

CITATION: Billings v. Mississauga (City), 2011 ONCA 247
DATE: 20110330
DOCKET: C52281

COURT OF APPEAL FOR ONTARIO

O'Connor A.C.J.O., Laskin and MacPherson JJ.A.

BETWEEN

Douglas Billings

Plaintiff (Appellant)

and

Corporation of the City of Mississauga

Defendant (Respondent)

Paul J. Cahill, for the appellant

Scott Hamilton, for the respondent

Heard and released orally: March 29, 2011

On appeal from the judgment of Justice Casimir N. Herold of the Superior Court of Justice dated May 31, 2010.

ENDORSEMENT

[1] The appellant, Douglas Billings, appeals the judgment of Herold J. dated May 31, 2010, dismissing his claim against the respondent.

[2] The appellant's claim related to injuries he suffered in a slip and fall accident on one of the respondent's sidewalks following a major snow and ice storm. The sidewalk in question had not been cleared of snow and ice within the 36 hour period following the storm referred to in the respondent's snow removal policy.

[3] Section 44(9) of the *Municipal Act*, S.O. 2001, c. 25, provides that "[e]xcept in cases of gross negligence, a municipality is not liable for a personal injury caused by snow or ice on a sidewalk."

[4] The appellant contends that the respondent's snow removal performance during and after the storm amounted to gross negligence. He points to the fact that the sidewalk in question remained dangerous for over 100 hours, that the sidewalk was not cleared within 36 hours of the end of the storm, and that the respondent relied exclusively on unionized workers (as opposed to independent contractors) who had no obligation to work overtime and week-ends (the accident happened on a Monday).

[5] We do not accept these submissions. In our view, the respondent's general policy with respect to snow and ice removal was a reasonable one. Moreover, on the days in question its performance pursuant to the policy was far removed from being grossly negligent. As the trial judge found, the storm in April 2003 was "an extraordinary

atmospheric event”, a conclusion supported by the fact that Environment Canada ranked it as runner-up on its list of the top ten Canadian weather stories of 2003.

[6] The trial judge carefully reviewed the respondent’s systems, personnel and policies for dealing with snow storms. He concluded that the respondent’s response to the storm was “completely reasonable”. We agree.

[7] The appeal is dismissed. The appellant shall pay the respondents costs of the appeal fixed in the amount of \$5,000 inclusive of disbursements and applicable taxes. We direct that the appellant need not pay the amount of \$5,000 into court pursuant to the order for security for costs. Appellant’s counsel undertakes to pay the \$5,000 being held in trust to the respondent.

“D. R. O’Connor A.C.J.O.”

“J. I. Laskin J.A.”

“J. C. MacPherson J.A.”