

**Loosli v. City of Salem, 215 Or.App. 502 (2007)**

**Facts**

Plaintiffs desired to open a vehicle dealership in Salem. On two occasions, they telephoned the city to find out if any zoning restrictions on the property prohibited it from being used as a vehicle sales business. On both occasions, a city employee informed them that there were no zoning or land use ordinances that prohibited such a use. Relying on those assurances, plaintiffs entered into a lease of property and began to improve it.

In order to conduct a business as a vehicle dealer, plaintiffs needed to obtain a certificate from the Oregon Department of Transportation (ODOT). Under ORS 822.020, ODOT will issue a vehicle dealer certificate if the applicant meets the filing and approval requirements of ORS chapter 822, which regulates vehicle-related businesses. One such requirement is that an applicant submits a certification, “signed by a person authorized by the local governing body to do so, stating that the location of the business as given in the application for a certificate complies with any land use ordinances or business regulatory ordinances of the city or county.” ORS 822.025(6).

In connection with their application for a vehicle dealer certificate, plaintiffs sought a certification from the city pursuant to ORS 822.025(6). After undertaking a computer check of the city’s records, a city employee certified in writing that the property leased by the plaintiffs complied with all relevant land use and business regulatory ordinances for the operation of a vehicle sales business. The city charged a fee for its certification, which was paid to the city cashier and not to the person who checked the city’s records. Plaintiffs then submitted the city’s certification with their application to ODOT and received a certificate from the department to operate a vehicle sales business. They subsequently opened their business on the property.

Shortly thereafter, the city notified plaintiffs that they were in violation of the city’s land use ordinances and ordered them to cease operations of their sales lot. Ultimately, plaintiffs were required to relocate their lot, thereby incurring additional damages.

Plaintiffs then filed suit against the city, alleging that the city had negligently represented that they could operate a sales lot on the leased property and that, as a result of the city's negligence, they had suffered economic loss. The city moved for summary judgment, arguing that, because plaintiffs' damages were solely economic in nature, they could not recover under the common law of negligence. The trial court granted the city's motion, and plaintiff's appeal.

The appellate court must now decide whether the trial court's decision favoring the city was correct.

### Handout Questions

1. Read the actual law:
  - a. Is it unlawful for someone seeking to open a business to not get proper written approval from the city or county before requesting ODOT to approve his or her application – i.e. to create a used car dealership?
  - b. If an applicant goes through the proper channels, making telephone calls and getting the appropriate document signed and approved by the city or county, has the applicant complied with the law?
2. Based upon your reading of the law, do you believe that a city that approves a dealership application under ORS 822.025(6) should be liable when it turns out the city has made a mistake?
3. You are the attorney for the State of Oregon. What would you argue in support of the position that the city is not liable when it wrongly certifies information that an applicant relies upon as a correct when he or she submits that information to ODOT?
4. Now you are the plaintiff's attorney. What would you argue to support the position that the city should be liable for the harm caused to the plaintiff's by wrongfully certifying that a property meets the applicable requirements of ODOT for the requested change in use?
5. In addition to arguing that the city should be liable for harm caused by its misrepresentation of the facts, how much, in terms of monetary liability, do you

- believe should be placed on the city for its misrepresentation to the plaintiffs?  
Or... if you believe there should be no liability placed on the city, please give your reason[s].
6. After reading the case, answer the following questions:
    - a. The Oregon Court of Appeals ruled in favor of:
      - i. Plaintiff / State of Oregon
    - b. What reasons did the court give to support its decision?
    - c. How did the Court go about interpreting the law?
    - d. Do you agree with the Court's final decision? Yes/No (circle one)
  7. The State argued and the Court reasoned that ORS 822.025(6) was not created with the intention to expose the city to harm for the City's negligence that resulted only in purely economic loss. Such reasoning is based upon the statute's silence to this issue. Given the statute's silence, do you believe the Court was correct or incorrect in its interpretation?
  8. Had the Court ruled in favor of the plaintiffs, what should have been the larger implications for cities and counties?

#### What are the Facts of the Case?

Plaintiffs, who sought to open a used car lot, were told by a city employee on two occasions over the telephone that there was no zoning or land use ordinances that prohibited such use. In addition, a city employee certified in writing that the property leased by the plaintiffs complied with all relevant State land use and business regulatory ordinances for the operation of a used car lot. Relying on this information, the plaintiffs entered into a lease for the property and began to improve it. Shortly thereafter, the city notified the plaintiffs of being in violation of the city's land use ordinances. The plaintiffs were ordered to cease operation of their sales lot and forced to move their location. The plaintiffs sued the city on negligence grounds for their economic loss.

### What Happened in the Lower Court?

The Trial Court, in banc, found for the City of Salem holding that the city's actions did not constitute negligence under the law.

### How did the Case get to the Oregon Court of Appeals?

Defendant petitioned for appeal arguing that the trial court erred in finding that the city did not act negligently under the parameters of ORS 822.025(6).

The plaintiffs' motion asked the Court to find that a special duty existed between the plaintiffs and the city when the city acted in certifying the plaintiff's application.

### Arguments

**Plaintiffs' Argument:** Plaintiffs contend that the city's negligent certification pursuant to ORS 822.025(6) violated a duty beyond the common-law duty to exercise reasonable care to avoid foreseeable harm. Arguing specifically that ORS 822.025(6) creates a duty that supports a claim for purely economic loss that, if breached, exposes the city to tort liability.

**State of Oregon's Argument:** Nothing in the text of ORS 822.025 or its context suggests that the legislature intended to create a duty on the part of certifying local governments that, if breached, could make them liable to the applicants. Rather, ORS 822.025(6) is aimed at protecting the public interest in requiring vehicle dealers to comply with local land use and business regulatory ordinances. Therefore, the statute does not impose a duty running from the city to plaintiffs that would support a negligence claim under the circumstances presented.

## Summary

The Court of Appeals reviewed the trial court's motion granting summary judgment to the defendant, the City of Salem, to determine if viewing the evidence in light of most favorable to the plaintiff the Trial Court's decision clearly lacked the preponderance of evidence necessary to find favor of the plaintiffs.

The court agreed with the State's argument. The plaintiff's argument focused on there being a special duty between the people in their position and the city, but the plaintiffs failed to articulate the reasoning behind this, where there was no legislative intent pointing to such a special relationship. The State, on the other hand, was able to show using precedent that no special relationship existed that would trigger a heightened duty of care, when parties were dealing at an arm's length. Essentially, because the city was a middleman between the ODOT and the plaintiffs, the city's only duty was ministerial [administrative].

ORS 822.025(6) therefore poses no duty between people in the positions of the plaintiffs' and the city. This is because in order to trigger a heightened duty needed to recover damages for negligence, there needs to be a special relationship between the parties – e.g. directly hiring someone to do something on ones behalf. Here the court found that the city was nothing more than intermediary between the plaintiff and ODOT, therefore the city could not liable for giving wrong information to the plaintiffs even though it caused harm to the plaintiffs.

## Who Won?

The City of Salem and the State of Oregon were the big winners in this case. The Court of Appeals ruled that the law was clearly not intended to create a special relationship necessary to invoke tort liability.

### How did the Court explain its Decision?

The court found that a special duty can arise: (1) a legislative intent to protect persons in the plaintiffs' circumstances, or (2) the existence of a "special relationship" between the city and plaintiffs. Using this test the court held no "special relationship" existed between the government officials and applicants for government permits, thereby affirming the Trial Court's summary judgment ruling for the City of Salem.

### Application Questions

1. Based upon the facts presented do you believe the court made the correct decision?
2. Do you believe that a city should be punished when it presents incorrect information that someone reasonably relies upon, resulting in his or her harm?
3. Do you believe that with other facts a city might be liable under this same code section? Give examples.
4. How would you rewrite the law so that in a similar situation, the plaintiffs would be protected from the city's negligence?
5. How would you argue the case if you were given the second chance to do such?