

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
2012 JUN 19 11 2 11
10-CVS-19903

NORTH CAROLINA
WAKE COUNTY

WAKE COUNTY S.C.

BRIAN CECCARELLI and LORI MILLETTE)
individually and as class representatives,)
)
Plaintiffs,)
v.)
TOWN OF CARY,)
)
Defendant.)

ORDER GRANTING
PLAINTIFFS' MOTION
FOR CLASS CERTIFICATION

This Cause came on before the undersigned Judge at the December 12, 2011 Session of Wake County Civil Superior Court on Plaintiffs' Motion for Class Certification. The hearing on this matter was held over to the January 10, 2012 motions session, and additional materials and argument were taken by the Court at that time. The Court took the motion under advisement and considered all of the materials produced by the parties for and against the Motion for Summary Judgment and with respect to Class Certification – including pleadings, affidavits, answers to interrogatories, exhibits, memoranda of law submitted by the parties, and arguments from both counsel for the Plaintiffs and counsel for the Defendant. Separate orders have previously been issued by the Court regarding other motions before the Court at the December 12, 2011 and January 10, 2012 hearings. Having reviewed the arguments of counsel and all matters of record, the Court makes the following findings and conclusions:

1. Plaintiffs, in their Complaint, challenge the application, at certain street intersections, of Defendant Town of Cary's ordinance making it unlawful for a vehicle to cross the stop line into an intersection toward which an automated traffic control photographic system (a.k.a. "red light camera") is in operation when the traffic signal for that vehicle's

direction of travel is emitting a steady red light. Cary Code of Ord. § 34-303. Any violation of this ordinance is a civil violation for which a civil penalty of \$50 is assessed by the Town of Cary. *Id.* at § 34-303,

2. Plaintiffs allege that the Town of Cary operates or has operated eighteen automated traffic control photographic systems. Plaintiffs assert that from 2004 to 2010, in order to operate a red light camera, the Town of Cary Charter required that the yellow light duration of the traffic signal where such a camera was installed be no less than the interval specified in the N.C. Department of Transportation Design Manual.
3. Plaintiff Ceccarelli alleges that on November 6, 2009, he drove his vehicle eastbound on Cary Towne Boulevard crossing its intersection with Convention Drive. This intersection has an automated traffic control photographic system installed by the Defendant. Plaintiff Ceccarelli alleges that the speed limit on the relevant portion of Cary Towne Boulevard was 45 mph. He further alleges that the NCDOT traffic signal plan of record was based on an incorrect speed limit of 35 mph, and that the yellow light duration for the intersection's traffic signal was less than that which would have been required by an accurate calculation of clearance time. Plaintiff Ceccarelli, therefore, asserts that he was unable to safely stop his vehicle before the traffic signal turned red in his respective path of travel.
4. Plaintiff Ceccarelli was issued Notice of Violation of Cary Town Code § 34-303 on November 10, 2009 and appeared before an appeal panel established by the Town of Cary. On January 20, 2010, the panel found Plaintiff Ceccarelli had violated Cary Town Code § 34-303. Plaintiff Ceccarelli has exhausted his administrative appeals.
5. Plaintiff Ceccarelli asserts that the traffic plan that he contends was inaccurate was used

until March 2010, and that this inaccuracy caused the duration of the yellow light to be less than the interval specified by the N.C. Department of Transportation and/or the Town Charter, and therefore, the utilization of automated traffic control photographic system by the Defendant at the intersection of Cary Towne Boulevard and Convention Center Drive was unlawful.

6. Plaintiffs, in their first claim for relief, seek to have a class certified of all drivers who were assessed a civil penalty for violations of Cary Town Code § 34-303 at the same type of intersection complained of by Plaintiff Ceccarelli – namely where the yellow light duration of the traffic signal at an intersection with an automated traffic control photographic system installed was set at a lower speed limit than the posted speed limit on the relevant roadway.
7. Plaintiffs, in their second claim for relief, claim that on May 7, 2010, Plaintiff Millette was traveling north on Kildaire Farm Road and turned left at the intersection of Kildaire Farm Road and Cary Parkway. This intersection has an automated traffic control photographic system installed by the Defendant. Plaintiffs assert that the posted speed limit for the relevant portion of Kildaire Farm Road was 45 mph.
8. Plaintiffs further assert that the duration of the left turn yellow light arrow for the above-described intersection was determined using the assumption that vehicles turning left would be traveling 20 to 30 mph. Plaintiffs contend that this assumption is not consistent with sound engineering principles and that it is not consistent with the interval specified in the NCDOT Design Manual, and that therefore, the utilization of automated traffic control photographic system by the Defendant at the intersection of Kildaire Farm Road and Cary Parkway, and other similar intersections, was unlawful.

9. Plaintiff Millette, after seeing the yellow light, contends that she was unable to safely stop her vehicle before the traffic signal turned red in her respective path of travel. She was issued a Notice of Violation of Cary Town Code §34-303 on May 21, 2010 by the Town of Cary. Plaintiff Millette paid the civil penalty of \$50, appealed the violation, and on August 18, 2010 appeared before an appeal panel established by the Town of Cary. The panel found she had violated § 34-303. Plaintiff Millette has exhausted her administrative appeals.
10. Plaintiffs, in their second claim for relief, seek to have a class certified of all drivers who were assessed a civil penalty for violations of Cary Town Code § 34-303 at the same type of intersection complained of by Plaintiff Millette – namely where the yellow light duration at an intersection with an automated traffic control photographic system was calculated under what the Plaintiffs contend was an arbitrary and capricious formula that assumed motorists would be going much slower than the posted speed limit before making a left turn.
11. The Court finds that the proposed classes (hereinafter referred to as the “Ceccarelli Class” and the “Millette Class”) are each so numerous that joinder of all members is impractical. While the record does not yet establish the actual number of potential plaintiffs for each class, the parties have provided estimates in their arguments and memoranda ranging from hundreds to tens of thousands, depending upon how narrowly the classes are defined. The Court finds that joinder of even the lowest of these estimates, namely hundreds of plaintiffs, would be impractical.
12. The Court finds that the members of the proposed classes share common questions of law and fact, namely whether the traffic control signals at intersections where automated

traffic control photographic systems were installed provided yellow light duration periods consistent with NCDOT Design Manuals and/or the Cary Town Charter and, if not, whether the failure to provide sufficient yellow light durations at such intersections provides a legal remedy for those class members who received and paid a Notice of Violation of § 34-303.

13. The Court further finds that the claims of the proposed class representatives are typical of absent class members.
14. The Court finds that the representative parties will fairly and adequately protect the interest of the classes. In making this determination, the Court finds that the named plaintiffs and their counsel do not have any conflicts of interest with other class members and the named plaintiffs and their counsel have demonstrated that they will prosecute the action vigorously on behalf of the classes. The Court is satisfied that the law firm of Stam & Danchie, PLLC has experience in class action litigation and complex litigation and that this firm, in conjunction with the firm of William W. Peaslee, Attorney at Law, PLLC, will be able to adequately litigate the class action.
15. The Court finds that questions of law and fact common to these classes predominate over questions affecting only individual members and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. Each of the proposed classes is sufficiently cohesive to warrant adjudication by representation. Adjudication of common issues will help achieve judicial economy.
16. While individualized issues exist within the classes, these issues do not predominate. One such individualized issue is whether the failure of some absent class members to exhaust their administrative remedies by appealing their citation deprives the Court of

subject matter jurisdiction. The Court concludes that the failure of absent class members (other than named plaintiffs) to exhaust their administrative remedies does not deprive the Court of subject matter jurisdiction because once Plaintiffs Ceccarelli and Millette gave their notices of appeal protesting the Defendant's actions, the Defendant was on notice that it could be facing similar claims in the future.

17. The Court finds that adequate notice can and will be given to all members of the classes through publication.

Based on the foregoing, the Court concludes that:

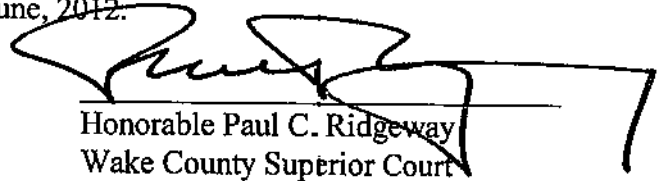
1. The Plaintiffs' Motion for Class Certification of Plaintiffs' First (Ceccarelli) and Second (Millette) Claim for Relief is ALLOWED.
2. The class for the First Claim for Relief (Ceccarelli) shall be those persons who were assessed a civil penalty for violation of Cary Ord. § 34-303 at the intersection of Cary Towne Boulevard and Convention Drive from December 2, 2009 through March 19, 2010. The inclusive dates are on or after the date that Ceccarelli gave notice of appeal of his citation until the yellow light interval duration at that intersection was changed.
3. The class for the Second Claim for Relief shall be those persons who were assessed a civil penalty for violation of Cary Ord. § 34-303 between August 1, 2010 through the date of trial while making a left turn maneuver at the same type of intersection complained of by Plaintiff Millette, specifically:
 - (i) traveling westbound on Maynard Road & turning left onto Kildaire Farm Road;
 - (ii) traveling westbound on Cary Parkway & turning left onto Kildaire Farm Road;
 - (iii) traveling northbound on Kildaire Farm Road & turning left onto Cary Parkway;

- (iv) traveling northbound on Cary Parkway & turning left onto High House Road; and
- (v) traveling southbound on Walnut Street & turning left onto Meeting Street.

The inclusive dates are August 1, 2010 through the date of trial. The inclusive date commences are on or after the date that Millette gave notice of appeal of her citation.

- 4. The Court is not ruling on the applicability of statute of limitations or statutes of repose defenses asserted by the Defendant. This order does not preclude the Defendant from raising these issues at a later time.

SO ORDERED, this the 19th day of June, 2012.



Honorable Paul C. Ridgeway
Wake County Superior Court

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