

1 IN THE UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION

3 DOROTHY GAUTREAUX, et al.,) Docket No. 66 C 1459
4 Plaintiffs,)
5 v.) Chicago, Illinois
6 CHICAGO HOUSING AUTHORITY,) July 30, 1998
7 Defendant.) 2:05 o'clock p.m.

8 TRANSCRIPT OF PROCEEDINGS - MOTION
9 BEFORE THE HONORABLE MARVIN E. ASPEN

10 APPEARANCES:

11 For the Plaintiffs: BUSINESS AND PROFESSIONAL PEOPLE
12 FOR THE PUBLIC INTEREST, by
13 MR. ALEXANDER POLIKOFF
(17 East Monroe Street
Suite 212
Chicago, Illinois 60603)

14 For the Receiver: MILLER SHAKMAN HAMILTON KURTZON
15 & SCHLIFKE, by
16 MR. MICHAEL L. SHAKMAN
MR. BARRY A. MILLER
17 MR. EDWARD W. FELDMAN
(208 South LaSalle Street
Suite 1100
Chicago, Illinois 60604)

18 For the CHA: SKADDEN ARPS SLATE MEAGHER &
19 FLOM, by
20 MS. SUSAN GETZENDANNER
(333 West Wacker Drive
Chicago, Illinois 60606)

21 For the City of Chicago: CITY OF CHICAGO LAW DEPARTMENT, by
22 MS. JULIA E. GETZELS
23 Director of Programs & Policy
(511 City Hall
Chicago, Illinois 60602)

1 APPEARANCES: (Continued)

2 COURT REPORTER:

MS. MARY M. GALLAGHER
(219 South Dearborn Street
Room 2524A
Chicago, Illinois 60604)
(312) 663-0049

5 ALSO PRESENT:

MR. TOM JOHNSON
MR. RICHARD M. WHEELLOCK

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1 THE CLERK: 66 C 1459, Gautreaux versus CHA.

2 MR. SHAKMAN: Good afternoon, Judge. Michael Shakman
3 and Barry Miller for the receiver.

4 This is the receiver's emergency motion for entry of
5 an order with regard to the CHA in compliance with the 1987
6 receivership order and various 1998 Hope VI orders. I should
7 point out at the outset that we had attempted to simply work
8 out a standby arrangement with counsel for the CHA, as on
9 page 2, so we would not have to present this as an emergency
10 matter. And to brief it, we were informed -- Mr. Miller had
11 this conversation; I did not. We were informed that CHA felt a
12 wish to proceed with the submission to Judge Coar in the
13 Cabrini case with the agreement that is apparently structured
14 with the Cabrini plaintiffs. And, therefore, we are not
15 prepared to enter into that kind of provision.

16 So what we are asking at this point is that -- I guess
17 I need to back up a step and state, as our papers do, that the
18 problem the receiver perceives at this point is apparently CHA
19 has gone ahead over our prior written objections to them and
20 are both negotiating and finalizing that agreement providing
21 for very extensive redevelopment procedures with respect to the
22 Cabrini-Green development, without permitting the receiver to
23 participate. In particular, without informing the receiver
24 even though we have been informed by counsel for CHA when we
25 raised this issue in a letter to them in June, that they were

1 to advise us of plans and proposed plans -- I should correct
2 that -- agreements and proposed agreements with the tenants
3 relating to creation of housing.

4 So the bottom line is that the receiver has been left
5 out of the area of responsibility that is exclusive the
6 receiver, the new housing development, when confronted by HUD.
7 And the consequence is that we can't say whether the proposed
8 redevelopment program is a good one or bad one because until
9 counsel for the CHA handed me a copy of the proposed agreement
10 a few minutes after 2:00 o'clock this afternoon, we had not
11 seen it or been a party to this in its negotiation or
12 development.

13 Earlier today I had caused to be delivered to the
14 Court our motion. I don't know if you have had a chance to
15 read it.

16 THE COURT: I have.

17 MR. SHAKMAN: I would like leave to file it now with
18 the exhibits. We didn't have the exhibits and I thought we'd
19 get it to the Court anyway.

20 THE COURT: Thank you.

21 MR. SHAKMAN: So what we are asking for at this point
22 is the Court not break any new ground, simply enforce its
23 existing orders by directing that the CHA not engage in any
24 further unilateral non-elderly housing development activities
25 without either the involvement of the receiver or prior

1 approval of the Court, that it turn over to the CHA all the
2 Hope VI non-elderly housing development that it's engaged in,
3 that it disclose all information about what it's doing, and
4 that specifically with respect to Cabrini that no further steps
5 be taken including presenting the proposed -- proposed
6 settlement agreement to Judge Coar for approval until the
7 receiver has had a chance to consider it and analyze it and
8 come to a conclusion as to whether it does or does not
9 effectively promote desegregation orders of this Court, the
10 receiver's responsibility as it relates to new housing.

11 I want to emphasize that we are not in a position --
12 the receiver is not in a position to express a point of view on
13 the merits of the redevelopment proposal that's embodied in the
14 settlement agreement. And that's because we have been left
15 out. It may well be that it's an appropriate redevelopment
16 agreement.

17 There are questions that are raised by it, but those
18 questions are questions we would hope to and are entitled to
19 have an opportunity to examine and consider.

20 Thank you.

21 THE COURT: Okay. Response?

22 MS. GETZENDANNER: Your Honor, I did not get the
23 motion until a few minutes after 2:00 myself. I have not read
24 it or any of the exhibits. I don't see what the emergency is
25 other than your Honor is going out of town. So in that

1 respect, if you'd like to set a briefing schedule today that
2 would be fine.

3 THE COURT: The only other emergency would be if
4 Judge Coar were going to take some action.

5 MS. GETZENDANNER: Your Honor, the consent decree
6 specifically provides that it must be approved by your Honor.
7 It's a specific requirement of the contract. The procedure we
8 went through in Horner was that Judge Zagel approved it first,
9 and then we brought it over to you. The same contemplated
10 scheme was going on there.

11 Judge Coar -- it is his case. It is a consent decree.
12 The parties have been working on this for five years. They are
13 very pleased to have a deal to present to Judge Coar. So we
14 would present it to Judge Coar and then go on and bring it to
15 you. So that's what I would suggest.

16 And plaintiffs' counsel in Judge Coar's case is here
17 as well as the CHA's lawyer, Tom Johnson. And that's their
18 desire to just present it to --

19 THE COURT: You are the CHA's lawyer.

20 MS. GETZENDANNER: Pardon?

21 THE COURT: You are the CHA's lawyer, are you not?

22 MS. GETZENDANNER: In this case, not in --

23 THE COURT: Not in the other case.

24 MS. GETZENDANNER: No.

25 THE COURT: Okay.

1 MS. GETZENDANNER: If you have any questions of them,
2 that would be --

3 THE COURT: I don't have any questions, but I am
4 certainly interested in hearing anything they feel I ought to
5 know, either of you.

6 MR. JOHNSON: Judge, if I might, just so your Honor
7 knows, Tom Johnson. I represent the CHA in Cabrini. I also
8 represent them in the Horner litigation.

9 When the case was filed in 1996, we did make a motion
10 before Judge Coar both to dismiss the case or in the
11 alternative to consolidate it with the Gautreaux litigation.
12 We always prefer to deal with one lawyer for the tenant as
13 opposed to two. But we have learned to live with that
14 situation in Horner, and Judge Coar denied our motion and said
15 he was going to preside over the Cabrini case. The case did
16 continue on.

17 The -- we do believe that we have an agreement that is
18 worked out not just with the LAC, the Cabrini leadership, but
19 also with the City, who's a party to that case. And the decree
20 expressly states that nothing would go forward. The decree is
21 not effective until your Honor reviews it. We had fully
22 intended to do just what we did in Horner, which is as I
23 understand what Mr. Polikoff had asked for as well, come up
24 with something concrete and then to present to your Honor with
25 whatever motions were appropriate. I don't know if Mr.

1 Wheelock wants to add anything further to that.

2 MR. WHEELLOCK: I'd just like to introduce myself. My
3 name is Richard M. Wheelock, counsel for the plaintiff,
4 Cabrini-Green's local advisory council, which is a residents
5 organization that represents all the residents of
6 Cabrini-Green, 30 some odd member council.

7 Mr. Johnson said that we have been engaged in
8 negotiations with both the City and CHA, intense negotiations,
9 over the last few months. And no one thought it could be done,
10 but we have reached an agreement. And as it's already been
11 stated -- I'm just repeating what you already heard -- the
12 intention was always, it's embodied in the consent decree, to
13 have Judge Coar first to approve it, in which the consent
14 decree provides that your Honor -- it's contingent upon your
15 approval.

16 So, you know, I would join in the request that we set
17 up a briefing schedule right now for that purpose. But there
18 is no need to enter any order regarding our presentation of the
19 consent decree to Judge Coar.

20 THE COURT: I will let you have the last word. I
21 think there are a couple other people who want to say
22 something.

23 MS. GETZELS: Your Honor, good afternoon. Julia
24 Getzels standing in for Andy Mine, on behalf of the City of
25 Chicago.

1 I just want to state for the record that the City also
2 believes that the settlement -- the consent decree adequately
3 provides the procedure for your Honor to review. That was the
4 parties' intention and remains the parties' intention.

5 THE COURT: Thank you.

6 Mr. Polikoff.

7 MR. POLIKOFF: Just one word, your Honor, maybe it
8 will be two.

9 Mr. Johnson refers to the example of the precedence,
10 if you will, of the Horner negotiation. Things worked out
11 ultimately amply at Horner but not without pain and suffering
12 and extended negotiations that were awkward and difficult and
13 unfortunately cast the plaintiffs and the receiver in the rolls
14 of opposing tenants because a deal was presented after the fact
15 that had already been approved by Judge Zagel. And then we
16 were necessarily and understandably in the position of being a
17 nay sayer and of trying to upset an apple cart that was rolling
18 along, an awkward posture that, even though it worked out
19 happily in that instance, as your Honor knows, was difficult,
20 was time consuming and unnecessary.

21 More to the point, the receivership agreement doesn't
22 say that the receiver should be given an opportunity to review
23 and express comments on agreements that the CHA has negotiated
24 respecting the development of non-elderly public housing. The
25 receivership agreement quite differently than that says that

1 the power to do the negotiation is withdrawn from CHA and given
2 to the receiver.

3 The party sitting at the table that's negotiating what
4 may well be a beautiful agreement should have included -- the
5 parties -- should have included the receiver, not to say that
6 the CHA should have been excluded. But the receivership
7 agreement unquestionably transfers the power of negotiation, as
8 well as lots of other powers, to the receiver. And it seems to
9 me impossible to contend that notwithstanding the subject-to
10 clause that counsel refers to, that that provision of the
11 receivership agreement has been violated in this instance.

12 I would urge on behalf of the plaintiffs, given the
13 example of Horner and given the example now of Cabrini, that
14 the receiver and the plaintiffs no longer be subjected to the
15 posture that CHA and its executive director clearly wants to
16 put them in in the public eye and in the legal context, of
17 having to come in at the eleventh hour and to express comments
18 which inevitably are taken as negative about a deal that CHA
19 intended to negotiate. And we should be relieved because of
20 the express language of the receivership order from being put
21 in that position, not only with respect to the current Cabrini
22 situation so that it should not go to Judge Coar before the
23 receiver's roll has been recognized, but for the future as
24 well.

25 THE COURT: Mr. Shakman.

1 MR. SHAKMAN: Thank you, Judge. I am sure when Mr.
2 Polikoff referred to the receivership agreement, he was
3 referring to the receivership order.

4 MR. POLIKOFF: Order, excuse me.

5 MR. SHAKMAN: I am sensitive to the fact that I am
6 here as the lawyer for your receiver. And if you wish the
7 receiver to be bypassed in this process, that's your call. And
8 we would not argue with that call. But I do want to under-
9 score what Mr. Polikoff said.

10 The issue as presented by counsel for the CHA and
11 counsel for the plaintiffs in the Cabrini case is a
12 misstatement of the issue. The issue is not whether or not
13 that agreement is one that should be submitted to Judge Coar at
14 some point. The issue is one of whether the CHA and the
15 parties, who knew of the receiver and the power this Court has
16 given the receiver, should have been negotiating independently
17 of the receiver and really contrary, I must underscore this,
18 contrary to the representation in writing by counsel to the CHA
19 in the June 12 letter that we quote on page 12 of our motion,
20 which said that they would advise us -- they would, quote,
21 provide information to the receiver regarding agreements made
22 and proposed with respect to Hope VI projects and any other
23 projects that involve construction of the housing, end of
24 quote.

25 I emphasize that because had we known -- had they done

1 what that letter said they would do, they would have told us of
2 this proposed agreement before we read about it yesterday
3 morning in the Tribune. And then we would have had at least
4 the opportunity to participate in -- to the extent of learning
5 about it and being able to comment on it and perhaps, if there
6 were aspects of it that we thought we could improve by making
7 suggestions that the parties could find acceptable, we would
8 have had that opportunity.

9 But what we have here instead is really a wholesale
10 disregard of this Court's orders entrusting the development
11 responsibility to the receiver, an intentional disregard of
12 those orders, and a direct violation not only of those orders
13 but of the written undertaking to us in the June 12 letter from
14 counsel for the CHA.

15 Now, in that context, if the Court chooses to defer
16 the matter to Judge Coar, and then if we have objections we
17 would present them to your Honor I presume in due course, as I
18 said to begin with, that is your call and not the receiver's
19 call. But it is our duty to say, as Mr. Polikoff has said,
20 that that really turns the whole process of receiver
21 responsibility on its head, and it undoes, in effect, the
22 Court's purpose for having a receiver to conduct the new
23 housing development in CHA, which is to make sure that, as you
24 said in your February 23rd order, that primary intention goes
25 to desegregation obligations that are out of this already long,

1 protracted litigation.

2 So we would ask the Court either to indicate that
3 there should be no further development of this proposal before
4 Judge Coar until we have had an opportunity to do what we
5 should have been permitted to do in the first place or instruct
6 us otherwise. Thank you.

7 MS. GETZENDANNER: Judge, the issue I was addressing
8 was is there an emergency. And I don't believe there is an
9 emergency. I am not responding -- I had not responded to the
10 merits of the motion.

11 I can tell your Honor that our brief in the Seventh
12 Circuit is due on August 12. We are fully occupied working on
13 that brief. That's the last brief, so we would expect the case
14 set for argument in September or October. They are pretty
15 quick about turning argument around. That's in part the whole
16 issue that Mr. Shakman is just raising.

17 But do you want a discussion of the merits of this
18 motion?

19 THE COURT: Well --

20 MS. GETZENDANNER: I haven't read it.

21 THE COURT: Well, you may not have read it, and I
22 certainly will give you an opportunity to do so. Let me
23 suggest this. Why don't you have a seat, Ms. Getzendanner.

24 MS. GETZENDANNER: Sure.

25 THE COURT: I want to be fair to all sides. Obviously

1 I don't want to rule on the motion as such if you have not had
2 a chance to read it because having read it, perhaps you might
3 be able to do what I would have hoped would have been done a
4 long time ago; that is, for the CHA and the receiver to sit
5 down and understand your respective obligations under the
6 Gautreaux decree and work in good faith.

7 You know, I am distressed that issues like this keep
8 arising. It seems to me that it's not a matter of form over
9 substance. There is an important principle involved and that
10 principle is that if the receiver has been appointed, the
11 receiver has been given authority, that authority has been
12 clarified, if the CHA has an order, a recent order, clarifying
13 that authority, that order is still the law of the case. And
14 the CHA, particularly as a governmental body, really should
15 feel obligated to follow the law as it exists. And there is
16 some question as to whether it has.

17 Now, you may say the bottom line doesn't matter
18 because the bottom line is that if the receiver is going to
19 have to look at the agreement because I have to approve it,
20 obviously before I approve it I would give the receiver that
21 opportunity. But I think Mr. Polikoff fairly states the
22 posture of this case, both in terms of fairness in dealing with
23 everyone and also with the unwanted political social
24 implications of a violation of this decree; that is, when there
25 is a done deal and somebody who is supposed to participate in

1 that deal is not involved in the deal, but later comes in and
2 attempts to undo the deal, that puts all the parties in a very
3 different posture than the posture that they are intended to be
4 as to their rolls as defined by the decree and the orders under
5 the decree. So it's not simply form over substance.

6 What I'm going to do is, first of all, give you seven
7 days to respond to this motion. I will give the receiver three
8 days to reply. I know there are other parties in this case.
9 If you align yourself in this issue with the plaintiff, feel
10 free to opt in on the plaintiffs' briefing schedule. If you
11 align yourself on the side of the receiver on this motion, feel
12 free to opt in on the briefing schedule on the side of the
13 receiver.

14 In the meantime, what happens as far as Judge Coar is
15 concerned? As far as Judge Coar is concerned, I am going to
16 issue a temporary restraining order, as far as the parties are
17 concerned, not to bring any proposed settlement to Judge Coar
18 until I have ruled on the motion itself. I hope that the
19 parties will sit down and work together, as I have suggested
20 many times before.

21 I have no reason not to take the receiver at face
22 value when the receiver tells me that the receiver is not a nay
23 sayer and has no preconceived notion to attempt to throw a
24 monkey wrench in the deal but just wants to participate, as the
25 receiver is entitled under the law.

1 So it's really my hope that everybody will do what I
2 had wanted them to do right in the beginning and work together
3 toward the same ends. I think everybody in this case has the
4 right motivation in the sense that they want to do what is best
5 for the community involved. It's a shame when people do have
6 the same mind set that they cannot work together under the
7 structure that exists.

8 Now, you may not like the structure, but that's fait
9 accomplis. The decree is what it is, and the relationship with
10 the parties is what it is, and the receiver has been appointed,
11 and the CHA may feel that we don't need a receiver. That's an
12 entirely different issue. That issue can be brought to a head
13 very directly if the CHA wants to do it. But you can't decide
14 that the receiver, in the view of the plaintiffs, is some
15 superfluous entity in these proceedings and, therefore, can be
16 ignored or thwarted because the Court's order just does not
17 permit that.

18 So I will enter the temporary restraining order as I
19 have indicated. If the parties want to get together and work
20 on an agreed draft order to reflect that, you can present that
21 to me. In the meantime, I will rule quickly after the motion
22 is completely briefed and grant further relief or extended
23 relief if necessary.

24 Again, let me say, I do all of this very, very
25 reluctantly because I do think that it serves everybody if the

1 parties work together and try to resolve it the way they are
2 supposed to. I hate to see -- as much as I like to see lawyers
3 have lots of business and do well, I hate to see all the
4 attorneys' fees in this case that the public is going to pay
5 for in some way or another when the parties really are not
6 philosophically at loggerheads on any substantive issue but
7 simply in a what I perceive as a mini turf war.

8 That will be the order, and I will sign the draft
9 order.

10 MS. GETZENDANNER: And the order is entering a
11 briefing schedule and TRO.

12 THE COURT: Yes.

13 MR. SHAKMAN: I misunderstood Ms. Getzendanner's
14 comments. It is -- the order is to enter a briefing schedule
15 and to grant a TRO precluding the presentation of this matter
16 to Judge Coar.

17 THE COURT: Yes, as I have said. My court reporter
18 will read it back to anybody who can't understand it. Thank
19 you very much.

20 One second. As long as we are here, there is a motion
21 by Stuart M. Nagel. I suppose he is not here?

22 MR. FELDMAN: He is not.

23 THE COURT: Is that the Stuart M. Nagel who was in my
24 law school class and went on to become a political science
25 professor at University of Illinois?

1 MR. FELDMAN: I don't think so, Judge. For the
2 record, Edward Feldman for the receiver.

3 That was a motion for leave to file a \$59,000 breach
4 of contract.

5 THE COURT: You have no objection?

6 MR. FELDMAN: We have no objection.

7 THE COURT: That motion will be allowed.

8 MR. FELDMAN: The claim -- limited to the claim that's
9 alleged in that complaint.

10 THE COURT: Thank you very much.

11 (Which were all the proceedings had at the hearing of the
12 within cause on the day and date hereof.)

13 CERTIFICATE

14 I HEREBY CERTIFY that the foregoing is a true,
15 correct and complete transcript of the proceedings had at the
16 hearing of the aforementioned cause on the day and date hereof.

17
18 Mary M. Gallagher

19 Official Court Reporter
20 U.S. District Court
21 Northern District of Illinois
22 Eastern Division
23
24
25

7-31-98

Date