

IN THE CIRCUIT COURT OF COUNTY, MISSISSIPPI

PLAINTIFFS

VS.

CIVIL ACTION NO.

DEFENDANT

DEFENDANT'S RESPONSE TO PLAINTIFFS'
MOTION FOR PARTIAL SUMMARY JUDGMENT
ON THE ISSUE OF LIABILITY

COMES NOW, Defendant, , by and through his/her attorneys of record herein, and files this his/her Response to Plaintiffs' Motion for Partial Summary Judgment on the Issue of Liability, and would show unto the Court the following:

1.

admits that a hearing was held on the date alleged in the Municipal Court of concerning a traffic citation issued to . denies the characterization in paragraph two of as the "defendant driver" and further denies the characterization of as a defendant in the present civil suit. Clearly he/she is not.

2.

denies that the finding at the hearing in Municipal Court is entitled to the application of the doctrine of collateral estoppel in the case at bar. further denies that he/she is estopped from "relitigating" in this action the issue of liability, especially since has never "litigated" this issue in the first place.

3.

In *Johnson v. Bagby*, 171 So.2d 327, 330 (Miss. 1965), the Mississippi Supreme Court held that the first basic requirement essential for the operation of collateral estoppel in Mississippi is that the parties to the original action must be the same parties to the subsequent action. This rule, known as the "mutuality of parties rule" is rigidly and strictly applied in the State of Mississippi. See *Ditta v. Clinton*, 391 So.2d 627 (Miss. 1981). See also, *Walker v. Keir-McKee Chemical Corp.*, 793 F. Supp. 688, 695 (N. D. Miss. 1992). Turning to the case at bar, was not a party to the earlier traffic court proceeding in which was charged and found guilty of a misdemeanor traffic violation. That action was not an action by the against , nor for that matter, was it an action between the and . The prior action was an action by the City of against . was not a party and thus the doctrine of collateral estoppel has no application.

4.

denies the allegations contained in paragraph four of the motion and would submit to the Court that issues of material fact exist concerning the elements of causation, damages and obviously liability. further submits that these are clearly questions of fact which require jury resolution.

5.

denies that the exhibits itemized in paragraph five on page two of the motion support a grant of summary judgment in this case.

6.

denies that the are entitled to partial summary judgment on the issue of liability based on the doctrine of negligence per se. There is ample evidence in the deposition of Plaintiff, , that his/her negligence was the cause of the accident. See excerpts of deposition attached hereto and incorporated herein by reference as Exhibit "A". Additionally, the fact that a person may be guilty of negligence per Se does not, under Mississippi law, establish a party's liability For example in *McRee v. Rainey*, 493 So.2d 1299 (Miss. 1986), the Court held that negligence per se constitutes evidence of a breach of duty, but does not constitute proximate cause or damages, nor does it establish the Defendant's liability. Id.

7.

submits that the doctrine of collateral estoppel clearly has no application in the case at bar. further submits that there are genuine issues of material fact for a jury to decide which prohibits the entry of summary judgment at this time. , therefore, respectfully requests the Court to deny the Plaintiffs' Motion for Partial Summary Judgment on the Issue of Liability.

WHEREFORE, PREMISES CONSIDERED, Defendant, , respectfully requests the Court to enter an Order denying the Plaintiffs' Motion for Partial Summary Judgment on the Issue of Liability.

Respectfully submitted, this the day of , .

By: _____
ATTORNEYS FOR DEFENDANT,

CERTIFICATE OF SERVICE

I, do hereby certify that I have this day mailed a true and correct copy of the above and foregoing **DEFENDANT'S RESPONSE TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE ISSUE OF LIABILITY** to the following counsel of record:
