

**Halberstam v City of New York**

2014 NY Slip Op 33270(U)

December 9, 2014

Supreme Court, New York County

Docket Number: 654239/2012

Judge: Kathryn E. Freed

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: Part 5

-----X  
DAVID HALBERSTAM, and KELLY ANN WILLIAMS,  
Individually and on behalf of others similarly situated,

Plaintiffs,

-against-

CITY OF NEW YORK, NEW YORK CITY  
DEPARTMENT OF TRANSPORTATION, and  
UNIDENTIFIED ENTITIES A THROUGH Z,

Defendants.

DECISION/ORDER  
Index No. 654239/2012  
Seq. No. 003

PRESENT:  
Hon. Kathryn E. Freed  
J.S.C.

-----X  
HON. KATHRYN E. FREED:

RECITATION, AS REQUIRED BY CPLR 2219 (a), OF THE PAPERS CONSIDERED IN THE REVIEW OF THIS MOTION.

| PAPERS  | NUMBERED        |
|---|-----------------|
| NOTICE OF MOTION AND AFFIDAVITS ANNEXED.....    | 1-2.(Ex A-1)..  |
| ORDER TO SHOW CAUSE AND AFFIDAVITS ANNEXED..... | ..3.(Exs. 1-8). |
| ANSWERING AFFIDAVITS.....                       | .....4,5.....   |
| REPLYING AFFIDAVITS.....                        |                 |
| EXHIBITS.....                                   |                 |
| OTHER...(Memoranda of Law).....                 |                 |

In this putative class action, defendants The City of New York and New York City Department of Transportation (hereinafter collectively “the City”) move for an order dismissing the complaint pursuant to CPLR 3211 (a)(2) and (a)(7). Plaintiffs David Halberstam and Kelly Ann Williams oppose the motion. After oral argument, and after a review of the motion papers and the relevant statutes and case law, the motion is **granted**.

**FACTUAL AND PROCEDURAL BACKGROUND:**

In their amended complaint dated December 23, 2013, plaintiffs alleged that the City improperly issued citations and collected fines through its “red light camera monitoring system” (hereinafter “the program”). The plaintiffs claimed that the program, which enabled the City to photograph vehicles which failed to stop at red lights, was improper since certain traffic lights in the City remained yellow for less than three seconds, the duration allegedly required by law, before turning red. The individually named plaintiffs and the putative class consist of individuals who allegedly received notices of liability (“NOLs”) under the program pursuant to Vehicle and Traffic Law (“VTL”) § 1111(d), and paid a fine to the City’s Department of Finance (“DOF”). The plaintiffs alleged claims of unjust enrichment, fraud, and violations of New York Civil Rights Law § 11. They also sought a declaration that the City operated the program in violation of federal standards and to enjoin the City from operating the program until it complied with state and federal laws regarding the duration of yellow signals. Further, the plaintiffs sought an order directing the City to conduct an audit to determine the identities of persons who were fined under the program and allegedly owed refunds. Plaintiffs also claim that defendants A through Z were entities which “manufactured, implemented, and otherwise serviced” the program. Amended Complaint at par. 11.

The City now moves, pursuant to CPLR 3211(a)(2) and (a)(7), to dismiss the complaint on the grounds that: (1) plaintiffs’ claims against municipal defendants fail because an Article 78 proceeding is the only proper procedural vehicle for judicial review of an administrative determination and plaintiffs failed to exhaust their administrative remedies; (2) plaintiffs’ State

Law claims fail since the New York State Vehicle and Traffic Law does not provide a private cause of action; (3) plaintiff's fail to state a cause of action for a violation of the New York State Constitution Article I, section 6; (4) plaintiffs fail to state a cause of action for a violation of the Fifth and Fourteenth Amendments to the United States Constitution; (5) plaintiffs fail to state a cause of action for unjust enrichment/disgorgement; (6) plaintiffs have failed to state a cause of action of fraud; and (7) plaintiffs' requests for injunctive and declaratory relief are without merit and should be denied.

In support of its motion, the City submits, inter alia, NOLs dated December 17 and 28, 2012 fining Halberstam and Williams, respectively, for driving through red lights. Exs. B, C.<sup>1</sup> The NOLs contain photographs of Halberstam's and Williams' vehicles driving through red lights. *Id.* The NOLs advised Halberstam and Williams that they could contest the violation by mail or at an in person hearing. *Id.*

On December 27, 2012, Halberstam wrote to the DOF to contest the NOL against him. Ex. D. He maintained that the light at the intersection in question was "short-timing on the yellow" and that his attorney had had this verified by an independent laboratory. Ex. D. In support of her written objection to the NOL, Williams submitted the affidavit of an expert who opined that the light at the intersection where her violation occurred remained yellow for 2.903 seconds, shorter than the 3 seconds required by the Manual on Uniform Traffic Control Devices. Ex. E.

By decisions dated January 11 and February 5, 2013, respectively, Halberstam's and Williams' objections to the NOLs were rejected by the DOF. Exs. F and G. Halberstam and

---

<sup>1</sup>Unless otherwise noted, all references are to the exhibits annexed to the City's motion.

Williams were notified that they had 30 days to appeal their “guilty determination[s]”. Exs. F and G. However, in an affidavit submitted in support of the City’s motion, Gwendolyn Turner of the DOF averred that neither plaintiff appealed the decisions upholding the NOLs. Ex. H.

### **POSITIONS OF THE PARTIES:**

In support of its motion, the City maintains that the complaint must be dismissed because plaintiffs’ sole remedy for contesting the NOLs was a CPLR Article 78 proceeding, which neither plaintiff commenced and in which neither plaintiff could have prevailed given that they each failed to exhaust their administrative remedies. The City further asserts that the complaint must be dismissed because plaintiffs do not have a private right of action pursuant to the VTL . The City next asserts that plaintiffs have failed to state a cause of action pursuant to Civil Rights Law section 11 since they did not allege that the amount they were fined was disproportionate to the nature of their offenses. Further, the City maintains that plaintiffs have failed to establish any due process violations of the New York or United States Constitutions. The City also argues that plaintiffs failed to state claims of fraud and unjust enrichment and that they are not entitled to declaratory relief.

In opposition to the City’s motion, plaintiffs argue that defendants violated VTL § 1680 because the traffic control devices used by the City remained yellow for less than three seconds and therefore failed to meet national standards for such equipment. Plaintiffs maintain that their class action constitutional claims were properly brought in a declaratory judgment action. They further assert that they were not required to exhaust their administrative remedies before

commencing this claim because they claim that the DOF's actions were unconstitutional. They further assert that the exhaustion requirement did not bar their action since their pursuit of administrative remedies would have been futile. Next, plaintiffs assert that the City violated their right to substantive and procedural due process. Plaintiffs further assert that their fraud, unjust enrichment, and Civil Rights Law claims are all meritorious.

In a reply memorandum of law in further support of its motion, the City argues that plaintiffs should have commenced an Article 78 proceeding and, since they did not, and did not exhaust their administrative remedies, their claims are not properly before this Court. The City further maintains that plaintiffs failed to state a claim pursuant to Civil Rights Law section 11 since the fines at issue were imposed with reasonable cause. Additionally, the City asserts that plaintiffs inappropriately characterize their action as one for declaratory judgment when they in fact seek monetary damages. It also argues that plaintiffs' assertion that the pursuit of administrative remedies would have been futile is without merit and that plaintiffs' state law claims fail since they do not have a private right of action. It also maintains that plaintiffs' due process rights were not violated by the DOF. Finally, the City asserts that plaintiffs failed to assert a claim of fraud or unjust enrichment.

#### **LEGAL CONCLUSIONS:**

Initially, this Court notes that plaintiffs do not challenge the constitutionality of the VTL § 1111, but rather the manner in which it was applied to them. Since "an Article 78 proceeding is generally the proper vehicle to determine whether a statute, ordinance, or regulation has been

applied in an unconstitutional manner” (*Matter of Kovarsky v Hous. and Devel. Admin. Of City of New York*, 31 NY2d 184, 191 [1972]), plaintiffs should have commenced such a proceeding herein. However, plaintiffs did not commence an Article 78 proceeding, most likely because they did not exhaust their administrative remedies, a prerequisite for the commencement of such a proceeding. In lieu of an Article 78 proceeding, plaintiff’s commenced a plenary action which, as the City asserts, fails to state a claim and must be dismissed. The causes of action alleged in the complaint are addressed seriatim below.

Plaintiffs’ first cause of action, pursuant to Civil Rights Law § 11, fails to state a claim. That section provides that “[n]o citizen of this state ought to be fined or amerced without reasonable cause, and such fine or amercement should always be proportioned to the nature of the offense.” Here, since plaintiffs’ complaint is devoid of any allegation that the \$50 fine imposed pursuant to the program is disproportionate to the nature of the dangerous offense of passing through a red light, this cause of action fails.

Plaintiffs’ second and third causes of action, alleging violations of substantive and procedural due process, are also without merit. Civil matters, such as the City’s red light enforcement program, require a lower level of due process protections as compared to criminal matters. See *Mathews v Eldridge*, 424 U.S. 319 (1976). “The fundamental requirement of due process for civil enforcement is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’ *Mathews*, 424 U.S. at 333.” *Krieger v City of Rochester*, 42 Misc3d 753, 768 (Sup Ct Monroe County 2013). See also *County of Suffolk v. Michelle Caldone*, 45 Misc3d 992, (App Term, 2<sup>nd</sup> Dept 2014), where owner challenged the procedure adopted under VTL § 1111, for commencing red light camera actions, as violating due process, the Court held that such

procedures were constitutional and that “in light of the particularized requirements ...and of the means by which it may be contested, it cannot be said that defendant was not afforded a meaningful opportunity to understand the nature of the violation and to interpose a defense.”

This Court holds that the program, which allows a NOL to be adjudicated through an administrative tribunal, does not violate plaintiffs’ due process rights. *See Rosenthal v Hartnett*, 36 NY2d 269, 274 (1975). Indeed, the NOLs provided plaintiffs with sufficient detail of the allegations against them (*see* VTL § 1111 - a [g]) and plaintiffs were provided with the opportunity to appear for hearings to contest the charges they faced. Exs. B and C. However, instead of appearing for hearings, plaintiffs opted to contest the NOLs by mail. Additionally, although plaintiffs had the opportunity to appeal the decisions upholding the NOLs (Exs. F and G), they did not do so. Given these procedural protections, and plaintiffs’ failure to avail themselves of the same, plaintiffs’ due process challenges fail as a matter of law. *See Krieger, supra* at 771.

Plaintiffs’ fourth cause of action, sounding in unjust enrichment, also fails as a matter of law. “The essential inquiry in any action for unjust enrichment . . . is whether it is against equity and good conscience to permit the defendant to retain what is sought to be recovered.” *Paramount Film Distrib. Corp. v State of New York*, 30 NY2d 415, 421 (1972).” *Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 182 (2011). Here, plaintiffs cannot assert in good faith that it is against equity and good conscience to allow a municipality to levy fines against individuals who drive through red lights and thus pose a danger to society.

The fraud claim alleged by plaintiffs is also insufficiently pleaded. The circumstances of a fraud claim must be stated in detail pursuant to CPLR 3016(b). In order to state such an action,



“a plaintiff must allege misrepresentation or concealment of a material fact, falsity, scienter by the wrongdoer, justifiable reliance on the deception, and resulting injury (citation omitted).” *Waggoner v Caruso*, 68 AD3d 1, 6 (1<sup>st</sup> Dept 2009). Here, plaintiff’s claim is not pleaded with sufficient specificity since it does not allege that the City knew that the traffic lights at the locations of plaintiffs’ violations remained yellow for less than three seconds.

Since plaintiffs failed to establish that the program was “bereft of a rational relationship to a legitimate government interest”, i.e., public safety, their claim for declaratory and/or injunctive relief must be denied as well. *See Krieger, supra*, at 765.

Therefore, in accordance with the foregoing, it is hereby:

ORDERED that the motion by defendants City of New York and New York City Department of Transportation is granted, and the complaint is dismissed as against those defendants, and the Clerk is directed to enter judgment in favor of the said defendants; and it is further,

ORDERED that the caption is amended accordingly; and it is further,

ORDERED that the remainder of the action shall continue; and it is further,


ORDERED that the Trial Support Office is directed to reassign this case to a non-City part and remove it from the Part 5 inventory. Counsel for movants shall serve a copy of this

order on all other parties and on the Trial Support Office, 60 Centre Street, Room 158. Any compliance conferences currently scheduled are hereby cancelled; and it is further,

ORDERED that this constitutes the decision and order of the Court.

DATED: December 9, 2014

ENTER:



Hon. Kathryn E. Freed  
J.S.C.  
**HON. KATHRYN FREED**  
**JUSTICE OF SUPREME COURT**