

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

SUSSEX COUNTY COURTHOUSE
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GEORGETOWN, DE 19947
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July 18, 2013

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RE: *June Aiken v. Town of Georgetown*
C.A. No. S13C-02-003 RFS

Submitted: July 8, 2013
Decided: July 17, 2013

Defendant's Motion for Summary Judgment.
Denied.

Dear Counsel:

Plaintiff June Aiken had a slip and fall within the limits of Defendant Town of Georgetown ("the Town"). Plaintiff sues the Town in negligence for failing to keep properly and maintain the Town's pavement. The Town's motion for summary judgment is based on its immunity from suit pursuant to the County and Municipal Tort Claims Act ("the Act"). Title 10 *Del.C.* § 4010--§ 4013.

Plaintiff alleges that on July 21, 2011, she was a pedestrian in the Town on or around Railroad Avenue where it intersects with the railroad tracks. The Town

argues that it is immune under § 4011(b)(6) of the Act:

(b) Notwithstanding § 4012 of this title, a governmental entity shall not be liable for any damage claim which results from:

(6) Any defect, lack of repair or lack of sufficient railing in any highway, townway, sidewalk, parking area, causeway, bridge, airport runway or taxiway, including appurtenances necessary for the control of such ways including but not limited to street signs, traffic lights and controls, parking meters and guardrails.

Plaintiff asserts that § 4011(b)(6) is inapplicable to the facts at bar. Instead, she relies on one of the exceptions to immunity listed in § 4012:

A governmental entity shall be exposed to liability for its negligent acts or omissions causing property damage, bodily or death in the following instances:

(2) In the construction, operation or maintenance of any public building or the appurtenances thereto, except as to historic sites or buildings, structures, facilities or equipment designed for use primarily by the public in connection with public outdoor recreation.

Plaintiff argues that her accident occurred on an appurtenance to a public building, the Georgetown Train Station. However, in response to this Court's Order to the parties that the motion to dismiss would be considered as a motion for summary judgment because of documents submitted outside the pleadings, Plaintiff filed information indicating that the Georgetown Train Station was purchased by the Historic Georgetown Association and is now used for a variety of meetings and events.

The real problem here is that, contrary to Plaintiff's position, "historic sites or buildings" are cited in § 4012(2) as structures for which a town or municipality shall be not exposed to liability for its negligence, not one of the exceptions to immunity.

Further, because discovery has not taken place the available facts are sketchy. It is not clear where Plaintiff fell. It is not clear whether the Georgetown Train Station is a public building or a historic site pursuant to § 4012. Assuming without deciding that it is a public building, it is not clear that Plaintiff fell on an appurtenance to that building.

Defendant's motion for summary judgment is premature and is therefore **DENIED** without prejudice.

IT IS SO ORDERED.

Very truly yours,

/s/ Richard F. Stokes

Richard F. Stokes

Original to Prothonotary