

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

WESTCHESTER CYCLE CLUB,

Plaintiff,

Index No.:

-against-

NEW YORK STATE DEPARTMENT OF
TRANSPORTATION,

COMPLAINT

Defendant.

Plaintiff Westchester Cycle Club alleges as and for its complaint against defendant New York State Department of Transportation as follows:

1. Plaintiff Westchester Cycle Club (“Cycle Club”) is a New York not-for-profit organization with a principle place of business in Westchester County, New York.
2. Defendant New York State Department of Transportation (“NYDOT”) is a duly organized department of the State of New York with a principle place of business in Albany County, New York, and a regional office in Westchester County, New York.
3. The Cycle Club has approximately 1,300 members.
4. Upon information and belief, about 100 members of the Cycle Club routinely and regularly bike along Route about 100 between Route 118 in the Town of Yorktown and Route 35 in the Town of Somers.
5. Upon information and belief, cyclists who do not belong to the Cycle Club routinely and regularly bike along Route 100 between Route 118 in the Town of Yorktown and Route 35 in the Town of Somers.

6. Upon information and belief, cyclists, both within and outside the Cycle Club, occasionally bike along Route 100 between Route 118 in the Town of Yorktown and Route 35 in the Town of Somers.

7. The members of the Cycle Club have the right, along with members of the public, to use Route 100 for biking, skating or gliding on in-line skates pursuant to New York State Vehicle and Traffic Law §1231.

8. A majority of the members of the Cycle Club reside in Westchester County, New York.

9. On or about April, 2008, audible roadway delineators (ARDs) (hereinafter referred to as “rumble strips”) were cut into the shoulders of a four mile stretch of Route 100, between Route 118 in the Town of Yorktown and Route 35 in the Town of Somers, Westchester County (hereinafter “Route 100”) by defendant NYDOT.

10. Upon information and belief, Route 100 is a New York State owned and maintained highway.

11. Route 100 passes through portions of the New York City reservoir system, and its wide shoulders and scenic views attract cyclists of all ages and experience levels.

12. The reservoir system along Route 100 also attracts fishermen, who may fish, by permit, and park along the shoulder of Route 100.

13. Upon information and belief, for many years, the cyclists have shared the shoulder of Route 100 with the parked vehicles of the fisherman without problem or incident as cyclists were able to ride around the parked vehicles without the need to travel off of the roadway.

14. Upon information and belief, prior to April, 2008, Route 100 was more than twice as safe as the average New York State two lane road.

15. According to the NYDOT 2004 Highway Design Manual the purpose of the rumble strips is to awaken drowsy drivers whose vehicles might drift off the road and onto the shoulder so as to avoid or prevent “drift-off” accidents.

16. Upon information and belief there is no documented history of “drift-off” accidents on Route 100.

17. According to the 2004 Highway Design Manual the NYDOT should consider installation of rumble strips in four specific situations 1) on limited stretches of highway or specific locations with a proven history of drift-off accidents; 2) in advance of bridges where the shoulder substantially narrows; 3) at gorge areas, and 4) as short warning strips on the outside of curves that follow long tangents.

18. The 2004 Highway Design Manual specifically provides at Section 3.2.5.4 as follows: “It should be noted, however, that shoulder rumble strips can be a major interference for bicycle traffic and may cause bicyclists to spend more time in the traveled way.”

19. The 2004 Highway Design Manual also states at Section 3.2.5.4 that on routes where bicycle traffic is permitted and the nominal shoulder width is 1.8 meters, or 5.9 feet, the decision to provide shoulder rumble strips should be reviewed by the Regional Traffic Engineer and the Regional Bicycle and Pedestrian Coordinator.

20. Upon information and belief, NYDOT did not review its decision with the Regional Traffic Engineer or the Regional Bicycle and Pedestrian Coordinator.

21. Upon information and belief, cars and trucks of fisherman regularly park along the shoulder of Route 100.

22. When cars and trucks are parked along the shoulder of Route 100, the normal shoulder width may be reduced below 1.8 meters or 5.9 feet.

23. Upon information and belief, when cars and trucks are parked along the shoulder of Route 100, the normal shoulder width may be reduced below 1.2 meters or 3.9 feet.

24. The 2004 Highway Design Manual states at Section 3.2.5.4 that where the nominal shoulder width is 1.2 meters or less (3.9 feet or less), shoulder rumble strips should not be used.

25. Upon information and belief, the parked cars can effectively reduce the nominal shoulder width below 1.2 meters or 3.9 feet.

26. Upon information and belief, Route 100 does not meet the criteria contained in the 2004 Highway Design Manual for installation of rumble strips.

27. The 2004 Highway Design Manual warns of the dangers of installing the rumble strips on two lane roads frequented by cyclists.

28. Since the installation of the rumble strips, Route 100 has become a dangerous condition to the cyclists as there is no longer sufficient room available to safely ride around parked vehicles and still remain on the shoulder of the road.

29. Upon information and belief, cyclists must now ride over the rumble strips onto the roadway in order to pass parked vehicles.

30. Upon information and belief, the rumble strips are cut deep into the shoulder surface.

31. When a bicycle, with narrow tires, passes over the rumble strips, the bicycle has the potential to become unstable creating the possibility of a cyclist falling off the bicycle and onto the roadway into the path of oncoming vehicles causing a hazardous condition for both the cyclist and motorists.

32. When a bicycle, with narrow tires, passes over the rumble strips, the bicycle has the potential to become unstable creating the possibility of a cyclist falling off the bicycle, hitting the pavement and sustaining serious injuries.

33. Upon information and belief, when it rains or snow is melting, the carved out portion of the rumble strip retains water causing a slick riding surface in above freezing temperatures and a dangerous icing condition in freezing temperatures.

34. The slick riding surface conditions and the dangerous icing conditions did not exist prior to the installation of the rumble strips.

35. There are certain breaks in the rumble strips that allow a cyclist to enter the roadway without crossing over the strips.

36. Upon information and belief, use of the breaks in the rumble strips force cyclists onto the roadway for extended periods of time requiring them to share space with cars traveling at 55 miles an hour, an additional danger.

37. Upon information and belief, the rumble strips force cyclists to ride further to the right of the shoulder where debris gathers resulting in a hazardous condition and increase of likelihood of damage to the bicycles.

38. On or about May, 2008, the Cycle Club requested on behalf of itself and the public that the NYDOT reconsider its installation of the rumble strip and remove them for the safety of the cyclists, including specifically the members of the Cycle Club.

39. The NYDOT agreed to have its engineers study the situation and reevaluate the effectiveness of the rumble strips.

40. On or about June 25, 2008, a Westchester County resident and member of the Westchester Cycling Club put the NYDOT on written notice that the rumble strips constituted a nuisance and that NYDOT had created a dangerous and hazardous condition for both cyclists and motorists utilizing the four mile stretch of Route 100.

41. On or about December, 2008, NYDOT issued a rumble strip installation report dated December 18, 2008 (the "Report") which stated that its study showed that there was no pattern of "fall asleep" type accidents that would be addressed by installation of rumble strips.

42. The Report indicated that employees of NYDOT "observed" the inappropriate use of the shoulder by motorists passing on the shoulder as well as the use of the shoulder by cyclists.

43. Upon information and belief, NYDOT has an office on Route 100.

44. The Report did not contain an engineering study or a re-evaluation of the effectiveness of the rumble strips, but contained an analysis of the original installation determination.

45. According to the Report, the NYDOT made its decision to install rumble strips based on field observation and field measurements and the unsupported finding that fisherman only use the area in the spring and that "most" vehicles park off the shoulder.

46. The Report states the original installation decision was based on a 1997 Departmental Policy rather than on the 2004 Highway Design Manual.

47. Pursuant to the NYDOT Report, the NYDOT refused the Cycle Club's request to remove the rumble strips.

48. Upon information and belief, there have been two reported and documented accidents by cyclists, with injuries, and additional unreported accidents.

49. Upon information and belief, there have been numerous cases of damage to personal property, to wit: bicycles.

50. The rumble strips have caused injury in fact.

51. The rumble strips constitute a hazard and danger to all cyclists and all motorists driving along Route 100 at the time a cyclists is forced into the roadway.

52. The Cycle Club is peculiarly and specifically injured and damaged given the fact that its members regularly cycle on Route 100 and are exposed to the threat of injury and damage to personal property on a more frequent basis than members of the public at large.

53. The Cycle Club is peculiarly affected by the rumble strips in a manner different from the public at large.

54. The rumble strips constitute a public nuisance.

55. The rumble strips interfere with and cause damage to the public in its exercise of rights common to all in a manner such as to interfere with the public's use of a public place so as to endanger or injure the property, health and safety of a considerable number of persons.

56. The plaintiff has no adequate remedy at law.

WHEREFORE, the plaintiff demands judgment declaring the rumble strips along Route 100 to be a public nuisance and enjoining the NYDOT from allowing Route 100 to remain in a

dangerous condition and requiring NYDOT to re-pave the specified four mile stretch of Route 100 so as to prevent harm and injury to the plaintiff and to the public.

Dated: White Plains, New York
May 29, 2009

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