

Order Entered By Court Of Common Pleas Of Philadelphia, Tengo S. Joloza vs. PA DOT, Case#060103894, ¶17-19). Plaintiff was also granted in forma pauperis status on the same date. (See Docket).

The Motion sought damages in the amount of \$210,000 to compensate him for “past medical expenses, past lost wages, past loss enjoyment of life, past services replacement, present lost wages, present loss enjoyment of life, present services replacement, future medical expenses, future lost capacity to earn, future loss of enjoyment of life, future services replacement, inability to enter occupation as an engineer, inability to pay Federal School Loans and inability to obtain graduate financial assistance from employer...” (Id.). The Motion was initially assigned to Judge King on September 13, 2006. (See Docket). On November 16, 2006, Judge King denied Plaintiff’s Motion and Plaintiff appealed to the Commonwealth Court. (Id.). The Commonwealth Court vacated the Order of Judge King and remanded the matter instructing the Trial Court to reinstate the case and request DOT to file preliminary objections or an answer. (Commonwealth Court Opinion, dated 10/22/07 pg. 4). The Commonwealth Court reasoned that Plaintiff’s Motion created a new cause of action (ie. Complaint) sounding in negligence, and, without any other pleadings opposing the Complaint, it was error to prematurely dismiss the case *sua sponte*, even if the proceeding is frivolous. (Commonwealth Court Opinion, dated 10/22/07 pg. 3).

As instructed by the Commonwealth Court, this Court treated the Motion as a Complaint and gave it a new Court Term and Number (June Term, 2006, No. 3324). An Order was also issued placing this matter in the Major non-jury program and requesting DOT to file Preliminary Objections or an answer to the Complaint. (Order, dated

1/17/08). On February 5, 2008, DOT filed its Preliminary Objections and Motion to Determine Preliminary Objections. (See Docket). DOT certified that a copy of the Preliminary Objections were served upon Plaintiff at his 2224 Grisham Street address, which is the same address Plaintiff used as his return address when forwarding a copy of his Statement of Matters to this Court. (DOT's Motion to Determine Preliminary Objections Cover Page).

Although a response date to the Preliminary Objections was set for February 25, 2008, Plaintiff never responded to DOT's Preliminary Objections. (See Docket). By Order dated March 11, 2008, this Court sustained DOT's Preliminary Objections and dismissed Plaintiff's Complaint. (See Docket). Plaintiff filed his Notice of Appeal on March 13, 2008 and issued his Statement of Matters pursuant to Pa.R.A.P. 1925 accordingly.

The sole issue alleged by Jolaza is whether this Court "dismissed the case *sua sponte*, without giving Tengo S. Jolaza (Appellant) the opportunity to be heard. Thus denying Appellant *due process*." (emphasis in original). (Statement of Matters, ¶1).¹

Plaintiff was given twenty (20) days to respond to DOT's Preliminary Objections but did not do so. In fact, the Preliminary Objections were not assigned to be ruled upon until March 6, 2008, which gave Plaintiff an additional ten (10) days to respond. (See Docket). Plaintiff, having not filed a response to the Preliminary Objections, left this Court without recourse, but to sustain DOT's Preliminary Objections as uncontested and dismiss the action.

¹ Jolaza lists three additional issues in his Statement of Matters, however they all pertain to the same issue of his alleged failure to be heard.

For this reason the Court believes that the Order dated March 11, 2008 sustaining the DOT's Preliminary Objections and dismissing the case should be affirmed.

BY THE COURT:

5-15-2008

Date

ALLAN L. TERESHKO, J.

cc:
Richard Charles Geer, Esq.
Tengo S. Joloza