UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CABRINI-GREEN LOCAL ADVISORY COUNCIL,	)	
Plaintiff,	)	No. 96-cv-06949
v.	)	Judge Edmond E. Chang
CHICAGO HOUSING AUTHORITY, *et. al.*,	)	
Defendants.	)	

ORDER

In August 2000, the Cabrini-Green Local Advisory Council, an organization that represents the residents of the Cabrini-Green neighborhood in Chicago, entered into a Consent Decree with the Chicago Housing Authority and the City of Chicago. R. 160, Consent Decree.[1] The Consent Decree resolved years of litigation over the CHA's development and revitalization plans for the Cabrini-Green neighborhood. The Local Advisory Council (which goes by its acronym, LAC) had alleged that the CHA's plan would displace the then-current residents and would reduce the affordable housing stock in violation of the Fair Housing Act, 42 U.S.C. § 3604, as well as other civil-rights laws.

Under the Consent Decree, the CHA agreed (among other things) to require that private developers give the LAC both an ownership interest in and a share of fees and profits from certain new development projects in Cabrini-Green. Consent

[1]Citations to the record are noted as "R." followed by the docket number, and when necessary, the page or paragraph number.

Decree § III.A.1. The receipt of developer fees and profits, however, was conditioned on the LAC only using the money "for non-profit purposes to benefit current and displaced Cabrini-Green residents." *Id.* To hold the ownership interest and to receive developer fees, the Consent Decree expressly contemplated that the LAC would have an "affiliated development entity." *Id.* So, in 2003, the LAC created a non-profit organization called the Cabrini-Green Local Advisory Council Community Development Corporation (known as the CDC), whose stated purpose was to "provide relief" to Cabrini-Green residents. R. 230-1, Lischka Decl. ¶ 6; R. 244-1, Pl. Resp. Br., Exh. A, CDC Bylaws at 1. The CDC's Board of Directors is comprised of current or displaced Cabrini-Green residents and is entirely appointed by the LAC. Lischka Decl. ¶ 7.

More than a decade passed without apparent incident. But in December 2016, the CHA's Office of Inspector General began receiving complaints that Carol Steele, who is the President of both the LAC and the CDC, had misappropriated CDC funds for her personal use. Lischka Decl. ¶ 2. Over the next 3½ years, the OIG undertook an investigation of the CDC's finances, which culminated in a report published in May 2020. *Id.* ¶ 3; R. 230-2, Lischka Decl., Exh. 1-A, OIG Report. In short, the OIG Report appeared to confirm the allegations of financial mismanagement against Steele and the CDC. (A fuller account of the findings will appear below.)

Given the mishandling of funds set forth in the OIG Report, the CHA and City now seek, under Federal Rule of Civil Procedure 65, to preliminarily freeze the bank accounts of the CDC as well as certain members of the LAC and CDC, including Carol

Steele, Lynnell Dillon, and JoAnn Hollie. R. 242. (Defendants have also filed a broader motion to enforce and modify the Consent Decree, R. 130, but that will be considered separately in a later order, pending the outcome of settlement discussions.) The LAC opposes the motion to freeze. R. 244, LAC Resp. Br. Steele also filed a response to the freeze motion in her individual capacity, R. 245, Steele Resp. Br., though she notes that the CDC has adopted her response, R. 248. A motion hearing was held on the freeze motion on August 21, 2020. R. 252. For the reasons explained below, the motion to freeze is granted in part and denied in part: financial controls and limits will be imposed, but the Court will not impose an across-the-board freeze that completely disables the CDC from operating.

I. Legal Standard

A preliminary injunction under Rule 65 of the Federal Rules of Civil Procedure is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). A party seeking to obtain a preliminary injunction must demonstrate: (1) that the case has some likelihood of success on the merits; (2) that no adequate remedy at law exists; and (3) that it will suffer irreparable harm if the injunction is not granted. *Orr v. Shicker*, 953 F.3d 490, 502 (7th Cir. 2020). If the moving party meets these threshold requirements, then the Court must balance the nature and degree of the potential harm to each party and the public interest. *Girl Scouts of Manitou Council, Inc. v. Girl Scouts, Inc.*, 549 F.3d 1079, 1086 (7th Cir. 2008).

When it comes to asset freezes in particular, the general rule is that a district court may not freeze a party's assets merely to preserve another party's right to recover money damages at a later stage in the litigation. *Grupo Mexicano de Desarrollo v. Alliance Bond Fund*, 527 U.S. 308, 330 (1999). Beyond that, though, courts do have the authority to preliminarily retrain assets pursuant to a request for equitable relief,[2] which is what is at issue in this case. *See CSC Holdings, Inc. v. Redisi*, 309 F.3d 988, 996 (7th Cir. 2002) (affirming asset freeze where party sought an accounting and profits remedy) (cleaned up).

II. Analysis

A. Jurisdiction

Before getting to the heart of the dispute, two jurisdictional hurdles must first be overcome. First, the LAC and the CDC argue that this Court has no authority over the CDC, which was not a named party to either the underlying litigation or the Consent Decree. LAC Resp. Br. at 3-4. But for purposes of the dispute over developer fees and profits, that stance is not persuasive. The Court has broad authority to enforce the Consent Decree. *See* Consent Decree § XII. More to the point, the Consent Decree specifically contemplated the creation of the LAC's "affiliated development entity," which would be hold the ownership interest in housing developments and receive the developer fees and profits. *Id.* § III.A.1. The CDC indisputably is the LAC's "affiliated development entity" as that term is used in the Consent Decree. It appears

[2]This Order uses (cleaned up) to indicate that internal quotation marks, alterations, and citations have been omitted from quotations. *See* Jack Metzler, *Cleaning Up Quotations*, 18 Journal of Appellate Practice and Process 143 (2017).

that the Consent Decree's grant of ownership and developer fees-and-profits make up the bulk of the CDC's revenue, and the Consent Decree sets out the standard for the expenditure of those funds: "for not-for-profit purposes to benefit current and displaced Cabrini-Green residents," *id.* § III.A.1; § III.A.6. The CDC's role as the affiliated development entity under the Consent Decree makes it subject to the Court's jurisdiction when enforcing the Consent Decree. That role too is why the Court permitted Steele's proposed intervention response to stand-in for the CDC's response (after the CDC affirmed its adoption of the response).

The second jurisdictional hurdle is advanced by Steele, who implies that the CHA lacks "standing" to challenge the CDC's use of the funds. Steele Resp. Br. at 8. Again, this argument is not persuasive. The CHA is a party to the Consent Decree, so it has a sufficient legal interest in the money that the Consent Decree funnels to the CDC. Indeed, it is CHA-owned land on which the housing developments—which are the source of the CDC's developer-paid fees and profits—are being built. Consent Decree § III.A.1. To be clear, it is not so much that the CHA can lay claim to the funds themselves. But the CHA negotiated a Consent Decree that provides for a specified use of the moneys derived from CHA-owned land. As a party to the Consent Decree, then, the CHA has a legally cognizable interest in enforcing the provision that specifies how the money must be spent. Standing is secure.

B. Likelihood of Success

Turning to the substance of the freeze motion, the first question is whether the CHA[3] is likely to succeed on the merits of the underlying motion to enforce and to modify the Consent Decree. On the current record, that bar has easily been met.

The OIG Report dominates the current factual record, with little to rebut it, at least so far. At this stage of the dispute, the Report sufficiently establishes that the CDC has spent Consent-Decree-dictated funds without sufficient recordkeeping to ensure that the funds were spent on non-profit purposes only; and worse that the CDC has indeed actually misspent funds. To be clear, it is always possible that further factual development would alter this preliminary finding, but right now the record evidence points this way.

The OIG Report explains that the CDC spent $264,000 on "Management and General Expenses," much of which was not supported with records showing that the payments were made for non-profit purposes to benefit displaced and current Cabrini-Green residents. Lischka Decl. ¶ 73(e); OIG Report at 24 (listing payments). Of more immediate concern are the potential misuse of the funds, including:

- $25,106 in checks made out to petty cash, most of which did not have any record of the money's purpose. Lischka Decl. ¶ 68; OIG Report at 21-22.

- $52,259 in contractor payments to Charles Price, who has never resided in public housing and lives in Indiana—but is the father of Steele's sons. Lischka Decl. ¶ 51; OIG Report at 17-18.

[3]For convenience's sake, the Order refers to the CHA and the City as just the CHA, because both of the Defendants stake out a joint position for purposes of the current dispute.

- $2,500 in funeral expenses for Steele's brother, who at the time of his passing was not a current or displaced Cabrini-Green resident. Lischka Decl. ¶ 60; OIG Report at 19.

Although the LAC and Steele broadly suggest that the factual allegations in the OIG Report are inaccurate, the response briefs themselves do not really offer any helpful counter-evidence to dispel the findings of the OIG Report. The CHA is likely to succeed in showing that funds were spent on personal purposes in violation of the Consent Decree's requirement that the funds be set aside for non-profit purposes.

C. Inadequate Remedy and Irreparable Harm

Moving on from likelihood of success, the CHA also has sufficiently shown that there is no adequate remedy at law and that there will be irreparable harm if some sort of preliminary relief is not granted. Put simply, the time urgency arises directly from the evidence that the CDC is misusing funds under the Consent Decree. If more money is misspent, there is every reason to believe that it will be difficult to claw back the money to replenish what is supposed to be a pool of funds for non-profit purposes. It is no answer, as Steele argues, to say simply that a "judicial order to return" any misused funds would alleviate the harm. Steele Resp. Br. at 9. Yes, money in general is fungible, but the funds funneled by the Consent Decree is sourced from CHA-owned land and thus is derived from public coffers. Nor is there any assurance that recipients of misspent funds have sufficient assets from which to collect even if ordered to pay back the money. So there is no adequate remedy at law and, correspondingly, there is a serious risk that the beneficiaries of the Consent Decree will suffer irreparable harm if more moneys are misspent.

It is worth noting that the CHA's failure to timely confer with the LAC and the CDC on the motion to enforce (as well as on this freeze motion) normally would count against the argument that irreparable harm is nigh. The alarm bells rang with the issuance of the OIG Report on May 21, 2020. But the CHA waited to "confer," if it could be called that, with the LAC until the very day the CHA filed the motion on July 21. Still, this misstep in litigation strategy ultimately does not diminish the facts set forth in the OIG Report and the valid concern over the potential irrecoverable loss of non-profit funds.

D. Balance of Harms

Finally, the balance of harms weighs heavily in favor of allowing for preliminary relief in this case, as does the public interest. To the extent that the LAC and the CDC are concerned that a preliminary asset freeze will potentially get in the way of legitimate efforts to spend money for the benefit of Cabrini-Green residents or to retain outside professional help (like an accountant), Steele Resp. Br. at 13-14, nothing in this Order will stop the CDC from doing that. As described in more detail below, the Court declines to issue a full-on asset freeze precisely to avoid disabling the CDC from legitimate efforts to pursue to the important goals of the Consent Decree. And nothing in this Order is meant to suggest that the LAC and CDC have not done any legitimate work in support of Cabrini-Green residents. But the financial controls will not prevent the CDC from spending money altogether.

Weighed against this, if no preliminary relief is given, then there is a real risk of the irreparable harm of misspent funds. With no transparency into even the most basic information about the CDC's current financial status, it will be immensely difficult later on to determine whether the spending that happens during this interim period was in violation of the Consent Decree, or indeed to even determine whether any spending happened at all. In the interest of not losing track of any more of the money meant to benefit Cabrini-Green's current and displaced residents, the Court concludes that some interim relief short of an asset freeze is justified in this case while the parties take their time to work toward a longer-term solution.

III. Conclusion

On balance, interim relief is clearly warranted here, though short of a full asset freeze. As alluded to above, the parties have agreed to participate in a settlement conference in the coming weeks. In the meantime, the CDC may continue to spend its funds on legitimate, non-profit objectives, subject to contemporaneous monitoring requirements set forth below. If this contemporaneous monitoring proves insufficient to curb the present concerns, then the CHA may move to escalate the preliminary relief. By the same token, if a record of trust is built, then the monitoring can be stepped down to some degree. For now, though, the LAC and CDC will be subject to the following requirements:

- The CDC shall provide written confirmation to its lawyers, the LAC's lawyers, and to counsel for the CHA and the City that there are no additional CDC bank accounts beyond the three accounts listed in the freeze motion. *See* R. 242 ¶ 10. For each of the CDC's bank accounts, the CDC shall also provide to the same recipients either a printout or screenshot of the most recent monthly statement. There is no need, for now, to provide a more detailed breakdown of assets or proposed budget. The confirmation and monthly statements are due by August 26, 2020.

- For all future spending and withdrawals from any of the CDC bank accounts, the CDC must provide supporting documentation (such as receipts, invoices, or contracts) to counsel for the LAC, the CDC, the CHA, and the City) within one business day of each expenditure.[4]

- For all proposed checks for petty-cash purposes, the CDC must file a motion detailing the anticipated need for the cash. If approved, then the CDC still must provide supporting documentation (such as receipts, invoices, or contracts) to counsel for the LAC, the CDC, the CHA, and the City within one business day of the expenditure.

- On the Wednesday of each week, starting on September 2, 2020, the CDC must disclose either a printout or screenshot from the online transaction summaries for each of the CDC's bank accounts covering the prior seven days (so the first period is August 26 through September 1). The weekly disclosures are required even if no transactions have been made.

    - After 21 days (that is, after the September 23 disclosure), the disclosure will only be required once every 14 days and cover the prior 14 days (that is, October 7 will be the next disclosure deadline after September 23).

- When the CDC is ready to retain professional services (such as accountants, auditors, or lawyers), the CDC must confer with the LAC, the CHA, and the City before entering into a binding contract. The conferral shall include disclosure of the proposed contract. The CHA and the City shall provide a response within three business days of the conferral and shall not withhold reasonable consent, but if either of the Defendants object, then the CDC must obtain Court approval before retaining the proposed service provider.

With these limits in place, the Court expects that the time urgency on the underlying motion will dissipate and that the LAC, the CDC, the CHA, and the City will have enough time to engage in good-faith settlement efforts. That being said, the

[4]This one-day reporting requirement is not intended to be overly burdensome on the CDC. Indeed, during the August 21, 2020 status hearing, counsel for Steele explained that he was not aware of any immediate or recurring payments that the CDC would need to make within the next week. So, the CDC shall ideally have some time over the next week to adjust to this new requirement.

Court strongly encourages the LAC and the CDC to act more nimbly going forward, though it is understandable that the pandemic and the financial disadvantages of the decision-makers have been obstacles to quick action. Hopefully other measures, such as conferring litigation authority on smaller subcommittees of the respective boards, can expedite the pace of decision-making. By the same token, the CHA too must more promptly engage in conferral before resorting to motion practice. All in all, no doubt all of the case participants now must work together toward achieving the Consent Decree's goal of providing non-profit assistance to Cabrini-Green's current and displaced resident.

With the settlement referral in place to the magistrate judge, R. 253, this Court sets a status hearing (to track the case only, no appearance is required) for October 9, 2020, at 8:30 a.m.

ENTERED:

Edmond E. Chang

Honorable Edmond E. Chang
United States District Judge

DATE: August 22, 2020