

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

WAKE COUNTY

BRIAN CECCARELLI, TIMOTHY CASPERSON)

PAUL D. METTERS, and LORI MILLETTE,)

individually and as class representatives,)

Plaintiff,)

v.)

TOWN OF CARY,)

Defendant.)

COMPLAINT

Plaintiffs, complaining of Defendant, allege and say:

1. All Plaintiffs are residents of Wake County, North Carolina.

2. Defendant, Town of Cary, is a political subdivision of the state of North Carolina, organized and operating as a municipal corporation, pursuant to North Carolina General Statute 160A with the capacity to be sued. Defendant’s principal offices are located in Wake County, North Carolina.

3. Pursuant to S.L. 2001-286 (as amended by S.L. 2003-380), the Town of Cary adopted ordinance Sec. 34-303 entitled “offenses” (hereinafter “the Ordinance”) as part of Article X of the Cary Town Ordinances entitled “Automated Traffic Control Systems” (hereinafter “Article X”) on May 26, 2005. A copy of Article X is attached hereto as Exhibit A.

4. On April 27, 2006 the Town of Cary adopted ordinance TC06-007 entitled “Ordinance Adopting Revisions to the Town Charter of the Town of Cary, North Carolina” (hereinafter “the Charter”). The relevant portion of the Charter is attached as Exhibit B.

5. Section 8.15 of the Charter (Section 11 of TC06-007) mandates that any traffic control photographic system operated by the Town of Cary meet requirements established by the North Carolina Department of Transportation.

6. The duration of the yellow light change interval at intersections where traffic control photographic systems are in use may be no less than the yellow light interval duration specified in Design Manual (hereinafter “the Manual”) developed by the Signals and Geometrics Section of the NCDOT (hereinafter “the NCDOT”).

7. The Ordinance makes it unlawful for a vehicle to cross the stop line into an intersection toward which a red light camera is in operation when the traffic signal for that vehicle’s direction of travel is emitting a steady red light.

8. Any violation of the Ordinance is a civil violation for which a civil penalty of \$50 is assessed by the Town of Cary.

9. The Town of Cary operates or has operated 18 Automated Traffic Control photographic systems a list of which is attached as Exhibit C.

FIRST CLAIM FOR RELIEF

10. Paragraphs 1-9 of this Complaint are incorporated into this First claim for Relief as if fully set out herein.

11. On November 6, 2009 at 09:27 PM Plaintiff Ceccarelli drove his vehicle eastbound on Cary Towne Blvd crossing its intersection with Convention Drive.

12. The speed limit on the relevant portion of Cary Towne Blvd is 45 mph.

13. The NCDOT Traffic Signal Plan for the intersection of Cary Towne Blvd and Convention Drive was planned when the speed limit of Cary Towne Blvd was 35 mph.

14. Subsequent to the implementation of NCDOT Traffic Signal Plan for the intersection of Cary Towne Blvd and Convention Drive the speed limit on the relevant portion of Cary Towne Blvd was increased to 45 mph.

15. The duration of the yellow light change interval at the intersection of Cary Towne Blvd and Convention Drive is shorter than required by the Manual.

16. The operation of the Automated Traffic Control system and the enforcement of the Ordinance by the Defendant with respect to this intersection is conducted in an arbitrary and capricious manner and in violation of the law.

17. The Plaintiff is not afforded the same protections of a yellow light duration as other drivers at comparable intersections.

18. Plaintiff Ceccarelli was unable to safely stop his vehicle before the traffic signal turned red in his path of travel.

19. Plaintiff Ceccarelli was issued a Notice of Violation of Cary Town Code 34-303 on November 10, 2009 by the Town of Cary.

20. Plaintiff Ceccarelli paid the civil penalty of \$50 demanded by the Town of Cary.

21. Plaintiff Ceccarelli appealed this violation on December 2, 2009 and appeared before a panel established by the Town of Cary which found on January 20, 2010 that Plaintiff violated Cary Town Code 34-303.

22. Plaintiff Ceccarelli has exhausted his administrative appeals

SECOND CLAIM FOR RELIEF

23. Paragraphs 1 through 9 of this Complaint are incorporated into this Second Claim for Relief as if fully set out herein.

24. On September 22, 2010 Plaintiff Casperson was traveling west on Cary Parkway and turned left at the intersection of Cary Parkway and Kildaire Farm Road.

25. Earlier in 2010 Plaintiff Millette was traveling North on Kildaire Farm Road and turned left at the intersection of Kildaire Farm Road and Cary Parkway.

26. On October 19, 2008 Plaintiff Metters was traveling east on Walnut Street and turned left at the intersection of Walnut Street and Meeting Street.

27. The speed limit at all relevant times and on the relevant portions of Cary Parkway at all relevant times was 45 mph.

28. The speed limit at all relevant times and on the relevant portions of Walnut Street is 45 mph.

29. The left turn yellow light arrow durations are determined using the assumption that vehicles turning left will be traveling 20 to 30 mph.

30. Plaintiffs Casperson, Metters and Millette were unable to safely stop their vehicle before the traffic signal turned red in their respective path of travel.

31. Plaintiff Casperson was issued a Notice of Violation of Cary Town Code 34-303 respectively on October 4, 2010 by the Town of Cary.

32. Plaintiff Millette and Metters were issued a Notice of Violation of Cary Town Code 34-303 subsequent to the date of their respective violations alleged by the Town of Cary.

33. Plaintiffs Casperson, Millette, and Metters, paid the civil penalty of \$50 demanded by the Town of Cary.

34. The Defendant uses the NCDOT's methodology and plans, which in the case of these left turns is arbitrary and capricious for the yellow light duration for left turning drivers where there is a yellow turn arrow.

The following paragraphs apply to both Claims for Relief:

35. Plaintiffs bring this claim for relief pursuant to N.C.G.S. § 1-253 *et. seq.*, and Rule 57 of the North Carolina Rules of Civil Procedure for a judgment awarding a refund for all sums paid by Plaintiff under the Ordinance to the date of judgment.

36. There exists a class which includes the above-named Plaintiffs and all others

similarly situated who were issued similar notice of violation and paid the civil penalty of \$50 and are subject to the Ordinance and the penalties imposed thereby. The named and unnamed members of the class have an interest in the same issues of fact and law, and these issues predominate over issues affecting only individual class members.

37. The named Plaintiffs and the unnamed class members have an actual controversy with the Town of Cary.

38. The named Plaintiffs and the unnamed class members have a genuine personal interest in the outcome of this litigation in that each is subject to the Ordinance and the penalties imposed thereby. The named Plaintiffs and the unnamed class members will have to pay and have paid the penalty.

39. The Town of Cary has and will unlawfully obtain the penalties from the named Plaintiff and the unnamed class members through the operation of its Ordinance. The Town of Cary is obligated to refund fully all of the penalties to the named Plaintiffs and unnamed class members with interest. The named Plaintiff and the unnamed class members are entitled to a refund of any penalties as in an action for money had and received or other action for return of unlawfully obtained or collected moneys.

40. The named Plaintiffs will fairly and adequately represent the interest of all potential class members in that the named Plaintiffs have a genuine, personal, substantial and direct interest in successfully pursuing this case and they are situated similarly to the unnamed class members with respect to application of the Ordinance. The named Plaintiffs will adequately represent members of the class located outside of North Carolina as well, if any exist.

41. There is no conflict of interest existing between the named Plaintiffs and any potential class members as to the issues raised in this action.

42. There are many potential class members and therefore, the class is so numerous that it is impractical to bring them all before the Court except pursuant to a class action designation or certification under Rule 23 of the Rules of Civil Procedure.

43. Proceeding as a class action will provide a fair and efficient adjudication of this controversy without the need for a multiplicity of lawsuits. This matter should proceed as a class action. See Perry v. Union Camp Corporation, 100 N.C. App. 168 (1990); Crowe v. Citicorp, 319 N.C. 275 (1986).

44. The named and unnamed members of the class do hereby protest payment of the civil penalties and any payments made are paid under protest.

45. The Town of Cary is not immune from this suit for a permanent injunction or for return of unlawfully collected fees or the relief sought hereunder by any claim of governmental immunity.

46. In the alternative, assuming *arguendo* that governmental immunity might apply, Defendant has waived its governmental immunity from civil liability by obtaining liability

insurance as provided by N.C.G.S. § 153A-435 or by participation in a local government risk pool. The aforesaid policy or participation in the government risk pool was in full force and effect at all times material to the matters described herein.

WHEREFORE, Plaintiffs prays that the Court:

1. Certify this matter as a class action pursuant to Rule 23 of the North Carolina Rules of Civil Procedure;
2. Enter a judgment declaring that the application of the Ordinance to these named Plaintiffs and the unnamed Plaintiff similarly situated and the penalties imposed thereunder are void and unenforceable in that they are beyond the scope of and violative of the Town of Cary's enabling authority under the General Statutes, its charter, or other law as applied to the Plaintiff and the Plaintiff class;
3. Enter a judgment awarding as damages a full refund to the named Plaintiffs and the unnamed class members, in a sum to be determined at trial, of all monies collected pursuant to the Ordinance, plus interest as allowed by law;
4. Award Plaintiffs' reasonable attorneys fees from the common fund created for the Plaintiff class;
5. Award the named Plaintiff and unnamed class members any and all other and further relief that the Court deems just and proper; and
6. That the costs of the action be taxed against Defendant.

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Document/Cary Red Light/Complaint

EXHIBIT A

Sec. 8.15. Traffic control photographic system (red light cameras).

(a) A traffic control photographic system is an electronic system consisting of a photographic, video, or electronic camera and a vehicle sensor installed to work in conjunction with an official traffic control device to automatically produce photographs, video, or digital images of each vehicle violating a standard traffic control statute or ordinance.

(b) Any traffic control photographic system or any device which is a part of that system, as described in subsection (a) of this section, installed on a street or highway which is a part of the state highway system shall meet requirements established by the North Carolina Department of Transportation. Any traffic control system installed on a street within the Town of Cary shall meet standards established by the Town of Cary and shall be consistent with any standards set by the Department of Transportation.

(c) Any traffic control photographic system installed on a street or highway shall be identified by appropriate advance warning signs conspicuously posted not more than three hundred (300) feet from the location of the traffic control photographic system. All advance warning signs shall be consistent with a statewide standard adopted by the Department of Transportation in conjunction with the Town of Cary.

(d) The Town of Cary may adopt ordinances for the civil enforcement of G.S. 20-158 by means of a traffic control photographic system, as described in subsection (a) of this section. If the Town of Cary adopts an ordinance pursuant to this section then, notwithstanding G.S. 20-176, a violation of G.S. 20-158 detected only by a traffic control photographic system shall not be an infraction. If a violation of G.S. 20-158 is detected by both a law enforcement officer and a traffic control photographic system, the officer may charge the offender with an infraction. If the officer charges the offender with an infraction, a civil penalty issued by the Town of Cary for the same offense is void and unenforceable. An ordinance authorized by this subsection shall provide that:

(1) The owner of a vehicle shall be responsible for a violation unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The owner of the vehicle shall not be responsible for the violation if the owner of the vehicle, within thirty (30) days after receiving notification of the violation, furnishes the office of the mayor any one of the following:

a. An affidavit stating the name and address of the person or company who had the care, custody, and control of the vehicle at the time of the violation.

b. An affidavit stating that the vehicle involved was, at the time, stolen. The affidavit must be supported with evidence that supports the affidavit, including insurance or police report information.

c. An affidavit stating that the person who received the citation is not the owner or driver of the vehicle, or that the person who received the citation was not driving a vehicle at the time and location designated in the citation.

(2) Subdivision (1) of this subsection shall not apply, and the registered owner of the vehicle shall not be responsible for the violation, if notice of the violation is given to the registered owner of the vehicle more than 90 days after the date of the violation.

(3) A violation detected by a traffic control photographic system shall be deemed a noncriminal violation for which a civil penalty of fifty dollars (\$50.00) shall be assessed and for which no points authorized by G.S. 20-16(c) shall be assigned to the owner or driver of the vehicle nor insurance points as authorized by G.S. 58-36-65.

(4) The owner of the vehicle shall be issued a citation that shall be attached to photographic evidence of the violation that identifies the vehicle involved. The citation shall clearly state the manner in which the violation may be challenged. The owner of the vehicle shall comply with the directions on the citation. The citation shall be processed by officials or agents of the Town of Cary and shall be forwarded by personal service or first-class mail to the address given on the motor vehicle registration. If the owner fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the owner shall have waived the right to contest responsibility for the violation and shall be subject to a civil penalty not to exceed one hundred dollars (\$100.00). The Town of Cary may establish procedures for the collection of these penalties and may enforce the penalties by civil action in the nature of debt.

(5) The Town of Cary shall establish a nonjudicial administrative hearing process to review objections to citations or penalties issued or assessed under this section. The Town of Cary may establish an appeals panel composed of town employees to review objections. If the Town of Cary does not establish an appeals panel composed of town employees, the mayor shall review and make a final decision on all objections.

(e) The duration of the yellow light change interval at intersections where traffic control photographic systems are in use shall be no less than the yellow light change interval duration specified in the Design Manual developed by the Signals and Geometrics Section of the North Carolina Department of Transportation.

(f) The Town of Cary upon enacting an ordinance implementing a traffic control photographic system may enter into a contract with a contractor for the lease, lease-purchase, or purchase of the system. The Town of Cary may enter into only one contract for the lease, lease-purchase, or purchase of the system and the duration of the contract may be for no more than sixty (60) months. After the period specified in the contract has expired, the system shall either be the property of the Town of Cary or the system shall be removed and returned to the contractor.

(g) The clear proceeds from the citations issued pursuant to the ordinance authorized by this section shall be paid to the Wake County school fund. The clear proceeds from the citations shall mean the funds remaining after paying for the lease, lease-purchase, or purchase of the

traffic control photographic system; paying a contractor for operating the system; and paying any administrative costs incurred by the Town of Cary related to the use of the system.

(N.C.S.L. Ch. 2001-286; N.C.S.L. Ch. 2003-380; Ord. No. 06-001, § 11, 2-9-2006)