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VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH

FRANK MESSINA,

Plaintiff,

v.

TIDEWATER COMMUNITY COLLEGE
(Frederick Campus),

and

WILLIAM W. BURDEN
4541 Ashland Drive
Chesapeake, Virginia 23321,

Defendants.

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At Law No.

L 80 - 887

AMENDED MOTION FOR JUDGMENT

TO THE HONORABLE JUDGES OF THE AFORESAID COURT:

NOW COMES your Plaintiff, Frank Messina, and hereby moves the Circuit Court of the City of Portsmouth, Virginia, at the Courthouse thereof, for judgment against the Defendants in the sum of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00), for this to-wit:

1. Defendant, Tidewater Community College is a local community college within the Virginia Community College System, and as such is the owner and operator of the Frederick Campus located in the City of Portsmouth, Virginia, and maintains a building thereon known as the College Theater.

2. As the owner and operator of the College Theater, a place of business to which the general public is invited to attend and in which students and the public are invited to perform, it is

the duty of the Defendant, Tidewater Community College, its agent and employees, to maintain the premises in a reasonably safe condition; and to make reasonable inspections to determine whether any defects exist and to warn the public of any such defects known to it, its agents and employees.

3. On or about March 11, 1979, the Defendant, William W. Burden, was the Superintendent of Buildings for the Defendant, Tidewater Community College, was its employee, and was acting within the scope of his employment; and as the Superintendent of Buildings it was his duty to maintain and supervise the maintenance of the buildings of the Tidewater Community College located at the Frederick Campus, including the College Theater, in a reasonably safe condition; and to make reasonable inspections to determine whether any defects existed therein and to warn the public of any such defects known to him or which would have been shown by a reasonable inspection.

4. Notwithstanding said duty, the Defendants' negligence allowed the stairway behind the stage of the College Theater to remain in a defective condition although they and their agents and employees knew, or in the exercise of reasonable care should have known, that it was defective.

5. On or about March 11, 1979, the Plaintiff was an actor in the play, "Thieves Carnival", being performed at the College Theater and he was walking down the stairway in which the defect was located.

6. As a direct and proximate result of the Defendants' negligence aforesaid, a faulty step caused the Plaintiff to fall and sustain serious injury to his person.

7. That as a further direct and proximate result of the negligence of the Defendants as aforesaid, your Plaintiff has been caused to expend, and will in the future be caused to expend, a substantial sum of money for an indeterminable time in an endeavor to be healed and cured of his injuries.

8. That as a further direct and proximate result of the negligence of the Defendants, as aforesaid, your Plaintiff will be caused to suffer severe pain and mental anguish for an indeterminable time in the future.

9. That as a further direct and proximate result of the negligence of the Defendants, as aforesaid, your Plaintiff has been unable to work and will be unable to work for an indeterminable time in the future.

10. That as a further direct and proximate result of the negligence of the Defendants, as aforesaid, your Plaintiff has sustained an aggravation of a pre-existing condition.

11. That as a further direct and proximate result of the negligence of the Defendants, as aforesaid, your Plaintiff has incurred a permanent injury.

WHEREFORE, your Plaintiff moves this Honorable Court for judgment against the Defendants in the sum of Five Hundred Thousand Dollars (\$500,000.00), as general damages.

FRANK MESSINA

Of Counsel

H. Joel Weintraub
Peter G. Decker, Jr.
Decker, Christie & Hitchings
Suite 900, One Main Plaza E.
Norfolk, VA 23510

I certify that I mailed a true copy of the foregoing Amended Motion for Judgment to Paul Forch, Office of the Attorney General, this 6th day of February, 1981.

LAW OFFICES
DUCKER, CHRISTIE
& HITCHINGS
NORFOLK, VIRGINIA

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH

FRANK MESSINA,

Plaintiff

v.

LAW NO. L80-887

TIDEWATER COMMUNITY COLLEGE

and

WILLIAM W. BURDEN,

Defendants

DEMURRER

Comes now the defendant, William W. Burden, by counsel, and states that the Motion for Judgment exhibited against it is not sufficient in law, and does not state a cause of action. As the grounds for this Demurrer, the defendant William W. Burden, states as follows:

(1) That the defendant, William W. Burden, was an employee of a State agency, i.e., the Tidewater Community College, and as stated in the Motion for Judgment was acting within the scope of his employment, and is immune to tort actions as such in that the present action seeking compensatory damages for personal injuries is barred by the Doctrine of Sovereign Immunity.

WILLIAM W. BURDEN,

By


Of Counsel

J. J. O'Keefe, III
Outland, Gray, O'Keefe & Hubbard
112 Coastal Way
Chesapeake, VA 23320

I hereby certify that a true copy of the foregoing Demurrer was mailed to H. Joel Weintraub, Esq., attorney for the plaintiff, Suite 900, One Main Plaza East, Norfolk, VA 23510.


J. J. O'Keefe, III

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH
FRANK MESSINA,

Plaintiff

v.

LAW NO. L80-887

TIDEWATER COMMUNITY COLLEGE and
WILLIAM W. BURDEN,

Defendants

O R D E R

This day came the defendant, William W. Burden, by counsel, and the plaintiff, Frank Messina, by counsel, upon the defendant's Demurrer to the Motion for Judgment, and plaintiff's Motion to Overrule same, and was argued by counsel.

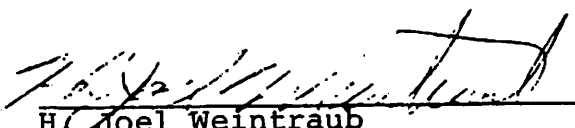
And it appearing to the Court that the allegations of plaintiff's Motion for Judgment assert that the defendant, William W. Burden, was performing a supervisory function and exercising discretionary judgment within the scope of his employment by an agency of the Commonwealth of Virginia, and that such actions are immune from suit for negligence under the Doctrine of Sovereign Immunity, it is therefore:

ORDERED that the Demurrer filed herein by the defendant William W. Burden be sustained, and it is further ORDERED that the plaintiff be granted ten days from the date of the entry of this Order to file an amended Motion for Judgment as to the defendant, William W. Burden, and it is further ORDERED that if said Amended Motion for Judgment is not filed within the stated ten day period this action is dismissed with prejudice as to the defendant, William W. Burden.

I ASK FOR THIS:

 , p.d.
J. J. O'Keefe, III

SEEN AND OBJECTED TO:

 , p.q.
H. Joel Weintraub

ENTER this ____ day of _____,
1981.

Judge

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH

FRANK MESSINA,

Plaintiff,

-vs-

AT LAW NO. L80-887

WILLIAM W. BURDEN,

Defendant.

SECOND AMENDED MOTION FOR JUDGMENT

TO THE HONORABLE JUDGES OF THE AFORESAID COURT:

NOW COMES the plaintiff, Frank Messina, and hereby moves the Circuit Court of the City of Portsmouth, Virginia, at the Courthouse thereof, for judgment against the defendant in the sum of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00), for this to-wit:

1. Tidewater Community College is a local community college within the Virginia Community College System, and as such is the owner and operator of the Frederick Campus located in the City of Portsmouth, Virginia, and maintains a building thereon known as the College Theater.

2. Tidewater Community College is the owner and operator at the Frederick Campus of the College Theater, a place of business to which the general public is invited to attend and to which students and the public are invited to perform.

3. On or about March 11, 1979 the defendant, William W. Burden, was an employee of the Tidewater Community College and it was his duty and the duty of his employer to maintain the premises of the College Theater in a reasonably safe condition, and to make reasonable inspections to determine whether any defects exist, and to warn the public of any such defects known to him or which would have been shown by a reasonable inspection, and to correct any such defects.

4. Notwithstanding the aforesaid duty, defendant was negligent in allowing the stairway behind the stage of the College Theater to remain in a defective condition although he knew or should have known in the exercise of reasonable care that it was defective; the defendant was further negligent in failing to make reasonable inspections of the stairway; the defendant was further negligent in failing to warn the public of such defect; and the defendant was further negligent in failing to correct such defect.

5. On or about March 11, 1979, the plaintiff was an actor in the play, "Thieves Carnival", being performed at the College Theater and he was walking down the stairway in which the defect was located.

6. As a direct and proximate result of the defendant's negligence aforesaid, a faulty step caused the plaintiff to fall and sustain serious injury to his person.

7. That as a further direct and proximate result of the negligence of the defendant as aforesaid, your plaintiff has been caused to expend, and will in the future be caused to expend, a substantial sum of money for an indeterminable time in an endeavor to be healed and cured of his injuries.

8. That as a further direct and proximate result of the negligence of the defendant, as aforesaid, your plaintiff will be caused to suffer severe pain and mental anguish for an indeterminable time in the future.

9. That as a further direct and proximate result of the negligence of the defendant, as aforesaid, your plaintiff has been unable to work and will be for an indeterminable time in the future.

10. That as a further direct and proximate result of the negligence of the defendant, as aforesaid, your plaintiff has sustained an aggravation of a pre-existing condition.

11. That as a further direct and proximate result of the negligence of the defendant, as aforesaid, your plaintiff has incurred a permanent injury.

WHEREFORE, your plaintiff moves this Honorable Court for judgment against the defendant in the sum of Five Hundred Thousand Dollars (\$500,000.00), as general damages.

FRANK MESSINA

By _____
Of Counsel

H. Joel Weintraub
Decker, Christie & Hitchings
Suite 900, One Main Plaza East
Norfolk, Virginia 23510

I hereby certify that a true copy of the foregoing Second Amended Motion for Judgment was mailed to John J. O'Keefe, III, Esquire, attorney for the defendant, William W. Burden, 112 Coastal Way, Chesapeake, Virginia 23320, on the _____ day of April, 1981.

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH
FRANK MESSINA,

Plaintiff

v.

LAW NO. L80-887

WILLIAM W. BURDEN,

Defendant

PLEA OF SOVEREIGN IMMUNITY

Comes now the defendant, by counsel, and states unto the Court that the defendant is an employee of a State Agency, and that the present action seeking compensatory damages for personal injuries is barred by the Doctrine of Sovereign Immunity.

WILLIAM W. BURDEN,

By


Of Counsel

J. J. O'Keefe, III
Outland, Gray, O'Keefe & Hubbard
112 Coastal Way
Chesapeake, VA 23320

I hereby certify that on April 23, 1981, I mailed a true copy of the foregoing Plea of Sovereign Immunity to H. Joel Weintraub, Esq., attorney for the plaintiff, Suite 900, One Main Plaza East, Norfolk, VA 23510.


J. J. O'Keefe, III

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH
IN THE COUNTY OF JAMES CITY, 1981.
FRANK MESSINA,

Plaintiff

v.

LAW NO. 80-887

WILLIAM W. BURDEN,

Defendant

O R D E R

This day came the defendant, by counsel, and the plaintiff, by counsel, upon the defendant's Plea of Sovereign Immunities, and was argued by counsel.

And it appearing to the Court that the allegations of the plaintiff's Motion for Judgment establish that the defendant, William W. Burden, was an employee of the Virginia Community College System and performing duties within the scope of his employment by same, and that such actions are immune from suit for negligence under the Doctrine of Sovereign Immunity, it is therefore: ORDERED that the Plea of Sovereign Immunity be sustained, and it is further ORDERED that this matter is hereby dismissed with prejudice as to the defendant, William W. Burden.

I ASK FOR THIS:

_____, p.d.
J. J. O'Keefe, III

SEEN AND OBJECTED TO:

_____, p.g.
H. Joel Weintraub

ENTER this ____ day of _____,
1981.

Judge

A COPY, TEL. 2: 10:00 P. M. 1964, CITY OF NEW YORK, OFFICE OF THE
CLERK OF THE COURT, 100 WALL STREET, NEW YORK, N. Y. 10038
BY *James H. [Signature]* D.C.

ASSIGNMENTS OF ERROR

1. The Court erred in sustaining the demurrer to the first amended motion for judgment on grounds of Sovereign Immunity.

2. The Court erred in sustaining the Plea of Sovereign Immunity to the second amended motion for judgment.