' injury or that it knew that such an injury was substantially certain to occur. Oracle supervisor Mark Lucas testified in his deposition that there was

FILED  
COURT OF CLAIMS  
OF OHIO

2013 DEC 11 PM 12: 10

Case No. 2013-00134-PR

- 4 -

DECISION

no reason why Higgins and Taylor needed to enter the elevator pit to remove the interior wood paneling of the elevator car. According to Taylor, both he and Higgins agreed that Higgins would verify whether something was preventing the removal of the bolt. Taylor asserted that such a verification did not require access to the elevator pit. Additionally, Lucas testified in his deposition that Higgins' own failure to properly access the elevator pit caused his death.

Plaintiff argues that Oracle deliberately removed an equipment safety guard in violation of R.C. 2745.01(C). Following the April 13, 2009 incident, an inspection revealed that the pit stop switch used to electrically disable the elevator had been bypassed by an electrical jumper, which had been used during a previous safety test. As a result, the pit stop switch, which prevents an elevator from moving when it is turned off, was not functioning.

In *Hewitt v. L.E. Myers Co.*, 134 Ohio St.3d 199, 2012-Ohio-5317, the Supreme Court of Ohio held that the term "equipment safety guard" in R.C. 2745.01(C) means "a device that is designed to shield the operator from exposure to injury by a dangerous aspect of the equipment." *Id.* at ¶ 26, quoting *Fickle v. Conversion Technologies Internatl., Inc.*, 6th Dist. No. WM 10-016, 2011-Ohio-2960, ¶ 43. Such a definition does not include "any generic safety-related item." *Hewitt* at ¶ 24. A pit stop switch is used to electrically disable an elevator and is designed to prevent an elevator from moving when it is switched off. Some pit stop switches, including those in this case, look similar to a light switch. A pit stop switch does not shield or guard an employee from entering a hazardous or dangerous place and is not "placed on equipment to prevent an employee from being drawn into or injured by that equipment." *Fickle* at ¶ 41. Accordingly, a pit stop switch is not an "equipment safety guard" pursuant to R.C. 2745.01(C).

Furthermore, if a pit stop switch could be considered an "equipment safety guard," there is no evidence that Oracle "deliberately removed" such a piece of equipment. "Deliberate removal" of an equipment safety guard occurs when an employer makes a deliberate decision to lift, push aside, take off, or otherwise eliminate that guard from the

2013 DEC 11 PM 12:10

Case No. 2013-00134-PR

- 5 -

DECISION

machine.” *Id.* at ¶ 30. Plaintiff argues that the jumper was most likely used for an annual safety test conducted by Oracle and that it was Oracle’s policy to bypass the pit stop switch when performing such a test. However, Lucas testified in his deposition that Oracle would remove such jumpers after any safety tests had been completed. Additionally, Lucas denied that the jumper was Oracle’s and was unaware of anyone at Oracle who may have placed the jumper. Plaintiff did not present evidence to rebut Lucas’ assertions.

Furthermore, there is no evidence that Oracle required or directed Higgins to enter the elevator pit in order to remove the interior wood paneling of the elevator car. Moreover, it is undisputed that Higgins failed to follow his training and experience when entering the elevator pit. Oracle employees are trained to perform either a “lockout/tagout” of the elevator or both electrically and mechanically disable the elevator prior to entering the elevator pit. A lockout/tagout completely shuts off the power supply and is performed whenever employees enter the elevator pit to perform maintenance. Higgins had been issued the tools necessary to perform a lockout/tagout and had authority to perform such a procedure. However, inasmuch as Higgins intended to only perform a visual inspection, he was required to both mechanically and electrically disable the elevator. Although Higgins may have attempted to electrically disable the elevator, there is no dispute that he did not mechanically disable the elevator. Such a step involves placing a wedge tool between the elevator doors. Oracle employees are then trained to verify that an elevator is disabled prior to entering the elevator pit. Accordingly, there is no genuine issue of material fact regarding plaintiff’s intentional tort claim against Oracle, and Oracle’s motion for summary judgment shall be granted.

With respect to Campus Partners’ motion for summary judgment, Campus Partners argues that it owed no duty to plaintiff’s decedent. It is undisputed that Campus Partners is the owner of the premises and that it leased the premises to OSU. OSU then retained Oracle to perform work on the elevators. Plaintiff alleges that Campus Partners was negligent in failing to warn Higgins regarding the inoperative pit stop switch, the incorrect location of the pit stop switch, and previous failed elevator safety tests. Plaintiff further

2013 DEC 11 PM 12:10

Case No. 2013-00134-PR

- 6 -

DECISION

argues that Campus Partners breached a non-delegable duty to equip the elevator pit with an operable stop switch.

“To maintain a wrongful death action on a theory of negligence, a plaintiff must show (1) the existence of a duty owing to plaintiff’s decedent, (2) a breach of that duty, and (3) proximate causation between the breach of duty and the death.” *Littleton v. Good Samaritan Hosp. & Health Ctr.*, 39 Ohio St.3d 86, 92 (1988), citing *Bennison v. Stillpass Transit Co.*, 5 Ohio St.2d 122 (1966), paragraph one of the syllabus.

Generally, liability in tort is dependent upon occupation or control of the premises. *Mitchell v. Cleveland Elec. Illum. Co.*, 30 Ohio St.3d 92, 94 (1987). “In Ohio, the commercial lessor’s liability is governed by traditional common law principles. Under common law, one having neither possession nor control of premises is ordinarily not liable for damages resulting from the condition of the premises.” *Hendrix v. Eight & Walnut Corp.*, 1 Ohio St.3d 205, 208 (1982). “The control necessary as the basis for tort liability implies the power and the right to admit people to the premises and to exclude people from it, and involves a substantial exercise of that right and power.” *Mitchell*, quoting *Wills v. Frank Hoover Supply*, 26 Ohio St.3d 186, 188 (1986). “[T]he test to be applied in every case involving the liability of a property owner for injuries arising from the defective condition of premises under lease to another is whether the landowner was in possession or control of the premises, or the part thereof, the disrepair of which caused the injury. *Wills* at 188. Furthermore, “[a]s to elevators, if a lessee has the sole control and management of an elevator in a leased building, he and not the lessor must usually answer to one who is injured because of defects in the elevator or by reason of surrounding dangers.” *Kauffman v. First-Central Trust Co.*, 151 Ohio St. 298, 303 (1949). However, an owner of leased property may be responsible for a defective elevator when the conditions complained of existed at the time the lease was executed. *Id.*

There is no dispute that on April 13, 2009, OSU had assumed control of the premises and did not need approval from Campus Partners for alterations, additions, renovations, improvements, construction, abatement and other changes to the premises.

2013 DEC 11 PM 12:10

Case No. 2013-00134-PR

- 7 -

DECISION

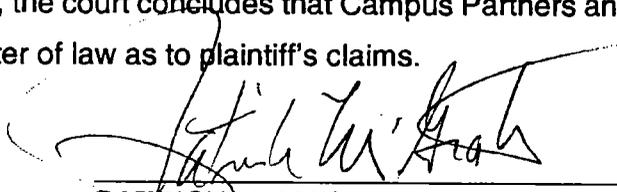
At no time did Campus Partners direct, control or participate in Oracle's work on the elevators. Additionally, there is no evidence that Campus Partners knew about the alleged inoperative pit stop switch.

Plaintiff argues that Campus Partners had a duty to inspect the property for dangerous conditions for which it reasonably should have known. However, "[o]ne having neither occupation nor control of premises ordinarily is under no legal duty to an invitee of another with respect to the condition or use of those premises." *Brown v. Cleveland Baseball Co.*, 158 Ohio St. 1 (1952), paragraph two of the syllabus.

Plaintiff argues that Ohio's Landlords and Tenants Act found in R.C. 5321 imposes non-delegable duties upon landlords, including Campus Partners. However, the statute contains a number of exceptions. Campus Partners correctly notes that "residential premises" does not include a hotel. R.C. 5321.01(C)(3). At the time of the accident, the building was being converted from a hotel to a residential premises. Furthermore, as previously stated, Higgins' own failure to follow his training and experience when entering the elevator pit proximately caused his death. Therefore, plaintiff has failed to demonstrate a genuine issue of material fact regarding her claim against Campus Partners for negligence. Campus Partners' motion for summary judgment shall be granted.

Finally, Oracle argues that it is entitled to summary judgment on Campus Partners' cross-claim for contribution based upon negligence. However, having already ruled against plaintiff on all her claims, Campus Partners' cross-claim for contribution is moot. *Wise v. Gursky*, 66 Ohio St.2d 241 (1981) syllabus; *Bush v. Beggrow*, 10th Dist. No. 03AP-1238, 2005-Ohio-2426.

In short, plaintiff has not demonstrated that there are any genuine issues of material fact remaining for trial. Therefore, the court concludes that Campus Partners and Oracle are entitled to judgment as a matter of law as to plaintiff's claims.

  
\_\_\_\_\_  
PATRICK M. MCGRATH  
Judge



# 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

NADIA HIGGINS, Admr., etc.

Plaintiff

v.

ORACLE ELEVATOR COMPANY

Defendant/Cross-Claim  
Defendant

and

CAMPUS PARTNERS FOR  
COMMUNITY URBAN  
REDEVELOPMENT

Defendant/Cross-Claim  
Plaintiff/Third-Party Plaintiff

v.

THE OHIO STATE UNIVERSITY

Third-Party Defendant

Case No. 2013-00134-PR

Judge Patrick M. McGrath

JUDGMENT ENTRY

2013 DEC 11 PM 12:10

FILED  
COURT OF CLAIMS  
OF OHIO

A non-oral hearing was conducted in this case upon Oracle's and Campus Partners' motions for summary judgment. For the reasons set forth in the decision filed concurrently herewith, Campus Partners' motion for summary judgment is GRANTED. Oracle's motion for summary judgment is GRANTED, in part, with respect to plaintiff's claim and DENIED as moot with respect to Campus Partners' claim. Therefore, judgment is rendered in favor of Oracle and Campus Partners on plaintiff's claims. Campus Partners' cross-claim for contribution is moot. Only Campus Partners' third-party claim against OSU remains. A

JOURNALIZED

FILED  
COURT OF CLAIMS  
OF OHIO

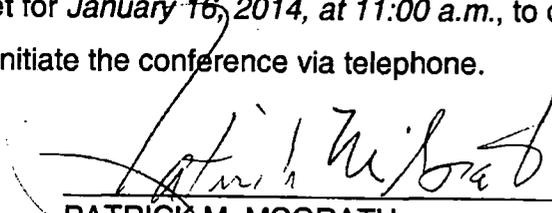
2013 DEC 11 PM 12:10

Case No. 2013-00134-PR

- 2 -

JUDGMENT ENTRY

case management conference is set for *January 16, 2014*, at 11:00 a.m., to discuss the status of the case. The court shall initiate the conference via telephone.



---

PATRICK M. MCGRATH  
Judge

cc:

Donald P. Kasson  
Capitol Square Office Building  
65 East State Street, 4th Floor  
Columbus, Ohio 43215

Mark E. Defossez  
495 South High Street, Suite 300  
Columbus, Ohio 43215

William S. Lavelle  
Jerome F. Rolfes  
65 East State Street, Suite 2000  
Columbus, Ohio 43215

Peggy W. Corn  
Assistant Attorney General  
Education Section  
30 East Broad Street, 16th Floor  
Columbus, Ohio 43215-3400

Randall W. Knutti  
Assistant Attorney General  
150 East Gay Street, 18th Floor  
Columbus, Ohio 43215-3130

003

JOURNALIZED