

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

No. 98-3145

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	Appeal from the United
	)	States District Court for the
v.	)	Northern District of Illinois,
	)	Eastern Division
CHICAGO HOUSING AUTHORITY,	)	
a corporation, and JOSEPH SHULDINER,	)	No. 66 C 1459
Executive Director, in his official capacity,	)	
	)	Chief Judge Marvin E. Aspen
Defendants.	)	

REPLY BRIEF OF DEFENDANTS-APPELLANTS
CHICAGO HOUSING AUTHORITY AND JOSEPH SHULDINER
IN CONNECTION WITH THE ISSUES PRESENTED BY APPEAL NUMBER 98-3145

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Dated: October 6, 1998

CERTIFICATE OF INTEREST

Cause No: 98-3145

Short Title: Gautreaux, et al. v. CHA, et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a certificate of interest stating the following information in compliance with Circuit Rule 26.1:

(1) The full name of every party or amicus the attorney represents in the case:

Chicago Housing Authority, a municipal corporation

Joseph Shuldiner, Executive Director, CHA

(2) If such party or amicus is a corporation:

i) Its parent corporation, if any; and

N/A

ii) A list of stockholders which are publicly held companies owning 10% or more of the stock in the party or amicus:

N/A

(3) The names of all law firms whose partners or associates have appeared for the party in the case or are expected to appear for the party in this court:

Skadden, Arps, Slate, Meagher & Flom (Illinois) is the only firm that

has appeared in connection with the litigation at issue in the

current appeal.

This certificate shall be filed with the appearance form or upon the filing of a motion in this court, whichever occurs first. The attorney furnishing the certificate must file an amended certificate to reflect any material changes in the required information. The text of the certificate (i.e. caption omitted) shall also be included in front of the table of contents of the party's main brief.

Attorney's Signature: 

Attorney's Printed Name: Susan Getzendanner

Date: October 6, 1998

CERTIFICATE

Pursuant to Circuit Rule 32, I certify that the attached reply brief contains
6,733 words.

A handwritten signature in dark ink, appearing to read "Susan Getzendanner", is written over a horizontal line.

Susan Getzendanner

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JURISDICTION.

Appellees agree that CHA's Statement of Jurisdiction is complete and accurate. (Rec.Br.1;Pltfs.CabriniBr.3) Thus, although both assert that the August Order imposes no new obligations on CHA and does not change the relationship between them and CHA (Rec.Br.17), and "properly interpreted" the Receivership Order (Rec.Br.18), both acknowledge that the August Order constitutes an appealable injunction.¹ The Order appellees describe would not be appealable, as CHA has consistently agreed. In fact the August Order imposes new obligations, including the requirement that Receiver must participate in negotiating a contract regarding housing development before CHA can present the plan to the court for a waiver of the Injunction.

STATEMENT OF ISSUES ON APPEAL

Receiver states that there is a single issue in this case:

Did Chief Judge Aspen act within his discretion (i) by ruling that CHA violated his 1987 Receivership Order . . . by excluding the Receiver from the negotiation of a consent decree . . . ; and (ii) by enjoining CHA to comply with the 1987 Order?

¹ In the appeal of the May Order, plaintiffs argued that the Order is not appealable on the ground it imposed no new obligations on CHA. However, there is no substantive difference between the May and August Orders. If the August Order is appealable, the May Order is appealable.

(Rec.Br.1) CHA disagrees.² The district court made no finding that CHA violated the Receivership Order and it did not enter the order because of any failure of CHA. The Order was entered because it was necessary to inform CHA of what its obligations are in the future regarding negotiation of contracts.

Plaintiffs state the issue in very different terms:

When an order of the district court unambiguously [enjoins] the defendant . . . and the order has not been stayed, vacated or modified, may the defendant ignore the order and [act] without violating the well-established rule that persons subject to an injunction are expected to obey it until it is stayed, vacated or modified?

(Pltfs.CabriniBr.1) This statement assumes that the court's prior orders are unambiguous. Later in their briefs plaintiffs expand the issue by arguing that "[a]s to lack of clarity, the Celotex Rule obligates CHA to obey supposedly unclear orders unless they are stayed, vacated or modified," (Pltfs.CabriniBr.11) which clearly misstates the Celotex Rule.

STATEMENT OF THE CASE

Receiver' statement of the case is that the "1969 Injunction Order provided a framework for the CHA to remedy the District Court's finding of intentional segregation in the location of CHA public housing." (Rec.Br.1) The Injunc-

² It is not fair to say that CHA "excluded" Receiver from the Cabrini negotiations. Receiver never sought to join even though on March 10, 1998, CHA's Executive Director told Receiver that CHA was planning to build at Cabrini with the Cabrini residents and not with Receiver. (Rec.Br.5)

tion is not a framework for a remedy; it is the remedy. If plaintiffs want a different remedy, they should seek to modify the Injunction. Plaintiffs cannot expand that remedy by relying on past waivers of the Injunction, and Receiver's use of HOPE VI funds that had been dedicated to the Gautreaux remedy, to develop scattered site units in "revitalizing areas" of the City with the agreement of CHA and HUD.

SUMMARY OF ARGUMENT

The August Order is the third in a series of orders that individually and collectively constitute an extraordinary intrusion of the federal judiciary into the government affairs of the CHA. Not once has the district court acknowledged the extensive precedent in this Circuit concerning the court's responsibilities in reviewing sweeping mandatory injunctions against units of local government.

Appellees could not have an understanding of HOPE VI, and what a successful revitalization project encompasses, and at the same time say that they cannot figure out why you cannot isolate one element of a HOPE VI plan and hand it over to Receiver, (Rec.Br.36) and that "since in dollar terms the housing portion of HOPE VI dwarfs the other provisions, CHA exaggerates the extent of potential friction." (Rec.Br.33)

HOPE VI:

The elements of public housing transformation that have proven key to HOPE VI include: (1) Changing the physical shape of public housing . . . (2) Establishing positive incentive for resident self-sufficiency and comprehen-

sive services that empower residents (4) Lessening concentrations of poverty by placing public housing in nonpoverty neighborhoods, or by promoting mixed-income communities where public housing once stood alone, thereby ending the social and economic isolation of public housing residents, increasing their access to quality municipal services such as schools, and increasing their access to job information and mentoring opportunities. (5) Forging partnerships with other agencies, local governments, nonprofit organization, and private businesses to leverage support and resources

(Exh.A.4)

A private housing developer such as Receiver does not have the expertise, and should not have the exclusive responsibility, to determine where, when, how much, and what kind of replacement housing should be part of a revitalization plan. Nor does a private housing developer have expertise to "maximize desegregation" or to evaluate a HOPE VI revitalization plan and project. Yet the district court is willing to allow Receiver sole authority over at least \$100,000,000.00 in HOPE VI funds awarded to CHA by HUD, and let CHA fend for itself in meeting its obligations under HOPE VI.

One look at Cabrini shows the extent of the partnerships that CHA has already forged, with City, private developers, private financiers, adjoining communities, and businesses such as Dominick's that provide access to residents and job opportunities. Placement of replacement housing is part of the whole package that makes land available for a library, a grocery store, a retail center. Land is traded for other land owned by City or other public or private agencies to create space for

schools and parks. All is part of a whole plan, and in Chicago Cabrini is part of City's Near North Development Plan. It is inconceivable that any entity could take full responsibility for the spending of replacement housing dollars that Receiver states "dwarfs" the remaining HOPE VI funds, decisions about where, when, how much, and what kind of housing to build, and have CHA responsible for all else. The consent decree negotiated by CHA, City and Cabrini LAC shows the extent of how CHA has maximized jobs and responsibility for Cabrini residents by entering into a partnership to develop a part of the planning area. Receiver and CHA have opposite views on the rights of the displaced residents. Receiver disputes the residents' right to remain in their community and to agree to the plan for their neighborhood.

The August Order should be set aside.

ARGUMENT

I CHA DID NOT VIOLATE THE COURT'S ORDERS; THE PRIOR ORDERS ARE NOT CLEAR; IF THEY WERE CLEAR, APPELLEES WOULD HAVE ACTED SOONER

A. CHA Has Not Been Found To Have Violated Orders.

Appellees have a theme running throughout both briefs. They claim that the 1987 Receivership Order plainly transferred to the Receiver all of CHA's powers set out in that Order in connection with the development of replacement housing in a HOPE VI revitalization plan, and, if there was any doubt that it did, it

was confirmed by the February Order. From this, and Receiver's interpretation of what Mr. Shuldiner stated at the March 10, 1998, meeting, appellees conclude that CHA purposefully disregarded the court's orders.

For example, plaintiffs argue that "[the deliberate nature of CHA's conduct exacerbates the disrespect shown by CHA. . . . This is not a case in which the defendant has intended to comply with court orders but failed to do so because it misunderstood or was confused." (Pltfs.CabriniBr.8-9;see also Rec.Br.18,21-2)

CHA has consistently demanded a hearing on Receiver's and plaintiffs' claims that CHA is purposefully violating court orders. None has been granted. However, since the court made no findings in the August Order, the lack of a hearing is not relevant. The problem is that appellees do not leave the subject alone. Appellees' accusations are made despite Receiver's admission that the question of whether CHA willfully violated court orders was not at issue regarding the May or August Orders, and that the court made no finding that there was an intentional violation (Rec.Br. 39-41) .

Contrary to appellees' argument that CHA seeks an evidentiary hearing of the facts underlying the August Order (Rec.Br.39-41), CHA did not make that argument. CHA does not dispute those facts. It continues to seek an evidentiary

hearing on appellees' accusations because appellees continue to misrepresent that CHA has violated court orders.³

B. The Prior Orders Are Unclear.

The parties have briefed extensively the question of the clarity of the court's orders and there is no need to repeat CHA's argument. CHA does ask the common sense question: If the 1987 Receivership Order plainly governs HOPE VI replacement housing, why did not Receiver challenge CHA's HOPE VI activities that have been on-going since 1992. It clearly had many opportunities during the history of the Cabrini revitalization project. The Receiver even failed to act after the February Order was entered. The failure to act says much more than appellees' arguments. Appellees failed to act because the orders do not clearly and unambiguously apply to HOPE VI replacement housing. Appellees have become emboldened by each order of the district court.

C. Appellees Failed To Act From 1992 Through 1997.

The Receiver agrees that in 1993 the CHA unilaterally applied to HUD for HOPE VI funds for the Cabrini redevelopment; that there was a dispute as regarding the role of the receiver in the HOPE VI Cabrini redevelopment project; that in 1995 the CHA and Receiver negotiated an agreement under which Receiver

³ Receiver goes so far as to make the tawdry statement that the Executive Director does not favor desegregation. (Rec.Br.38n26)

would act as the "development manager" for new construction at Cabrini; that the CHA refused to execute the agreement; that in September 1996 the CHA told the receiver to stop work; and that thereafter the CHA performed all "development" tasks that were the receiver's responsibility under the Receivership Order. (Rec.Br. 1, 7) Given these events, why did not appellees act to enforce the orders.

During this entire period of time, from 1993 through 1997, plaintiffs and Receiver did not once go to court and complain that CHA was acting beyond its authority or usurping the powers of Receiver. If it was clear that the Receivership Order transferred all of CHA's development powers at Cabrini to Receiver, why was Receiver negotiating a contract with CHA to act as "development manager." No contract would be necessary if the Receivership Order applied.⁴

D. The History Of The Cabrini Revitalization Plan.

Plaintiffs' and Receiver's lack of interest in Cabrini-Green until May 1998, and the lack of clarity in the court's prior orders, is stark when the history of the Cabrini revitalization project is considered. This history is set forth in Judge Coar's opinion in *Cabrini LAC v. CHA* (Exh.B.; CHACabriniBr.)

⁴ Receiver states that "CHA agreed that the Receiver would function as 'development manager' for the construction of replacement units." (Rec.Br.7) Receiver is acting as the "development manager" at the Henry Horner pursuant to a contract with the CHA and not an entity that has all of CHA's powers. Receiver is not acting pursuant to the Receivership Order.

On May 5, 1993, CHA filed an application with HUD under HOPE VI for \$50 million to revitalize Cabrini-Green. The application called for the demolition of three residential buildings with 660 dwelling units and provided for one-to-one replacement of demolished units either by constructing new units or by providing Section 8 certificates to those displaced by the demolition.

On May 28, 1993, CHA and the Cabrini LAC entered into a memorandum of agreement that provided that residents impacted by rehabilitation and demolition will be provided relocation opportunities within the general planning area of the Cabrini-Green development project.

On March 15, 1995, CHA submitted to HUD the HOPE VI Plan to Revitalize Cabrini-Green, which provided for one-to-one replacement of dwelling units. In October, 1995, CHA issued an RFP for the planning, design and development of mixed-income housing for the Cabrini HOPE VI revitalization project to assist CHA in developing a replacement housing plan for the 660 units scheduled to be demolished. Receiver did not complain that its job was being put out to bid.

On June 27, 1996, CHA and the City announced their agreement on a Revised Plan for the redevelopment of Cabrini-Green, under which CHA would demolish eight buildings totaling 1,324 units and for only 300-335 replacement units to be built. Receiver did not file an emergency motion seeking to enjoin the agreement. When the plan was announced, only Cabrini LAC reacted. It sued CHA and

City, *inter alia*, for breach of contract. In January 1997, Judge Coar upheld most counts of LAC's complaint. Thereafter, the parties began to litigate and later negotiate a resolution of the dispute.

In November 1997, a member of the Receiver's staff was deposed in the Cabrini case and testified that CHA does not select the development manager for Cabrini because the district court had appointed Receiver, but made no claim made that only Receiver could negotiate agreements regarding replacement housing at Cabrini. (Rec.Br. 23 n23)

E. Cabrini Decree Properly Included Replacement Housing.

Receiver states that it was "aware of the Cabrini lawsuit, but not of the details or substance of the settlement negotiations *or that those negotiations contemplated a redevelopment of Cabrini.*" (Emphasis added) (Rec.Br. 10 n4) This is not plausible. Receiver does not deny that it knew about the settlement negotiations, and Receiver knew the nature of the Revised Plan and Cabrini LAC's complaint. The Cabrini litigation was directly and principally related to how much replacement housing would be built and where it would be built. It was willing to agree to demolition of specific buildings only in exchange for an agreement regarding one-on-one replacement housing. As Judge Coar specifically stated: "Particularly, plaintiff alleges that LAC members will be denied eligibility to reside in replacement housing at Cabrini-Green. (Exh.B.12) That is what the lawsuit is

about. Receiver knew or should have known that the negotiations contemplated the redevelopment of Cabrini.

Receiver argues that CHA could have settled the lawsuit without negotiating and providing for replacement housing; that Cabrini LAC's complaint did not seek mandatory relief concerning new housing development; and that Judge Coar could not properly have ordered new housing development. (Rec.Br. 24) None of these statements is correct. The nature of the complaint, Judge Coar's opinion, and the Revised Plan for Cabrini made it clear that demolition, replacement housing, location of replacement housing, and tenant eligibility for replacement units are at the core of the Cabrini litigation and Judge Coar upheld most of the Cabrini LAC's claims for relief.

F. Dispute Regarding Receiver Was Not Presented In 1997.

Receiver seeks to avoid the consequences of its past failures to act by implying that the dispute regarding Receiver's role at Cabrini-Green was ongoing from 1995 and the dispute was presented to the district court in 1997 and resolved in the February Order. (Rec.Br. 7) This is not true. Receiver did nothing to assert the Receivership Order until it filed its Emergency Motion on May 18, 1998.

What was presented to the district court in 1997 was CHA's motion for interpretation of the 1969 Injunction that it did not govern HOPE VI projects, which specifically stated that it did not address the applicability of the Receivership

Order. February Order does not address the Receivership Order, let alone decide the issue.

G. Appellees Even Failed To Act After February Order.

Had Receiver believed that the February Order removed all doubt as to the applicability of the Receivership Order, Receiver would have taken some action regarding his role at Cabrini. The Receiver admits that on March 10, 1998, it knew CHA's plans to enter into agreements regarding Cabrini. (Rec.Br.5)⁵ It was not until May 18th that Receiver filed anything in court that stated the position it asserts in this appeal, and even then it was silent regarding CHA's negotiations at Cabrini and CHA's intent to proceed without Receiver. The motion was limited to "seeking cooperation in the preparation of the [CHA's 1998] HOPE VI application," (Rec.Br.6) and it could have, but did not, include the claim that the Receivership Order also prevented CHA from negotiating agreements with residents at Cabrini.

After the May Order was entered, CHA continued to inform Receiver of its plans to go forward and make agreements with residents at HOPE VI projects.

⁵ Receiver and plaintiffs make much out of Receiver's recollection that on March 10, 1998, months before the May Order applied the Receivership Order to HOPE VI projects, CHA's Executive Director told Receiver that he would continue to make plans with the Cabrini residents, and that Receiver could only "try to stop him." These words are not threatening, nor do they show disrespect for the February Order, which did not concern Receiver's role. Basically Receiver was told, if you think the Receivership Order applies to Cabrini, ask the court to confirm that and stop CHA.

Receiver's counsel's letter to CHA of June 12, 1998, acknowledges: "The CHA has repeatedly stated that it has entered into agreement with ABLA tenants, and that those agreements limit the redevelopment planning potential." (Rec.Br.8) By return letter dated June 16, 1998, CHA's counsel responded and again told Receiver that CHA intended to enter into agreements with Cabrini residents. (Rec.Br.9) So Receiver was repeatedly told after the May Order was entered that CHA was going forward in meeting with residents and entering into agreements with them. Still Receiver did nothing. Instead, Receiver waited and filed an "emergency motion" after the agreement between CHA and the Cabrini LAC was announced.

II. APPELLEES CANNOT USE CHA'S PAST ACTIONS REGARDING THE SCATTERED SITE HOUSING PROGRAM TO JUSTIFY BROADENING THE REMEDY UNDER THE INJUNCTION

A. There Is No "Long History" That Supports Appellees.

Appellees' predominant theme is that there is a "now-long history of revitalizing orders, [under] which CHA, the Receiver, and the plaintiffs have developed new housing – including HOPE VI housing with HUD's consent –without any of the confusion that now purportedly burdens CHA." (Rec.Br.30) Appellees are using the past history of obtaining waivers and allowing Receiver to build "replacement housing" in "revitalizing areas" to expand the remedy provided by the Injunction. What appellees never include in their recitation of this history is that it the building of those units was done with HOPE VI funds that had been set aside by

HUD for the Gautreaux remedy. The funds were used by plaintiffs and Receiver to build in "revitalizing areas." The HUD consent decree permitted such building, and the units would fulfill part of HUD's obligation to provide 7100 units of public housing. This use of these funds was directed by plaintiffs and Receiver and agreed to by HUD and CHA. The past has nothing to do with CHA's use of HOPE VI funds awarded to CHA by HUD for particular revitalization plans.

This "long history" is also used throughout Receiver's brief to show that the role Receiver wants to play in CHA's on-going HOPE VI revitalization projects, such as Cabrini-Green, is just "business as usual" – a continuation of a pattern of practice that CHA had no problem with in the past, and should have no problem with now, and that was allowed under the Injunction. For example, plaintiffs refer to "the first replacement housing order of December 10, 1993," (Pltfs.Br. 9) as though the parties have created a series of orders waiving the requirements of the Injunction to permit Receiver to build replacement housing in the Limited Area, thereby establishing a precedent that plaintiffs and Receiver want to continue. CHA's behavior when Receiver is building scattered site housing with HOPE VI funds dedicated to the Gautreaux remedy so that HUD's obligation under the consent decree can be fulfilled, is not a proxy for behavior in the context of shared responsibility for a HOPE VI project.

B. CHA's Past Actions Were Based On Clear Orders That Have No Connection To CHA'S HOPE VI Responsibilities.

Appellees argue that CHA knows how to cooperate because it has cooperated in the past when Receiver developed "HOPE VI replacement housing"⁶ (Pltfs.Br.14); that CHA knows how to "share" responsibility with Receiver because it has done so in the past (Rec.Br.32); and that the locational requirements of the Injunction are not a "straight-jacket," because the Injunction has been fluid enough in the past to permit, and will continue to permit the Receiver to build "replacement units" in the Limited Area under the Injunction and Receivership Order. (Rec.Br.30)

Plaintiffs use the past waivers and argue that CHA and Receiver have acted together in harmony for years in the development of replacement housing in "revitalizing areas," and the fact that both CHA and Receiver purportedly jointly negotiated with the residents at those developments proves that CHA has overstated the problems. Again, Receiver omits context (use of Gautreaux funds to satisfy HUD's Gautreaux consent decree obligations), and the fact that Receiver was acting pursuant to negotiated contracts, not the Receivership Order.

⁶ Despite the success of the 1998 HOPE VI application, Receiver still contends that CHA's "cooperation fell short in some respects." (Rec.Br.8n3) CHA believes it fully cooperated. Who is to say what the "duty to cooperate" requires.

III. PLAINTIFFS' RESPONSE TO CHA'S ARGUMENTS.

A. Celotex Rule Is Not Applicable Unless The Order Is Clear.

Plaintiffs' first response to CHA's arguments is that this Court should not consider them. They argue that under the "Celotex Rule" this Court should affirm the August Order without reaching CHA's arguments because CHA disobeyed the "contract negotiation" provision of the Receivership Order. (Pltfs.CabriniBr.6) Receiver makes the identical argument. (Rec.Br.21)

There is no doubt that CHA is legally obligated to obey the court's injunctions even if it disagrees with those orders or there are grounds to challenge the validity of those orders. A failure to comply can result in a contempt action. However, the orders must clearly inform CHA of its obligations to act or refrain from acting in particular regard. Each of the cases relied upon by plaintiffs, including *Celotex*, involved a failure to obey a clear, definite order of a court.

Plaintiffs contend that "the Celotex Rule obligates CHA to obey supposedly unclear orders unless they are stayed, vacated or modified." (Pltfs.CabriniBr.11) No case cited by plaintiffs holds that an enjoined person must obey an *unclear order* or face contempt. In each case, the order that was disobeyed was specific, clear and informed the enjoined person of his responsibilities. The operative rule is just the opposite. If the order is vague and does not inform the party

as to its obligations, the order is not judicially enforceable. If the district court's orders are vague and unenforceable, the so-called Celotex Rule is irrelevant.

B. The HOPE VI Issues Are Entwined. (Pltfs.CabriniBr.9-10)

Plaintiffs dispute CHA's position that the HOPE VI issues are entwined and not capable of separate negotiation with the LAC by CHA and Receiver. Plaintiffs point to Receiver's role in the development of replacement housing in "revitalizing areas" pursuant to waivers of the Injunction and that CHA and Receiver jointly negotiated with the residents regarding those developments. Plaintiffs' claim that CHA is exaggerating the "entwined issues." However, Receiver's role was limited to those units that would be built with Gautreaux funds. Receiver did not negotiate the Henry Horner revitalization plan with the Horner LAC. CHA and Receiver have not negotiated HOPE VI revitalization plans with any Local Advisory Council or with the City of Chicago.

C. CHA Did Not Engage In A Prohibited Act. (Pltfs.CabriniBr.10)

Plaintiffs claim that by negotiating the consent decree with the Cabrini LAC, CHA "engage[d] in prohibited acts" and the fact that CHA intended subsequently to seek a waiver of the Injunction is not an excuse for violating the Receivership Order. CHA's position is that it did not engage in any final act that violated the Receivership Order. CHA intended to seek a waiver of the Injunction and conditioned the effectiveness of the agreement on subsequent approval by the

Gautreaux court. Hence, the agreement was not final. CHA had not engaged in a prohibited act because the act could be undone by the court. Had the waiver been denied, the agreement would have been a nullity. Had the waiver been obtained, the Receivership Order would not apply and could not be violated.

D. CHA Is Entitled To Plan And Negotiate A Revitalization Plan Without The Receiver And Before Obtaining A Waiver.

Appellees' argument that CHA had to jointly with Receiver negotiate the contours of the Cabrini plan before presenting the plan to the court for a waiver, (Pltfs.CabriniBr.26-27) does not make a lot of sense. Receiver is the agent of the court. The court is not permitted to negotiate plans and then consider whether to grant a waiver for those plans.

Even the district court agreed that CHA could present the Cabrini plan to the court without renegotiating with Cabrini LAC and City. After holding that the consent decree be renegotiated with Receiver's participation, the court stated: "If the CHA chooses instead to seek a waiver, it should know that we will consult the Receiver on the merits of the proposed waiver So, the more prudent, effective, and efficient court will be to negotiate with the Receiver prior to seeking our involvement." (AP6)

This highlights the mandatory nature of the new relief granted Receiver in the August Order. The district court enjoined CHA "from developing or

negotiating or otherwise pursuing any agreement . . . regarding the development of dwelling units . . . without the full participation of the Receiver, unless, of course, it has already secured a waiver." But CHA cannot get a waiver without Receiver's approval, and the likelihood of getting a waiver without involving Receiver in the negotiation of the plan is nil. Thus, the district court is prohibiting CHA from pursuing any agreement regarding development of public housing without Receiver. There is nothing in the Receivership Order or Injunction that remotely justifies the August Order.

E. The August Order And The Receivership Order Conflict With HOPE VI. (Pltfs.Br.10-11)

Plaintiffs argue that "[a]s to conflict, CHA adds nothing to the incompatibility arguments it has previous made. . . ." (Pltfs.CabriniBr.11) However, Receiver has pointed out that the Receiver's responsibility to relocate occupants, when necessary, set forth in the Receivership Order, does not apply to HOPE VI replacement housing. (Rec.Br.32n18) Receiver goes on to assert that "the Receiver has not asserted such a power and the District Court has not construed the Receivership Order in the way CHA fears. . . . The Receiver does not read this provision to cover the relocation of public housing tenants from one CHA building to another, or to other housing on an interim basis." (Id.)

That, of course, is the problem CHA faced regarding the contract negotiation provision. Receiver had not asserted the power to negotiate the consent decree and the district court had not construed the Receivership Order in that way. And CHA did not read the contract negotiation provision to prohibit it from negotiating and executing the consent decree. The Receivership Order must be interpreted in order to clarify Receiver's responsibility to relocate displaced tenants into replacement housing, and, similarly, Receiver's responsibilities under the contract negotiation provision.

Plaintiffs do not respond to CHA's argument that there is a direct conflict between the Receivership Order as applied by the district court and HOPE VI. Under HOPE VI CHA is not the developer and therefore Receiver cannot be the developer. Receiver's response is stunning. It now states that the "developer" that must be selected pursuant to a competitive RFP process

refers to the selection of the specific party who will design and construct the housing. The Receiver typically has not performed this construction function. Rather, it oversees the process by which such parties are selected and it monitors the ensuing work. That is the role it has performed at Horner and that is the role CHA and the Receiver agreed it will perform in the ABLA/Horner HOPE VI process.

(Rec.Br.31) So the Receiver--to which all of CHA's development authority has been transferred--now asserts that it is not in fact the "developer" of public housing because "typically" it does not actually act as the contractor that builds the house.

Receiver does not deny that it has the responsibility under the Receivership Order to site, design, spec and to cause the actual construction of public housing. And Receiver agrees that the HOPE VI "developer" is the party who will design and construct the housing. What Receiver wants to do is make the HOPE VI developer the "building contractor" so Receiver can still be the developer under the Receivership Order.

Receiver is far outside the record when it argues that merely "oversees the process by which such contractors are selected." In fact, Receiver actually selects the building contractor pursuant to its own process, and no one else's process, contracts with that building contractor, and is responsible for the work performed by its agents.

Receiver claims that it is performing this way at Horner, which is correct. Receiver has performed a limited "developer" function at Horner because at Horner the Receiver is not exercising all of CHA's development responsibilities pursuant to the Receivership Order. Instead, as noted above, Receiver has agreed with CHA to perform specific tasks as the "development manager" at Horner.

Receiver also performed a part of the Development Team" at another HOPE VI project. Plaintiffs describe the Team as a "partnership of CHA's affiliate and Habitat [one of the receiver entities] as the non-profit partnership." (Pltfs.Br.11)

Again, this is not Receiver functioning with all of CHA's powers under the Receivership Order.

Finally, Receiver's role in the ABLA HOPE VI process was agreed to under compulsion of the May Order that required CHA to cooperate and coordinate the ABLA application with Receiver. It provides no precedent.

F. Receiver Wants To Enforce CHA's Duty To Desegregate, But It Is Not An Enforceable Duty And Receiver Has Not Been Appointed To Do So. (Pltfs.Br.11-13)

Plaintiffs dispute CHA's argument that its duty to desegregate is not part of Receiver's responsibility. However, there is nothing in the Receivership Order that appoints Receiver to do anything other than implement the scattered site housing program in accordance with the court's orders. The only other duty is to desegregate the system, and there is nothing in the Receivership Order appointing Receiver to enforce that order. Receiver's claims that it was appointed to "weigh and implement the desegregation remedy," (Rec.Br.38) and that it "inherited CHA's discretion," (Rec.Br.39) are simply not justified by the language of the Receivership Order and the nature of receiverships generally. A court cannot appoint a receiver to "enforce" future, unknown orders of court. Any appointment of a receiver over a local government entity must be justified. CHA is entitled to know when the receiver is appointed what its duties and responsibilities are.

CHA completely agrees with this plaintiffs' argument based on this Court's decision in *Parents for Quality Educ. v. State of Ind.*, 977 F.2d 1207, 1211 (1992). The district court can enforce the affirmative obligation of a Fourteenth Amendment violator to dismantle its segregated system "by ordering the state to take affirmative actions" (Pltfs.CabriniBr. 12) In this case the court ordered CHA to develop and implement the scattered-site housing program. This was the relief granted by the court. No other affirmative action was ordered by the court. There is nothing in the Injunction that informs CHA of what is required to fulfill its duty to desegregate.

CHA's point is that Receiver does not intend to enforce the locational requirements of the Injunction, but to examine the HOPE VI plan to make sure that it gives "adequate weight to the CHA's desegregation obligations under the Injunction," and makes no "compromises that limit desegregation opportunities that would otherwise be available." Receiver's motion stated that it would "implement the Court's important desegregation remedies," and assure that Cabrini-Green is developed "in a manner that effectuates the desegregation remedy in this case." (Receiver's Motion, paragraphs 45-46, and 48, at SSA-17 and SSA-20)

The August Order did not appoint Receiver as the court's roving ambassador to impose obligations on CHA that meet Receiver's notion of what best

achieves desegregation. If it did, such an injunction is unenforceable and an improper use of a receiver.

Plaintiffs also claim that the duty to desegregate is not relevant because the focus of the August Order is the violation of the "negotiation" provision of the Receivership Order. (Pltfs.CabriniBr.12) CHA does not claim otherwise; but in negotiating an agreement with Cabrini LAC Receiver necessarily will be attempting to enforce CHA's duty to desegregate. Receiver is not intending to implement the locational requirements of the Injunction. All parties agree that the locational requirements of the Injunction are not applicable because the replacement units are being built in the Limited Area. So Receiver must be pursuing some other desegregation remedy, which it is not entitled to do under the terms of the Receivership Order.

The cases cited in Receiver's supplemental appendix attached to its briefed have nothing to do with this case. All but one involve typical receivers appointed to take possession of property. Orders entered in such receiverships do forbid parties to interfere with the receiver in its possession of the property. Those are clear orders, just like the duty of cooperation was clear when the Receivership Order was used, as it was intended, for building public housing in the General Area.

G. August Order Implicates Duty To Cooperate. (Pltfs.Br.13-14)

Plaintiffs argue that CHA's duty of cooperation is not at issue in the August Order. Receiver makes the identical argument. (Rec.Br.33-34) Nevertheless, CHA and Receiver, under the August Order, must jointly negotiate different parts of the consent decree, and Receiver is "entitled" to CHA's "cooperation" in negotiating a new agreement. CHA does not know what the duty of cooperation requires of it in the context of negotiating the consent decree.

CHA agrees that the duty to cooperate with Receiver is not vague when Receiver is acting purely as the developer of public housing units for the scattered site program. Everyone knows what that entails. When Receiver was going to build scattered site units in "revitalizing areas" within the Limited Area with HOPE VI funds that HUD and CHA had agreed could be used for the Gautreaux remedy, all of the parties knew exactly what was happening and what was required of each. The duty of cooperation was defined by the nature and extent of Receiver's duties. When CHA and Receiver share duties in the same project, one demolishing projects and relocating displaced residents, and the other building replacement units, CHA's duty cannot be defined.

Receiver's response would be that it of course will take into consideration CHA's concerns in making its decisions, just as it grandly announced that "Receiver is sensitive to tenant desires to remain [on-site] and will attempt to

maximize tenant choice to the extent practicable." (Rec.Br.25 n10) Receiver, of course, would determine unilaterally what is practicable, and how much sensitivity it will exercise. The fact is that Receiver has not been qualified to make judgments that under the terms of federal law must be negotiated with the residents.

H. Resolution Of Cabrini Litigation Cannot Be Jointly Negotiated.

Receiver takes the position that "while Judge Coar arguably had the power to enjoin demolition of certain buildings or to compel CHA to consult with tenants, he had no power to order CHA to reach any specific agreement with tenants or implement any specific redevelopment plan at Cabrini." (Rec.Br.25n10) CHA disagrees. While a court cannot order a litigant to agree to a specific plan, the court can impose a specific plan on the litigant if it finds, for example, that the litigant is contractually obligated to that specific plan. Judge Coar has already found that the court can determine whether a plan meets the "revitalization" goals of HOPE VI and that the Cabrini LAC has the power to enforce those goals.

CHA and Receiver also have different notions regarding the rights of the residents. Receiver takes the position that tenants have no right to choose where to live and that "HOPE VI requires tenant consultation, not consent." (Rec.Br.25 n9) CHA's goal is to have an agreement with the residents. Under these circumstances, how can both Receiver and CHA jointly negotiate the agreement. Moreover, CHA may have governmental concerns and reasons to agree to resolve the Cabrini

litigation by agreeing to a certain number of replacement units on site; for example, reasons that relate to CHA's overall planning and goals for the entire system. Decision made by Receiver could adversely impact CHA's performance of its executive functions.

I. CHA Has Made No Misstatements. (Pltfs.CabriniBr.7-8)

CHA has not misstated the "right" of displaced residents to remain in their community. The residents have the right to chose to remain in the neighborhood in rehabilitated or replacement housing because CHA is entitled to build a sufficient number of replacement units to provide housing for every displaced resident *who wants to remain* in the neighborhood. This is a substantial change in federal public housing policy. Before HOPE VI, HUD regulations did not permit building new public housing in any area that already had a certain level of public housing, such as the Limited Area. Congress changed that policy by excluding HOPE VI replacement housing.⁷

Plaintiffs accuse CHA of "hubris" by claiming that, notwithstanding the Receivership Order, "CHA retained the power to give that authority to someone else." (Pltfs.CabriniBr.8) CHA has not made such a claim. CHA argued that under federal law CHA cannot be the developer and CHA has no power to select the

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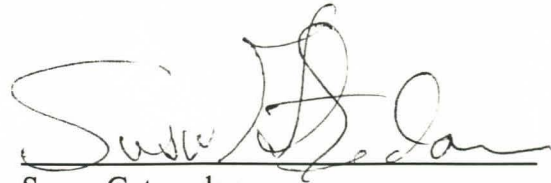
developer for a HOPE VI project other than through a competitive RFP.

(CHACabriniBr.17) Therefore, Receiver cannot be the developer.

CONCLUSION

For the reasons stated above and in CHA's opening brief, CHA respectfully asks this Court to set aside the August Order.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Susan Getzendanner", written over a horizontal line.

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CERTIFICATE OF SERVICE

I, Susan Getzendanner, an attorney, hereby certify that on Tuesday, October 6, 1998, caused a copy of the foregoing REPLY BRIEF OF DEFENDANTS- APPELLANTS CHICAGO HOUSING AUTHORITY AND JOSEPH SHULDINER IN CONNECTION WITH THE ISSUES PRESENTED BY APPEAL NUMBER 98-3145 to be served by hand delivery and facsimile (without exhibits) on counsel listed below:

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I, Susan Getzendanner, an attorney, hereby certify that on Tuesday, October 6, 1998, I caused a copy of the foregoing 3 ½" floppy computer disk containing REPLY BRIEF OF DEFENDANTS-APPELLANTS CHICAGO HOUSING AUTHORITY AND JOSEPH SHULDINER IN CONNECTION WITH THE ISSUES PRESENTED BY APPEAL NUMBER 98-3145 to be served via hand delivery on counsel listed below:

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Susan Getzendanner

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 98-3145

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	Appeal from the United
	)	States District Court for the
v.	)	Northern District of Illinois,
	)	Eastern Division
CHICAGO HOUSING AUTHORITY,	)	
a corporation, and JOSEPH SHULDINER,	)	No. 66 C 1459
Executive Director, in his official capacity	)	
	)	Chief Judge Marvin E. Aspen
Defendant.	)	

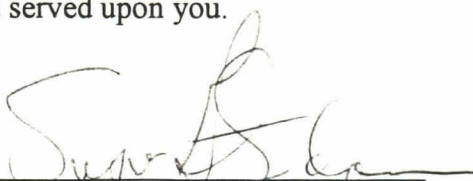
NOTICE OF FILING

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PLEASE TAKE NOTICE that on Tuesday, October 6, 1998, we filed with the clerk of the United States Court of Appeals for the Seventh Circuit, REPLY BRIEF OF DEFENDANT-APPELLANTS CHICAGO HOUSING AUTHORITY AND JOSEPH SHULDINER IN CONNECTION WITH THE ISSUES PRESENTED BY APPEAL NUMBER 98-3145, and a 3 1/2" floppy computer disk containing said brief,

copies of which are attached hereto and served upon you.

Dated: October 6, 1998
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