

ORIGINAL

IN THE SUPREME COURT OF OHIO

Janine Lycan, et al.

Case No. 2014-0358

Plaintiffs-Appellees

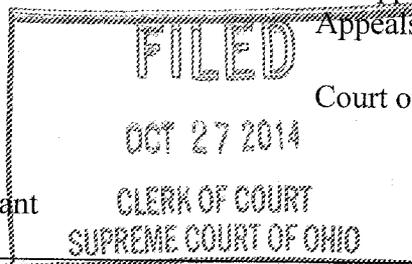
On appeal from the Cuyahoga County Court of Appeals, Eighth Appellate District

vs.

City of Cleveland,

Court of Appeals Case No. 99698

Defendant-Appellant



REPLY BRIEF OF AMICUS CURIAE XEROX STATE & LOCAL SOLUTIONS, INC.
IN FURTHER SUPPORT OF APPELLANT CITY OF CLEVELAND

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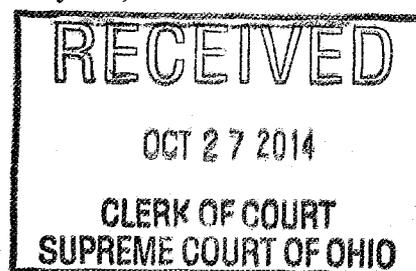
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ARGUMENT

The Lycan Plaintiffs' Present Lawsuit Fails Because They Paid Their Citations Rather Than Seek Prompt Declaratory Relief.

The speeding/red light camera cases pending before this Court,--*Lycan*, *Walker*, and *Jodka*--all share a common fact that makes each case improper. In each case, the plaintiffs paid their traffic camera violations rather than contest them at an available administrative hearing.¹ Instead, each waited a year or more before attempting to recover the payments via a class action lawsuit seeking restitution and purported declaratory relief. Specifically, Janine Lycan waited nearly two and a half years from receiving her citation before filing suit². (See City of Cleveland's Merit Brief in *Lycan*, p. 10). Bradley Walker waited one year and three months. (See March 28, 2014 Joint Reply Brief of Amici Curiae Xerox and City of Cleveland in *Walker*, Case No. 2013-1277, p. 13). Sam Jodka waited five years. (See April 22, 2014 Memorandum in Support of Jurisdiction of Xerox defendants in *Jodka*, Case No. 2014-0636, p.5). The payment of the citations and delays seeking declaratory relief doom their present lawsuits.

There were two avenues available to the *Lycan* plaintiffs to challenge the application of former CCO 413.031 to vehicle lessees. First, they could have refused to pay the fines and instead requested an administrative hearing as set forth in the ordinance. If unsuccessful, the *Lycan* plaintiffs could have then filed an appeal to the Cuyahoga County Court of Common Pleas from the Parking Violations Bureau pursuant to Ohio Revised Code Chapter 2506. This is what

¹ Jeane Task, a plaintiff in *Lycan*, neither paid nor challenged her citation. But for the reasons already addressed in Xerox's August 25, 2014 Amicus Brief in *Lycan*, p.3, nt. 1, the fact that she did not pay neither saves her claim from the application of *res judicata* nor the defense of lack of standing.

² Of the several named plaintiffs in *Lycan*, according to the record, only Lindsey Charna, who was added as a new-party plaintiff in the amended complaint filed May 28, 2009, received a citation only months before the suit was filed. She received her citation on March 13, 2009. (See City of Cleveland's Merit Brief in *Lycan*, p. 4).

happened in *Dickson & Campbell v. City of Cleveland*, 181 Ohio App.3d 238, 2009-Ohio-738, 908 N.E.2d 964 (8th Dist.), and the motorist there prevailed. This appellate process likewise gave the *Lycan* plaintiffs an adequate remedy at law. *Scott v. City of Cleveland*, 112 Ohio St.3d 324, 2006-Ohio-6573, 859 N.E.2d 923 at ¶ 24. They did not pursue this remedy. Consequently, for the reasons already addressed by the City of Cleveland and supporting *amici* in this case, *res judicata* bars their current action. And as noted by the Eighth District in *Jodka v. City of Cleveland*, 8th Dist. Ct. App. No. 99951, 2014-Ohio-208, they also now lack standing to bring the present suit as they relinquished their personal stake in the controversy by making payment. See also *Stubbs v. City of Center Point, Alabama*, 2013 WL 6734092 at *13 (N.D.Ala. 2013) (plaintiff who had no standing to bring a § 1983 claim challenging a traffic camera citation because she had paid the citation also lacked standing to request declaratory judgment).

The fact that the *Lycan* plaintiffs (as well as *Walker* and *Jodka*) paid their violations is the death knell of their current lawsuit. Payment did not create their unjust enrichment claims but rather acted as a consent judgment triggering *res judicata*. (See August 25, 2014 Amicus Brief of Xerox in *Lycan*, p.4). Payment also destroyed their standing. And the fact that the current suit is a class action does not prevent the application of *res judicata*. As noted by the Sixth Circuit in *Carroll v. City of Cleveland*, 522 Fed. Appx. 299, 305 (6th Cir. 2013):

True, Appellants hope to proceed as a class and therefore seek the return of *many* motorists' money. But aggregation changes only the scope, not the nature of Appellants' claims. At bottom, Appellants could have obtained precisely the "damages" they request had they availed themselves of the ordinance's appellate procedure.

The *Lycan* plaintiffs' second option was again to refuse to pay the fines and to promptly file a declaratory judgment action in common pleas court challenging the application of the

ordinance to vehicle lessees.³ They did not do this either. Rather, Janie Lycan paid her fine, and then nearly two and a half years later, filed the present lawsuit which is not a timely declaratory judgment action.

As noted by this Court, “[a]n action for declaratory judgment to determine the validity of an administrative agency regulation may be entertained by a court, in the exercise of its sound discretion, where the action is within the spirit of the Declaratory Judgment Act, a justiciable controversy exists between adverse parties, and speedy relief is necessary to the preservation of rights which may otherwise be impaired or lost.” *Burger Brewing Co. v. Liquor Control Commission*, 34 Ohio St.2d 93, 296 N.E.2d 261 (1973) (¶ 1 of the syllabus).

There is no genuine dispute between the *Lycan* plaintiffs and the City of Cleveland of sufficient immediacy and reality now to justify a declaratory judgment action addressing the application of the former version of CCO 413.031 to vehicle lessees. They accepted liability by paying and not contesting their citations. Instead, they could have filed an administrative appeal, or they could have immediately filed a proper declaratory judgment action upon receipt of their citations. Even in the unlikely event that the City of Cleveland would have attempted to obtain a judgment on the unpaid violation while the declaratory judgment proceeding was pending, the *Lycan* plaintiffs could have asserted their defenses in that action also. Rather, Lycan, who received her citation on September 12, 2006, waited nearly two and a half years, until February 25, 2009, to file her complaint which was later amended to include additional plaintiffs. Besides

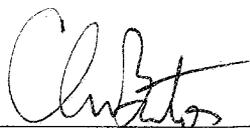
³ Unlike *Walker* and *Jodka*, *Lycan* does not involve a facial constitutional challenge to the camera ordinance at issue but is limited to the application of the former version of CCO 413.031 to vehicle lessees. Nevertheless, the *Lycan* plaintiffs are likewise seeking declaratory relief that would obligate the City of Cleveland to return funds collected on a class-wide basis. See *Lycan v. City of Cleveland*, 8th Dist. Ct. App. No. 94353, 2010-Ohio-6021 at ¶ 10.

the application of *res judicata* and their lack of standing, the *Lycan* plaintiffs simply have not alleged any genuine dispute of sufficient immediacy and reality to warrant declaratory relief.

CONCLUSION

For the foregoing reasons as well as for the reasons previously submitted, Amicus Curiae Xerox respectfully requests that this Court reverse the decision of the Eighth District Court of Appeals in favor of Plaintiffs-Appellees. This Court should adopt the City of Cleveland's proposition of law and hold that Plaintiffs-Appellees' claims are barred by *res judicata*.

Respectfully submitted,



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The undersigned, an attorney, hereby certifies that he served a copy of the foregoing
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