IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN
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COLLISTER MCKINLEY FAHIE,	)	
	)	**CASE NO. ST-16-CV-646**
Plaintiff,	)	
v.	)	**ACTION FOR FRAUD,**
	)	**DEFAMATION, INJURIOUS**
	)	**FALSEHOOD, CONSPIRACY,**
BANK OF NOVA SCOTIA,	)	**INENTIONAL INFLICTION OF**
	)	**EMOTIONAL DISTRESS**
	)	
Defendant.	)	**JURY TRIAL DEMANDED**

Cite as: 2019 VI Super 40U

MEMORANDUM OPINION

¶1 Before the Court is Defendant Bank of Nova Scotia's Motion to Dismiss, which was filed on December 16, 2016. Plaintiff Collister McKinley Fahie filed a response on December 29, 2016, and Bank of Nova Scotia (BNS) filed a reply on January 25, 2017. On September 18, 2018, the Court issued an Order converting BNS's Motion to Dismiss into a Motion for Summary Judgment and provided the parties an appropriate time to respond. BNS filed Defendant's Response to September 18, 2018 Order on October 19, 2018, and on October 31, 2018, Fahie filed Plaintiff's Renewed Motion for Summary Judgment and Response to Defendant's Response to September 18, 2018 Order.[1] Being fully briefed, the Court will grant BNS's motion.

I. BACKGROUND

¶2 On October 31, 2016, Fahie filed his Complaint for Fraud, Negligence, Breach of Contract, Intentional Infliction of Emotional Distress and Negligent Infliction of Emotional Distress. According to Fahie, United We Stand Sports Club, Inc. (UWS) was incorporated on January 19, 1999, with Fahie serving as the President and Agent for Service of Process for UWS. On or about January 14, 2000, Fahie and Judy Roland-Fahie opened checking account #1304414 for UWS through BNS, with Fahie being a signatory on that account.

¶3 The Complaint states that, around 2006, Fahie informed BNS that his name and signature were added to three new bank accounts associated with the United States Virgin Islands Soccer Federation, without his knowledge or consent, by the then President of the Soccer Federation and BNS Manager Derrick Martin.[2] Fahie complained of bank fraud, wire fraud, and identity theft to BNS but to no avail.[3] Between November and December 2010, BNS charged a fee for insufficient

[1] Though titled as a Renewed Motion for Summary Judgment, Fahie's document is more properly treated as a response to BNS's now-converted Motion for Summary Judgment. However, the Court will still reference the document as its titled.
[2] Compl. ¶ 19.
[3] Compl. ¶ 20.

funds in the UWS checking account due to an allegedly unauthorized check written against the account. Fahie asserts that, November 30, 2010, he requested that BNS stop all checks written from the UWS bank account so as to avoid any fraudulent transactions.[4] Despite this request, according to Fahie, the same check that was previously rejected – check #1062 – was redeposited on December 15, 2010, and again was rejected for insufficient funds, which resulted in another fee charged to the UWS account.[5]

¶4 Fahie contends that BNS knew that the persons that signed check #1062 were not signatories on the account and purposefully failed to report that fact to the police.[6] Fahie further asserts that, on January 5, 2011, BNS verbally informed him that it was conducting an investigation of the UWS bank account and had frozen the account until the completion of investigation.[7] From Fahie's perspective, however, BNS intentionally misinformed Fahie with this information so that Dwight Ferguson, Sr., Monique Chetram, and others could file new Articles of Incorporation for UWS, become signatories on the account, and essentially "colluded and conspired in the 'set up' of [Fahie] which resulted in his arrest, incarceration, defamation and severe injury."[8]

¶5 With these facts, the Court turns to BNS's motion.

II. LEGAL STANDARD

¶6 Summary judgment is appropriate where the "pleadings, discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."[9] The moving party bears the burden of demonstrating there is no genuine issue of material fact.[10] A fact is material only if its existence or non-existence will affect the outcome of a lawsuit under applicable law, and a dispute over a material fact is genuine only if the evidence is such that a reasonable fact-finder could return a verdict for the nonmoving party.[11] Thereafter, the non-moving party must show specific facts to establish a genuine issue for trial.[12]

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[4] Compl. ¶ 27.
[5] Compl. ¶¶ 30-31.
[6] Pl.'s Renewed Mot. for Summ. J. and Resp to Def.'s Resp to September 18, 2018 Order 4.
[7] Compl. ¶ 34.
[8] Compl. ¶¶ 29, 37-44
[9] *Guardian Gen. Insurance Ltd, v. Caribbean Food Servs., Inc.*, Super Ct Civil No. ST-15-CV-253, 2016 V.I. LEXIS 215, at *5 n.4 (V.I. Super. Ct. Oct. 24, 2016).
[10] *Williams v. United Corp.*, 50 V.I. 191, 194 (V.I. 2008); *United Corp. v. Hamed*, 64 V.I. 297, 309 (V.I. 2016). Even though the Supreme Court of Virgin Islands in *Williams v. United Corp.* set out a framework for adjudicating motions for summary judgment pursuant to the now-abrogated Federal Rule of Civil Procedure 56(a), the Court finds *Williams's* analysis convincing and suitable for considering motions for summary judgment pursuant to V.I. Civ. R. 56(a). The Court notes that the two rules have identical text. Therefore, the Court will continue to use the standard of review set forth in precedent set the V.I. Court.
[11] *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 247-48 (1986). The Court notes the U.S. Supreme Court's interpretation of federal procedural rules is not binding precedent for the Superior Court. However, the Court considers the U.S. Supreme Court's interpretation of Federal Rule of Civil Procedure 56 sound and adopts its analysis.
[12] *Williams v. United Corp.*, 50 V.I. at 194 (citing Fed. R. Civ. P. 56(e)).

¶7 The "[c]ourt must view the inferences to be drawn from the underlying facts in the light most favorable to the non-moving party, and ... must take the non-moving party's conflicting allegations as true if 'supported by proper proofs.'"[13] "Th[e] [c]ourt may not itself weigh the evidence and determine the truth; rather, we decide only whether there is a genuine issue for trial such that a reasonable jury could return a verdict for the non-moving party."[14] Then, if there is no genuine issue of material fact, the court must determine whether the movant is entitled to judgment as a matter of law.[15]

III. ANALYSIS

¶8 BNS's motion to dismiss – now a motion for summary judgment – presents two questions for the Court to decide: (1) whether the causes of action in Fahie's complaint are barred by way of *res judicata*; and (2) if not, whether those causes of actions are time-barred by the relevant statute of limitations set forth in V.I. Code Ann. tit. 5, § 31. In deciding these questions, the Court acknowledges that Fahie is a pro se litigant and considers such when analyzing his pleadings. Virgin Islands courts provide pro se litigants with "greater leeway in dealing with matters of procedure and pleading."[16] Pro se filings are liberally construed, and the Court must "allow[for] reasonable accommodations for the pro se litigant so long as no harm is done [to] an adverse party."[17]

¶9 Before addressing the claims in BNS's motion, however, the Court must preliminarily consider BNS's concerns about the Court's determination to convert its motion to dismiss into one for summary judgment. In its response to the Order issued on September 18, 2018, BNS asserted that *res judicata* is "traditionally not a summary judgment finding but a motion to dismiss," that the Court *must* take judicial notice of its own records, and that converting its motion to dismiss into one for summary judgment is averse to the promotion of judicial economy underlying the principle of *res judicata*.[18]

¶10 First, though *res judicata* can be analyzed on a motion to dismiss, it is not uncommon for courts to consider claims of res judicata on motions for summary judgment. Both federal and state courts have considered *res judicata* claims on a motion for summary judgment without difficulty.[19]

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[13] *Id.* (citations omitted).
[14] *Id.* at 195 (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 255).
[15] V.I. R. CIV. P. 56(c).
[16] *Joseph v. Bureau of Corrections*, 54 V.I. 644, 650 (V.I. 2011).
[17] *Smith v. Empls. of the Bureau of Corrections*, 64 V.I. 383, 392 (V.I. 2016) (Swan, J., concurring in part and dissenting in part) (quoting *Bernhardt v. Bernhardt*, 51 V.I. 341, 352 n.8 (V.I. 2009)).
[18] Def.'s Resp. to September 18, 2018 Order 1-3.
[19] *See Morgan v. Federal Aviation Administration*, 657 F. Supp. 2d 146, 151-54 (D.D.C. 2009) (granting summary judgment on basis of res judicata); *Maicobo Inv. Corp. v. Von Der Heide*, 243 F. Supp. 885, 890 (D. Md. 1965) ("The defense of res judicata may be raised in a federal court by a motion for summary judgment."); *Hall v. Gulaid*, 140 A.3d 396, 400 (Conn. App. Ct. 2016) ("Summary judgment is the appropriate method for resolving a claim of res judicata."); *Sena v. Pereira*, 179 So. 3d 433, 435 (Fla. Dist. Ct. App. 2015) ("Summary judgment may be granted based on the doctrine of res judicata."); *Ross Adver., Inc. v. Heartland Bank & Trust Co.*, 969 N.E.2d 966 (Ill. App. Ct. 2012) ("[S]ummary judgment may be granted on the basis of *res judicata* or collateral estoppel."); *Palmer v. Walker*, 31 So. 3d 443, 444 (La. Ct. App. 2010) ("[A] plea of res judicata may be raised by motion for summary

Although BNS characterizes the defense of *res judicata* as being one historically brought on a motion to dismiss,[20] it is important to remember that, "[o]rdinarily, the defense of res judicata is pleaded as an affirmative defense under [Rule 8(c)],"[21] and is generally considered if raised in dispositive motions where no prejudice against the non-moving party exists.[22]

¶11 Second, BNS fails to provide any legal support for the assertion that the Court *must* take judicial notice of its own records. The Court is aware that it "may take judicial notice of docket entries, pleadings and papers in other cases"[23] under Rule 201 of the Virgin Islands Rules of Evidence. But nowhere in that rule or accompanying case law does it say that the Court is required to do so without retaining discretion.[24] Indeed, Rule 201 explicitly states that the Court "may take judicial notice on its own[,] or must take judicial notice *if* a party requests it and the court is supplied with the necessary information."[25] BNS never requested that the Court take judicial notice of Fahie's prior complaint filed in Case Number ST-14-CV-623 in either its initial motion to dismiss or its response to the Court's September 18, 2018 Order. In fact, not only did BNS fail to request that the Court take judicial notice of these court documents, but it attached the documents as factual exhibits for the Court to consider in deciding BNS's Motion to Dismiss – which is the very action that BNS now avers is not within the power of the Court to perform.

¶12 Lastly, BNS insists that the Court's conversion of its Motion to Dismiss into one for summary judgment frustrates the principle of judicial economy underlying the doctrine of *res judicata*. To the contrary, the Court finds that deciding the issues before it on a motion for summary judgment furthers judicial economy in this instance. BNS moved to dismiss this action based on

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judgment when there is no genuine issue as to any material fact."); *George v. California Unemployment Ins. Appeals Bd.*, 102 Cal. Rptr. 3d 431, 441 (Cal Ct. App. 2009) ("Summary judgment is an appropriate remedy when the doctrine of res judicata in its subsidiary form of collateral estoppel refutes all triable issues of fact suggested by the pleadings.") (internal quotation marks and citation omitted).

[20] The *Cenni v. Est. Chocolate Hole Landowners Assn., Inc.*, Case No. ST-15-CV-383, 2016 V.I. LEXIS 98, at *22 (V.I. Super. Ct. July 18, 2016), court, cited by BNS for this proposition, relied upon the Supreme Court of the Virgin Islands' decision in *Smith v. Turnbull*, 54 V.I. 369 (V.I. 2010). The Supreme Court in *Smith*, however, was presented with a situation where motions to dismiss under Rule 12(b) had been filed *after* the defendants' answer. *Smith*, 54 V.I. at 374. In the motion to dismiss based on res judicata, the defendants had failed to specify which Rule 12(b) subsection they were relying upon, and in that context, the Supreme Court concluded that motions to dismiss based on res judicata are properly characterized under Rule 12(b)(6). *Id.* at 374 n.4. In other words, if a litigant asserts the defense of res judicata on a motion to dismiss, courts should treat that motion to dismiss as being brought under Rule 12(b)(6). This assertion, however, does not stand for the proposition that a res judicata defense is traditionally or commonly brought on a motion to dismiss, but rather, if it is brought on such a motion, it should be characterized as being asserted under Rule 12(b)(6).

[21] *United States v. Alaska*, 197 F. Supp. 834, 836 (D. Alaska 1961).

[22] *See Harris v. Secretary, United States Dep't of Veterans Affairs*, 126 F.3d 339, 345 (D.C. Cir. 1997) (finding that "a party must first raise its affirmative defenses in a responsive pleading before it can raise them in a dispositive motion.").

[23] *Mua v. Maryland*, ELH-16-01435, 2017 U.S. Dist. LEXIS 21813, at *14 (D. Md. Feb. 15, 2017) (internal quotation marks omitted).

[24] *See* V.I.R.E. 104(a) ("The court must decide any preliminary question about whether . . . evidence is admissible. In so doing, the court is not bound by evidence rules, except those on privilege.").

[25] V.I.R.E. 201(c) (emphasis added).

the defense of *res judicata* and statute of limitations.[26] Regarding the statute of limitations defense, the Supreme Court of the Virgin Islands has stated that "the statute of limitations defense is an affirmative defense involving issues of fact, [and] typically cannot be decided on the pleadings alone."[27] On a Rule 12(b)(6) motion, "[t]he time bar must be evident on the face of the complaint[,]"[28] and Fahie's Complaint simply does not unequivocally account for the germane timeframes. Hence, given the factual nature of the statute of limitations defense and the longstanding principle that a plaintiff need not anticipate any affirmative defenses that a defendant might raise in an answer,[29] the Court found it more economical to provide the parties the opportunity to present evidence on both issues, and Fahie's status as a pro se litigant reinforces this determination.

¶13 Having addressed BNS's concerns, the Court will next determine whether Fahie's Complaint is barred by *res judicata*.

A. The five causes of action in Fahie's Complaint are barred under *res judicata*.

¶14 The common-law doctrine of *res judicata*[30] prohibits a party from relitigating causes of action against a person where those same claims were previously adjudged in an action against the same party. In other words, "[t]he doctrine of claim preclusion (the here-relevant aspect of res judicata) prohibits 'successive litigation of the very same claim' by the same parties."[31] *Res judicata* is "premised on fairness to the defendant and sound judicial administration,"[32] and the Supreme Court of the Virgin Islands, upon conducting a *Banks* analysis, has concluded that "res judicata represents the soundest rule for the Virgin Islands because it protects litigants 'from the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions."[33]

¶15 To succeed on a claim of *res judicata*, the invoking party must satisfy three elements: "(1) the prior judgment was valid, final, and on the merits; (2) the parties in the subsequent action are identical to or in privity with parties in the prior action; and (3) the claims in the subsequent action arise out of the same transaction or occurrence as the prior claims."[34] Because both Fahie and BNS

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[26] Although, it appears that BNS has either forgotten about or abandoned its statute of limitations argument, as BNS does not reference its statute of limitations argument in its response.

[27] *United Corporation v. Hamed*, 64 V.I. 297, 306 (V.I. 2016) (internal quotation marks omitted).

[28] *Perelman v. Perelman*, 545 F. App'x 142, 149 (3d Cir. 2013).

[29] *See Mills-Williams v. Mapp*, 67 V.I. 574, 596 (V.I. 2017) ("[O]rdinarily[,] a plaintiff need not anticipate an affirmative defense when filing a complaint."); *Rennie v. Hess Oil V.I. Corp.*, 62 V.I. 529, 544 (V.I. 2015) ("Rennie . . . was not required to anticipate in his complaint any affirmative defenses HOVIC might raise in its answer[.]").

[30] While *res judicata* broadly encompasses the related doctrines of claim preclusion and collateral estoppel, otherwise known as issue preclusion, the Court's analysis here focuses only on claim preclusion. *See Allen v. McCurry*, 449 U.S. 90, 94 (1980) (discussing "the related doctrines of *res judicata* and collateral estoppel."); *Montana v. United States*, 440 U.S. 147, 153 (1979) (discussing same).

[31] *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292, 2305 (2016) (citing *New Hampshire v. Maine*, 532 U.S. 742, 748 (2001)).

[32] *Stewart v. Virgin Islands Board of Land Use Appeals*, 66 V.I. 522, 531 (V.I. 2017).

[33] *Id.* at 532 (quoting *Montana v. United States*, 440 U.S. 147, 153-54 (1979).

[34] *Id.* (quoting *Cacciamani & Rover Corp. v. Banco Popular De Puerto Rico*, 61 V.I. 247, 255 (V.I. 2014)). *See Duhaney v. Attorney General of U.S.*, 621 F.3d 340, 347 (3d 2010) (listing same).

were a named party in the first suit and the current suit, no genuine issue of material exists as to the parties in question. Therefore, the Court's analysis will only focus on the first and third elements of *res judicata* as it pertains to Fahie's Complaint.

1. The dismissal of all counts in Second Amended Complaint against BNS in Case Number ST-14-CV-623 constitutes a final decision on the merits.

¶16 On a motion for summary judgment, the Court is tasked with determining whether there is a genuine issue of material fact as to the existence of a final prior judgment on the merits.[35] In *Stewart v. Virgin Islands Board of Land Use Appeals*, the Supreme Court of the Virgin Islands aptly explained what constitutes a decision on the merits:

> A decision is on the merits if it permanently forecloses a party from further advancing a claim or defense. A decision may be on the merits for purposes of res judicata even if it does not actually resolve the underlying substantive issues, especially if a litigant does not avail himself of opportunities to pursue remedies in the first proceeding, or if he has flouted orders of the court.[36]

¶17 Here, the Court finds that the adjudication in the first suit, Case Number ST-14-CV-623, in favor of BNS constituted a final decision on the merits. In that case, on November 18, 2015, Judge Michael Dunston issued a Memorandum Opinion granting BNS's motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure and subsequently issued an Order dismissing all counts in the Second Amended Complaint against BNS with prejudice. The granting of a motion to dismiss under Rule 12(b)(6) is a decision on the merits,[37] as it "ends the litigation . . . and leaves nothing for the court to do but execute the judgment."[38] Therefore, it must follow that Judge Dunston's granting BNS's motion to dismiss constituted a final decision on the merits for the purposes of *res judicata*.

2. The causes of action against BNS in this matter arise out of the same transactions or occurrence as the causes of action against BNS in Case Number ST-14-CV-623.

¶18 To determine whether a cause of action arises out of the same transaction or occurrence, courts rely on one of two approaches: the same evidence test and the transactional test. In *Stewart*, the Supreme Court of the Virgin Islands concluded that the transactional test represents the soundest rule for the Virgin Islands:

> Utilizing the transactional test, we must evaluate whether or not the legal theories or rights asserted in [the second suit] were raised or could have been raised in the [first suit] based on the conduct, transaction, or occurrence giving rise to that action,

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[35] *Morgan*, 657 F. Supp. at 152-53.
[36] *Stewart*, 66 V.I. at 533-34 (internal citations omitted).
[37] *Federated Dept. Stores, Inc. v. Moitie*, 452 U.S. 394, 399 n.3 (1981); *Bank of Nova Scotia v. Flavius*, Super. Ct. Civil No. SX-16-CV-125, 2018 V.I. LEXIS 14, at *3 n.23 (V.I. Super. Ct. Feb. 2, 2018).
[38] *Hard Rock Café v. Lee*, 54 V.I. 622, 638 (V.I. 2011) (Swan, J. concurring in part and dissenting in part) (quoting *Riley v. Kennedy*, 553 U.S. 406, 419 (2008)).

> regardless of the legal elements or evidence upon which [the first suit's pleadings] depended, or the particular remedies sought.
>
> Under this test, the measure of a cause of action is the aggregate of connected operative facts that can be handled together conveniently for purposes of trial. A prior judgment bars a later suit arising out of the same aggregate of operative facts even though the second suit relies on a legal theory not advanced in the first case, seeks different relief than that sought in the first place, and involves evidence different from the evidence relevant to the first case.[39]

Application of this standard requires a "pragmatic[] consider[ation of] whether the [connected operative] facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage."[40]

¶19 Numerous factual similarities exist between the Second Amended Complaint in Case Number ST-14-CV-623 and the Complaint in this matter. In both, Fahie asserts that Steven Gardner and Daniel Rogers, employees of BNS, made several false statements to the Virgin Islands Police Department in October 2011 regarding Fahie and the UWS bank account.[41] In both complaints, Fahie referenced Gardner's statements to the VIPD regarding Fahie's withdrawal of $1,000 from the UWS account,[42] and argued that BNS conspired with other people to have him wrongfully investigated, arrested, charged, and later incarcerated.[43] Further, both complaints refer to BNS's decision to freeze the UWS account due to several discrepancies,[44] and competing documents that offer conflicting information on UWS signatories and personnel.[45]

¶20 Essentially, the factual similarities between the two suits cannot be overlooked – which neither party attempts to do – and the Court finds that the complaint in this matter is based on the substantially similar, if not the same, allegations, actions, and inactions occurring between Fahie, BNS, Daniel Rogers, Steve Gardner, Derrick Martin, and others, between the years 2010 and 2012 that served as the basis for Fahie's causes of action against BNS in Case Number ST-14-CV-623. The main difference between Fahie's Complaint here and his Second Amended Complaint in Case Number ST-14-CV-623 is the emphasis that he places on certain events or people. For instance, in his Second Amended Complaint, Fahie focuses primarily on the statements given by Rogers, Gardner, and Martin.[46] In this matter, Fahie focuses more on the actions and inactions of BNS and its employees regarding the UWS bank account.[47] This difference in emphasis, however, does not

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[39] *Stewart*, 66 V.I. at 542-43 (internal citations omitted).
[40] *Id.* at 543 (internal quotation marks omitted).
[41] Mot. to Dismiss, Ex. A; Compl. ¶¶ 6, 8-10.
[42] Mot. to Dismiss, Ex. A; Compl. ¶ 12.
[43] Mot. to Dismiss, Ex. A; Compl. ¶ 24.
[44] Mot. to Dismiss, Ex. A; Compl. ¶ 34.
[45] Mot. to Dismiss, Ex. A; Compl. ¶¶ 38-44.
[46] Mot. to Dismiss, Ex. A.
[47] *See generally* Compl.

detract from the inevitable conclusion that the two complaints in question are factually related and arise out of the same transactions and occurrences.[48]

¶21 Because the factual bases for the five counts in Fahie's Complaint in this matter – Fraud (I); Negligence (II); Breach of Contract (III); Intentional Infliction of Emotional Distress (IV); and Negligent Infliction of Emotional Distress (V) – are "related in time, space, origin, or motivation," as those found in his Second Amended Complaint in Case Number ST-14-CV-623, Fahie should have raised these legal theories against BNS in the Second Amended Complaint. Each of the five counts in the Complaint in this matter are based on the same common nucleus of events: statements made by Gardner, Rogers, and Martin to the VIPD; confusion and discrepancies over the authorized signatories for the UWS account and certain transactions; freezing the UWS account due to the previously described discrepancies; and BNS's actions and inactions leading to the arrest, charging, and incarceration of Fahie in 2012.[49] The fact that the none of the five counts here were found in Fahie's Second Amended Complaint in Case Number ST-14-CV-623 is inconsequential given that information on which Fahie now relies is the same information that was at his disposal at the time of his filing his Second Amended Complaint.

¶22 It follows, then, that no genuine issue of material fact exists as to whether Fahie's current Complaint arises out of the same transaction or occurrences that served as the basis for his Second Amended Complaint in Case Number ST-14-CV-623.[50] Since no genuine issue of material fact exists as to the three prongs of *res judicata*, BNS is entitled to judgment as a matter of law.

B. Fahie's Motion for Summary Judgment must be denied under *res judicata*.

¶23 Fahie's pending Motion for Summary Judgment that was filed on May 26, 2017, will be denied because it relies on the same factual transactions and occurrences that served as the basis for granting BNS's motion under *res judicata*. Fahie also presents arguments similar to those asserted in his response to the Court's September 18, 2018 Order converting BNS's motion into one for summary judgment. The Court's reasoning and conclusions pertaining to BNS's motion is equally applicable to Fahie's motion, and as a result, the Court will deny Fahie's motion.

IV. CONCLUSION

¶24 *Res judicata* requires a prior final and valid judgment on the merits, parties identical to or in privity with the parties in the prior law suit, and claims that arose out of the same transactions or occurrences as those in the prior law suit. No genuine issue of material fact exists as to the

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[48] *Cf. Sheffield v. Sheriff of the Rockland County Sheriff Dep't*, 393 F. App'x 808, 813 (2d Cir. 2010) ("Sheffield's state petition made claims [of] alleged discrimination . . . in employment practices, unequal treatment of minorities, and a hostile work environment . . . precisely the same broad allegations made in the federal complaint. That the EEOC letters attached to Sheffield's federal complaint contained 'more specific allegations of counduct' . . . does not change the fact that the two complaints assert claims that are part of the same 'series of connected transactions[.]'").

[49] *See generally* Compl.

[50] In fact, in his response to the Court's September 18, 2018 Order, Fahie himself states that no genuine issue of material fact exists before the Court. Pl's Renewed Mot. for Summary Judgment and Resp. to Def.'s Resp. to September 18, 2018 Order 10.

existence of these three requirements. Therefore, the Court finds that BNS is entitled to judgment as a matter of law and will grant summary judgment in its favor. A separate Judgment will issue consistent with this Memorandum Opinion.

DATE: 3/19/2019

DENISE M. FRANCOIS
Judge of the Superior Court
of the Virgin Islands

ATTEST:
Estrella H. George
Clerk of the Court

By: _____
Lori Boynes-Tyson
Chief Deputy Clerk 3/19/19