

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

DOROTHY GAUTREAUX, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	66 C 1459
	)	
v.	)	Hon. Marvin E. Aspen
	)	
	)	
CHICAGO HOUSING AUTHORITY and	)	
JOSEPH SHULDINER, Executive Director,	)	
	)	
Defendants.	)	

**LAKEFRONT COMMUNITY ORGANIZATION'S REPLY IN SUPPORT OF ITS
EMERGENCY MOTION TO INTERVENE**

Now comes the Lakefront Community Organization (hereinafter "LCO"), by and through its attorneys, the Legal Assistance Foundation of Chicago, and replies to statements from Dorothy Gautreaux *et al.* (hereinafter "Gautreaux-Plaintiffs"), the Chicago Housing Authority (hereinafter "CHA"), and Daniel E. Levin and the Habitat Company (hereinafter "Habitat"), regarding its emergency motion to intervene. To reduce the confusion created by CHA's, Habitat's, and Gautreaux-Plaintiffs' lumping together of the separate issues present by LCO's emergency motion to intervene and LCO's motion for a temporary restraining order, LCO addresses its emergency motion to intervene in this document, and files a separate reply in support of its motion for a temporary restraining order.

Neither Habitat nor the Gautreaux plaintiffs oppose intervention. Their position has

supported intervention since May 13, 1996, when Alex Polikoff, on behalf of the Gautreaux-Plaintiffs, and Daniel Levin, on behalf of Habitat, sent a letter to counsel for the LCO, indicating that if the LCO became dissatisfied with the pace of development of the replacement housing they would “support the request of [LCO] . . . for a hearing on that issue before the Gautreaux presiding judge.” LCO complaint, Exhibit C.

Habitat’s takes no position on LCO’s petition to intervene. Habitat’s Statement at 1. The Gautreaux-plaintiffs “do not object to LCO’s motion to intervene” Gautreaux-plaintiffs’ Statement at 1. Indeed, both Habitat and the Gautreaux-Plaintiffs suggest that the appropriate resolution of this case may involve this Court enforcing a compliance order for the provision of replacement housing instead of granting a temporary restraining order against demolition. Gautreaux-Plaintiff’s Statement at 4, Habitat’s Statement at 9-10. Inherent in that suggestion is not just a lack of opposition to LCO’s motion to intervene, but tacit approval for the motion. There is good reason for this. The construction of replacement public housing required by the 1995 Agreement is inextricably linked to Gautreaux. Only CHA opposes LCO’s motion to intervene, and its reasons do not bear scrutiny.

I. The LCO Satisfies the Requirements for Intervention of Right, Fed. R. Civ. Pro. 24(a).

The LCO satisfies the requirements of Rule 24(a)(2)-(4) for intervention as of right. The LCO’s application is “timely” (24a(2)) because it was made within six months of the time the CHA first told the LCO of its plans to demolish the Lakefront Buildings (CHA Resp. Ex. C) and within 3 weeks after CHA announced a definite demolition date. See Affidavit of Richard

Wheelock, attached hereto as Exhibit A.. The issue of timeliness is discussed in greater detail in section III of this Reply.

The commitment to build the replacement public housing units promised under the 1995 Agreement undoubtedly relates to CHA's desegregation obligations under Gautreaux -- the subject of this action under 26(a)(2). CHA, Habitat, and plaintiffs' counsel had to obtain this Court's permission to build 241 of those units on or near the site of the Lakefront Buildings because North Kenwood-Oakland is a "limited area" under the Gautreaux consent decree. The remaining 200 units counted toward CHA's obligation to build scattered-site units in "general areas" of the City .

Rule 26(a)(3) is satisfied because the LCO's ability to protect its interest in the Court-approved replacement housing will be impaired if the Court explicitly or implicitly allows CHA and Habitat to demolish the Lakefront Buildings without building the off-site replacement housing, as they represented they would when they sought the June 1996 Revitalizing Order. The LCO cannot realistically go to any other court to protect itself while Gautreaux is pending, given that this Court is the only one that supervises both CHA and Habitat, so far as the construction of replacement non-elderly public housing is concerned. Thus, CHA's suggestion that the LCO (like the absent partner in Shea v. Agulo, 19 F.3d 343, (7th Cir. 1994)) should just sue CHA for breach of contract somewhere else is disingenuous.

Finally, although the CHA argues that the LCO's interests are adequately represented by Habitat, Habitat makes no such claim -- and in fact both Habitat and plaintiffs' counsel have no objection to intervention by the LCO. That should be dispositive on the issue of whether the LCO is "adequately represented" by existing parties under 26(a)(4).

There is no principled basis for distinguishing this case from Gautreaux v. Pierce, 548 F. Supp. 1284 (N.D. Ill. 1982), in which this Court allowed two groups to intervene as of right so that the Court could decide their claims that HUD was required to or enjoined from authorizing Section 8 payments to a particular Near West Side development under the “revitalizing area” criteria of the consent decree. The only difference here is when the dispute arose, not the nature of the dispute or its relationship to the case wherein the intervenors’ rights must be adjudicated.

II. The LCO Satisfies the Requirements for Permissive Intervention, Fed. R. Civ. Pro. 24(b).

A fortiori the LCO satisfies the requirements for permissive intervention in Rule 24(b)(2). First, the relief requested by LCO in its intervenor’s complaint is governed by the Gautreaux injunction. For that reason, neither Habitat nor the Gautreaux plaintiffs oppose LCO’s motion to intervene. Second, since the issues raised by the intervenor’s complaint involve Gautreaux, the interests of judicial economy speak against allowing a state court judge to make independent rulings in areas governed by Gautreaux. Third, LCO’s motion to intervene was timely filed. Therefore, the LCO should be allowed to intervene.

CHA recognizes that permissive intervention is appropriate “when an applicant’s claim or defense and the main action have a question of law or fact in common.” F. Rule Civ. Pro. 24(b)(2). Here, the fact in common is the construction of new non-elderly public housing, and the law in common is the body of law created in Gautreaux. If LCO’s motion to intervene is denied, LCO will be required to file its complaint in state court. Orders entered in the state case may contradict orders entered in Gautreaux, and may also impact the provision of public

housing to Gautreaux class members. In the interest of judicial economy and to avoid such potential conflict, this Court should grant LCO's petition. Venegas v. Skaggs, 867 F.2d 527, 531 (9th Cir. 1989). This Court has unparalleled experience adjudicating the rights of public housing tenants in claims based on CHA's construction of new public housing as regulated by Gautreaux.

CHA spends most of its section on permissive intervention arguing (again) that the LCO's motion is not timely under City of Bloomington v. Westinghouse Electric Corp., 824 F.2d 531, (7th Cir. 1987). Viewing the four factors referenced by CHA in its response, this Court must conclude that LCO's motion to intervene was timely filed.¹

The first factor is the length of time the intervenor knew or should have known of its interest in the case. LCO had no reason to intervene when this court first entered its June 3, 1996 order. That order, authorizing the construction of the 241 replacement units in the North Kenwood/Oakland neighborhood, was consistent with the requirements of the 1995 Agreement. Id. The LCO had no knowledge of any potential breach that would require the LCO to intervene until CHA sent LCO a letter on June 2 of this year informing LCO of CHA's intent to demolish the Lakefront high-rises prematurely. CHA Response, Exhibit C.

The June 2, 1998 letter informed Ms. Davis that demolition would commence no later than August 1, 1998. After the LCO was so notified, the LCO, unrepresented at that time, began a search for counsel. On September 25, 1998, Izora Davis, the executive director of the LCO, first met with a staff attorney at the Legal Assistance Foundation to discuss the possibility of representation. On November 2, 1998, after thorough discussion with LCO and investigation of

¹ These four factors are "[a]mong the factors to be considered" in judging timeliness, not a four prong test, as misstated by CHA in its Response. See Id.

LCO's position, the Legal Assistance Foundation signed a retainer with LCO.

On November 4, 1998, LCO's counsel first heard of a potential early December 1998 demolition date through an article in the Hyde Park Herald. On November 10, 1998, LCO, with counsel, met with Joseph Schuldiner, CHA Executive Director, and other CHA officials to discuss the proposed demolition.² On November 19, 1998, LCO's counsel met with Alex Polikoff and officials from Habitat to discuss issues arising from the proposed demolition. On November 23, 1998, LCO filed the instant motion to intervene. Based on the late notice to LCO of the date set for demolition, and the significant activities required before filing the instant motions, LCO's motion to intervene was timely filed.

The second factor referenced by CHA is the extent of prejudice to the original litigants caused by the intervenor's delay. Id. CHA alleges that it is prejudiced by whatever delay occurred because the Lakefront high-rises are structurally unstable. That argument goes to the Court's decision regarding the issuance of a TRO, or other relief under LCO's complaint; not to whether to grant LCO's motion to intervene. In the intervention context, the prejudice required is described in City of Bloomington, where, after months of complex negotiation, involving public information meetings, city council meetings, publication of a proposed consent decree in the Federal Register, solicitation of comments, and reaching final agreement on a consent decree, the InPIRG filed a motion to intervene. 824 F.2d at 533. Under those facts, the Court of Appeals held that intervention would prejudice the original parties to the suit. Id. at 536. CHA

² At that meeting, Andrew Rodriguez, CHA Director of Redevelopment, informed LCO's representatives that the four Lakefront high-rises would remain structurally sound until the moment of implosion on December 12, 1998, despite preparatory work by the contractor. See Affidavit of Richard Wheelock, attached hereto as Exhibit A.

does not, and cannot, make similar allegations in this case, where the LCO is simply seeking to hold CHA to a contract it made voluntarily, and presented to this Court for approval with the concurrence of Habitat and Polikoff.

The third factor is whether LCO would suffer prejudice from a denial of its motion to intervene. CHA argues that LCO will not suffer prejudice because the Gautreaux-Receiver adequately represents LCO's interests. As noted above, the Receiver makes no such claim for itself. Habitat and the Gautreaux-plaintiffs' counsel have not objected to intervention.

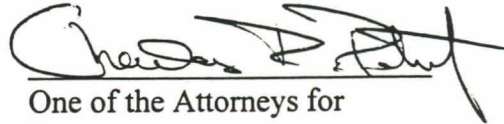
The fourth and final factor referenced by CHA is whether any (unspecified) unusual factors exist in relation to the timing of the intervention. Contrary to CHA's position, unusual factors are not a requirement for timely intervention.

Finally, CHA adds to its response the allegation that LCO's counsel is prohibited from representing the LCO because LCO's counsel is prohibited from participating in class actions. That is an allegation CHA should make to the Legal Services Corporation. Compliance with LSC regulations is not to be raised in any other proceeding. 42 U.C.S. § 2996(b)(1)(B).

III. Conclusion.

This Court should grant LCO's motion to intervene as a matter of right because CHA's commitment to build 341 replacement units of public housing undoubtedly relates to CHA's desegregation obligations under Gautreaux -- the subject of this action under 26(a)(2). In the alternative, this Court should grant LCO's motion under the requirements for permissive intervention. The issues raised by intervenor's complaint are inextricably linked to the Gautreaux litigation, and issues of judicial economy favor intervention.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles R. Petrof", written over a horizontal line.

One of the Attorneys for
Intervenor

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AFFIDAVIT

I, Richard M. Wheelock, being first duly sworn oath, deposes and states as follows:

1. I am the Housing Supervisory Attorney at the Legal Assistance Foundation of Chicago (LAFC) and am one of the attorneys representing the Lakefront Community Organization (LCO).

2. On November 5, 1998 I first became aware, as a result of an article in the November 4, 1998 edition of the Hyde Park Herald, of the Chicago Housing Authority's plans to demolish the Lakefront Buildings sometime during the first two weeks in December 1998.

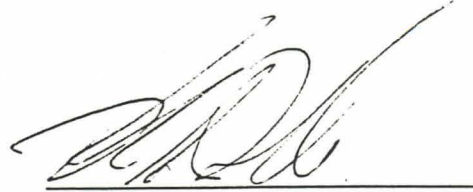
3. On November 10, 1998 I, along with Charles Petrof, a staff attorney at LAFC, and Izora Davis, the president of LCO, attended a meeting with Chicago Housing Authority (CHA) officials at 626 W. Jackson, Chicago, IL. Also present at the meeting were Joseph Shuldiner, CHA Executive Director; Ed Moses, CHA Deputy Director; Karen Newton, Acting CHA Chairman; Jerome Butler, CHA General Counsel; Andrew Rodriguez, CHA Director of Redevelopment; and Rufus Meyers, CHA Government Liaison.

4. At that meeting, Karen Newton stated that the CHA intended to implode the Lakefront Buildings on December 12, 1998. Andrew Rodriguez stated that the CHA had hired a contractor to do the work and that the contractor would be preparing the building for implosion prior to that date.

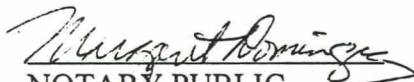
5. I asked Andrew Rodriguez whether the work done by the contractor prior to December 12 would compromise the structural integrity of the buildings. He answered in the negative.

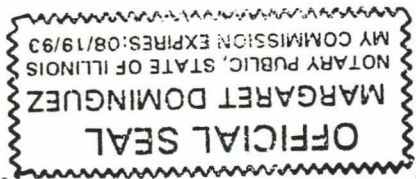
6. On November 19, 1998, I spoke with Andrew Rodriguez by telephone and again

asked whether the work currently being done by the CHA contractors on the Lakefront Buildings prior to December 12 would compromise the structural integrity of those buildings. Again, he answered in the negative.

A handwritten signature in black ink, appearing to be "M. D.", written over a horizontal line.

Subscribed and sworn
to me on December 2, 1998


NOTARY PUBLIC



Richard M. Wheelock
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Certificate of Service

I, Richard M. Wheelock, certify that I caused to be served a copy of **Lakefront Community Organization's Reply In Support Of Its Emergency Motion To Intervene** upon the counsel on the attached service list by depositing the same in the U.S. mail at 111 W. Jackson, Chicago, Illinois 60604 with proper postage prepaid on December 2, 1998.



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