

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION
GENERAL CHANCERY SECTION

ROSIE JONES, DEBRA DEMBRY, and JANET
WITTENMYER, individually, and on behalf of all
others similarly situated.

Plaintiff.

v.

VILLAGE OF CRESTWOOD

Defendants.

TIMOTHY BAILEY, SHAUN SHOBUWALE, TOM
LEVIS, and ROBERT TAYLOR

Plaintiffs.

v.

VILLAGE OF CRESTWOOD

Defendants.

DANIEL J. LYNCH,

Plaintiff.

v.

VILLAGE OF CRESTWOOD

Defendants.

Case No. 2017 CH 13401

consolidated with

Case No. 2021 CH 00443

related to

Case No. 2017 M5 05792

Calendar 11

ORDER

This matter came on to be heard on Plaintiffs' Second Amended Motion for Class Certification. After considering the briefs and oral arguments, the Court grants the Motion.

THE PROPOSED CLASS AND SUBCLASS

These cases involve red light camera tickets issued by Defendant Village of Crestwood ("Defendant" or "Crestwood"). Plaintiffs in the three related cases claim that the traffic signals governing the dedicated right turn lanes at the intersection of Cicero Avenue and Cal Sag Road (the "Intersection") are not properly placed. As a result, they allege, red light camera tickets were improperly issued to persons turning right at the Intersection.

The Motion asks the Court to certify the following Class:

All persons who were issued a citation for a red light camera violation when turning right from Cicero Avenue onto Cal Sag Road in the Village of Crestwood, Illinois.

In addition, the Motion asks the Court to certify a Sub-class of persons who paid their citations. The proposed Sub-class is defined as follows:

All persons who were issued a citation for a red light camera violation when turning right from Cicero Avenue onto Cal Sag Road in the Village of Crestwood, Illinois, and who paid a fine, penalty, and/or interest thereon.

Neither the proposed Class nor the proposed Sub-class were limited to persons receiving citations during a specific time period.

Each of the three cases challenges the issuance of red light camera tickets at the Intersection. The first-filed action is a suit for administrative review. Plaintiff Daniel J. Lynch (a retired Circuit Court judge) received a ticket for failing to come to a complete stop at the Intersection on May 23, 2017. He challenged the ticket in an administrative hearing, arguing that the placement of the traffic signal violated the Manual on Uniform Traffic Control Devices (“MUTCD”). The Crestwood hearing officer ruled against him. On August 22, 2017, Judge Lynch brought suit for administrative review in *Lynch v. Village of Crestwood*, 17 M5 05792 (the “Lynch Action”). Before briefing was completed, the case was transferred to this Court as related to the *Jones* Action.

On October 5, 2017, Plaintiffs Rosie Jones, Debra Dembry and Janet Wittenmyer filed a class action complaint against Crestwood (the “*Jones* Action,” 17 CH 13401), challenging the issuance of red light camera tickets at the Intersection and asking for declaratory relief (Count I), an injunction (Count II), and damages for unjust enrichment (Count III). As the litigation proceeded, the Court denied Defendant’s Motion to Dismiss (June 28, 2018), its first Motion for Summary Judgment (October 10, 2019), and its Motion to Reconsider or to Certify the Question for Appellate Review (January 2, 2020). The parties conducted additional discovery and Defendant filed its second Motion for Summary Judgment.

On January 28, 2021, Plaintiffs Timothy Bailey, Shaun Shobowale, Tom Levis and Robert Taylor, Jr. filed their class action complaint against Crestwood (the “*Bailey* Action,” 21 CH 00443). It challenged the issuance of red light camera tickets at the Intersection and sought the same relief sought in *Jones*. The *Jones* and *Bailey* cases were consolidated on May 13, 2021. The Court denied the second Motion for Summary Judgment on December 9, 2021, holding that genuine issues of material fact remained, concerning whether the traffic signals were properly placed and were sufficiently legible to be seen by an ordinary person.

Plaintiffs filed their Second Amended Motion for Class Certification on January 21, 2022. After reviewing the briefs, the Court heard oral argument on June 13, 2022 and took the Motion under advisement. On August 19, 2022, the date set for status on ruling, the Court asked the parties to weigh in on adding a time limitation to the class definition. The Court heard further argument on that issue on August 23, 2022 and then issued this written ruling.

ANALYSIS

Certification of a class is governed by Section 2-801 of the Illinois Code of Civil Procedure, which provides:

An action may be maintained as a class action in any court of this State and a party may sue or be sued as a representative party of the class only if the court finds:

- (1) The class is so numerous that joinder of all members is impracticable.
- (2) There are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members.
- (3) The representative parties will fairly and adequately protect the interest of the class.
- (4) The class action is an appropriate method for the fair and efficient adjudication of the controversy.

735 ILCS 5/2-801.

The proponent of the class has the burden of establishing these four prerequisites. Decisions regarding class certification are within the sound discretion of the trial court, as long as that discretion is exercised within the framework of Section 2-801. *See Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill. 2d 100, 125-26 (2005). In deciding whether to certify a proposed class, the trial court “accepts the allegations of the complaint as true and should err in favor of maintaining class certification, but should avoid deciding the underlying merits of the case or resolving unsettled legal questions.” *CE Design Ltd. v. C&T Pizza, Inc.*, 2015 IL App (1st) 131465, ¶ 9 (internal citations omitted).

“Threshold Legal Issues”

Defendant first argues that it is premature for the Court to decide the certification issue. Defendant contends that (1) the Court should deny the Motion because Plaintiffs have failed to state a claim on which relief can be granted, and (2) the Court should first decide the threshold legal issue of whether the Intersection violates the MUTCD and the Illinois Vehicle Code.

The first argument has no merit. More than four years ago, the Court denied Defendant’s Motion to Dismiss and found that the *Jones* Action stated a claim. Defendant now argues that the proposed class definition contained in the pleadings—which excludes motorists who “have had their claims in this matter finally adjudicated and/or otherwise released”—would disqualify most of the named plaintiffs and any other proposed class members who did not challenge their tickets in an administrative hearing. The Court notes that the Motion does not ask the Court to include this exclusion in the proposed class definitions. Moreover, the Court already rejected the argument that Plaintiffs must exhaust their administrative remedies. Citing *Maschek v. City of Chicago*, 2015 IL App (1st) 150520, the Court in denying the Motion to Dismiss found that Plaintiffs in our case do not have to exhaust their administrative remedies because, among other reasons, this case challenges the administrative actions as void.

Defendant’s second argument also fails. Defendant argues that, before deciding whether or not to certify a class, the Court should decide:

Whether the red light camera tickets issued by the automatic traffic cameras for right turns from Cicero Avenue onto Cal Sag Road violate the Illinois Vehicle Code and/or the MUTCD and, therefore, are invalid.

This is the ultimate issue in the case, and it is a mixed question of law and fact. The Court has already decided, not once but twice, that this question raises a genuine issue of material fact. The cases Defendant cites are distinguishable, as they raised purely legal issues. *See Barbara's Sales, Inc. v. Intel Corp.*, 227 Ill. 2d 45 (2007); *Avery*, 216 Ill. 2d 100 (2005); *Alley 64, Inc. v. Soc'y Ins.*, 2022 IL App (2d) 21040.

The next logical step in this litigation, now that the Motion to Dismiss and the Motions for Summary Judgment have been denied, is class certification. At the class certification stage, Plaintiffs are not required to prove their case and trial courts should not rule on the factual merits of the claims. *Turnipseed v. Brown*, 391 Ill. App. 3d 88, 95 (1st Dist. 2009).

The Court will analyze the four statutory requirements to certify a class.

Numerosity

The court in *Wood River Area Dev. Corp. v. Germania Fed. Sav. & Loan Ass'n*, 198 Ill. App. 3d 445 (5th Dist. 1990) noted that there was “no bright line, no magic number” of class members needed to meet the numerosity requirement. The standard is whether or not “joinder of all members is impracticable.” 735 ILCS 5/2-801(1). While rejecting bright line rules, the court in *Wood River* nevertheless set forth some useful guidance from federal practice, which is appropriate to consider here:

“If the class has more than forty people in it, numerosity is satisfied; if the class has less than twenty-five people in it, numerosity probably is lacking; if the class has between twenty-five and forty, there is no automatic rule and other factors . . . become relevant.” (Quoting Miller, *An Overview of Federal Class Actions: Past, Present, and Future*, Federal Judicial Center, at 22 (1977)).

Id. at 450.

Although Plaintiffs have not proven the precise number of class members in this case, they have shown it is well above the 40-person guideline. In response to interrogatories, Crestwood disclosed it had issued over 80,000 tickets to drivers turning right at the Intersection. Defendant points out that this does not mean there are 80,000 class members, because some drivers may have received more than one ticket. But even if each class member received 10 tickets, the class still would have more than 8,000 members. Plaintiffs have satisfied the numerosity requirement.

Commonality

The next requirement is that the case must involve “questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members.” 735 ILCS 5/2-801(2). Plaintiff identifies the following common questions, among others:

- Whether the traffic signals for the through traffic on Cicero Avenue are in proper position and sufficiently legible to be seen by an ordinarily observant person in the Dedicated Right Turn Lanes;
- Whether the red light camera tickets issued by the automatic traffic cameras for right turns from Cicero Avenue onto Cal Sag Road violate the Illinois Vehicle Code, and therefore, are invalid;
- Whether the red light camera tickets issued by the automatic traffic cameras for right turns from Cicero Avenue onto Cal Sag Road violate the MUTCD, and therefore, are invalid; and
- Whether Crestwood was unjustly enriched as a result of its conduct.

Defendant argues that common questions do not predominate. Rather, they contend, this case will require inquiries into the knowledge and behavior of each individual class member—“including whether they were otherwise obeying traffic laws and whether they were able to see the stop light”—in order to establish their individual rights of recovery.

This argument disregards the standard for determining whether or not a ticket was validly issued. The standard is objective. The question is not whether each potential class member could see the traffic signal when they were ticketed, but whether the signal was properly placed according to MUTCD guidelines and was “sufficiently legible to be seen by an ordinarily observant person.” That issue is common to the class.

Defendant also contends that common issues do not prevail because the proposed class includes some individuals who have exhausted their administrative remedies and some who have not, some who have paid their tickets and some who have not. As the Court previously recognized, all proposed class members in this case are challenging their tickets as void, so exhaustion of administrative remedies is not required. Moreover, to the extent that some (but not all) class members may be entitled to recover damages because they paid their tickets, the proposed sub-class recognizes that difference. “In a class proceeding, if certain individual questions exist which may require individual determinations, these individual questions may be handled within subclasses, as long as the common issues predominate.” *Purcell & Wardrobe Chartered v. Hertz Corp.*, 175 Ill. App. 3d 1069, 1074-75 (1st Dist. 1988).

The Court finds that common questions predominate over any questions affecting only individual members.

Adequacy of Representation

The third requirement for class certification is that the class representatives “will fairly and adequately protect the interest of the class.” 735 ILCS 5/2-801(3). Plaintiffs ask the Court to approve as class representatives the Plaintiffs in the *Bailey* and *Lynch* cases: Timothy Bailey, Shaun Shobowale, Tom Levis, Robert Taylor, Jr., and Daniel J. Lynch.

In appointing class representatives, the standard is whether their interests are the same as those of the rest of the class, and whether they will fairly represent the class. *See Miner v. Gillette Co.*, 87 Ill. 2d 7, 14 (1981). The Court finds that the claims of the *Bailey* Plaintiffs

(Bailey, Shobowale, Levis, and Taylor) are typical of those of the proposed Class and Sub-class. Defendant issued automated traffic tickets to each of them for failure to observe a signal when turning right at the Intersection, so they fit within the definition of the Class. They also fit within the definition of the Sub-class, as they all paid their tickets. Further, they have all participated actively in this litigation.

Plaintiff Lynch's situation is a bit different. As Defendant points out, Lynch did not bring his case as a class action. That should not disqualify him from being a class representative, though. He received an automated ticket for turning right at the Intersection, so he fits within the definition of the Class. While he could not be a member of the Sub-class because he did not pay his ticket, he could still adequately represent members of the Class. The procedural history of his case shows he has vigorously advanced the arguments now brought by the Class.

Defendant argues that Lynch should not be a class representative because he (unlike many members) exhausted his administrative remedies. However, Lynch has not taken a position adverse to the rest of the Class. He does not contend that exhaustion of administrative remedies is necessary. If at some point the Court finds it useful to distinguish between members who have exhausted their remedies and those who have not, additional sub-classes could be created. *See Purcell*, 175 Ill. App. 3d at 1075.

The Court finds that Timothy Bailey, Shaun Shobowale, Tom Levis, Robert Taylor, Jr., and Daniel J. Lynch will fairly and adequately represent the interests of the class.

Defendant has not challenged the appointment of Plaintiffs' counsel (Zimmerman Law Offices, P.C. and Roth Fioretti, LLC) as class counsel. The Court has observed counsel's advocacy in this case and others, and finds they will fairly and adequately protect the interests of the class.

Appropriateness

Finally, a class action must be "an appropriate method for the fair and efficient adjudication of the controversy." 735 ILCS 5/2-801(4). The Court has determined that the class is numerous and that common questions prevail. The efficiency of determining the common issues in one proceeding is apparent.

In this case, many individuals have allegedly been issued invalid traffic tickets and, if they paid them, incurred damages too small to justify a separate action. Collectively, a court may efficiently adjudicate their claims. This is what class actions were designed to achieve.

CONCLUSION

The Court certifies the following Class:

All persons who were issued a citation since June 28, 2016 for a red light camera violation when turning right from Cicero Avenue onto Cal Sag Road in the Village of Crestwood, Illinois.

In addition, the Court certifies the following Sub-class:

All persons who were issued a citation since June 28, 2016 for a red light camera violation when turning right from Cicero Avenue onto Cal Sag Road in the Village of Crestwood, Illinois, and who paid a fine, penalty, and/or interest thereon.

Both the Class and the Sub-class exclude the following persons: (1) Defendant and Defendant's agents, (2) the Judge to whom this case is assigned and the Judge's immediate family; (3) any person who executes and timely files a timely request for exclusion from the Sub-class; and (4) the legal representatives, successors and assigns of any such excluded person.

The Court appoints Timothy Bailey, Shaun Shobowale, Tom Levis, Robert Taylor, Jr., and Daniel J. Lynch as class representatives.

The Court appoints Zimmerman Law Offices, P.C. and Roth Fioretti, LLC as class counsel.

This matter is continued to October 6, 2022 at 10:15 a.m. for status.

ENTER:



Judge Pamela McLean Meyerson

*This order corrects a
scrivener's error.*

Judge Pamela McLean Meyerson

AUG 23 2022

Circuit Court – 2097