

STATE OF INDIANA) IN THE HAMILTON SUPERIOR COURT 5
) SS:
COUNTY OF HAMILTON) CAUSE NO. 29D05-2308-CT-7700

MAHARI MRACH OUKBU and)
NITSIHITI ABRAHAM,)
)
Plaintiffs,)
)
v.)
)
AMAZON, INC., a corporation,)
AMAZON.COM, INC., a corporation,)
AMAZON LOGISTICS, INC., a corporation,)
AMAZON.COM SERVICES, LLC, MQJI,)
a limited liability company,)
CF MOUNT COMFORT DST,)
a limited liability company,)
BRUCE L. GIBSON, an individual,)
CITY OF GREENFIELD, INDIANA,)
HANCOCK COUNTY BOARD OF)
COMMISSIONERS,)
HANCOCK COUNTY PLANNING COMMISSION)
and HANCOCK COUNTY HIGHWAY)
DEPARTMENT,)
)
Defendants.)

FILED
January 4, 2024
CLERK OF THE HAMILTON
CIRCUIT COURT

ORDER

This matter is before the Court on a Motion to Dismiss filed by Defendants Hancock County Board of Commissioners, Hancock County Planning Commission, and Hancock County Highway Department (collectively “Hancock County”), as well as Motions for Judgment on the Pleadings filed by Defendants Amazon, Inc., Amazon.com, Inc., Amazon Logistics, Inc., and Amazon.com Services, LLC, MQJ1 (collectively “Amazon”) and CF Mount Comfort DST (“Mount Comfort”). The Court has reviewed these motions and the parties’ corresponding filings and now finds, concludes, and orders as follows.

RELEVANT FACTS AND PROCEDURAL POSTURE¹

The underlying incident involving the parties occurred on September 2, 2022. Plaintiff, Mahari Mrach Oukbu, an independent contractor, was intending to make a delivery to an Amazon fulfillment center located on Mount Comfort's property. In so doing, Mahari decided to park his semi-tractor trailer beside the public highway, County Road West 300 North, across from the fulfillment center. Mahari exited his vehicle onto the county road, began walking across the roadway, and was struck by a truck driven by Bruce L. Gibson. Plaintiffs initiated this lawsuit against Amazon, Mount Comfort, and Gibson on April 24, 2023. Plaintiffs subsequently filed a notice of tort claim with Hancock County on May 24, 2023, and in turn filed an Amended Complaint in this matter on July 6, 2023, naming Hancock County and the City of Greenfield as additional defendants.

Plaintiffs' Amended Complaint alleges that Amazon and Mount Comfort each owed a duty to Mahari to provide proper lighting and signage at the Amazon fulfillment center so he would not have to get out of his vehicle to locate the entrance, and that their failure to do so created a hazardous condition on the premises for which they failed to provide warning. Plaintiffs' Amended Complaint further alleges that Hancock County owed a duty to Mahari to provide proper lighting and signage on the county road adjacent to the Amazon fulfillment center, and that its failure to do so created a hazardous condition for which it failed to provide warning.

¹ The parties note that a similar case, *Harjit Kaur v. Amazon, Inc., et al.*, involving Amazon and Mount Comfort is currently pending in the Hamilton Superior Court 4 under cause number 29D04-2212-CT-10006. Two appeals of the court's orders in that matter are currently pending under cause numbers 23A-CT-02059 and 23A-CT-02561. The Court takes judicial notice of these matters.

Plaintiffs' Amended Complaint does not allege that Mahari ever entered Amazon or Mount Comfort's premises or even attempted to enter the premises. Rather, Mahari decided to park his vehicle adjacent to the county road across from the Amazon fulfillment center on Mount Comfort's property and was then struck as he stepped onto the road.

HANCOCK COUNTY'S MOTION TO DISMISS

In its Motion to Dismiss,² Hancock County argues that Plaintiffs' notice of tort claim filed on May 24, 2023 was untimely, and thus their claims are barred. The Court agrees. Under the Indiana Tort Claims Act, a claim against a political subdivision must be filed within 180 days after the loss occurs. Ind. Code § 34-13-3-8(a). Here, the alleged incident occurred on September 2, 2022, making Plaintiffs' deadline to file their notice of tort claim no later than March 1, 2023. Because Plaintiffs did not file their notice of tort claim until May 24, 2023, the Court finds that Plaintiffs' notice was untimely and their claims against Hancock County should be dismissed.

AMAZON AND MOUNT COMFORT'S MOTIONS FOR JUDGMENT ON THE PLEADINGS

In their respective Motions for Judgment on the Pleadings, Amazon and Mount Comfort argue that they owed no duty to Mahari as an invitee because under Indiana law, a person's status as an invitee is not created until the person enters the landowner's premises, and here the alleged incident occurred on the county road across from the Amazon fulfillment center on Mount Comfort's property. In response to both motions, Plaintiffs argue that a duty can exist beyond a landowner's actual

² Plaintiffs did not respond to Hancock County's motion.

premises, and in support cite *Lutheran Hospital v. Blaser*, 634 N.E.2d 864 (Ind. Ct. App. 1994), *reh'g denied*.

The Court finds that *Precedent Partners I, L.P. v. Hulen*, 863 N.E.2d 328 (Ind. Ct. App. 2007) is more applicable than *Lutheran Hospital* to the facts alleged in Plaintiffs' Amended Complaint. In that case, the plaintiff sued the housing developer and homeowner's association for injuries sustained after being hit by a truck while riding her bicycle on a public street around the housing development. The Court of Appeals held, in relevant part, as follows:

With regard to the alleged duty to redirect construction traffic or to post signs warning of construction traffic, the designated evidence does not establish that either Precedent or the Association had such a duty. Even assuming such a duty existed, there is no evidence that any breach of that duty contributed to the accident. The designated evidence does not suggest that the streets of the Meadows were congested with construction traffic or that construction vehicles otherwise posed any foreseeable danger to residents. A single pickup truck traveling on a public street is not a hazardous condition, as a matter of law.

The Hulens' reliance on *Lutheran Hospital of Indiana, Inc. v. Blaser*, 634 N.E.2d 864 (Ind. Ct. App. 1994), and *Holiday Rambler Corp. v. Gessinger*, 541 N.E.2d 559 (Ind. Ct. App. 1989), *trans. denied*, is misplaced. In both of those cases, the defendants' use of their premises proximately caused the plaintiffs' injuries. In *Lutheran Hospital*, the hospital allowed pedestrians and automobiles to use the "exit" driveway of its parking lot as an entrance without adequate safeguards or warnings. We held that "[b]ecause Lutheran knew the manner in which its invitees, both pedestrians and drivers, customarily used the driveway of the 'exit' in connection with its invitation, it is under a duty to correct the dangerous conditions and guard against foreseeable injuries." *Lutheran Hosp.*, 634 N.E.2d at 870.

In *Holiday Rambler*, the defendant company permitted hundreds of employees to leave its premises at 3:00 p.m. every day using four exits within an 800-foot stretch of a state road with a speed limit of fifty-five miles per hour. The employer did not establish a traffic flow pattern or otherwise try to safeguard against accidents. We reiterated that "the owner of land adjacent to a highway owes the duty to the traveling public to prevent injury to travelers upon the highway from any unreasonable risks created by the

property's dangerous condition which the landowner knew or should have known about." *Holiday Rambler*, 541 N.E.2d at 562. And we held that a question of fact existed whether the defendant company had discharged its duty.

But here, again, neither Precedent nor the Association created a "dangerous condition" on their property that proximately caused Michelle's injuries. There is simply no evidence of a danger posed to residents from construction traffic, so there was no duty to redirect construction traffic or post warning signs. And the Hulens have failed to establish that Precedent and the Association caused, created, or had notice of an allegedly dangerous or hazardous condition. In moving for summary judgment, Precedent and the Association made a prima facie showing that there were no disputed facts regarding the existence of a hazardous condition that caused the accident. Indeed, Michelle could not remember whether her view of Guardado's pickup truck had been obscured by vegetation in the median, and the photographs included in the designated evidence do not depict anything suggesting that her view was so obscured. Further, a single pickup truck traveling down a public street is not, as a matter of law, a hazardous condition.

The law does not impose a duty on a business to guard against injury to the public from the negligent acts of someone over whom the business has no control and which injury occurs off the business' premises. *Snyder Elevators, Inc. v. Baker*, 529 N.E.2d 855, 859 (Ind. Ct. App. 1988), *trans. denied*. Neither Precedent nor the Association was accountable for the conduct of Guardado and neither controlled the premises where the accident occurred. We hold that the trial court erred when it denied Precedent's and the Association's joint summary judgment motion. We reverse and remand with instructions to enter summary judgment in favor of Precedent and the Association and against the Hulens.


Id. at 332-33 (footnotes omitted). Here, the Court finds that neither Amazon nor Mount Comfort had a duty to guard against injury to Mahari from the negligent acts of someone over whom they had no control and when the injury occurred off their premises. The Court further finds that the allegations in Plaintiffs' Amended Complaint are distinguishable from those in *Lutheran Hospital*. In that case, the hospital's use of their premises proximately caused the plaintiffs' injuries. The hospital had allowed pedestrians and automobiles to use the "exit" driveway of its parking lot as an entrance

without adequate safeguards or warnings. There are no such allegations in the present case.

JUDGMENT

The Court hereby GRANTS Hancock County's Motion to Dismiss and GRANTS Amazon and Mount Comfort's Motions for Judgment on the Pleadings. Judgment shall be entered in Hancock County, Amazon, and Mount Comfort's favor as there is no just reason for delay.

Date: 1/3/2024



Judge, Hamilton Superior Court 5

Distribution to counsel of record.