

Illesca v Arredondo
2017 NY Slip Op 33488(U)
September 20, 2017
Supreme Court, Westchester County
Docket Number: Index No. 65741/15
Judge: David F. Everett
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To commence the 30-day statutory time period for appeals as of right under CPLR 5513 (a), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
JORGE ALBERTO ILLESCA,

Plaintiffs,

-against-

MARIO ARREDONDO and MARIO A.
ARREDONDO,

Defendants.

-----X
EVERETT, J.

Index No. 65741/15
Motion Sequence No. 002
Decision and Order

The following papers were read on this motion:
Notice of Motion/Affirmation in Supp/Exhibits A-K
Affirmation in Opp/Exhibits A-C
Reply Affirmation/Exhibits A-B

Upon the forgoing papers, the motion is granted.

Plaintiff Jorge Alberto Illesca (Illesca) moves for an order, pursuant to CPLR 3212, granting summary judgment against defendants Mario Arredondo (Arredondo) and Mario A. Arredondo (M.A. Arredondo) on the issue of liability. Defendants oppose the motion.

The following facts are taken from the motion papers, pleadings, affidavits, documentary evidence and the record, and are undisputed unless otherwise indicated.

Illesca commenced this action by filing a summons and complaint in the Office of the Westchester County Clerk on September 23, 2015, to recover damages for the serious physical injuries he sustained when a motor vehicle being operated by Arredondo struck him as he rode

his bicycle at approximately 11:20 p.m., on January 11, 2015, at the intersection of Lockwood Avenue and Guion Place, New Rochelle, New York. The initial complaint only named Arredondo as a defendant. After issue was joined and the parties conducted discovery, M. A. Arredondo was added as a party defendant based on his ownership of the motor vehicle involved in the accident.

Currently before the Court is Illesca's motion for summary judgment on the issue of liability. As the proponent of the motion for summary judgment, Illesca must tender evidentiary proof in admissible form sufficient to warrant the court to direct judgment in his favor as a matter of law (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; CPLR 3212 [b]). To make this showing, Illesca submits copies of the pleadings, an uncertified police report, both his and Arredondo's deposition transcripts, and his sworn affidavit attesting to the facts underlying the complaint. According to Illesca, the accident occurred when the Arredondo, who had stopped at a stop sign on Guion Place, moved forward and struck him (Illesca) while he was riding his bicycle across the intersection of Guion Place and Lockwood Avenue. Illesca, who did not have a stop sign facing him on Lockwood Avenue, claims that he had the right of way.

According to Arredondo, prior to the accident, he had been traveling on Guion Place and intended to turn left onto Lockwood Avenue. He testified that he had his headlights and left turn signal on, and that, after stopping at the stop sign facing his direction, he looked both left and right, and when he did not see any vehicles or pedestrians, he slowly proceeded forward and struck plaintiff prior to actually making the left turn (Arredondo, tr 37-44). Arredondo denies observing Illesca prior to the accident.

New York's Vehicle and Traffic Law § 1142 (a) provides that:

“[e]xcept when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop as required by section eleven hundred seventy-two and after having stopped shall yield the right of way to any vehicle which has entered the intersection from another highway or which is approaching so closely on said highway as to constitute an immediate hazard during the time when such driver is moving across or within the intersection.

It is undisputed that, because there was a stop sign at the subject intersection facing Arredondo's direction, and no stop sign or other traffic control device facing Illesca, Arredondo was obligated to yield the right of way to Illesca in order to avoid a hazard. Arredondo was under a “duty to see that which under the facts and circumstances he should have seen by the proper use of his senses” (*Lester v Jolicofur*, 120 Ad2d 574, 574-575 [2d Dept 1986] [internal quotation marks and citations omitted]). The fact that he did not see Illesca prior to moving forward despite having come to a proper stop at the stop sign, and having looked in both directions, does not relieve him of liability.

Here, Illesca has satisfied his prima facie burden of establishing negligence on the part of defendant as a matter of law on the issue of liability, and defendants have not raised a question of fact sufficient to preclude summary judgment.

Accordingly, it is


ORDERED that the motion for summary judgment is granted as to liability; and it is further

ORDERED that the parties are directed to appear with counsel in the Settlement Conference Part, courtroom 1600, Westchester County Courthouse, 111 Dr. Martin Luther King, Jr. Blvd., White Plains, New York, on October 31, 2017 to schedule a trial on damages.

This constitutes the decision and order of the Court.

Dated: White Plains, New York
September 20, 2017

ENTER:



HON. DAVID F. EVERETT, A.J.S.C.

Law Office of Ami Morgenstern
40-17 Broadway
Long Island City, NY 11103

Mead Hecht Conklin & Gallagher
925 Westchester Avenue
White Plains, NY 10604