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

DOROTHY GAUTREAUX, ODELL JONES, DOREATHA R. CRENCHAW, EVA RODGERS, JAMES RODGERS, ROBERT M. FAIRFAX and JIMMIE JONES,

Plaintiffs

vs.

THE CHICAGO HOUSING AUTHORITY, a Corporation, and ALVIN E. ROSE, Executive Director,

Defendants.

CASE NO. 66C1459

NOTICE

TO: William Hurley
Dixon, Todhunter, Knouff & Holmes
First National Bank Building
Chicago, Illinois

Kathryn Kula
Chicago Housing Authority
55 West Cermak Road
Chicago, Illinois

PLEASE TAKE NOTICE that we have this day filed a Motion for leave to amend Counts I and II of the Complaint, with the amendment, and a brief and affidavit in support thereof, copies of all of which are herewith served upon you.

Alexander Polikoff
One of the attorneys for plaintiffs
231 South LaSalle Street
Chicago, Illinois 60604
CEntral 6-4500

Received a copy of the above referred to Motion and supporting documents this 4th day of March, 1968

William Hurley
One of the attorneys for
defendants

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Defendants.

CASE NO. 66C1459

MOTION FOR LEAVE TO AMEND COUNTS I AND II OF THE COMPLAINT

NOW COME PLAINTIFFS, by their attorneys, and respectfully move the Court for leave to amend Counts I and II of the Complaint. A copy of the amendment to such Counts and a brief in support of this Motion are attached hereto.

Alexander Polikoff
One of the attorneys for plaintiffs

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Chicago, Illinois 60604
CEntral 6-4500

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vs.

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Defendants.

CASE NO. 66C1459

AMENDMENT TO COUNTS I AND II
OF THE COMPLAINT

1. Paragraph 17 of Counts I and II is hereby amended by adding at the end of said paragraph in each of said Counts the following:

"Subsequent to the filing of the complaint in this action the Authority has deliberately chosen other sites for dwelling units to be provided by it, through new construction, rehabilitation of existing structures and leasing, to avoid the placement of Negro families in white neighborhoods. The Authority has deliberately employed in the past and continues now to employ practices for the assignment of tenants to dwelling units provided by it which avoid the placement of Negro families in white neighborhoods."

2. Paragraph 18 of Counts I and II is hereby amended by changing the first four lines of said paragraph in each of said Counts to read as follows:

> "The effect of such site selection and tenant assignment practices upon Negro applicants for and tenants of dwelling units provided by the Authority has been and continues to be that:"

3. Paragraph 19 of Counts I and II is hereby amended by deleting the following words from said paragraph:

> "construction of the Five Proposed Projects and of the Twelve Proposed Projects on the sites selected therefor, and"

4. Paragraph (2) of the prayer for relief of Count I is hereby amended to read as follows:

> "(2) That after a full hearing this Court permanently enjoin defendants from carrying on and perpetuating the racially discriminatory aspects of their public housing system."

5. Paragraph (2) of the prayer for relief of Count II is hereby amended to read as follows:

> "(2) That after a full hearing this Court permanently enjoin defendants from employing Federal financial assistance in carrying on and perpetuating the racially discriminatory aspects of their public housing system."

Alexander Polikoff
One of the attorneys for
plaintiffs

231 South LaSalle Street
Chicago, Illinois 60604
CEntral 6-4500

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vs.	)	CASE NO. 66C1459
THE CHICAGO HOUSING AUTHORITY, a Corporation, and ALVIN E. ROSS, Executive Director, Defendants.	)	

BRIEF OF PLAINTIFFS IN SUPPORT OF MOTION
FOR LEAVE TO AMEND COUNTS I AND II OF THE COMPLAINT

The proposed amendment is limited in scope and has two purposes:

1. To allege facts having to do with site selection which occurred subsequent to the filing of the complaint.

2. To allege facts having to do with tenant selection which is an additional form of discrimination, closely related to and forming a part of, the discriminatory pattern already alleged in the complaint.

Evidence in both categories has become known to plaintiffs in the course of discovery; evidence in the second category has already been submitted to the Court in response to defendants' motion to dismiss the complaint.

Federal Rule 15(d) provides that the Court may, on such terms as are just, permit a party "to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented." Federal Rule 15(a) provides that leave to amend a pleading "shall be freely given when justice so requires." Professor Moore says, "The clearest cases for leave to amend are ... amplification of previously alleged claims or defences." (3 Moore's Federal Practice 887.)

The courts in this jurisdiction have consistently favored liberality in the amendment and supplementing of pleadings. In Fuhrer v. Fuhrer, 292 F.2d 140, 143 (CA 7, 1961), the Court said:

> "Rule 15(a) of the Federal Rules of Civil Procedure relied upon by the trial court explicitly provides that leave of court to amend ' shall be freely given when justice so requires.' The Federal Rules respecting amendments to pleadings should be given a liberal construction so that cases are decided on the merits rather than on bare pleadings. McHenry v. Ford Motor Co., 6 Cir., 269 F.2d 18. Leave to amend should be freely given unless it appears to a certainty that plaintiff would not be entitled to any relief under any state of facts which could be proved in support of his claim. Kingwood Oil Co. v. Bell, 7 Cir., 204 F.2d 8, 13."

In A.L.B. Theatre Corporation v. Lowe's Incorporated, 21 FRD 584, 586 (D.C. N.D., Ill., 1957), Judge Hoffman stated:

> "The opinions of the Court of Appeals for the 7th Circuit have consistently employed as the criterion for granting or refusing leave to amend a pleading the test of whether the adverse party would be prejudiced by filing of the amendment. See, e.g., Goldenberg v. World Wide Shippers & Movers of Chicago, Inc., 7 Cir., 1956, 236 F.2d 198; Huse v. Consolidated

Freightways, Inc., 7 Cir., 1955, 227 F.2d 425; Aiken v. Insull, 7 Cir., 1941, 122 F.2d 746, certiorari denied, 1941, 315 U.S. 806, 62 S.Ct. 638, 86 L.Ed. 1205. No case in this circuit has been found which holds that delay in itself warrants refusal of leave to amend. In the Goldenberg case, supra, the district court had permitted an amendment of the complaint two years after the filing of the complaint and two days before trial. The Court of Appeals upheld this ruling on the ground that the defendant was not prejudiced by the plaintiff's delay in offering its amendment."

The amendment here is offered almost four months before the scheduled trial date. It is offered before discovery has been completed and no resetting of previously agreed upon deposition dates is requested. Indeed, as noted, some discovery has already been had with respect to the additional allegations. And it is clearly proper to permit the complaint to be supplemented by facts which occurred subsequent to the filing of the complaint. An affidavit in support of these factual statements is attached hereto.

Since the proposed amendment is extremely limited in scope, alleges facts which are intimately related to and connected with the allegations of the complaint, will not delay either discovery or trial of the cause and therefore will not prejudice the defendants in any way, the amendment should be allowed.

Respectfully submitted

Alexander Polikoff
One of the attorneys for the Plaintiffs

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AFFIDAVIT

The undersigned, Alexander Polikoff, being duly sworn, on oath says:

1. He is one of the attorneys for the Plaintiffs in this case.

2. The first of the two new factual allegations is that subsequent to the filing of the complaint the Authority has deliberately chosen sites for dwelling units to be provided by it, through new construction, rehabilitation of existing structures, and leasing, to avoid the placing of Negro families in white neighborhoods. This allegation relates to facts which have occurred subsequent to the filing of the complaint.

3. The second of the two new factual allegations is that the Authority has deliberately employed in the past, and continues now to employ, practices for the assignment of tenants to dwelling units provided by it which avoid the placement of Negro families in white neighborhoods. Such practices were first raised as an issue in this case when the defendants' motion to strike the complaint challenged the standing of the plaintiffs. Plaintiffs' counsel first acquired knowledge of such discriminatory practices while preparing to oppose defendants' motion. Evidence bearing upon this issue was submitted to the Court in connection with the hearing on that motion. Documentary material relating to this issue has been supplied by the defendants to the plaintiffs during the course of discovery. Questions on this issue have been asked of, and answered by, deponents during the course of discovery. In the most recent depositions, however, counsel for defendants have begun to instruct deponents not to answer questions on this subject on the ground that the tenant assignment practices of the defendants are not in issue in the case.

Further affiant sayeth not.

_____
Alexander Polikoff

Subscribed and sworn to
before me this 4th day
of March, 1968

_____
Notary Public