

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 66 C 1459
	)	
CHICAGO HOUSING AUTHORITY,	)	Chief Judge Aspen
	)	
Defendant.	)	

**RECEIVER'S EMERGENCY MOTION FOR ENTRY OF ORDER DIRECTING CHA
TO COMPLY WITH 1987 RECEIVERSHIP ORDER AND 1998 HOPE VI ORDERS**

DANIEL E. LEVIN and THE HABITAT COMPANY, (collectively "the Receiver")
move the Court, for the reasons set forth below, for the following relief against the defendant
Chicago Housing Authority:

- (1) That CHA cease all further unilateral non-elderly housing development activities without prior approval of the Court;
- (2) That CHA turn over control of all HOPE VI non-elderly housing development to the Receiver (including but not limited to operating and financial control);
- (3) That CHA disclose to the Receiver all information about its non-elderly housing development activities, including but not limited to agreements it has made (or has been negotiating) with tenants or others concerning new housing development;
and
- (4) That CHA be enjoined from taking any steps to implement any purported agreement with tenants concerning the development of non-elderly public housing

(including the Cabrini-Green agreement described below), without advance express written consent of the Receiver or further Order of this Court.

This motion is submitted on an emergency basis because of the CHA's unilateral act in agreeing to a settlement of a lawsuit involving redevelopment plans for the Cabrini-Green housing project in the case of Cabrini-Green Local Advisory Council v. CHA, No. 96 C 6949, (N.D. Ill.) ("Cabrini-Green LAC"), which is apparently to be presented soon to Judge Coar, in a manner that appears to be inconsistent with the Gautreaux Court's Orders. In addition, counsel for the Receiver asked counsel for the CHA if it would agree to a standstill agreement to permit a regular, expedited briefing schedule on this Motion. Counsel for the CHA refused.

Because the Receiver has not been given a copy of the document, the Receiver has not formed an opinion on the merits of the proposed housing development to be implemented pursuant to the settlement. It may view the development as sound (or it may not). Nevertheless, the Receiver is concerned that the process followed by the CHA in entering into the purported settlement -- a process from which the CHA excluded the Receiver -- appears to violate this Court's Orders.

In support of this Motion, the Receiver states:

I. BACKGROUND RELATED TO CHA'S DUTY OF COOPERATION.

A. The Receivership Order:

1. By order of August 14, 1987 (Exhibit A hereto; "Receivership Order"), the Court appointed the Receiver to assume responsibility for the "scattered site program," which the Order defined as including "all CHA non-elderly public housing development programs which

may in the future be authorized by HUD during the pendency of Civil Action No. 66 C 1459."

Receivership Order ¶(C).

2. The Receivership Order provides, among other things, that the Receiver's responsibilities include:

2. The Receiver shall have and exercise all powers of CHA respecting the scattered site program necessary and incident to the development and administration of such program, including:

(a) Making all determinations governing the scattered site program in compliance with prior and future orders of this Court, including without limitation (i) submission to HUD of applications for funding, development programs and other documents, (ii) site selection and acquisition (including policies respecting the location of sites and buildings to be acquired), (iii) the relocation of occupants, when necessary and (iv) construction and rehabilitation of dwelling units and the design and specifications therefore in compliance with applicable laws and ordinances; and

(b) Carrying out the determinations so made, including without limitation (i) negotiating and executing any contracts or other documents necessary or appropriate to implement the scattered site program . . . and (v) doing such other acts and things, including site selection and acquisition in the name of CHA, construction and rehabilitation of dwelling units and retaining the services of such personnel . . . as are determined by the Receiver to be necessary and appropriate to implement the scattered site program and to enable the Receiver to discharge its duties pursuant to the provisions hereof. [Emphasis added.]

3. The Receivership Order also directs the CHA to cooperate with the Receiver, and restrains the CHA from interfering with the Receiver:

7. CHA, its agents, servants and employees shall provide full cooperation and assistance to, and shall not interfere with, the Receiver in the performance of the Receiver's responsibilities hereunder, including without limitation providing full access to all information, records, documents, files relating to the scattered site program. [Emphasis added.]

B. The February 23 Order.

4. By Order of February 23, 1998, Exhibit B hereto, the Court confirmed that the Judgment Order in this case "governs the CHA's use of HOPE VI funds" and that "any construction of public housing in Cook County must conform to the judgment order's locational requirements." Exhibit B at 5.

C. The CHA's Refusal to Implement the February 23 Order and the Motion for Further Relief.

5. By letter of March 13, 1998, the Receiver informed the Court of its unsuccessful efforts to obtain cooperation from the CHA concerning the HOPE VI application process. A copy of the March 13 letter is attached as Exhibit C hereto.^{1/}

6. As set forth in the March 13 letter, the Receiver met on March 10 with Joseph Shuldiner, the Executive Director of the CHA, and a representative of HUD:

At the meeting, Mr. Shuldiner stated that he did not agree with your February 23 Order, that he opposed the Receivership, and that he disagreed with the requirements of various Court Orders mandating housing to be located so as to further desegregation goals. He also stated that the CHA intended to proceed with its own programs for development of new housing without the Receiver, and invited us to "try to stop him." He made it clear that no cooperation would be forthcoming, and that if the Receiver opposed him, he would join tenants in pressing claims against us. [Ex. C at 1.]

7. Among the other matters discussed on March 10 was the following:

Mr. Shuldiner said that he reads the February 23 Order as dealing only with the location for HOPE VI housing, and not as a statement that HOPE VI-funded housing is within the Gautreaux judgment for all purposes. He added that he does not agree that the Court-ordered Gautreaux locational requirements (such

^{1/} The March 13 letter was subsequently verified by the March 30 Affidavit of Daniel Levin ¶17, and the March 31 Affidavit of Valerie Jarrett at ¶9. Those affidavits have never been controverted by the CHA.

as one-for-one construction of housing in limited and general areas, the designation of revitalizing areas, etc.) should limit the CHA's ability to place new housing units wherever it chooses. [Ex. C at 2.]

8. Following the service of the March 13 letter, the Plaintiffs filed a *Motion for Further Relief*. A copy of the Motion, and the Proposed Order submitted therewith, is attached as Exhibit D hereto. In the Motion, the plaintiffs requested an Order:

- (1) Ordering the CHA to cease all activities incident to the development of non-elderly public housing, "including without limitation entering into negotiations, making commitments to tenants or others, or seeking . . . approvals with respect thereto;"
- (2) Providing the Receiver with full information relating to development activities in which the CHA had engaged;
- (3) Making CHA employees available to respond to questions of the Receiver;
- (4) Executing all documents requested by the Receiver or HUD to transfer all housing development funds to the Receiver;
- (5) Making no application for funding for development without the written consent of the Receiver; and
- (6) Providing a statement of the CHA's plans for desegregation.

9. The Receiver supported the Motion for Further Relief, and submitted extensive affidavits and documentary evidence in support. The Court is respectfully referred to Affidavits of Daniel Levin, Valerie Jarrett, Philip Hickman, and Barry Miller, and accompanying documents.

D. The Emergency Motion Concerning the CHA's HOPE VI Duty of Cooperation.

10. While the Motion for Further Relief was pending, on March 31, 1998 HUD published a Notice of Funding Availability ("SuperNOFA") under the HOPE VI program. After reviewing the SuperNOFA, the Receiver wrote the CHA to ask to meet to discuss a joint application. After the CHA failed to respond to two letters, the Receiver filed on May 18, 1998 the *Receiver's Emergency Motion for Entry of Order Implementing CHA's Duty of Cooperation*.

11. At a hearing on May 19, the CHA opposed the motion on the ground that the Receiver had no authority over HOPE VI. A copy of the transcript of that hearing is attached as Exhibit E hereto.

E. The Court's Comments and Order on May 19.

12. At the May 19 hearing, the Court stated, inter alia:

[M]y focus is not on whether he can get along with the Receiver or not. My focus is whether or not everyone, including the CHA, complies with the orders of this Court, the orders that I have issued thus far and the orders that I will issue in the future. I expect Mr. Shuldiner to comply with those orders, whether or not he feels that it's an impediment to follow my orders because he can't get along -- or feels he can't get along with the Receiver.

I will issue an order, and as long as the Seventh Circuit has not changed my order it's a viable order and I expect Mr. Shuldiner to comply with it. If he does not comply with it, I will do what I have to do to make him comply with it. I hope you will give him that message.

* * * * *

. . . [If Mr. Shuldiner's] belief conflicts with the orders of this Court, then Mr. Shuldiner will have to opt to follow the orders of this Court. You know, we're not in a lawless society where somebody has their own views as to the law or the construction of an agreement and can follow those if there is a Court order to the contrary.

* * * * *

[U]ntil and unless an order of the Court has been overturned by a reviewing court, I expect that order to be followed, regardless of Mr. Shuldiner's personal views as to how he thinks the law ought to operate. And please convey that to him.

* * * * *

I find that Mr. Shuldiner has thus far indicated that he would rather contest every aspect of the relationship between the Receiver rather than attempt to cooperate. And to the extent I can, I will straighten it out when I rule on the motions.

13. Later on May 19, the Court entered an Order granting the Emergency Motion. A copy of the Court's Order is attached as Exhibit F hereto. After discussing the prior Orders, including the Receivership Order's grant of "all powers of CHA" with regard to the development and administration of non-elderly housing development, the Court ruled:

On February 23 we held that there was no reason to treat HOPE VI funds differently than any other funds for purposes of the *Gautreaux* judgment order, and we similarly see no reason to treat those funds differently for purposes of the order appointing the Receiver.

* * * * *

Our order of August 14, 1987, appointing the Receiver, obligates the CHA to cooperate with the Receiver and to provide the Receiver with the information it needs. It is now clear, if it was not before, that this means that the CHA is to coordinate its 19989 HOPE VI application with the Receiver and to provide the Receiver with the information it has requested.

F. Before the CHA Would Produce Prior HOPE VI Applications to the Plaintiffs and the Receiver, the May 20 Order of this Court Was Required.

14. On May 20, the CHA presented a motion for a stay of the Court's May 19 Order pending appeal.^{2/} While in the courthouse on May 20, the CHA's counsel refused to produce HOPE VI applications that had been requested by counsel for the plaintiffs (and had long been requested by the Receiver). The Court granted the plaintiffs' oral motion to compel immediate production of the documents. A copy of the Court's Order is attached as Exhibit G hereto.

G. The Denial of the Motion for Further Relief.

15. On May 21, 1998, this Court denied the plaintiffs' Motion for Further Relief as moot. In its ruling, the Court expressed the view that most of the matters contained in the Motion for Further Relief had been disposed of by its May 19 Order concerning HOPE VI:

We do not believe such an order will be necessary. In an order issued on May 19, in response to an emergency motion from the Receiver, we wrote that "we [have previously] held that there was no reason to treat HOPE VI funds differently than any other funds for purposes of the Gautreaux judgment order, and we similarly see no reason to treat those funds differently for purposes of the order appointing the Receiver." Accordingly we held that the parts of the HOPE VI program discussed in our opinion of February 23 "fit[] entirely within the Receiver's jurisdiction. . . . Many of the problems detailed in the plaintiff's motion concern the CHA's HOPE VI-related activity, and those problems were addressed by our prior order.

To the extent that the plaintiffs' motion raises issues unrelated to the Receiver's role in the HOPE VI program, we think it best that the Receiver bring those issues to this Court's attention if it so chooses.

^{2/} For the Court's information, on May 29, 1998, the Seventh Circuit denied the CHA's motion to stay this Court's February 23 and May 19 Orders. The initial briefs of the CHA, the Receiver, and the plaintiffs have been filed in the Seventh Circuit. The CHA's Reply is due on August 12, 1998. No date has yet been set for oral argument.

H. Other Problems with the CHA Following the February 23 and May 19 Orders.

16. Since the May 19 Order, the Receiver has attempted to focus on resolving matters of immediate concern in a cooperative manner with the CHA.

17. A HOPE VI application was filed by the CHA with respect to ABLA on June 29, 1998, and all parties agreed to the entry of a revitalizing order by this Court on June 19, 1998.

18. Nevertheless, in the preparation of the ABLA HOPE VI application, the CHA refused to allow the Receiver to sign the application and apply for the housing development as Receiver -- as required by the Receivership Order ¶2. In addition, the CHA did not fully cooperate in other respects in the HOPE VI application. See July 10, 1998 letter from Daniel E. Levin to the Court, a copy of which is attached as Exhibit H hereto.

19. The CHA also failed to comply with the Court's Orders and cooperate in performing the ministerial acts required to transfer \$7 million of funds, much of it to the Receiver. See 3/31/98 Jarrett Aff't ¶9-13 & Ex. 4 thereto. After the Court's May 19 Order, the transfer was obtained by the Receiver in early June through direct negotiations with HUD.

II. BACKGROUND CONCERNING CHA'S ACTIONS AT CABRINI-GREEN.

20. The following additional background is relevant to the CHA's recent disregard of this Court's orders as they relate to the Cabrini Development.

A. Originally the CHA Recognized the Receiver's Role in the Cabrini Redevelopment, then it Excluded the Receiver.

21. In 1993 the CHA unilaterally applied to HUD for HOPE VI funds for the Cabrini redevelopment. After the Receiver learned of the application and objected, the CHA agreed that Habitat would function as "development manager" for the construction of replacement units.

Aff't of Daniel E. Levin of 3/31/98 ¶¶18-19. This agreement was confirmed by letter of November 14, 1995 from the CHA's board chairman, Exhibit I hereto.

22. The Receiver functioned as development manager for Cabrini for over a year, after which the CHA instructed the Receiver (in September 1996) to stop work, and the CHA thereafter began performing some development tasks that are the Receiver's responsibility under the Receivership Order. 3/30/98 Aff't of Philip A. Hickman ¶¶28-39, 44-46.

B. After the Court Denied CHA's HOPE VI Motion, the CHA Announced its Intention to Proceed as it Saw Fit with Respect to Cabrini and other HOPE VI Development Activities.

23. As is related above, after the CHA excluded the Receiver from participation in Cabrini. Throughout the summer of 1997, the Receiver raised with the CHA the issue of the fact that HOPE VI authority was vested in the Receiver, and the CHA should not be acting in any development role at Cabrini-Green.

24. In July 1997, the Receiver advised the Court of the CHA's position that the Receiver had no role in HOPE VI funded development activities, and requested the Court's assistance. The Court urged the parties to meet to attempt to work out their differences. At first, the CHA refused to discuss the HOPE VI questions; it later agreed to negotiate. 3/31/98 Miller Aff't ¶¶7-8; Levin Aff't ¶¶25-38.

25. In September 1997, the CHA filed the HOPE VI motion that the Court denied in an Order of February 23, 1998. Following that Order the Receiver invited the CHA and HUD to a meeting to discuss how to implement the Order, which recognized that HOPE VI-funded housing was subject to the remedial orders in this case. Levin Aff't of 3/17/98 ¶¶ 3-5 and Ex. A thereto at 1.

26. In the March 10 meeting, Mr. Shuldiner stated as follows with respect to the Cabrini redevelopment, as Mr. Levin reported to the Court in his letter of March 13, 1998, p. 5:

Near the end of the meeting, Mr. Shuldiner told me that he had offered to residents at Cabrini-Green a development partnership interest. He will build replacement housing with them, and without the Receiver. He made it clear that he is going to continue to make plans with the residents at Cabrini-Green, and that we could only "try to stop him."

27. The circumstances described in Mr. Levin's March 13, 1998 letter led the plaintiffs to file a motion for further relief on March 18, 1998, which the Court subsequently dismissed as moot in view of its ruling on the Receiver's Emergency Motion of May 18, 1998.

28. After the Court granted the May 18 motion by its May 19, 1998 Order, the Receiver continued to request cooperation from the CHA and compliance with the Receivership Order. In view of the Court's clear statement to the CHA in the May 19 Order that it was obligated to cooperate with the Receiver (as well as statements in open Court), the Receiver hoped that the CHA would in fact provide such cooperation.

C. When the Receiver Objected to CHA's Unilateral Negotiation of Redevelopment Agreements with Tenants, the CHA Refused to Alter its Practice.

29. Thereafter, the Receiver, the CHA, and the City of Chicago entered into discussions in accordance with the May 19 Order jointly to prepare an application for additional HOPE VI funds to be submitted to HUD on June 29, 1998. In those discussions, the CHA referred to agreements it claimed to have made with tenants that limited the options available for development planning at the ABLA development.

30. On June 12, 1998 one of the Receiver's attorneys wrote one of the CHA's attorneys seeking information, and specifically focused on the CHA's negotiation of separate development arrangements with tenants. The June 12 letter (Exhibit J hereto) stated:

The CHA has repeatedly stated that it has entered into agreements with ABLA tenants, and that those agreements limit the redevelopment planning potential. . . . [W]e have not yet seen any executed agreements. The Receiver is sensitive to the importance of communication with tenants as part of the planning process. But we have not been afforded the opportunity to participate. Instead, we have been presented with an agreement we have not seen as a *fait accompli*.

While the agreement with ABLA tenants apparently predates the 5/19 Order, when the CHA follows the practice of negotiating agreements with tenants (to which the Receiver is not a party), that limit development options that may later be available, the CHA impermissibly occupies a portion of the Receiver's responsibility. We trust this won't happen again in the future.

In keeping with the above, with respect to ABLA and elsewhere, the Receiver requests that (1) the CHA provide it with information about all agreements it has made with tenants concerning rehabilitation or redevelopment, anywhere in the City, and (2) the CHA not enter into any such agreements hereafter without the participation and written concurrence of the Receiver. [Emphasis added]

31. By letter of June 16, 1998, Exhibit K hereto, counsel for the CHA responded:

The CHA does not intend to provide the receiver with "information about all agreements it has made with tenants concerning rehabilitation or redevelopment, anywhere in the City," nor does the CHA intend to refrain from entering into any such agreements "hereafter without the participation and written concurrence of the Receiver." . . . The CHA will provide information to the receiver regarding agreements made and proposed with regard to HOPE VI projects and any other projects that involve the construction of new housing. [Emphasis added.]

32. Despite the CHA's agreement to "provide information to the receiver regarding agreements made and proposed with regard to HOPE VI projects and any other projects that

involve the construction of new housing," the CHA did not provide any such information with respect to the Cabrini agreement.

D. The Cabrini-Green LAC Lawsuit.

33. In 1996, the Cabrini-Green Local Advisory Council, a tenant's organization, sued the CHA to enjoin the CHA's plan for redevelopment at Cabrini-Green under the HOPE VI program. This lawsuit essentially brought development activities at Cabrini-Green to a stop.

34. On January 22, 1997, Judge Coar issued an opinion denying the defendants' motion to dismiss, 1997 U.S. Dist. LEXIS 625 (copy attached as Exhibit L). In that opinion, Judge Coar addressed the relationship between the Cabrini-Green LAC case and Gautreaux.

35. In the motion to dismiss, the CHA argued that the Cabrini-Green LAC case was an impermissible collateral attack on Gautreaux's prohibition of building housing in racially segregated communities without court approval. 1997 U.S. Dist. LEXIS at *44. Indeed, the CHA's Memorandum in Support of the Motion to Dismiss, filed December 6, 1996, labeled the Cabrini-Green LAC case as "directly contrary to the court order that binds CHA in Gautreaux v. CHA"

36. On November 18, 1996, counsel for the CHA argued at a preliminary injunction hearing before Judge Coar that any redevelopment plan at Cabrini-Green was subject to the orders of the Gautreaux court:^{3/}

MR. JOHNSON: . . . One of the difficulties . . . is that the LAC is very much, as is their right, very much wedded to the earliest plans on Cabrini. And when Mr. Shuldiner meets with them, he receives from them the statement that they must go back to the original plan, and that's it. There is a bit of an

^{3/} A copy of the transcript is attached as Exhibit M hereto.

impasse. That plan was submitted to HUD and was not acceptable to HUD, not acceptable to the city. We believe it is also not acceptable to the Gertreaux [sic] plaintiffs.

* * * * *

Judge Aspen has Gertreaux [sic]. And, of course, Your Honor knows that in Gertreaux we have a race discrimination judgment against us that amongst many other things would preclude building in the Cabrini area, just as it has precluded building over at Horner. But we then have gone in Gertreaux [sic] and sought waivers free that injunction based on specific showings to Judge Aspen that the building will be taking place in a revitalizing community. Otherwise the Gertreaux injunction would prohibit all redevelopment at Cabrini.

We then have to work with counsel for the residents, the class in Gertreaux [sic], Mr. Polikoff. And so in our mind there is a tremendous intersection between this case and Gertreaux [sic] in the sense that here we have race claims being made against us for, you know, redevelopment plans, which before they can take place must be reviewed by a different judge of this district in the context of a race discrimination judgment against CHA. [Ex. M at 20-21 (emphasis added).]

* * * * *

[N]o redevelopment at Cabrini can take place without a waiver, which is a contested proceeding in the Gertreaux court [Id. at 22]

37. Judge Coar disagreed, because the requested relief *might* not be within the scope of Gautreaux. In addition, Judge Coar expressly noted that the agreement the Cabrini-Green LAC was seeking to enforce was subject to Gautreaux, and that any relief ordered by the Court would take Gautreaux into account:

It is not clear that granting plaintiff's requested relief -- i.e., ordering CHA to specifically perform on its contractual agreements with LAC and its members -- will necessarily bring this case within the scope of Gautreaux. This conclusion is based on the fact that the agreement that plaintiff seeks to have enforced specifically states that the agreement is "subject to . . . Federal Court guidelines under Gautreaux." (Compl., P. 38). Any relief that this Court directs must necessarily take this provision into account.

1997 U.S. Dist. LEXIS at *44-45.

E. The Cabrini-Green Settlement.

38. The Receiver first learned details of the Cabrini agreement from an article appearing in the *Chicago Tribune* on July 29, 1998.

39. Following publication of the article, the CHA's General Counsel was not prepared to turn over to the Receiver the written settlement agreement without attempting to extract an advance agreement from the Receiver not to contest the as-yet unseen agreement before the CHA sought court approval from Judge Coar. See Letter of July 29, 1998, Exhibit N hereto.

III. THE NEED FOR ACTION BY THIS COURT.

A. The Facts Warrant Further Action by this Court.

40. It is clear from the foregoing that the CHA has intentionally chosen to disregard the requirements of the Receivership Order by entering into unilateral redevelopment agreements with tenants that are clearly part of the Receiver's responsibility.

41. Despite this Court's Orders of February 23 and May 18, 1998, the CHA has determined that it will proceed with taking unilateral actions with respect to housing development at Cabrini, with the Receiver left, in the words of Joe Shuldiner, to go to Court to "try to stop him." Ex. C at 1.

42. It is also clear that the CHA has failed to comply with the cooperation provision of the Receivership Order, and its own attorney's undertaking in the letter of June 16, 1998, to inform the Receiver regarding agreements made and proposed with regard to HOPE VI projects.

43. Because of the CHA's violation of the Receivership Order and the 1998 Orders regarding HOPE VI, the Receiver has been totally excluded from virtually all aspects of Cabrini

redevelopment planning, and specifically excluded from what has been reported in the press as a wide-ranging and far-reaching agreement with tenants, which includes the following components (according to press reports):

- The CHA agreed to build 895 apartments for people who qualify for public housing. Of those units, 700 would have rents set at 30 percent of a family's income; 195 units would be for families with incomes 40 percent of median income or below.
- Cabrini's tenant council would be the "co-general partner for the development of all units" on the site of demolished buildings "with a 51 percent interest in the ownership of the general partnership."^{4/}
- The tenant council would get a portion of developers' fees and profits--"provided it uses such fees and profits for not-for-profit purposes"--and a role in the selection of property managers and construction contractors.
- The agreement restricts redevelopment of other parcels of land in the area.
- The CHA has promised \$59 million over the next few years, apparently including the \$40 million in HOPE VI housing development money that has previously been authorized by HUD.
- In addition, on information and belief, the CHA names a separate company as its development consultant for the property in the settlement agreement.

All of these terms, if accurately reported by the press, pre-empt areas of responsibility entrusted to the Receiver by Receivership Order and reconfirmed by the February 23 and May 19 Orders.

^{4/} The 51% set aside for the tenants' partnership interest might otherwise be available for building additional housing.

44. The Receiver is concerned that the CHA may be following the course discussed by Mr. Shuldiner in the March 10 meeting when he threatened to fight and otherwise retaliate against the Receiver if the Receiver sought control of HOPE VI housing development.

45. Given the CHA's recent statements of opposition to the Judgment Order and the subsequent Orders of this Court, the Receiver is concerned that any agreement negotiated by the CHA *may* not give adequate weight to the CHA's desegregation obligations under this Court's Orders, or *may* represent compromises that limit desegregation opportunities that would otherwise be available.

46. The Receiver may support the entire Cabrini-Green agreement, or substantial aspects of it, after it has had an opportunity to study it. Nothing in this motion is intended to express a pre-judgment of the merits of that agreement. However, for the reasons stated, the Receiver strongly objects to the process that has generated the agreement, and the CHA's violations of this Court's Orders. At a minimum, the Receiver should have been fully informed of and involved in the negotiations leading to the formation of the proposed agreement. This Court's officer, appointed to implement the Court's important desegregation remedies, should not have been kept in the dark about negotiations concerning redevelopment of almost a thousand units of public housing.

47. Instead of unilaterally settling the lawsuit, the CHA should have consulted with the Receiver and sought its approval of the terms of any settlement agreement. This should have occurred before the CHA made any commitments to tenants -- let alone signing an agreement that the CHA has no authority to sign or enforce.

B. CHA Had No Actual Authority to Enter into this Settlement,
and All Parties Dealing with it Had Notice of that Fact.

48. The CHA had no actual authority to enter into this Settlement Agreement. The Receivership Order, as reaffirmed by the February 23 and May 19 Orders, transferred "all powers of the CHA" concerning the development of non-elderly housing to the Receiver.

49. The CHA and the plaintiff class in the Cabrini case had actual knowledge of the Gautreaux case -- it's applicability was briefed in the Cabrini case and Judge Coar's January 22, 1997 Order noted that any relief would be subject to Gautreaux. Both have actual knowledge of the Receivership Order.

50. It is hornbook law that parties negotiating agreements with government agencies are charged with knowledge of all limitations of those agencies' contracting authority, and that any contract that is *ultra vires* or otherwise entered into without authority is void. See, e.g., Lindahl v. City of Des Plaines, 210 Ill. App. 3d 281, 568 N.E.2d 1306, 154 Ill. Dec. 857 (1st Dist. 1991); Bank of Pawnee v. Joslin, 166 Ill. App. 3d 927, 521 N.E.2d 1177, 118 Ill. Dec. 484 (4th Dist. 1988).

51. Accordingly, neither the plaintiff class in Cabrini-Green LAC nor the CHA can claim any right in the settlement agreement -- as presently "approved" by the CHA -- since the CHA had no authority to enter into any portion of that agreement respecting housing development.

C. The Court Has Broad Authority to Issue
Supplemental Orders to Effectuate the Receivership.

52. The Court has broad authority to issue supplemental orders to effectuate the Receivership it created. Rhode Island Hosp. Trust Nat'l Bank v. Howard Commun. Corp., 980 F.2d 823, 829 (1st Cir. 1992)(affirming finding of civil contempt against defendants for impeding work of court-appointed receiver); SEC v. Hardy, 803 F.2d 1034, 1037-38 (9th Cir. 1986). Accord 13 *Moore's Federal Practice* §§66.06[4][a], 67.07[3] (3d ed. 1998). This is especially true in a racial discrimination case, where the defendant has resisted implementation of the Court's desegregation orders.

CONCLUSION

53. As the Court is aware, the Receiver has attempted for the past several years to work with the current CHA administration, and has worked since 1996 to attempt to voluntarily resolve disputes about HOPE VI.

54. The Receiver continues to be interested in working cooperatively with the CHA, and remains willing to seek the CHA's input in decisions as to which the Court has assigned responsibility to the Receiver.

55. After the parties presented the HOPE VI issue to the Court, the Court reaffirmed on May 19, 1998 that the Receiver had authority over non-elderly housing development under the Receivership Order, including HOPE VI.

56. The CHA has disobeyed the Receivership Order and has not accepted the Court's February 23 and May 19 Orders, and continues to act unilaterally with respect to HOPE VI housing development.

57. The Receiver continues to view its role as implementing the Court's wishes, as expressed in its Orders.

58. The Receiver shares the desire to redevelop Cabrini-Green as quickly as possible, in a manner that effectuates the desegregation remedy in this case.

WHEREFORE, for the foregoing reasons, the Court is respectfully requested to enter the following relief against the defendant Chicago Housing Authority:

- (1) That CHA cease all further unilateral non-elderly housing development activities without prior approval of the Court;
- (2) That CHA turn over control of all HOPE VI non-elderly housing development to the Receiver (including but not limited to operating and financial control);
- (3) That CHA disclose to the Receiver all information about its non-elderly housing development activities, including but not limited to agreements it has made (or has been negotiating) with tenants or others concerning new housing development; and
- (4) That CHA be enjoined from taking any steps to implement any purported agreement with tenants concerning the development of non-elderly public housing (including the Cabrini-Green agreement), without express written consent of the Receiver or further Order of this Court.

Respectfully submitted,
Daniel E. Levin and
The Habitat Company

DATE: July 30, 1998

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