

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

DOROTHY GAUTREAU, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 66 C 1459
	)	
THE CHICAGO HOUSING AUTHORITY,	)	
et al.,	)	
	)	
Defendants.	)	

RESPONSE OF PLAINTIFFS TO MOTION
TO INTERVENE

The motion to intervene is supported by "suggestions" and a number of affidavits. These documents all make essentially the same argument: Housing is desperately needed in the "Model Cities" areas of the City of Chicago; the Court's decree of July 1, 1969 in this case (the "decree") is supposed to be preventing the Chicago Housing Authority ("CHA") from building public housing in these areas; therefore the decree should be modified to exclude these areas.

Plaintiffs ask that the motion be denied for the reasons set forth below.

I. THE AFFIDAVITS DO NOT SUPPORT PETITIONERS' KEY ARGUMENT.

Petitioners' key assertion, on which their entire position rests, is that the decree is preventing CHA from building public housing in the Model Cities areas. No facts are supplied

to support that assertion. It is an unsupported conclusion.

Seven basic forms of affidavit have been filed. A typical form states:

"The order of the U.S. District Court in the matter of Dorothy Gautreaux et al. v. The Chicago Housing Authority et al No. 66 C 1459, has had an effect of halting all public housing development and remodeling for the low-income families in our area." (Affidavit of Ralph H. Metcalfe, p.1.)

The Appendix attached sets out the conclusory assertions of the other forms of affidavit.

Some of the affidavits speak as if the decree totally barred CHA construction in the Model Cities areas. That, the Court well knows, is untrue. Other affidavits assert or assume that the decree impedes CHA construction in the Model Cities areas. As to this, the Court is not even told in a conclusory fashion, let alone with facts admissible in evidence, that CHA has any plans for construction in the Model Cities areas at all; or if so what these plans are; or whether such plans, if any, are affected at all by the decree; or how such effect, if any, affects other areas of the City which may also desperately need low income housing; etc.*

*In papers previously filed in this case the Court was told that over a five year period the total number of public housing units planned to be constructed in the three Model Cities areas which are in the Limited Public Housing area is 1,450 units, and that most of these are not planned to be constructed until the period 1971-73. (Memorandum of the United States, p. 11.) Moreover, the decree only required that construction of 700 dwelling units first be commenced in the General Public Housing area, and that thereafter units might be constructed in both the General and Limited areas in a prescribed ratio. The Court knows that CHA has already located sites for more than the initial 700 units.

Accordingly, the affidavits are deficient and the Court is presented with a motion to intervene which is rested exclusively upon an undocumented conclusory assertion. The motion must be denied for this reason, since it is of course fundamental that affidavits must set forth facts admissible in evidence, not conclusions. 2 C.J.S. Affidavits, §16, pp. 952-53; Davenport v. Berman, 420 F.2d 294, 296 (C.A. 2, 1969).

II. THE MOTION IS NOT TIMELY.

Rule 24(a) requires a "timely application." This application comes a year after entry of the decree. The rule as to post-decree intervention is that, while it may be allowed if necessary to preserve a right which cannot otherwise be protected, "such intervention will not be permitted unless a strong showing is made." 2 Barron & Holtzoff, Fed. Prac. & Proc. pp. 368-69. And see United States v. Blue Chip Stamp Company, 272 F.Supp. 432, 435-38 (C.D. Calif. 1967), aff'd., Thrifty Shoppers Scrip Co. v. U.S., 389 U.S. 580 (1968).

It is clear that here, a year after entry of the decree, and without any showing of excuse for the delay*, petitioners' motion must be viewed as untimely.

*The motion says that earlier application for intervention "was impossible because the judgment order did not adversely affect applicants until the occurrence of events more fully described in the aforesaid affidavit," (¶6), but no such events are described. The "suggestions" say that the Model Cities Program was approved on June 26, 1969, which was of course before the decree was entered. (p.2.) They also refer to demolition in the City, but indicate that substantial demolition occurred in the 2-1/2 years before the decree was entered, and that the rate of demolition in the year since the entry of the decree appears to have slowed. (p.3.) Moreover, in
(cont. on page 4)

III. PETITIONERS DO NOT MEET THE REQUIREMENTS FOR INTERVENTION
OF FEDERAL RULE 24(a)(2).

To intervene an applicant must show three things:

1. that he has a recognized interest in the subject matter of the litigation;
2. that his interest might be impaired by the disposition of the suit; and
3. that his interest is not adequately protected by the existing parties.

Edmondson v. Nebraska, 383 F.2d 123, 126 (C.A. 8, 1967). Petitioners fail to meet these requirements.

In Hatton v. County Board of Education, 422 F.2d 457 (C.A. 6, 1970), a school desegregation case, a motion to intervene was filed by parents of school children, who claimed to represent "a large majority" of the citizens of the county in question, for the purpose of opposing the defendant school board's desegregation plan. The motion was filed on the day the school board's desegregation plan was filed pursuant to court order. The district court refused to permit intervention and the Court of Appeals affirmed agreeing with the district court opinion and incorporating it as an appendix to its own. The district court opinion, while finding that the petitioners had sufficient "interest" to intervene, said:

"There is nothing in petitioners' motion papers to indicate that their interests as residents of Maury County and parents

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early 1970 a procedure was agreed to by both the City and the Department of Housing and Urban Development "to assure that new low income housing constructed keeps pace with reduction of such housing by governmental action." See the exchange of correspondence between Mayor Daley and the HUD Regional Administrator which is attached hereto and made a part hereof.

of children attending the public schools are not being adequately represented by the present defendants. The record indicates that the defendants have advanced every reasonable defense to this action, and petitioners have made no allegation of collusion, bad faith, or gross negligence on the part of the Board of Education in defending the suit.

Petitioners seem to rely on the fact that, because the plaintiffs had standing as parents to bring suit against the School Board, they, as parents, should be allowed to intervene. This contention is without merit. Intervention is concerned with something more than standing to sue. It is concerned with protecting an interest which can only be protected through intervention in the current proceeding. This is not the situation here." 422 F.2d, at 461.

Here, for a variety of reasons, petitioners fail to meet the requirements of Rule 24(a)(2) even more clearly than did the Hatton petitioners.

A. Petitioners are merely residents of the City who say they would like additional CHA housing in their neighborhoods. Their interest is simply that of persons desiring housing (although no petitioner has advised the Court of the nature or condition of his present housing, whether he or she is a tenant in CHA housing or an applicant therefore, etc.) No case of which we are aware sustains intervention on such a tenuous basis. Petitioners lack the interest of the petitioners in Hatton, and unlike the petitioners there would not have had standing to bring this suit in the first instance.

B. No reason appears to distinguish Model Cities areas from other areas of the City in respect of the need for housing. There is no factual showing that low-income housing is in greater

demand in Model Cities areas than elsewhere in the City. The Court knows that low-income housing is in desperately short supply in the entire City. Thus, even if a general interest in housing constituted a sufficient interest to intervene, which it does not, petitioners' effort to intervene should be denied because the interests they purport to represent are too narrow.*

C. Petitioners do not appear to be asserting rights or interests of their own so much as rights or interests of the City as the recipient, and HUD as the grantor, of Model Cities funds. The Court will judicially notice that Model Cities programs rest upon a contract between two parties - the City and HUD. The interests of the parties to the Model Cities contract - the City and HUD - should plainly not be determined in the absence of those parties and at the instance of individuals who purport, but without apparent authority, to speak in their behalf.

D. There is no showing that petitioners' desire to have housing built has been impaired by the disposition of the case. There is instead merely an unsupported conclusion (see I above) that the decree in this case has prevented CHA from building housing in the areas in which petitioners reside. For example, petitioners make no showing that CHA's dilatory performance under the decree, rather than the decree itself, is not the cause of the problem they perceive, or even that - quite apart from the decree -

*Petitioners do not even claim to represent Model Cities residents as a class, and plainly could not do so. See E. below.

CHA had any plans at all for building in the neighborhoods between the entry of the decree and the filing of the motion to intervene.

E. There is no showing that petitioners are not adequately represented by the parties. Plaintiffs represent a class of persons - applicants for CHA housing - who desperately need housing at least as much as petitioners claim to want it in their neighborhoods, and who have evidenced that need (as petitioners have not claimed to) by applying to CHA for low-income housing. Although the record does not show the residences of the applicants plaintiffs represent, the Court has previously been advised that applicants number in the thousands and it is inconceivable that some of them do not live in the areas of the City in which petitioners reside. Accordingly, there are numbered among the plaintiff class persons who have the same general residence as petitioners and the same need for housing as petitioners, but who have gone petitioners one step better by making specific application for such housing. There is no showing, or even any effort to show, why petitioners' legal interests are any different from those of the plaintiff class just described, and why therefore that interest is not adequately represented by the plaintiffs.*

*Petitioners may mean to assert that since the plaintiffs have an interest in desegregation they are not able to represent people who need housing desperately. Plaintiffs deny that their interest in desegregation is incompatible with their need for housing. Indeed, the Court knows that the plaintiffs are currently arguing in favor of more strenuous enforcement of the Court's decree in the interests of producing more housing more quickly. Moreover, the argument that the decree would impede the construction of housing was vigorously
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F. Finally, petitioners claim is without merit. It reduces to the argument that because low-income housing is desperately needed, a resumption of the discredited and illegal policy of building such housing exclusively or largely in black areas of the City is permissible. That argument was vigorously made by CHA and has been considered and rejected by the Court, which decided that "the praiseworthy and urgent goals of low cost housing and urban renewal" do not justify a racial separation policy. Gautreaux v. CHA, 296 F.Supp. 907, 914 (1969).

In United States v. Blue Chip Stamp Company, 272 F.Supp. 432, 440 (C.D. Calif. 1967), aff'd. sub nom Thrifty Shoppers Scrip Co. v. U.S., 389 U.S. 580 (1968), the court said:

"There is no merit to the claims petitioners seek to advance; intervention should thus be denied ... Petitioners here do nothing more than reiterate arguments previously presented; they fail to raise any additional arguments not already heard at length and denied by this court. To permit intervention and vacation of the decree so that these very same arguments can be heard again would impose an unwarranted burden on the parties and the court."

CONCLUSION

Petitioners seek more housing. So do the plaintiffs. Thus, any difference of views between petitioners and plaintiffs is less important than the area of agreement and arises from

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made by CHA, and the Court fully considered such argument prior to the entry of its decree. See F. above. Thus, to the extent petitioners believe that their interests have not been adequately represented by the plaintiffs, it may be said that their argument has been vigorously made by the defendant.

petitioners' erroneous perception that the decree, rather than the dilatory performance of CHA, has slowed the progress of public housing in Chicago. The remedy is not to scrap the Court's decree but to seek prompt and strict enforcement of it.

The harm which would flow from granting petitioners' request would be devastating. The Model Cities areas comprise large portions of the City, housing over 300,000 people. If these areas were excluded from the decree there would be nothing to prevent CHA from concentrating all or nearly all of its future construction in them, thereby vitiating the decree. The effect would be to open the doors once again to an unconstitutional segregationist public housing policy in the City, this time with official court sanction. The impact of such a defeatist determination on the hopes of the plaintiffs and countless other Americans to whom the spectre of a separatist society is anathema, and to whom this Court's decree was a courageous rejection of that spectre, would be incalculable.

Asserting that the nation was rapidly moving toward two increasingly separate societies - white suburban and Negro central city - the Kerner Report said:

"The Negro society will be permanently relegated to its current status, possibly even if we expend great amounts of money and effort in trying to 'gild' the ghetto. In the long run, continuation and expansion of such a permanent division threatens us with two perils. The first is the danger of sustained violence in our cities. ... The second is the danger

of a conclusive repudiation of the traditional American ideals of individual dignity, freedom, and equality of opportunity." (Bantam ed., 407-08.)

The Report concluded,

"If the effort [of public housing programs] is not to be counter-productive, its main thrust must be in nonghetto areas, particularly those outside the central city." (Id., 482.)

* * * *

Petitioners' poignant supporting affidavits do not support intervention, but they do confirm that the time has come for strict enforcement of Subsection A of Article VIII of the decree which requires CHA to use its best efforts to increase the supply of low-income housing as rapidly as possible in conformity with the decree.

Respectfully submitted,

Alexander Polikoff
109 North Dearborn Street
Chicago, Illinois 60602

Charles R. Markels
231 South La Salle Street
Chicago, Illinois 60604
CE6-4500

Bernard Weisberg
111 West Jackson Boulevard
Chicago, Illinois
Harrison 7-9250

Milton I. Shadur
208 South La Salle Street
Chicago, Illinois
ANdover 3-3700

Merrill A. Freed
33 North La Salle Street
Chicago, Illinois
Randolph 6-9020

Cecil Butler
109 North Dearborn Street
Chicago, Illinois 60602
641-5570

By:

A handwritten signature in cursive script, appearing to read "Alexander Polikoff", written over a horizontal line.

Alexander Polikoff
Attorney for Plaintiffs

DATED: July 8, 1970

APPENDIX

Conclusory Assertions of the Seven Basic Forms of Affidavit

- FORM 1 - "I ask the U.S. District Court to permit public housing to be developed in low-rise and or town-house or single family units in the Lawndale Model Cities area so that low-income families presently being displaced by demolition will be able to stay. . ." (Affidavit of Dorothy Branch)
- FORM 2 - "[T]he order of the Federal District Court of July 1, 1969 entered by Judge Richard Austin effectively eliminates the possibility of public housing construction and rehabilitation in my community. . ." (Affidavit of Edgar T. Thornton)
- FORM 3 - "[H]ope and expectancy for living conditions reasonably comparable to that enjoyed by other citizens within the City of Chicago and within the country, have not come to fruition because said Ward is contained within the "limited public housing area" set forth in the District Court order of July 1, 1969, which precludes public housing of any kind from being constructed at the earliest possible moment. . ." (Affidavit of George W. Collins)
- FORM 4 - . . . "I ask the U.S. District Court to exempt the four Model Cities Areas from its order of July 1, 1969 (Dorothy Gautreaux, et al. vs. The Chicago Housing Authority, et al. 66 C 1459) and permit the Chicago Housing Authority to begin immediately to build housing for low-income families in our area." (Affidavit of Walter Walker)
- FORM 5 - "[T]he order in the instant case entered on July 1, 1969 by Judge Austin places the 29th Ward within a 'limited public housing area' and thereby precludes the kind of construction which would enable residents of the 29th Ward to remain in their community. . ." (Affidavit of Robert Biggs)
- FORM 6 - "[U]nless the original order entered in this cause is further modified to permit some public housing in the Model Cities Area of the 4th Ward, then the very people that this lawsuit is designed to protect, will suffer the most by reason of the enforcement of said original order." (Affidavit of Claude W.B. Holman)

FORM 7 - "The order of the U.S. District Court in the matter of Dorothy Gautreaux, et al. vs. The Chicago Housing Authority, et al. 66 C 1459, has had an effect of halting all public housing development and remodeling for the low-income families in our area."
(Affidavit of Ralph H. Metcalfe)

February 3, 1970

The Honorable Richard J. Daley
Mayor of the City of Chicago
Chicago, Illinois 60602

Dear Mayor Daley:

This letter and accompanying certificate serve as confirmation of the recertification of Chicago's Workable Program for Community Improvement until July 1, 1971. In accordance with your request, the certification is retroactive to July 1, 1969, and will expire on July 1, 1971. As you know, this certification is based upon agreements between the City of Chicago and HUD contained in the City's September 4, 1969, additional Workable Program submission and your letter to me dated January 15, 1970. At this time, I would like to reiterate, for the sake of clarity, the major points covered by our agreements:

(1) The most serious problems faced by the City of Chicago in the housing-related area currently are (a) the possible inadequacy of relocation resources for anticipated displacement activities, (b) the apparent reduction of the supply of low income housing, and (c) the absence of an overall program designed to increase housing opportunities for low and moderate income persons.

(2) To deal effectively with the above-noted problems, a combined HUD-City Team will be formed, composed of members of the HUD Regional Office staff and your designated representatives. The Team will have three basic functions:-

(a) To safeguard against a reduction of the housing supply. The City has agreed to build immediately 1500 new family units of public housing and to lease an additional 600 units for public housing families. HUD has agreed to increase by 350 units the authorization of the city to lease housing units. The team will review the progress of housing construction and displacement. When the Team perceives a deficit between the number of new low income units to be built and the anticipated number of displacees, it will recommend to the City and to HUD actions appropriate to preserving the low income housing supply. If for any reason the Team cannot agree on a course of action, HUD will of course be forced to take steps to preserve the housing supply, including, if necessary, the reduction or suspension of displacement in HUD-assisted activities.

(b) To monitor displacement. The joint HUD-City Team will establish a procedure to monitor displacement from government action on a monthly basis to insure that displacees are relocated properly. When the monitoring system identifies inadequate relocation, the Team will recommend actions to correct the problem.

(c) To develop a housing strategy or program designed to increase the supply of low income housing. This is a broad and complex area requiring the cooperation and the combined efforts of the City and HUD. The problems of lack of information on City-wide needs, resistance to low income housing, the short supply of money, the restrictions of public housing construction imposed by the Austin decision, the scarcity of land, the existence of discrimination in the availability of housing for minority groups are all problems which call for this kind of cooperative approach. Thus, in developing a housing strategy for the City of Chicago, the Team will consider all areas and matters which are relevant to the overall housing problems of the City.

including the initiation of any studies necessary to obtain needed information.

We will be in contact with your office in the immediate future in order to set up the first Team meeting, so that the joint HUD-City effort may begin. As always, we have appreciated the cooperation of your office and staff and we look forward to working with the City in these areas of mutual concern.

Sincerely yours,

/s/ Francis D. Fisher

Francis D. Fisher
Regional Administrator

Attachment

CITY OF CHICAGO
OFFICE OF THE MAYOR

MAYOR

January 15, 1970

Mr. Francis D. Fisher
Regional Administrator
Department of Housing and Urban
Development
360 North Michigan Avenue - Room 1500
Chicago, Illinois

Dear Mr. Fisher:

I have been informed of the recent meetings held to review the Chicago Workable Program submittal and the discussions about your proposal to expand on a cooperative basis HUD - City of Chicago Analysis, programming and utilization of Federal Assistance. The objectives are: increasing the supply of low-rent housing, minimizing relocation problems and developing in some detail both short and long range housing programs, primarily but not limited to increase the supply of low-rent housing.

As part of the process of recertification of the Chicago Workable Program for the period July 1, 1969 - July 1, 1971 and in order to move forward in these areas of mutual concern and interest, I will immediately appoint appropriate city officials to be joined by your designated representatives to form a combined HUD - City Team.

The Team will:

- A - Review the displacement that has already taken place and the displacement projected for the remainder of the Workable Program period, to assure that new low income housing constructed keeps pace with reduction of such housing by governmental action. They will match the proposed reduction of housing supply against additions or imminent additions to the housing supply to insure conformance with Federal Law and regulations.

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CITY OF CHICAGO
OFFICE OF THE MAYOR

MAYOR

D. Fisher

January 15, 1970

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- B - Develop a procedure for monitoring on a monthly basis the displacement and relocation of families and individuals.
- C - Develop a strategy for increasing the supply of low income housing in the Chicago Metropolitan Area.

The Teams, in conjunction with other appropriate officials, are to work on a continuing basis and to develop in the shortest possible time the special material to cover the items above. The Teams will review the data and recommend to the City and HUD any additional steps that need to be taken. The Teams will also outline the process which they consider appropriate for the development of a plan of action in the City and the surrounding areas. Once such process is agreed to by HUD, the City, and other appropriate officials, all possible steps necessary to effectuate this process will be taken by the appropriate bodies.

Sincerely,

Mayor

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Alexander Polikoff,
One of the Attorneys for Plaintiffs