

**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.	)	
	)	Honorable Marvin E. Aspen
CHICAGO HOUSING AUTHORITY and	)	
JOSEPH SHULDINER, Executive Director,	)	
	)	
Defendants.	)	

**LAKEFRONT COMMUNITY ORGANIZATION'S
REPLY IN SUPPORT OF ITS MOTION FOR A
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

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 "the Receiver"), regarding its motion for a temporary restraining order and preliminary injunction.

I. Introduction

By filing a motion for a temporary restraining order and preliminary injunction, LCO is not seeking to preserve vacant and dilapidated buildings. It is merely seeking an opportunity to be heard before CHA breaches the 1995 Agreement in a way that will irreparably harm the former public housing residents who have been waiting more than twelve years for CHA to fulfill its contractual obligations.¹

¹The 1995 Agreement superseded a 1986 Agreement which provided that CHA would rehabilitate the Lakefront Buildings.

LCO's simply wants to insure that CHA completes construction on all the replacement housing units that, under the terms of the 1995 Agreement, it promised to build *before* demolishing the Lakefront Buildings. CHA must not be allowed to break this promise without subjecting itself to a binding order from this Court that sets forth a schedule for completing construction on all the replacement units.

II. The 1995 Agreement

The 1995 Agreement sets forth several preconditions that CHA must satisfy before demolishing the Lakefront Buildings. First, it must secure funding from HUD to build 100 public housing units on land where the Lakefront Buildings now stand and 200 scattered-site units outside of the North Kenwood-Oakland community. 1995 Agreement, at ¶¶ 3-5. Second, CHA must identify and obtain control of land in the North Kenwood-Oakland community on which it can build 141 units of scattered-site housing. *Id.* at ¶¶ 3 and 6. Third, it must obtain permission from the United States District Court to construct these sites. *Id.* at ¶¶ 3-6. Once CHA satisfies these three preconditions, a twenty month construction schedule goes into effect which provides that CHA must begin construction on the 341 off-site units within ten months, and complete construction on these units within the following ten months. *Id.* at ¶¶ 3, 5, 6 and 15. No demolition is to occur until those off-site units are built. *Id.* at ¶ 3.

III. CHA must be enjoined from demolishing the Lakefront Buildings until this Court has had a chance to hold a hearing and rule on the merits of LCO's Complaint

CHA has not yet satisfied the conditions for demolition set forth in the 1995 Agreement. By announcing its intent to demolish the Lakefront Buildings on December 12, 1998, it has breached this Agreement and, more important, threatened to deprive LCO of its only means of

insuring that the off-site units will be built in a timely manner (if at all). LCO has filed a motion for a TRO and preliminary injunction so it will have an opportunity to present these claims before it suffers irreparable harm.

A. LCO will likely succeed on the merits of its complaint

In its complaint – which, as CHA correctly notes, is “essentially one for breach of contract” (Defendants’ Response, at 9) – LCO simply alleges that CHA has failed to satisfy the preconditions set forth in the 1995 Agreement. The Gautreaux Plaintiffs, who were not a party to this Agreement, express no view on the matter. Gautreaux Plaintiffs’ Statement, at 1-2. CHA and the Receiver, however, contend that CHA has substantially complied with its contractual obligations by completing construction on just 68 of the 341 units of off-site housing that, under the terms of the 1995 Agreement, must be built before the Lakefront Buildings can be demolished. CHA’s Response, at 9; Receiver’s Statement, at 2-3. This contention lacks merit. One does not substantially comply with its obligations by completing less than 20% of the work it is required to do.² Furthermore, CHA has not secured from HUD a commitment to provide the \$15,000,000 necessary to build 124 of the scattered site units outside of the North Kenwood-Oakland community. Receiver’s Statement, at 3.

CHA and the Receiver point to their good intentions as evidence of substantial compliance. Both claim that they fully intend to build all 441 units of replacement housing (CHA’s Response, at 9; Receiver’s Statement, at 3), but that has no bearing on the issue of whether a breach of the 1995 Agreement has occurred. Nowhere does the Agreement provide

²The Receiver tacitly acknowledges the weakness of its position by conceding that the 1995 Agreement “might arguably be construed as barring demolition until *all* of the preconditions of paragraph 3 are met.” Receiver’s Statement, at 6 n.3 (emphasis added).

that CHA can perform its obligation to build replacement housing by demolishing first and promising to build later.

B. The LCO will suffer irreparable harm, for which there is no adequate remedy at law, if CHA demolishes the Lakefront Buildings before this Court holds a hearing on LCO's complaint

CHA contends that if, after demolishing the Lakefront Buildings, it fails to build all the replacement housing units, LCO has an adequate remedy at law in the form of a breach of contract action. CHA's Response, at 10. This contention, however, is based upon a misconstruction of the 1995 Agreement. Paragraphs 3 and 15 of this Agreement set forth certain preconditions that CHA must satisfy if it wants to demolish the Lakefront Buildings. Once the preconditions in ¶ 3 have been met, a twenty month construction schedule for the scattered-site units goes into effect, and CHA must complete construction of these units *before* beginning the demolition process. 1995 Agreement, at ¶ 15. If CHA does not comply with the construction schedule, LCO may (after giving CHA 60 days notice of its intent to declare a breach of the contract) file suit to enforce the terms of the Agreement. *Id.* In other words, the Agreement gives LCO the right to sue CHA for failing to comply with the construction schedule *while the Lakefront Buildings remain standing*.

If CHA demolishes the Lakefront Buildings now, before it has even satisfied the preconditions set forth in ¶ 3 of the 1995 Agreement, LCO will have no adequate remedy at law in the event that CHA refuses or fails to complete construction of the scattered site units in a timely manner. LCO can file suit against CHA for demolishing the Lakefront Buildings before satisfying the necessary preconditions, but where that suit could be brought, when it would be decided, whether it would be consistent with *Gautreaux*, and how damages would be calculated

or injunctive relief fashioned are all extremely uncertain. The grounds for ordering CHA to comply with the construction schedule set forth in ¶ 15 of the 1995 Agreement will no longer exist, because ¶ 15 will never be triggered.

If CHA wants to breach the 1995 Agreement by demolishing the Lakefront Buildings on December 12, 1998, LCO is entitled to relief *now*, and this Court should order CHA to complete construction of all the replacement housing units within twenty months after the demolition occurs (the schedule CHA itself chose). LCO's Complaint, at 6. (The Gautreaux Plaintiffs have already indicated their strong support for the entry of such an order. Gautreaux Plaintiffs' Statement, at 2 and 4.)

C. The injury that LCO will suffer if its motion for a TRO is denied outweighs the harm any other party will suffer if the motion is granted

As the Gautreaux Plaintiffs have noted, the LCO seeks only to forestall demolition until it has had an opportunity to be heard on its complaint, and a hearing can in all likelihood be held before December 12, 1998 (the day on which CHA is scheduled to demolish the Lakefront Buildings). Gautreaux Plaintiff's Statement, at 2. Given this fact, granting LCO's motion for a temporary restraining order will not cause the considerable and unjustified delay predicted by the Gautreaux Plaintiffs, CHA, and the Receiver. Gautreaux Plaintiffs' Statement, at 4; CHA's Response, at 11; Receiver's Statement, at 3-4.

Denying the motion, however, will deprive LCO of its right and ability to force CHA to construct the remaining replacement housing units in a timely manner (if at all). Therefore, the harm that LCO faces if its motion is denied far outweighs whatever minor delay the other parties will suffer if the motion is granted.

D. Granting LCO's motion for a TRO will not hurt the public interest

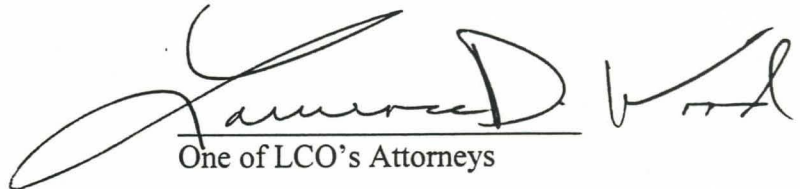
In arguing that a temporary restraining order will harm the public interest, the Gautreaux Plaintiffs reiterate the arguments they made while addressing the balance of harms. In effect, they claim that issuing such an order will delay implementation of the revitalization plan for the North-Kenwood Oakland area. Gautreaux Plaintiffs' Statement, at 2-3. As demonstrated above in Section III(C), however, this delay (which may last just a few days) is insignificant, especially when one considers that the buildings have stood vacant for the past twelve years. It is disingenuous to argue that allowing them to stand a short while longer will seriously harm the public interest.

CHA argues that "open and vacant buildings pose an immediate and continuing hazard to the community," and may become grounds for criminal activity. CHA's Response, at 11. Again, these arguments ignore the fact that the Lakefront Buildings have remained open and vacant for more than a decade, and that the LCO is seeking to enjoin demolition for a very short period of time.

The Receiver makes many of the same arguments CHA relied upon, but also complains that the entry of a restraining order will depress property values, deter developers from building houses in the community, and impede the sale or rental of units in the area. Receiver's Statement, at 4-5. These arguments are premised upon the incorrect assumption that LCO is seeking a long-term injunction. As stated above, the LCO does not want to preserve the Lakefront Buildings. It merely wants to ensure that CHA will honor its commitment to build all the replacement housing. The Court can help LCO achieve this goal by issuing a short-term injunction, affording LCO an opportunity to be heard on its complaint, and considering LCO's requests for relief (including the

entry of an order requiring CHA to complete construction of the replacement housing units within twenty months after demolition occurs).

Respectfully submitted,



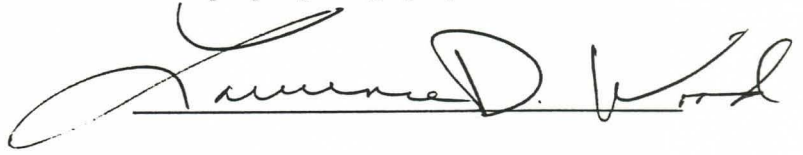
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Certificate of Service

I, Lawrence D. Wood, certify that I caused to be served a copy of **Lakefront Community Organization's Reply In Support Of Its Motion For A Temporary Restraining Order And Preliminary Injunction** 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.

A handwritten signature in black ink, appearing to read "Lawrence D. Wood", is written over a horizontal line.

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