

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

**ANTHONIA A. PERCIVAL,
DELICIA THOMAS,
KARLENE EDDY PERCIVAL, AND
DESHAWN WILLIAMS LIBURD,**

Plaintiffs,

vs.

NATASHA M. OVERBEEK,

Defendant.

CIVIL NO. ST-15-CV-656

ACTION FOR DAMAGES

MEMORANDUM OPINION

THIS MATTER is before the Court on Plaintiffs' "Motion for Partial Summary Judgment," (filed August 18, 2016).¹ Plaintiffs allege that Defendant's negligence caused a traffic accident and damages to the Plaintiffs. Plaintiffs believe Defendant is collaterally estopped from denying negligence because Defendant was found guilty of negligent driving in traffic court for the same traffic accident. Therefore, Plaintiffs seek summary judgment on the issue of Defendant's negligence. However, for the reasons set forth herein, Plaintiffs' motion will be denied.

I. Relevant Background

1. Plaintiffs allege that "[o]n or about September 12, 2015, in St. Thomas, Virgin Islands, Defendant, while operating her vehicle, proceeded through a red light,

¹ Due to the early filing of the motion for partial summary judgment, Defendant's motion pursuant to Rule 56(d) F.R.Civ.P. was granted to allow Defendant time to conduct discovery before responding to the motion for partial summary judgment.

while talking on her cell phone and crashed into the vehicle [plaintiffs were traveling in].” Pls.’ Mot. for Partial. Summ. J. 2.

2. Defendant was issued a traffic ticket after the collision with Plaintiffs’ vehicle. On November 4, 2015, Defendant represented herself in traffic court and was found guilty of negligent driving. The traffic court “found that the defendant tried to beat the light thereby causing the auto collision.” *Gov’t of the Virgin Islands v. Overbeek*, Case No. ST-15-MV-3227, 2 (VI. Sup. Ct. Nov. 4, 2015).
3. On December 16, 2015 Plaintiffs filed this civil complaint, alleging “Defendant, Overbeek, had a duty of due care in the operation of her vehicle, which she breached by proceeding through a red light, while talking on her cell phone and colliding into the vehicle [plaintiffs were traveling in].” Pls.’ Compl. ¶ 7.
4. Plaintiffs now move this Court for “partial summary judgment on the issue of whether Defendant Natasha M. Overbeek is liable to Plaintiffs...” because Defendant was already found guilty of negligent driving in the November 4, 2015 traffic case. Plaintiffs argue “by virtue of the prior criminal conviction, Defendant Overbeek should be collaterally estopped from re-litigating the issues of her negligent driving of September 12, 2015, which resulted in a vehicular collision and damages to the Plaintiffs...” Pls.’ Mot. for Partial. Summ. J. 2.

II. Discussion

Plaintiffs' motion for partial summary judgment is based on the theory of offensive collateral estoppel.² "[T]he doctrine of collateral estoppel, founded on notions of judicial efficiency and consistency,...bars the re-litigation of facts and issues already decided in a judicial forum" *Lettsome v. Waggoner*, 22 V.I. 94, 97 (VI. Terr. Ct. 1986). Offensive collateral estoppel occurs "when the plaintiff seeks to foreclose the defendant from litigating an issue the defendant has previously litigated unsuccessfully in an action with another party." *Parklane Hosiery Co., Inc., v. Shore*, 439 U.S. 322, 326 n.4.³ (1979)

In *Parklane*—the seminal case setting out the parameters of the offensive use of collateral estoppel—the United States Supreme Court cautioned that in certain circumstances, offensive collateral estoppel does not promote judicial efficiency, and may also be "unfair" to defendants. *Id.* at 322-323. The Court illustrated how judicial efficiency may be compromised by the use of offensive collateral estoppel:

Since a plaintiff will be able to rely on a previous judgment against a defendant but will not be bound by that judgment if the defendant wins, the plaintiff has every incentive to adopt a "wait and see" attitude, in

²Although Plaintiffs' motion is based on the theory of offensive collateral estoppel, Plaintiffs failed to even identify that theory, or cite any legal authority supporting its use. Additionally, due to the common law nature of offensive collateral estoppel, and the absence of binding local law in relation thereto, Plaintiffs' theory also necessitated the three prong analysis set forth in *Banks v. Intl Rental & Leasing Corp.*, 55 V.I. 679, 984-84 (V.I. 2011)—which Plaintiffs also failed to provide. The Court reminds Plaintiffs, "The rules that require a litigant to brief and support his arguments ... before the Superior Court, are not mere formalistic requirements. They exist to give the Superior Court the opportunity to consider, review, and address an argument[.]" *Simpson v. Golden*, 56 V.I. 272, 280 (V.I. 2012).

³ On the other hand, Defensive use of collateral estoppel occurs "when a defendant seeks to prevent a plaintiff from asserting a claim the plaintiff has previously litigated and lost against another defendant." *Id.*

the hope that the first action by another plaintiff will result in a favorable judgment.

Id. at 330.

The *Parklane* court also illustrated offensive collateral estoppel may be unfair because if “a defendant in the first action is sued for small or nominal damages, he may have little incentive to defend vigorously, particularly if future suits are not foreseeable.” *Id.* *Parklane* ultimately held that trial courts have broad discretion to determine when offensive collateral estoppel should be applied, and concluded. “The general rule should be that in cases where a plaintiff could easily have joined in the earlier action or where...the application of offensive estoppel would be unfair to a defendant, a trial judge should not allow the use of offensive collateral estoppel.” *Id.* at 331.

No binding authority in this jurisdiction has specifically opined which elements must be satisfied in order for a plaintiff to use offensive collateral estoppel to bind a court in a subsequent civil action by an earlier judgment.

In the absence of local law, our courts are required to complete the three prong analysis set forth in *Banks v. Int’l rental & Leasing Corp.*, 55 V.I. 967, 984-985 (VI. 2011) (*Banks* analysis) to determine the soundest rule for the Virgin Islands. See *Gov’t of the Virgin Islands v. Connor*, 60 V.I. 597, 600 (VI. 2014). The *Banks* analysis requires this Court to consider the following three factors:

- (1) Whether any Virgin Island Courts have adopted a particular rule;
- (2) The position taken by the majority of courts from other jurisdictions; and

(3) Which approach represents that soundest rule for the Virgin Islands.

Connor, at 600.

The Court will address each step.

(1) The first step in the *Banks* analysis “requires the Superior Court to ascertain whether any other local courts have considered the issue and rendered any reasoned decisions upon which litigants may have grown to rely.” *Id. at 603.*

The use of offensive collateral estoppel is familiar to the Virgin Islands. In fact, “[t]here is no doubt that the doctrine or concept of offensive collateral estoppel ha[d] become the law of this jurisdiction.” *Van Cura v. Delgado*, 18 V.I. 127, 128 (VI. Terr. Ct. 1982); *See also Martin v. Frett*, 18 V.I. 32, 34 (VI. Terr. Ct. 1980) (granting partial summary judgment on the basis that offensive collateral estoppel prevented re-litigating the defendant’s intoxication while operating a vehicle because he had already been found guilty during a criminal trial). In harmony with *Parklane*, courts here decided “that the determination should be made on a case-by-case basis when the application of the doctrine would not be unfair to the previously bound party.” *Van Cura*, at 128.

(2) The second step in the *Banks* analysis “directs the Superior Court to consider all potential sides of an issue by viewing the potentially different ways that other states and territories have resolved a particular question.” *Connor*, at 603.

The majority of states and the federal government allow convictions to estop the litigation of issues in a subsequent civil action. *See, e.g., Megan Maag & Adam*

Tomakich, *In Favor of “Trina’s Law”: A Proposal to Allow Crime Victims in Ohio to Use the Criminal Convictions of the Perpetrators as Collateral Estoppel in Subsequent Civil Cases*, 32 Cap. U. L. Rev. 351, 354 nn.20-22, 359 nn.43-44 (2003) (collecting case law and statutes from 50 states); Joshua M. D. Segal, *Rebalancing Fairness and Efficiency: The Offensive use of Collateral Estoppel in §1983 Actions*, 89 B.U. L. Rev. 1305, 1342 (2009) (listing states that allow offensive collateral estoppel). Even when offensive collateral estoppel is permitted, often “the rule is neither mandatory nor mechanically applied.” *Marcum v. Miss. Valley Gas Co. Inc.*, 672 So. 2d 730, 733 (Miss. 1996). Instead, “[f]airness to the defendant thus is a critical finding necessary for the application of offensive estoppel.” *Jack Faucett Assocs., Inc. v. Am. Tel. and Tel. Co.*, 744 F.2d 118, 125 (D.C. Cir. 1984) (internal quotation mark omitted); *compare* *Aetna Cas. & Sur. Co. v. Niziolek*, 481 N.E.2d 1356, 1360 (Mass. 1985) (“a party to a civil action against a former criminal defendant may invoke the doctrine of collateral estoppel to preclude the criminal defendant from re-litigating an issue decided in the criminal prosecution”) *with* *LePage v. Bumila*, 552 N.E. 2d 80, 82 (Mass. 1990) (declining to allow offensive collateral estoppel based on a traffic citation because “[i]t would be unfair to create a rule of law allowing the payment of such a citation to be used as an admission in a later civil trial” due to lack of incentive to litigate.)

Some courts have found that even when the requirements for general collateral estoppel are met, judicial discretion regarding fairness can still preclude the use of

offensive collateral estoppel. For example, although the Third Circuit outlined the four general requirements for collateral estoppel in *Smith v. Borough of Dunmore*, 516 Fed. Appx. 194, 199 (3rd Cir. 2013) (“(1) the identical issue was previously adjudicated; (2) the issue was actually litigated; (3) the previous determination was necessary to the decision; and (4) the party being precluded from re-litigating the issue was fully represented in the prior action.”) the *Smith* court found that even though “all four technical requirements for application of collateral estoppel exist... it was not an abuse of discretion for the District Court to refuse to apply nonmutual offensive collateral estoppel...” *Id.* *Smith* emphasized both the fact that offensive collateral estoppel has “a unique potential for unfairness” and the importance of specifically evaluating if allowing its application “would be unfair to defendants”. *Id.* (Internal quotation mark omitted)

3. Finally, the third step of the *Banks* analysis “mandates that the Superior Court weigh all persuasive authority both within and outside the Virgin Islands, and determine the appropriate common law rule based on the unique characteristics and needs of the Virgin Islands.” *Connor*, at 603.

Combining the general requirements for collateral estoppel from *Smith v. Borough of Dunmore* with the fairness requirement of *Parklane* provides the soundest rule in the Virgin Islands for allowing a plaintiff to use offensive collateral estoppel to bind a court in a subsequent civil action by an earlier judgment. This means first evaluating if: (1) the identical issue was previously adjudicated; (2) the issue was

actually litigated; (3) the previous determination was necessary to the decision; and (4) the party being precluded from re-litigating the issue was fully represented in the prior action.

Secondly, even *if* all four requirements are met, the court must still then consider if allowing offensive collateral estoppel would promote judicial efficiency and be fair to the defendant according to *Parklane*. This two-step process of first evaluating the requirements from *Smith v. Borough of Dunmore*, and then considering *Parklane* will help courts make a case-by-case assessment to determine if the use of offensive collateral is fair to the defendant, while also promoting judicial efficiency and consistency throughout the Virgin Islands.

III. Analysis

Plaintiffs hope to use offensive collateral estoppel to prevent Defendant Overbeek from re-litigating the issue of negligence because Overbeek “had a trial, and was found guilty of negligent driving...” Pls.’ Mot. for Partial. Summ. J. 2. Nevertheless, using the test outlined above, the Court finds the use of offensive collateral estoppel to be inappropriate in this instance.

Negligent driving is a traffic offense codified as 20 V.I.C. § 503. *See also Murrell v. People of the Virgin Islands*, 54 V.I. 327, 335, (V.I. 2010). “The elements of [negligent driving] are (1) operating a vehicle in a negligent manner, (2) over and along a public highway of this Territory, and (3) in such a manner as to endanger or be likely to endanger any person or property.”

However, the elements of negligent driving are not identical to the elements of negligence in a tort action. *See Lembach v. Antilles Sch., Inc.*, 2015 V.I. LEXIS 35, *71-72 (V.I. Super. Ct. Apr. 7, 2015) (“[T]he foundational elements of negligence [are] (1) a legal duty of care to the plaintiff [and] (2) a breach of that duty of care by the defendant, (3) constituting the factual and legal cause of (4) damages to the plaintiff.”)

Thus, the first two requirements of the first step of the test fail because (1) the *identical issues* was not previously adjudicated, and consequently there is no proof that (2) the required negligence elements were actually litigated. Therefore, Plaintiffs are not entitled to offensive collateral estoppel.

The Court also finds that the fourth prong of collateral estoppel (the party being precluded from re-litigating the issue was fully represented in the prior action) has not been satisfied. In this instance Overbeek—representing herself—was found guilty in traffic court and fined \$75. *Parklane* warned offensive collateral estoppel may be unfair to a defendant, if they had little incentive to defend themselves vigorously because they were facing small or nominal damages in the first action. The Court finds it would be unfair to bind Overbeek to this traffic court judgment, in which Overbeek represented herself and faced a relatively minimal fine of \$75.00.

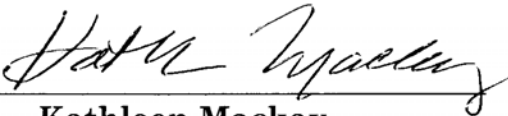
III. Conclusion

Based on the test specified above, the Court finds the use of offensive collateral estoppel in this instance is not proper as the elements of negligent driving in a traffic violation are not identical to the elements of negligence in a tort action. In addition, the use of collateral estoppel in this case would be unfair to Overbeek who represented herself in traffic court and faced a maximum fine of \$75.00.

Thus the motion for partial summary judgment will be denied.

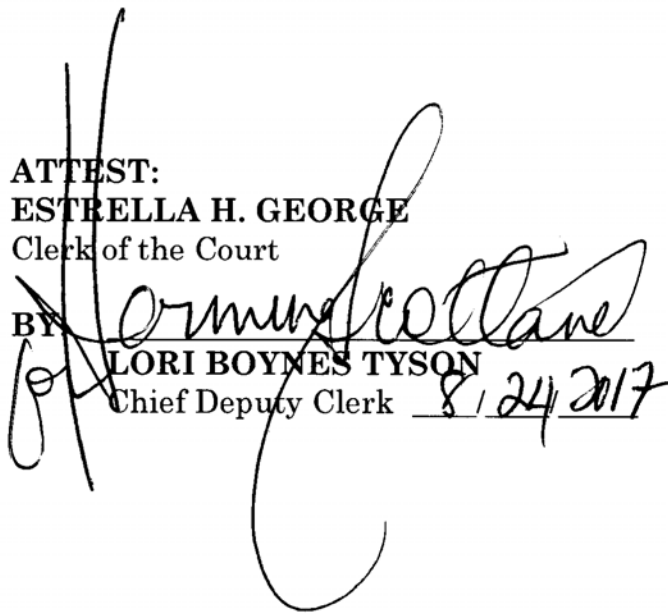
An Order consistent with this Memorandum Opinion will be entered.

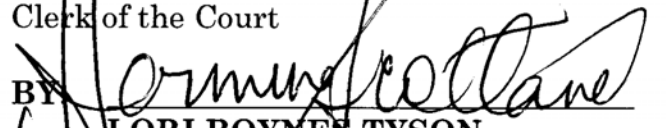
DATED: August 23, 2017



Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

ATTEST:
ESTRELLA H. GEORGE
Clerk of the Court



BY 
LORI BOYNES TYSON
Chief Deputy Clerk 8/24/2017