

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**
No. 99-2158

DOROTHY GAUTREAUX, et al.,	)	Appeal from the United States	
	)	District Court for the Northern	
Plaintiffs,	)	District of Illinois, Eastern Division	
	)		
v.	)		
	)		
CHICAGO HOUSING AUTHORITY, et al.,	)	66 C 1459	
	)		
Defendants,	)		
	)		
Appeal of: LAKEFRONT COMMUNITY	)		
ORGANIZATION.	)	Chief Judge Marvin Aspen	

**U.S.C.A.—7th Circuit
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**LAKEFRONT COMMUNITY ORGANIZATION'S
RESPONSE TO THE RECEIVER'S MOTION TO DISMISS**
(Exhibit List)

LCO's Emergency Motion to Intervene	Exhibit A
LCO's Motion for a TRO and Preliminary Injunction	Exhibit B
LCO's Reply in Support of its Emergency Motion to Intervene	Exhibit C
LCO's Reply in Support of its Motion for a TRO and Preliminary Injunction	Exhibit D
December 10, 1998 Order Denying LCO's Motions to Intervene and for a TRO and Preliminary Injunction	Exhibit E
LCO's Second Motion to Intervene	Exhibit F
LCO's Memorandum in Support of its Second Motion to Intervene	Exhibit G
LCO's Reply in Support of its Second Motion to Intervene	Exhibit H
April 7, 1999 Order Denying LCO's Second Motion to Intervene	Exhibit I
LCO's Motion for Clarification	Exhibit J
May 6, 1999 Order Granting LCO's Motion for Clarification	Exhibit K

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

RECEIVED
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DOROTHY GAUTREAUX, *et al.*

Plaintiffs,

v.

CHICAGO HOUSING AUTHORITY and
JOSEPH SHULDINER, Executive Director,

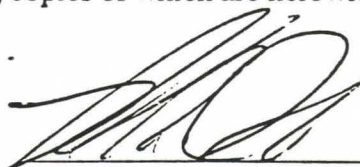
Defendants.

Judge Marvin E. Aspen
U.S. District Court
66 C 1459
Hon. Marvin E. Aspen

NOTICE OF EMERGENCY MOTION

TO: Counsel on attached service list

On November 24, 1998 at 9:30 a.m., or as soon thereafter as counsel may be heard, the Cabrini-Green Local Advisory Council shall appear before the Honorable Marvin E. Aspen of the United States District Court for the Northern District of Illinois in Room 2548 at 219 S. Dearborn Street, Chicago, IL, or before any other judge in his place, and shall then and there present the attached **EMERGENCY MOTION OF THE LAKEFRONT COMMUNITY ORGANIZATION TO INTERVENE and INTERVENOR'S MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**, copies of which are herewith served upon you.

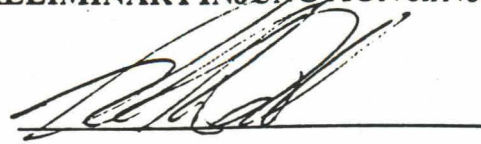


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Certificate of Service

I, Richard M. Wheelock, an attorney, certify that I caused to be hand delivered to the counsel on the attached service list copies of **EMERGENCY MOTION OF THE LAKEFRONT COMMUNITY ORGANIZATION TO INTERVENE and INTERVENOR'S MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION** on November 23, 1998.



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IN THE UNITED STATES DISTRICT COURT
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Plaintiffs,

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Defendants.

66 C 1459

Hon. Marvin E. Aspen

**EMERGENCY MOTION OF THE
LAKEFRONT COMMUNITY ORGANIZATION TO INTERVENE**

The Lakefront Community Organization ("LCO"), by its attorneys of the Legal Assistance Foundation of Chicago, moves this Court for leave to intervene in order to assert the claims set forth in its proposed complaint, a copy of which is attached hereto. In support of this motion, LCO states as follows:

1. Rule 24(a)(2) of the Federal Rules of Civil Procedure allows intervention of right where the applicant seeking intervention claims to be so situated that a ruling or disposition in the litigation may impair or impede the applicant's interest, and that interest is not adequately represented by the existing parties. See Gautreaux v. Pierce, 548 F. Supp. 1284, 1287 (N.D.Ill. 1982).

2. Rule 24(b)(2) of the Federal Rules of Civil Procedure also permits intervention when an applicant's claim or defense and the main action have a question of law or fact in

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Defendants.

66 C 1459

Hon. Marvin E. Aspen

INTERVENOR'S COMPLAINT

I. INTRODUCTION

1. The intervenor, Lakefront Community Organization (hereinafter "LCO"), represents former tenants of 3939 South Lake Park Avenue, 3983 South Lake Park Avenue, 4040 South Oakenwald, 1130 East 41st Street, 4155 South Lake Park, 1132 East 42nd Street (hereinafter "the Lakefront properties").

2. These former tenants were moved out of the Lakefront properties in 1985. For the next ten years they waited for the Chicago Housing Authority (hereinafter "CHA") to rehabilitate the buildings, as it had promised to do in a written agreement (hereinafter "the 1986 Memorandum").

3. In 1995, LCO and CHA entered into a new agreement (hereinafter "the 1995 Agreement"), which provides that CHA can demolish four of the buildings (4040 South Oakenwald, 1130 East 41st Street, 4155 South Lake Park, 1132 East 42nd Street) (hereinafter "the Lakefront Buildings") once it builds new replacement housing in the larger North

III. PARTIES

A. Intervenor

11. LCO is a non-profit organization incorporated in 1985 to represent the interests of the families displaced from the Lakefront properties. As the sole representative of these displaced tenants, LCO negotiated with CHA and entered into the 1986 Memorandum, which provided for the rehabilitation of the Lakefront properties. (A copy of this Memorandum is attached as Exhibit A.)

12. The LCO then entered into the September 1995 Agreement, which is the subject of this complaint. (A copy of the 1995 Agreement is attached as Exhibit B.)

B. Defendants

13. Defendant CHA is an Illinois municipal corporation, created and existing under the Housing Authorities Act, Ill. Rev. Stat., ch 67½, §§ 1 - 27e. CHA is also a Public Housing Agency ("PHA") administering federally subsidized and assisted low-rent housing within the meaning of 42 U.S.C. § 1437.

14. Defendant Joseph Shuldiner is the Executive Director of CHA. He is charged with establishing and implementing the policies of CHA, including those relating to the demolition of public housing owned and managed by CHA.

IV. STATEMENT OF THE CASE

15. On May 27, 1986, CHA, LCO, and other parties entered into the 1986 Memorandum, which established a procedure for vacating and rehabilitating the Lakefront high-rises.

16. CHA renovated two of the six Lakefront high-rises (3939 and 3983 South Lake

Park, Chicago, Illinois) to create Lake Parc Place.

17. CHA did not renovate the other four buildings, which have remained vacant since the residents were moved out.

18. In or around the end of 1993 and the beginning of 1994, CHA approached LCO to negotiate a revision of the 1986 Memorandum.

19. On September 22, 1995, CHA and LCO entered into the 1995 Agreement.

Exhibit B.

20. This Agreement permits CHA to demolish the Lakefront Buildings in exchange for constructing scattered site housing and issuing Section 8 certificates to the displaced residents.

21. The 1995 Agreement provides that the following conditions must be satisfied before CHA demolishes the Lakefront Buildings:

a. CHA must obtain binding funding commitments from HUD for the construction of 80 to 100 units of public housing on the Lakefront properties and 200 scattered site public housing units in the City but outside the North Kenwood/Oakland neighborhood. See 1995 Agreement, ¶¶3(a), 4, and 5. The North Kenwood/Oakland neighborhood is bordered by Oakwood Boulevard on the north, the Illinois Central Railroad right-of-way on the east, 47th Street on the south, and Cottage Grove Avenue on the west.

b. CHA must obtain site control of enough property to construct 141 units of replacement public housing in the North Kenwood/Oakland neighborhood. See 1995 Agreement at ¶¶ 3(b) and 6.

c. CHA must obtain LCO's approval for the sites selected in the North

common. A less stringent standard may be applied if an applicant seeks intervention for a very limited purpose rather than full participation in the litigation. 6 James Wm. Moore et al., Moore's Federal Practice ¶ 24.11 (3rd ed. 1998).

3. The LCO represents former tenants of 3939 South Lake Park Avenue, 3983 South Lake Park Avenue, 4040 South Oakenwald, 1130 East 41st Street, 4155 South Lake Park, 1132 East 42nd Street (hereinafter "Lakefront properties").

4. The LCO incorporates herein by reference ¶¶ 1 - 28 of LCO's complaint.

5. The order entered by this Court on June 3, 1996 authorizes the construction of 241 units of replacement housing in the North Kenwood/Oakland neighborhood and affords families displaced from the Lakefront Buildings first priority for those units. This Court also oversees the implementation of the scattered site program. The LCO, as the representative of those families, now seeks CHA compliance with the 1995 Agreement upon which this Court's order was predicated, including the construction of the units authorized by this Court.. As such, the LCO should be granted permission to intervene as a matter of right, or, in the alternative, should be permitted intervention since the LCO's claims present common questions of fact and law.

6. The LCO is not a party to the Gautreaux litigation, is not represented by either party, and has interests that are distinct from the interests of both parties.

7. The CHA is adverse to the LCO, in that it has breached the 1995 Agreement, as described above. The Gautreaux plaintiffs' are not signatories to the 1995 Agreement and therefore are not the proper parties to enforce the terms of the Revised Agreement.

WHEREFORE, the LCO moves this Court to permit it to intervene for the purpose of filing the attached complaint against the CHA.

Respectfully submitted,


One of LCO's Attorneys

Richard M. Wheelock
Diana White
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Kenwood/Oakland neighborhood. See 1995 Agreement at ¶¶ 3(b) and 6.

d. CHA must (1) start construction on all 141 units of the replacement public housing in the North Kenwood/Oakland neighborhood, and all 200 scattered site public housing units in the City outside of the North Kenwood/Oakland neighborhood within ten months after satisfying subparagraphs a - c above; and (2) complete construction of these units within a reasonable period of time thereafter. 1995 Agreement at ¶¶ 3, 5, 6, and 15.

22. On May 13, 1996, Alexander Polikoff (attorney for the Gautreaux plaintiff class) and Daniel Levin (Habitat's chairman) sent a letter to William Wilen, then employed by the Legal Assistance Foundation of Chicago and acting as attorney for LCO, stating that if the former Lakefront tenants became dissatisfied with the pace of development of the North Kenwood/Oakland replacement housing, the Gautreaux plaintiffs' counsel and the Receiver would support a request by the former Lakefront tenants for a hearing in front of the presiding Gautreaux judge on that issue. A copy of this letter is attached hereto as Exhibit C.

23. On May 22, 1996, the Gautreaux plaintiffs and CHA filed a joint motion to designate the North Kenwood/Oakland neighborhood as a Revitalizing Area and to authorize the construction or rehabilitation of 241 units of public housing in the Revitalizing Area. (A copy of the joint motion is attached hereto Exhibit D.) This motion, which received Habitat's approval, was provided for in the 1995 Agreement. Furthermore, entry of the order requested in the motion was a condition precedent to the demolition of the Lakefront Buildings. See ¶ 3 of Exhibit B.

24. On June 3, 1996, this Court entered the requested order, a copy of which is attached as Exhibit E.

25. As of the filing of this suit, CHA has failed to complete construction of all 241 units to be located in the North Kenwood/Oakland neighborhood and elsewhere in the City of Chicago, and has failed to meet the other prerequisites conditions set forth above in paragraph 21.

26. At a meeting on November 10, 1998, Karen Newton (Acting Chair of the CHA) stated that CHA will demolish all four of the Lakefront Buildings simultaneously on December 12, 1998.

27. CHA has already begun preparing for the demolition of the Lakefront Buildings.

V. INADEQUATE REMEDY AT LAW – IRREPARABLE HARM

28. As a result of CHA's actions, LCO has suffered, and will continue to suffer, irreparable harm for which there is no adequate remedy at law. Specifically, LCO will lose the *quid pro quo* (the demolition of the Lakefront Buildings) on which the 1995 Agreement was predicated without having any assurance that the CHA, through the Habitat Company, will build the promised replacement housing.

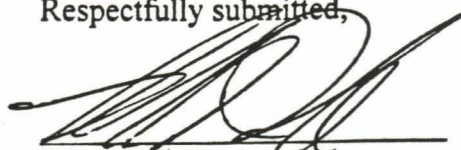
WHEREFORE, LCO prays that this Honorable Court:

A. Enter an order enjoining the demolition of the Lakefront Buildings until defendants have complied with its commitments, as set forth in the 1995 Agreement;

B. In the event this Court should allow demolition to proceed, enter an order requiring defendants to comply with its commitments under the 1995 Agreement within a set period of time after the demolition, including commencing construction of all the units, both on-site and off-site, and completing them within 20 months, as provided for in ¶ 15; and

C. Grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'R. M. Wheelock', written over a horizontal line.

One of the Attorneys for
Intervenor

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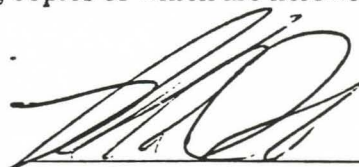
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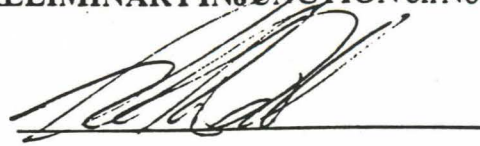


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MEMORANDUM OF ACCORD REGARDING RELOCATION OF RESIDENTS
FROM THE LAKEFRONT PROPERTIES PURSUANT TO THE CIAP
REHABILITATION PROJECT

May 27, 1986

MEMORANDUM OF ACCORD REGARDING RELOCATION OF RESIDENTS
FROM THE LAKEFRONT PROPERTIES PURSUANT TO THE CIAP
REHABILITATION PROJECT

The parties hereto enter this Agreement based upon a common goal and objective that the proposed rehabilitation of the Lakefront Properties be completed in an expeditious and fair manner consistent with Federal Modernization Program requirements and to assure that the proposed rehabilitation be implemented in a manner which safeguards the rights of the affected resident community. The resident population of the Lakefront Properties as of October 1, 1985 and thereafter are the intended beneficiaries of this Agreement.

The Chicago Housing Authority (CHA) and the Lakefront Community Organization (LCO), individually and through their attorneys, hereby agree to the following procedures and requirements regarding the relocation of residents from the Lakefront Properties (the Olander Homes, 3939 S. Lake Park Avenue; Olander Extension, 3833 S. Lake Park Avenue; and the three (3) building complex in Lake Michigan Homes at 41st Street and Lake Park) pursuant to the Comprehensive Improvement Assistance Program ("Modernization Program") authorized by 42 U.S.C. § 1437(1) and 24 C.F.R. § 968. CHA has consulted with the Presidents of the Local Building Councils of the Lakefront Properties and they agree to support this Agreement.

By entry into this Memorandum of Accord the parties hereto agree to comply with all terms and conditions set forth herein, agree to cooperate and support implementation of this Memorandum of Accord and hereby acknowledge that substantial breach of this Agreement shall be enforceable by a party hereto pursuant to any existing administrative or legal remedy authorized by law.

Accordingly, the parties hereby agree as follows:

1. The parties support and will urge adoption by the CHA Board of Directors at their May Board Meeting of this Memorandum of Accord and the first six recommendations previously made by the Lakefront Properties Task Force regarding the proposed rehabilitation. These six recommendations are attached hereto as Appendix 1 and are incorporated herein.

2. The parties support the proposed rehabilitation of these properties and recognize that all families will have to be moved at lease once in order that the rehabilitation can be completed.

3. Because some families will not be able to be moved to other CHA developments (e.g. large family, no unit available), or that some families will not be able to be relocated under the Section 8 program, (e.g., landlords unwilling to rent to families with teenage children), the parties agree upon a phased relocation proposal. To determine how units within the Lakefront Properties will be made available during rehabilitation, the following priorities shall be adopted:

(a) first priority for apartments will be given to current lease holders who satisfy CHA eligibility criteria and who are handicapped or who are seriously ill or who have handicapped or seriously ill family members;

(b) second priority shall be given to families that are eligible for 4 bedroom or larger size units under CHA occupancy guidelines;

(c) third priority shall be given to families with minor children above the age of 14;

(d) fourth priority shall be given to

families with minor children 14 years of age or younger facing unusual housing difficulties, e.g., day care needs for children of working mother;

(e) all other units shall be prioritized to families requesting to stay in the Lakefront Properties based upon seniority to be determined by the date that the original dwelling lease was signed by the family;

(f) families who wish to remain in the Lakefront Properties during rehabilitation shall be allowed to do so consistent with the above priorities. If the number of available vacant units is not sufficient to house all families who have requested to remain in the Lakefront Properties those families who cannot be accommodated will be offered apartments at the Wells/ Washington developments, and all other CHA developments, to the extent that units are available to all other residents;

(g) no CHA apartments shall be offered to affected residents as relocation housing in "as is" condition. All units under the program offered to residents must satisfy state, city and federal regulations regarding health and safety. No resident will be asked to move to a unit which is not properly repaired or brought up to code standard.

4. To facilitate the phased rehabilitation and relocation, the parties recognize that security considerations may require the temporary removal of fixtures from vacant apartments. However, the

removal of such fixtures shall not eliminate that apartment from subsequently being made temporarily available to house families who remain in the Lakefront Properties during rehabilitation.

5. The increasing vacancy rate in the property requires that CHA provide additional security measures in the development. These may include:

(a) additional security personnel at the buildings;

(b) access to monthly reports indicating the number, nature and building location of alleged incidents; and

(c) establishment of a security "hotline" or other service to be made available to residents.

6. All families who currently reside in the Lakefront Properties and all families who have moved out of the Lakefront Properties since October 1, 1985 in connection with the proposed rehabilitation, shall have the right to return as a tenant in the Lakefront Properties after the rehabilitation is completed except those tenants:

✓ (a) who because of income or family composition are no longer qualified for CHA;

(b) who prior to their moving out of the Lakefront Properties had a court eviction order terminate their right to continue to occupancy in CHA.

✓ (c) who are evicted for "good cause" as set forth at 24 C.F.R. § 966.4(1)(1) or other

serious violations of their lease during the period of relocation;

2. (d) who are relocated outside of CHA housing during the period of rehabilitation but who have committed acts, during the period of rehabilitation, which constitute a threat to the health and safety of other CHA tenants or employees as that term is defined in CHA Administrative Circular 1798.

Provided, however, that families who are determined ineligible to return based upon such charge shall be entitled to written notice and a hearing to challenge such determination as set forth in CHA Administrative Circular 1797;

- (e) who left CHA owing rent and who after a reasonable opportunity to resolve any account balance refuse or are unable to resolve any rent arrearage.

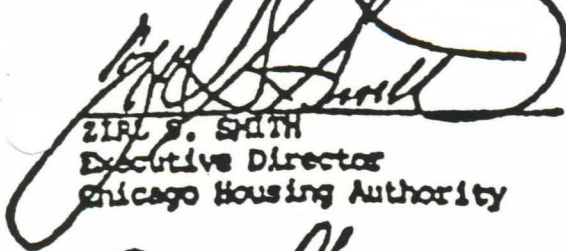
7. CHA shall provide all residents with all relocation benefits and assistance required by federal law according to standards set forth under the Uniform Relocation Assistance Act at 24 C.F.R. Part 42, in both moving out of the Lakefront Properties and moving back into the properties after rehabilitation. Families who elect to permanently relocate under the Section 8 program shall be furnished with Section 8 certificate for the fullest term authorized by law.

8. In consideration of the Agreement by CHA to adopt and commit to comply with the above procedures, the LCO agrees to provide

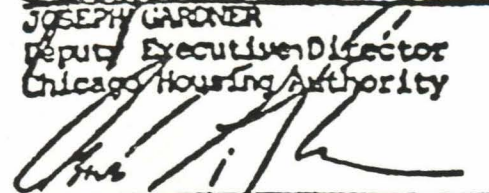
all reasonable assistance and cooperation with CHA to insure the prompt and fair implementation of the plan.

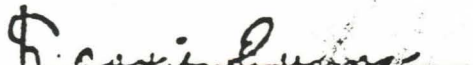
9. CHA shall agree to hire and train residents who were certified leaseholders on October 1, 1985 to perform certain of the work to be performed during rehabilitation. Residents shall have priority for jobs to the maximum extent feasible and available. CHA shall further provide training for interested residents regarding management and operation of the building after rehabilitation.

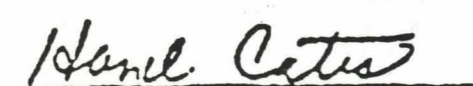
The Presidents of the Local Building Councils for the Lakefront Properties, as representatives of the Local Advisory Council, and the President of the Local Advisory Council hereby acknowledge that CHA consulted with them, that have reviewed the terms of this Agreement and hereby agree with its provisions. By signing this document we hereby agree to support this Memorandum of Accord.

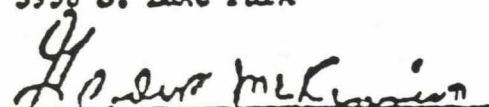

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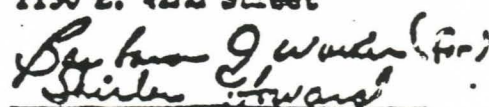

HAZEL GATES
President, Building Council
3938 S. Lake Park

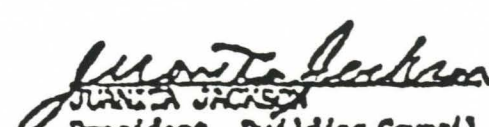

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QUENSA RANDOLPH
President
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Advisory Council

**REVISED AGREEMENT REGARDING FORMER RESIDENTS
OF THE LAKEFRONT PROPERTIES AND
THE FUTURE USE OF THOSE PROPERTIES**

The Parties hereto enter this Agreement based upon a shared recognition and understanding that the rehabilitation of the four remaining Lakefront Properties, hereinafter identified, is neither desirable nor appropriate. The parties do share a common goal of providing suitable housing choices to the former residents of the Lakefront Properties, including the choice to move back into the North Kenwood - Oakland community.

The Chicago Housing Authority (CHA) and the Lakefront Community Organization (LCO), which is the sole representative of the displaced Lakefront tenant families¹, by their duly authorized representatives and attorneys, heraby agree as follows:

1. The CHA shall immediately apply to the Department of Housing and Urban Development ("HUD") for permission to demolish the four Lakefront Properties that have not been rehabilitated, namely the 453 units in the three building complex known as Lake Michigan Homes located at 1130 East 41st Street, 1132 East 42nd Street and 4155 South Lake Park, comprising HUD Project No. 2-41; and the 151 units in the building located at 4040 Oakenwald Street, part of HUD Project No. 2-34, Washington Park Homes.

2. In conjunction with its demolition application(s), CHA will submit to HUD replacement housing plans, as required by 42 U.S.C. 1437p(b)(3) and 24 CFR 970.11, for the provision of replacement housing units for each public housing unit to be demolished under its application(s). The replacement housing plans will provide for the acquisition or development of

¹ The "displaced Lakefront tenant families" means:

(i) all persons who were residing at the six Lakefront properties (i.e., 3939 S. Lake Park Avenue, 3983 S. Lake Park Avenue, 4040 S. Oakenwald Street, 1130 E. 41st Street, 4155 S. Lake Park Avenue and 1132 E. 42nd Street) as of October 1, 1985 and who were displaced by the proposed Lakefront properties rehabilitation project, except that "displaced Lakefront tenant families" does not include those tenant families who are leaseholders at Lake Parc Place on the date of this agreement;

(ii) the following tenant families who resided at 4040 Oakenwald Street from November, 1986 to November, 1991 and who were temporarily relocated to Lake Parc Place in 1991 and whose names are listed on attachment A hereto.

scattered site public housing units and the provision of Section 8 certificates.

3. No demolition of the four remaining Lakefront properties shall commence until: (a) HUD has entered binding funding commitments with CHA for the purposes set forth in paragraphs 4 and 5 of this Agreement; (b) the City of Chicago and CHA have identified, and CHA has obtained site control of, sufficient sites, which are acceptable to LCO, to develop 141 units of public housing in accordance with paragraph 6 of this Agreement; and (c) the United States District Court has entered (i) an appropriate order permitting construction or rehabilitation of public housing under paragraphs 4 and 6 of this Agreement and (ii) an appropriate order amending CHA's tenant selection and assignment plan to permit priority occupancy rights to units developed under paragraphs 4, 5 and 6 of this Agreement to displaced Lakefront tenant families. If the conditions set forth in this paragraph 3 and in paragraph 15 below are satisfied, CHA shall demolish the four remaining Lakefront properties.

4. The CHA, through the Gautreaux-appointed Receiver, subject only to satisfaction of the conditions set forth in paragraphs 3(a) and 3(c)(1) of this Agreement, shall build approximately 100 units, but not less than 80 units, of public housing and shall build or otherwise provide a community center on sites owned or otherwise provided by CHA as part of its Lakefront properties, including the 4040 Oakenwald building. CHA, through the Gautreaux-appointed Receiver, shall apply to the City of Chicago Zoning Board of Appeals for a variance or special use which would permit construction of the community center, and shall appeal, if warranted by counsel for CHA or LCO, any determination that prohibits construction of the community center. CHA and the Gautreaux-appointed Receiver shall consult and attempt to reach agreement with LCO in all matters regarding the community center and shall provide LCO with office space in the community center.

5. Subject only to satisfaction of the conditions set forth in paragraphs 3(a) of this Agreement, the CHA, through the Gautreaux-appointed Receiver and/or the Joint Venture, shall build or rehabilitate not less than 200 scattered site units in communities of the City of Chicago other than North Kenwood-Oakland on sites which are acceptable to LCO.

6. The CHA, subject only to satisfaction of the conditions set forth in paragraph 3(b) and 3(c)(i) of this Agreement, shall build 141 units of scattered site housing (new or rehabilitated), already funded pursuant to the Gautreaux Consent Decree, in the North Kenwood - Oakland community. These units will be developed by the Gautreaux-appointed Receiver and/or the Joint Venture, primarily on CHA owned vacant land and City of Chicago owned

sites, which are acceptable to LCO.

7. CHA shall apply to HUD for three hundred and two (302) Section 8 certificates for use as replacement housing. In the event CHA's Section 8 replacement housing application is not funded by HUD, either in whole or in part, CHA will make available up to 302 Section 8 certificates from its own inventory of Section 8 certificates to meet the replacement housing needs of displaced Lakefront tenant families.

8. Subject to the court order discussed in paragraph 3(c)(ii) of this Agreement, CHA shall offer, on a first priority basis, all units developed under paragraphs 4, 5 and 6 of this Agreement and all Section 8 certificates provided under paragraph 7 of this Agreement, (up to a combined maximum of 604 units and certificates); to eligible displaced Lakefront tenant families. Eligible families are all displaced Lakefront tenant families except those:

(a) who because of income are no longer eligible for CHA housing;

(b) who prior to moving out of the Lakefront Properties were subject to a written eviction order terminating their right to continued occupancy at CHA;

(c) who have been evicted from public housing for "good cause" as set forth at 24 CFR Section 966.4(1)(2) or other serious violation of their lease during the period of relocation;

(d) who have been relocated outside of CHA housing but who, during the period of relocation, have been convicted of a felony involving physical violence to persons or crimes against property that adversely affect the health, safety or welfare of other persons or the misdemeanors of aggravated assault, unlawful use of a weapon, battery or criminal damage to property;

(e) who left CHA owing rent and who after a reasonable opportunity to resolve any account balance refuse or are unable to resolve any rent arrearage within a reasonable time of any determination of ineligibility.

Any displaced Lakefront tenant family determined to be ineligible for replacement housing pursuant to the provisions of this paragraph will be entitled to appeal the determination of ineligibility to a committee composed of three members chosen by LCO and three members chosen by CHA. This committee shall have access to all relevant documents that led to the finding of ineligibility, shall consider any evidence of rehabilitation of the tenant family or any evidence of the tenant family's willingness to participate in social service or other appropriate counseling service programs, and shall be empowered to waive any

or all rent arrearages for good cause shown and to establish a reasonable installment payment plan.

This committee shall initially screen the tenants who shall reside in the housing to be provided under this Revised Agreement. After initial occupancy is completed the committee shall be expanded to nine (9) members, with the three (3) additional members to be selected from the residents who will reside in the new housing to be built under this Revised Agreement.

9. Up to a maximum of 604 eligible displaced Lakefront tenant families shall be afforded either their first or their second housing choice pursuant to paragraph 8 of this Agreement. CHA, through its tenant selection and assignment procedure, shall maintain a parity in the occupancy of public housing units developed pursuant to paragraph 4 of this Agreement between eligible low income and very low income families, as those terms are defined in 24 CFR Section 913.102. In the event that CHA's obligation to afford up to 604 displaced Lakefront tenant families with either their first or second housing choices cannot be reconciled with CHA's obligation to maintain a parity in the occupancy of public housing units, as required by this paragraph, CHA and LCO will negotiate a mutually agreeable amendment to this Agreement.

10. CHA shall negotiate and attempt to reach agreement with the LCO with respect to all matters involving the displaced Lakefront tenant families, including but not limited to agreement with the Gautreaux-appointed Receiver and/or the Joint Venture relative to the site selection and design of all housing units constructed, rehabilitated or otherwise made available for occupancy pursuant to the terms of this Agreement and with CHA relative to the management and operation of all housing units constructed, rehabilitated or otherwise made available for occupancy pursuant to the terms of this Agreement.

11. CHA, with the assistance of LCO, shall conduct an aggressive outreach campaign to contact eligible displaced Lakefront tenant families in order to determine whether they wish to avail themselves of the housing opportunities being provided under this Agreement. CHA and LCO shall enter a side agreement setting forth the timing, scope and terms of the outreach program. A bar date will be fixed after which there will be no further right to replacement housing under this Agreement. Consistent with the outreach program developed by and agreed to by CHA and LCO, CHA will make all reasonable efforts to locate displaced Lakefront tenant families up to the bar date.

12. All displaced Lakefront tenant families who avail themselves of the replacement housing opportunities being provided under paragraphs 4, 5, 6 and 7 of this Agreement

shall be moved by CHA, at CHA's expense, or paid by CHA the amount of actual, reasonable moving costs, including the actual, reasonable costs of utility reconnection.

13. The Gautreaux-appointed Receiver shall comply with Section 3 requirements in the demolition and construction identified in the Agreement, and shall work with CHA and LCO in identifying members of displaced Lakefront tenant families as eligible for training and employment opportunities pursuant to Section 3. CHA, directly or through its agent, shall provide training for interested residents regarding management and operation of the replacement housing units being provided pursuant to this Agreement.

14. By signing this document, LCO and CHA hereby agree that this Revised Agreement replaces and supplants the Memorandum of Accord entered into on May 27, 1986. However, if the conditions set forth in paragraph 3 of this Agreement for demolition of the four remaining Lakefront properties are not satisfied by January 1, 1996, LCO may give CHA seven days notice of its intent to declare a breach of this Agreement. If those conditions are not satisfied within that seven day notice period, LCO may declare a breach of this Agreement. Upon such a declaration of breach, this Revised Agreement shall be null and void, and the terms and conditions of the original Memorandum of Accord, dated May 27, 1986, shall be reinstated.

15. The construction or rehabilitation of the replacement housing required under paragraphs 5 and 6 of this Agreement shall commence within ten months after satisfaction of the conditions set forth in paragraph 3 of this Agreement for demolition of the four remaining Lakefront properties and shall be completed within a reasonable time, as that term is defined by current construction industry standards for the type of construction and rehabilitation contemplated by the agreement. If the construction or rehabilitation of the replacement housing required under paragraphs 5 and 6 of this Agreement has not commenced within ten months after satisfaction of the conditions set forth in paragraph 3 of this Agreement for demolition of the four remaining Lakefront properties or is not completed within ten months thereafter, LCO shall give CHA sixty days notice of its intent to declare a breach of this Agreement prior to instituting any suit to enforce the terms of this Agreement.

16. CHA's entry into this Revised Agreement in the context of the unique circumstances involving the displacement and relocation of the former residents of the Lakefront Properties shall not be deemed a precedent with respect to the relocation and replacement housing rights of other CHA tenants families who may be displaced and relocated from their present housing units as a consequence of future demolition of CHA housing units.

17. This agreement shall be governed as to performance and interpretation in accordance with the laws of the State of Illinois. In construing the terms of this Agreement, neither CHA nor LCO shall be deemed the drafter of this Agreement.

18. In consideration of the Agreement by the CHA to enter into the above obligations, the LCO agrees to support CHA's application to HUD for demolition of the Lakefront Properties. Both parties to this agreement agree to comply with all terms and conditions set forth herein, agree to cooperate and support implementation of this agreement and acknowledge that this agreement is intended by the parties to be a binding contract enforceable by either party in any court of competent jurisdiction.

19. CHA shall reimburse LCO for all reasonable expenses incurred by LCO members in connection with the implementation of this Revised Agreement, including car fare and transportation, telephone and copying expenses. Such reimbursement shall be provided by CHA within 30 days of submission by LCO of reasonable proof of expenditures to CHA.

EXECUTED THIS 22nd DAY OF September 1995
IN CHICAGO, ILLINOIS

FOR THE LAKEFRONT COMMUNITY
ORGANIZATION:

By: Clara Dixon
CLARA DIXON, President

By: Izora Davis
IZORA DAVIS
Executive Board Director

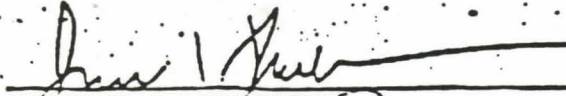
By: John Williams
JOHN WILLIAMS
Executive Board Director

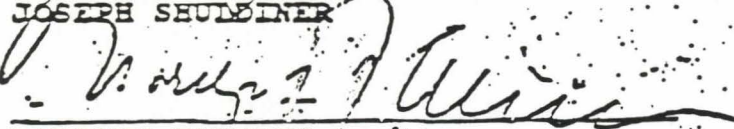
By: Darlene Rush
DARLENE RUSH
Executive Board Director

1116
WILLIAM P. WILEN
MICHAEL PARDYS
ALLISON ASHE-CARD
Legal Assistance Foundation
of Chicago
343 S. Dearborn Street
Suite 700
Chicago, Illinois
Attorneys for LCO

FOR THE CHICAGO HOUSING AUTHORITY:

By:


JOSEPH SHULDINER


MARILYN JOHNSON
Chicago Housing Authority
200 W. Adams Street
Suite 2100
Chicago, Illinois 60606
Attorney for CHA

May 13, 1996

Honorable Toni Preckwinkle
Alderman, 4th Ward
4646 South Drexel Boulevard
Chicago, Illinois 60653

Mr. William Wilen
Legal Assistance Foundation
343 South Dearborn Street
Chicago, Illinois 60604

Ms. Shirley Newsome, President
Conservation Community Council
4140 South Lake Park
Chicago, Illinois 60653

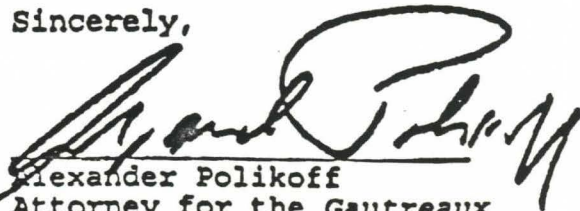
Dear Alderman Preckwinkle, Mr. Wilen and Ms. Newsome:

In connection with our anticipated request to Judge Aspen to designate North Kenwood-Oakland as a Revitalizing Area and to permit the development of public housing therein, we make the following assurances:

- (1) The Receiver will use its best efforts to achieve the development of market rate as well as public housing on both the Lakefront and Drexel corridor sites which have been the subject of discussion among us; and
- (2) In the event that community representatives or former Lakefront Properties tenants become dissatisfied with the pace of progress in developing either form of housing, Gautreaux plaintiffs' counsel and the Receiver will support the request of either or both groups for a hearing on that issue before the Gautreaux presiding judge.

Sincerely,


Daniel Levin
Gautreaux Receiver


Alexander Polikoff
Attorney for the Gautreaux
Plaintiff Class

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

DOROTHY GAUTREAUX, et al.

Plaintiffs,

vs.

CHICAGO HOUSING AUTHORITY and
HENRY CISNEROS, Secretary of
Department of Housing and Urban
Development,

Defendants.

66 C 1459

66 C 1460

(Consolidated)

JOINT MOTION OF PLAINTIFFS, AND DEFENDANTS
CHICAGO HOUSING AUTHORITY AND DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT, FOR AN ORDER
DESIGNATING A NORTH KENWOOD-OAKLAND REVITALIZING AREA AND
AUTHORIZING THE DEVELOPMENT OF
SCATTERED SITE PUBLIC HOUSING UNITS THEREIN

Plaintiffs, and Defendants Chicago Housing Authority and
Department of Housing and Urban Development, by their respective
attorneys, move this court for an order in the form attached
hereto:

(1) designating as the North Kenwood-Oakland Revitalizing
Area that portion of the City of Chicago that lies between
Oakwood Boulevard on the north, the Illinois Central Railroad
right-of-way on the east, 47th Street on the south, and Cottage
Grove Avenue on the west (the "Revitalizing Area"), and

(2) authorizing the development, through new construction or
rehabilitation of existing buildings, of not more than 241 units
of public housing within the Revitalizing Area.

In support of this motion, the parties state as follows:

1. In 1986, the proposed Revitalizing Area contained

approximately 1,066 family public housing units. Nine hundred and three units were in six CHA high-rise buildings, known as the Lakefront Properties, located along Lake Park Avenue between Oakwood Boulevard on the north and 42nd Place on the south. Of the remaining 163 units, 151 were in a combination of high-rise and mid-rise buildings in CHA's Washington Park homes development, on a block bounded by 41st Street on the north, Drexel Boulevard on the east, Bowen Avenue on the south and Cottage Grove Avenue on the west (the "Washington Park site"). The remaining 12 were in a small building at 900 East 40th Street ("the 900 Building").

2. In 1986, CHA and the Lakefront Community Organization ("LCO"), representing the tenants of the Lakefront Properties, entered into a Memorandum of Accord. A copy of the 1986 Memorandum of Accord is attached hereto as Exhibit A. Under the Memorandum of Accord the tenants agreed to leave their homes voluntarily, and CHA agreed to rehabilitate the Lakefront Properties buildings and grant to the displaced families "the right to return as a tenant in the Lakefront Properties after the rehabilitation is completed." (§ 6)

3. In 1990 and 1991, CHA extensively rehabilitated the two northernmost Lakefront Properties high-rises, turning them into attractive, landscaped buildings, now known as Lake Parc Place. As authorized by Congressional legislation, CHA established a mixed-income tenancy for Lake Parc Place, reserving half the units for working families, i.e., families earning between 50%-80% of the median income for the Chicago Metropolitan Area (for a

family of four in 1996, an income of \$27,500 - \$41,600).

4. Also in 1990-1991, the Receiver developed 15 new scattered site public housing units at 4525 South Lake Park Avenue.

5. In 1995, while discussions were underway concerning the remaining four Lakefront high-rises, CHA demolished the 151 units on the Washington Park site and the 12-unit 900 Building.

6. After lengthy discussions, in September, 1995, CHA and LCO entered into a supplemental agreement modifying the Memorandum of Accord ("Revised Agreement"). The Revised Agreement is attached hereto as Exhibit B. The Revised Agreement reflects a "shared recognition and understanding that the rehabilitation of the four remaining Lakefront Properties . . . is neither desirable nor appropriate," as well as a "common goal of providing suitable housing choices to the former residents of the Lakefront Properties, including the choice to move back into the North Kenwood-Oakland community." (p. 1)

7. The Revised Accord provides that, instead of rehabilitation, the four remaining high-rises, containing approximately 603 units, should be demolished. (§1) The Revised Accord provides further that replacement housing for the demolished units should take the following form: (1) up to 241 units in North Kenwood-Oakland, including 80-100 units on the site of the to-be-demolished Lakefront high-rises and an additional 141 units scattered throughout the area, including on the Washington Park site; (2) 200 additional units outside of North Kenwood-Oakland; and (3) up to 302 Section 8 certificates.

(114-7)

8. The Revised Accord also provides that CHA shall achieve a mixed-income occupancy of the 80-100 new units on the site of the Lakefront high-rises by maintaining a "parity ... between eligible low income [50-80% of median income] and very low income families...." (19) Finally, the Revised Accord provides that the displaced Lakefront tenant families should have first priority, subject to Court approval, to all of the replacement units. (18)

9. Movants believe the replacement housing provisions in the Revised Accord are appropriate and desirable for a number of reasons. First, the proposed demolition and replacement housing would complete a radical transformation of public housing in the Revitalizing Area. The number of family public housing units in the Revitalizing Area would be reduced by approximately 50% from 1986 levels, i.e., from 1,066 to 538. In addition, the concentration of the remaining units would be greatly reduced. The family units in the Revitalizing Area would be privately managed and in mixed-income configurations.

10. Second, the proposed Revitalizing Area satisfies the Gautreaux "revitalizing" criteria, and would therefore be an appropriate location for the provision of low-rise public housing. The revitalizing character of the area is evidenced by the following:

- Major ongoing efforts by institutional actors, including the City and the Fund For Community Redevelopment and Revitalization (which is funded by the MacArthur Foundation), to bring about revitalization in North Kenwood-Oakland;
- An increasingly active private residential real estate market in the Revitalizing Area, including the

construction of new, market rate housing, and plans to develop additional market rate housing;

- Substantial and increasing investment by residents of the Revitalizing Area in home repair and rehabilitation;
- Steady increases in the number and value of bank loans within the Revitalizing Area;
- New commercial development, both completed and planned, along 47th Street;
- Substantial efforts to improve area schools, including two new public schools planned to open in the Revitalizing Area in September, 1996;
- Community amenities favoring continuation of the already-occurring revitalization, including a choice lakefront location, excellent access to transportation, and ample available land for development at reasonable prices; and
- Burgeoning development in nearby areas, particularly South Kenwood.

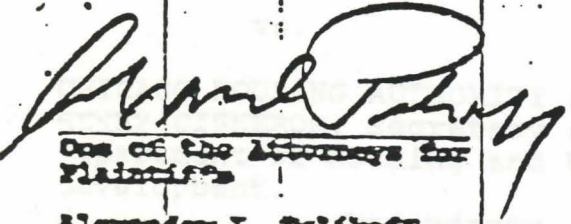
11. Movants are authorized to represent to the Court that the Receiver supports this motion and that the City of Chicago has no objection thereto.

12. Proposals to locate new public housing in the Revitalizing Area have been the subject of several meetings of community residents. The community is divided respecting the development of new public housing in the area, with some residents in support and many others opposed.

WHEREFORE, Plaintiffs, and Defendants Chicago Housing Authority and the Department of Housing and Urban Development, request the Court to enter an order in the form attached hereto, (1) designating as the North Kenwood-Oakland Revitalizing Area that portion of the City of Chicago that lies between Oakwood Boulevard on the north, the Illinois Central Railroad right-of-

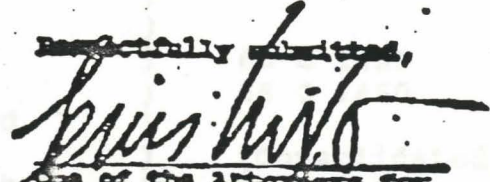
way on the east, 47th Street on the south, and Cottage Grove Avenue on the west, and (2) authorizing the development of not more than 241 units of public housing within the Revitalizing Area.

May 22, 1956

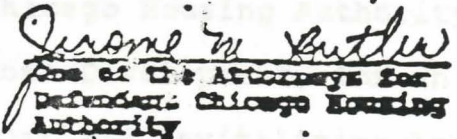

One of the Attorneys for
Plaintiffs

Alexander L. Polikoff
Robert L. Jones, Jr.
Business and Professional People
for the Public Interest
17 East Monroe Street
Chicago, Illinois 60603

Respectfully submitted,


One of the Attorneys for
Defendant U.S. Department
of Housing & Urban
Development

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Assistant General Counsel
for the Midwest
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One of the Attorneys for
Defendant Chicago Housing
Authority

Jerome Butler
General Counsel
Chicago Housing Authority
200 West Adams Street
21st Floor
Chicago, Illinois 60604

permitted public or assisted housing to be provided in census tracts not within the General Public Housing Area upon a sufficient showing of "revitalizing" circumstances such that a responsible forecast of economic integration, with a longer term possibility of racial desegregation, could be made; and

The Court being of the view that such a forecast can be made with respect to the North Kenwood-Oakland Revitalizing Area if the terms and conditions of this order are met;

Now, therefore, IT IS HEREBY ORDERED:

1. The Court designates as the North Kenwood-Oakland Revitalizing Area ("Revitalizing Area") that portion of the City of Chicago that lies between Oakwood Boulevard on the north, the Illinois Central Railroad right-of-way on the east, 47th Street on the south, and Cottage Grove Avenue on the west;

2. The Receiver, previously appointed by the Court to develop scattered site public housing on behalf of the defendant, Chicago Housing Authority, shall be free to develop, through new construction or rehabilitation of existing buildings, up to 241 units of public housing within the Revitalizing Area, subject to the following conditions:

- a) No more than 100 units of public housing shall be developed on CHA-owned land that is the site of CHA's Lakefront high-rise buildings (the area bounded by 40th Street on the north, the Illinois Central Railroad right-of-way on the east, 42nd Place on the south, and Lake Park Avenue on the west).

- b) No more than approximately 50 units of public housing shall be developed on the site of the demolished Washington Park buildings (the CHA-owned property bounded by 41st Street on the north, Drexel Avenue on the east, Cottage Grove Avenue on the west, and Bowen Avenue on the south) and adjacent property.
- c) The balance of such units of public housing within the Revitalizing Area, in addition to those referred to in subparagraphs (a) and (b) above, shall be developed on other sites distributed throughout the Revitalizing Area.
- d) One-half of the public housing units developed pursuant to subparagraphs (a) and (b) above shall be occupied by families whose incomes are in the range of 50-80% of the median income in the Chicago Metropolitan Area, and such units shall be geographically distributed approximately evenly among the units developed pursuant to subparagraphs (a) and (b).

3. The CHA Tenant Selection and Assignment Plan previously approved by this Court shall be modified to afford eligible displaced Lakefront tenant families, as defined in the "Revised Agreement Regarding Former Residents of the Lakefront Properties and the Future Use of Those Properties," dated September 22, 1995, between CHA and the Lakefront Community Organization, first

priority to all public housing units developed pursuant to subparagraphs 2(a), (b) and (c) of this Order, subject only to the provisions of subparagraph 2(d) of this Order.

ENTER:

Walter E. Asper

Judge

Date: *June 3*
~~May 11~~, 1996

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

RECEIVED

NOV 23 1993

Judge Marvin E. Aspen
U.S. District Court

DOROTHY GAUTREAUX, *et al.*

Plaintiffs,

v.

CHICAGO HOUSING AUTHORITY and
JOSEPH SHULDINER, Executive Director,

Defendants.

66 C 1459

Hon. Marvin E. Aspen

**INTERVENOR'S MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

Intervenor Lakefront Community Organization ("LCO"), by and through its attorneys at the Legal Assistance Foundation of Chicago, moves this Court to issue a temporary restraining order and preliminary injunction to prevent the Chicago Housing Authority ("CHA") from demolishing the buildings standing at 4040 South Oakenwald, 1130 East 41st Street, 4155 South Lake Park, and 1133 East 42nd Street (hereinafter referred to as "the Lakefront Buildings") before the LCO can be heard on its complaint that the CHA has not fulfilled its contractual commitment to perform certain actions before any demolition can occur. In support of this motion, the LCO states the following:

1. The LCO incorporates herein the facts set forth in paragraphs 1-9 and 11-28 of Intervenor LCO's Complaint.

2. The LCO meets the four prerequisites for preliminary injunctive relief: (1) the LCO has a reasonable likelihood of success on the merits; (2) the LCO has no adequate remedy

at law and will be irreparably harmed if the injunction is not granted; (3) the threatened injury to the LCO outweighs the threatened harm to the CHA; and (4) the injunction will not disserve the public interest. Roland Machinery Co. v. Dresser Industries, Inc., 749 F.2d 380 (7th Cir. 1984). The greater the LCO's showing on some of these four factors, the less it needs to establish on others. *Id.*

Success On The Merits

3. For the reasons stated in the Intervenor's Complaint and the attached affidavit, there is a reasonable likelihood that the LCO's claims will succeed on the merits. See Affidavit of Izora Davis, attached hereto as Exhibit A. The LCO seeks to enforce an agreement that the CHA made in 1995, and presented to this Court (with Habitat's concurrence) as the basis for seeking a waiver of Gautreaux locational requirements in 1996.

4. The CHA is currently in the process of preparing the Lakefront Buildings for demolition on December 12, 1998. See pictures of Lakefront Buildings taken on November 19, 1998, attached hereto as Exhibit B.

5. CHA has failed to comply with the following requirements, which must be satisfied before CHA may demolish the Lakefront Buildings:

a. Concerning the binding funding commitments from HUD for construction of 80 to 100 units of public housing on the Lakefront properties and 200 scattered site public housing units in the City of Chicago but outside of the North Kenwood/Oakland neighborhood (see Complaint, ¶ 21a.), Habitat's own records indicate that, at minimum, 124 units still are unfunded. See Summary prepared by Habitat, attached hereto as Exhibit C.

b. Concerning the 141 units to be built in the North Kenwood/Oakland

neighborhood for which CHA must obtain site control (see Complaint, ¶ 21b), CHA and Habitat have only turned over documents proving site control of sufficient sites for approximately 80 units. See Land Inventory, attached hereto as Exhibit D. The LCO has not received documentary evidence of site control for the following sites listed in the Land Inventory: 4416 S. University, 900 E. 40th Street, 4516 S. Drexel, 826 E. 42nd Street, 4309 S. Berkeley, 4311 S. Ellis, 4140 S. Drexel, 4162 S. Drexel, 821 E. 42nd Place, 825 E. 42nd Place, 827 E. 42nd Place, 829 E. 42nd Place, 3991 S. Ellis, 810 E. 41st Street, 4019 S. Cottage Grove. Additionally, the LCO questions the sufficiency of the letter offered as evidence of site control for the site at 4630 S. Woodlawn.

c. Concerning the completion of 341 units of public housing to be built in the North Kenwood/Oakland neighborhood and in the City but outside of the North Kenwood/Oakland neighborhood (see Complaint, ¶ 21d), Habitat's own records indicate that only 111 units of public housing have been completed. See Exhibit E.

Inadequate Remedy At Law/Irreparable Harm

6. As a result of CHA's actions, LCO has suffered, and will continue to suffer, irreparable harm for which there is no adequate remedy at law. Specifically, LCO will lose the *quid pro quo* (the demolition of the Lakefront Buildings) on which the 1995 Agreement was predicated without having any assurance that the CHA, through the Habitat Company, will build the promised replacement housing. The timely construction of the replacement public housing is especially important because the LCO and the displaced families it represents have been waiting for more than 10 years for this housing.

Balance Of Harms

7. If this Court does not enter a temporary restraining order and preliminary injunction enjoining the CHA from demolishing the subject buildings, the LCO will lose the *quid pro quo* provided in the agreement, assuring it of replacement housing. The loss of this *quid pro quo* will result in additional, substantial delay in the construction of the replacement housing. If the Court grants the TRO/injunction, the CHA will have to let the Lakefront Buildings, which it has allowed to stand vacant for 12 years, stand vacant a short time longer.

Injunction Will Not Disserve The Public Interest

8. The injunction will not disserve the public interest because the Lakefront Buildings are not a threat to public safety. Most of the Lakefront Buildings have been vacant for 12 years. Requiring the buildings to remain standing an additional short period of time does not significantly impact the public interest. However, the public interest will be served if the CHA makes good on its commitment to build much needed, and long promised, replacement housing.

Waiving Bond

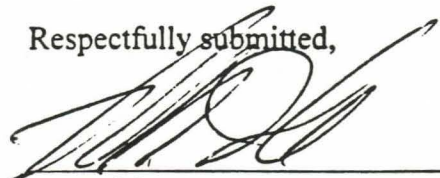
9. Intervenor is a non-profit corporation charged with representing low income former tenants of the Lakefront Buildings, and cannot afford to post bond as security for the issuance of the temporary restraining order and preliminary injunction. This is an appropriate circumstance for this Court not to require the posting of security under Fed. R. Civ. P. 65(c) if the Court enters a preliminary injunction. C. Wright, A. Miller, and M.K. Kane, Federal Practice and Procedure, § 2954, at pp. 298-300 (1995); Wayne Chemical, Inc. v. Columbus Agency Service Corp., 567 F.2d 692, 701 (7th Cir. 1977) (poverty is a special circumstance to excuse security). See also Walker v. Pierce, 665 F. Supp. 831, 843-844 (N.D.Cal. 1987) (security

waived where injunction sought by indigent class representatives on behalf of mostly indigent tenants).

WHEREFORE, the LCO prays that the Court grant the following temporary restraining order and preliminary injunctive relief:

1. Enter a temporary restraining order and preliminary injunction enjoining CHA from taking any further acts to demolish the Lakefront Buildings, until such time as the LCO can be heard on its complaint that the CHA has not fulfilled its contractual commitment to perform certain actions before any demolition can occur ;
2. Waive the posting of bond as security for the issuance of this order;
3. Order CHA to make the Lakefront Buildings immediately available for on-site inspection by LCO's experts to determine the current structural integrity of these buildings; and
4. Grant such other relief as may be proper and just.

Respectfully submitted,


One of the Attorneys for the LCO

Richard Wheelock
Diana White
Charles R. Petrof
Lawrence Wood
Legal Assistance Foundation of Chicago
111 West Jackson, 3rd floor
Chicago, IL 60604
Tel: 312/341-1070

AFFIDAVIT OF IZORA DAVIS

I, Izora Davis, first being duly sworn on oath, depose and state that if I were sworn as a witness I could competently testify to the following:

1. I am the executive director of the Lakefront Community Organization, which organization is the Plaintiff in this lawsuit.

2. On information and belief, the Lakefront Community Organization was first incorporated on October 16, 1985.

3. The Lakefront Community Organization is the representative non-profit corporation for former tenants of 3939 South Lake Park Avenue, 3983 South Lake Park Avenue, 4040 South Oakenwald, 1130 East 41st Street, 4155 South Lake Park, 1132 East 42nd Street (hereinafter "Lakefront properties").

4. As the sole representative of these displaced tenants, the Lakefront Community Organization has negotiated with the Chicago Housing Authority and reached agreements resulting in the May 27, 1986 Memorandum of Accord Regarding Relocation of Residents from the Lakefront Properties Pursuant to the CIAP Rehabilitation Project, which provided for the rehabilitation of the buildings on the Lakefront properties, and the September 22, 1995 Revised Agreement Regarding Former Residents of the Lakefront Properties and the Future Use of Those Properties, which agreement is the subject of this lawsuit.

5. On May 27, 1986, the Chicago Housing Authority entered into a Memorandum of Accord Regarding Relocation of Residents from the Lakefront Properties Pursuant to the CIAP Rehabilitation

Project with the Lakefront Community Organization and other parties.

6. The 1986 Memorandum established a procedure for the emptying and rehabilitating of the Lakefront properties high-rises.

7. The Chicago Housing Authority renovated two of the six Lakefront properties high-rises. Specifically, the Chicago Housing Authority renovated the building at 3939 South Lake Park, Chicago, Illinois, and the building at 3983 South Lake Park, Chicago, Illinois. These buildings were sufficiently renovated to accommodate tenants in 1991.

8. The Chicago Housing Authority removed the tenants from the other four Lakefront properties high-rises. Specifically, the tenants were removed from 1130 East 41st Street, 4155 South Lake Park and 1132 East 42nd Street in 1986, and, as a separate action, tenants were removed from 4040 South Oakenwald on or about November 1991.

9. The Chicago Housing Authority did not renovate these four buildings. Instead, the buildings have been vacant since the residents were removed, and many of the former residents remain displaced.

10. Sometime between the end of 1993 and the beginning of 1994 the Chicago Housing Authority approached the Lakefront Community Organization to negotiate a revision of the 1986 Memorandum.

11. On September 22, 1995, the Chicago Housing Authority and the Lakefront Community Organization entered into a Revised

Agreement Regarding Former Residents of the Lakefront Properties and the Future Use of Those Properties.

12. The Chicago Housing Authority has not demonstrated to me, the executive director of the Lakefront Community Organization, that it has satisfied the requirements precedent to the demolition of the four vacant Lakefront high-rises.

13. Specifically, the Chicago Housing Authority has not demonstrated to me that it has obtained binding funding commitments from HUD for the construction of 80 to 100 units of public housing on the Lakefront properties and for the construction of 200 scattered site public housing units in the City of Chicago in neighborhoods other than the North Kenwood/Oakland neighborhood as required by ¶¶3(a), 4, and 5 of the Revised Agreement.

14. The Chicago Housing Authority has not demonstrated to me that they have obtained site control of sufficient property to construct 141 units of replacement public housing in the North Kenwood/Oakland neighborhood as required by ¶¶3(b) and 6 of the Revised Agreement.

15. The Chicago Housing Authority has obtained the Lakefront Community Organization's approval for not more than 20 sites in the North Kenwood/Oakland neighborhood. The Revised Agreement requires that CHA seek and obtain approval for all of the sites for the 141 units to be located in the North Kenwood/Oakland neighborhood as required by ¶¶3(b) and 6.

16. The Chicago Housing Authority has not commenced construction on (1) all 141 units of replacement public housing in

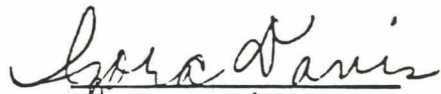
the North Kenwood/Oakland neighborhood, and (2) all 200 scattered site public housing units in the City of Chicago outside of the North Kenwood/Oakland neighborhood.

17. The Chicago Housing Authority has not completed construction on (1) all 141 units of replacement public housing in the North Kenwood/Oakland neighborhood, and (2) all 200 scattered site public housing units in the City of Chicago outside of the North Kenwood/Oakland neighborhood, as required by ¶¶ 3 and 15 of the Revised Agreement.

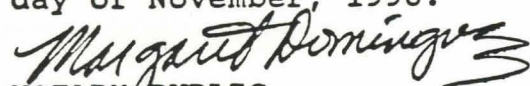
18. At a meeting on November 10, 1998, Karen Newton, Acting Chairman of the CHA, stated that demolition of the four vacant Lakefront properties high-rises is set for December 12, 1998.

19. As of the filing of this complaint, work on the demolition of the Lakefront properties high-rises has already begun. This work includes the removal of some of the outer walls and some of the floors from all of the vacant Lakefront high-rises.

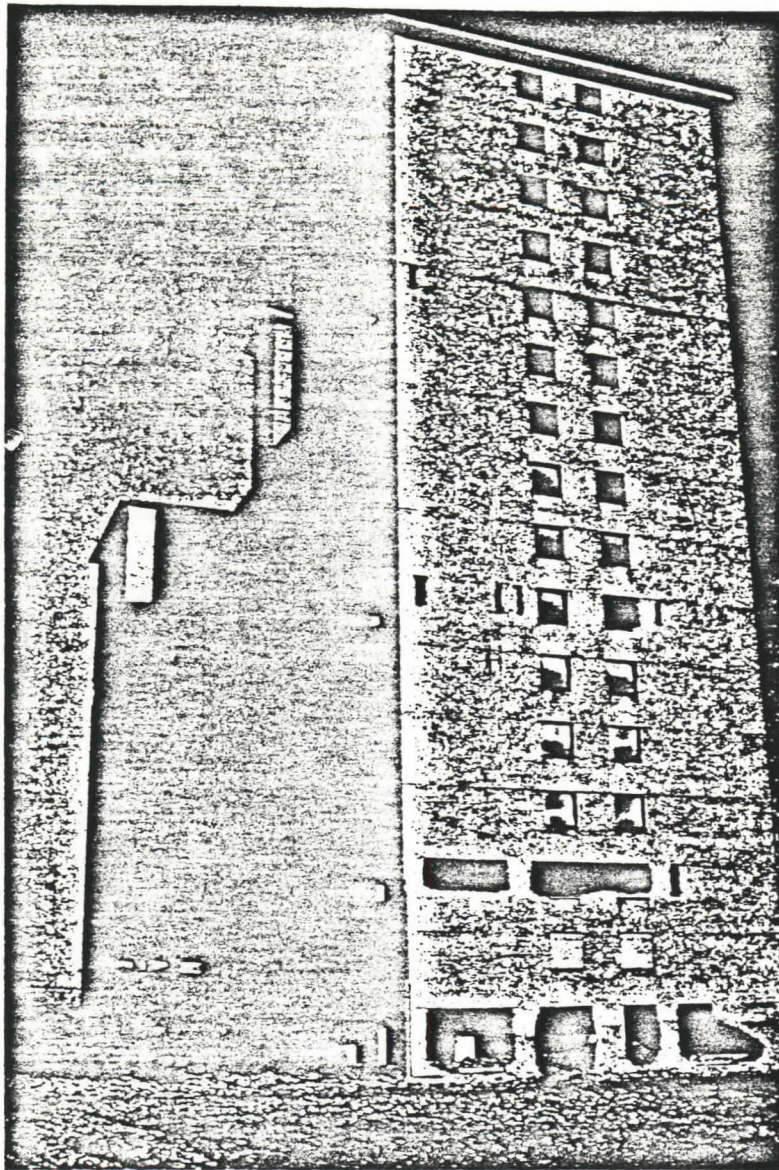
FURTHER AFFIANT SAYETH NAUGHT.


Izora Davis

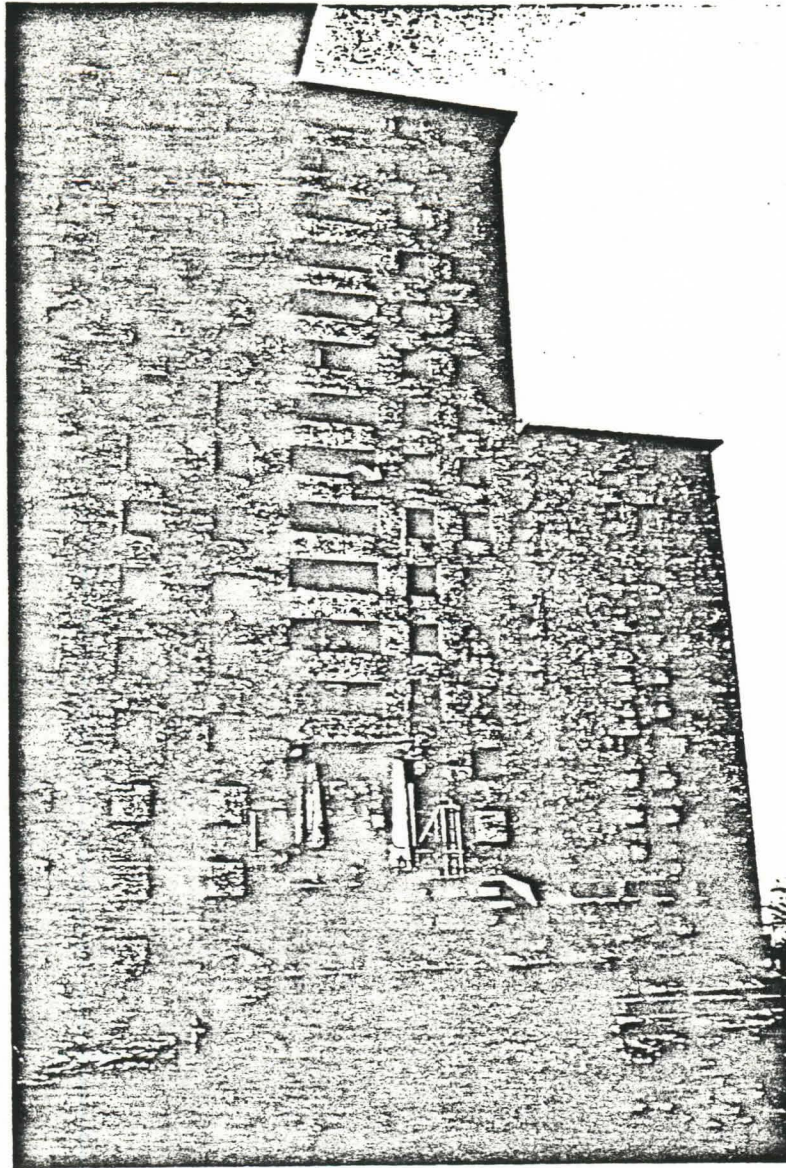
Sworn to and signed
before me this 23rd
day of November, 1998.


NOTARY PUBLIC

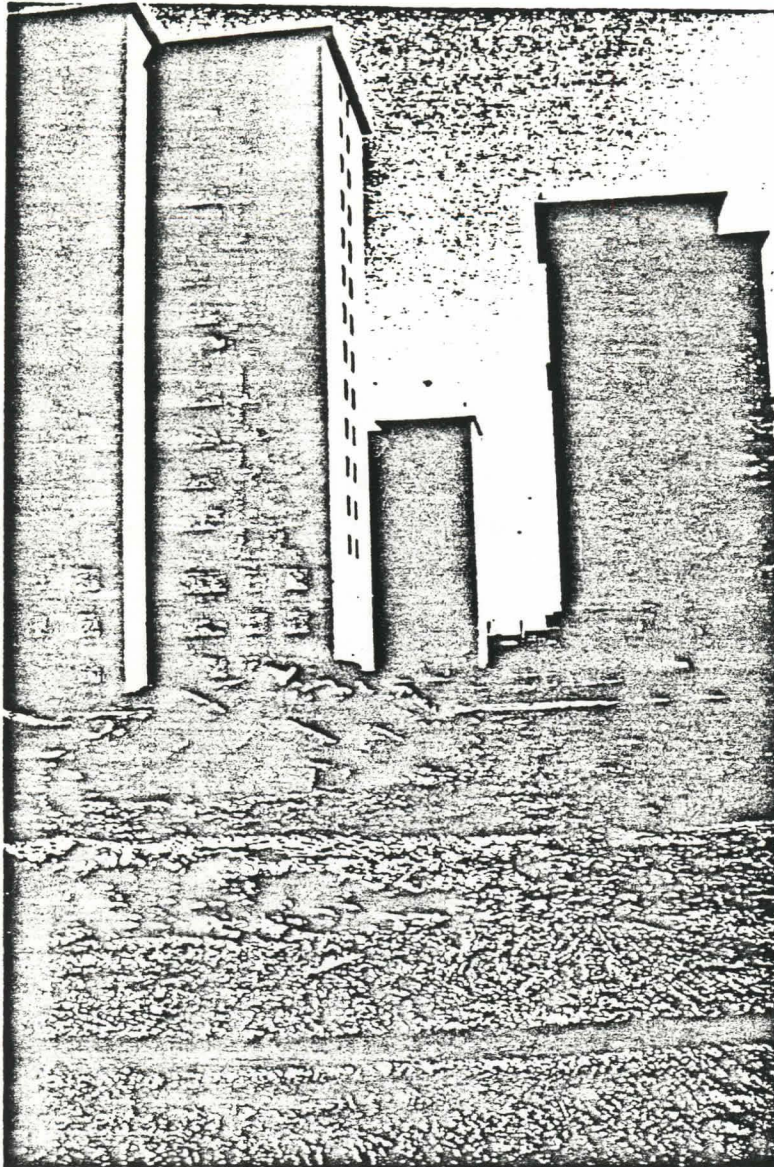




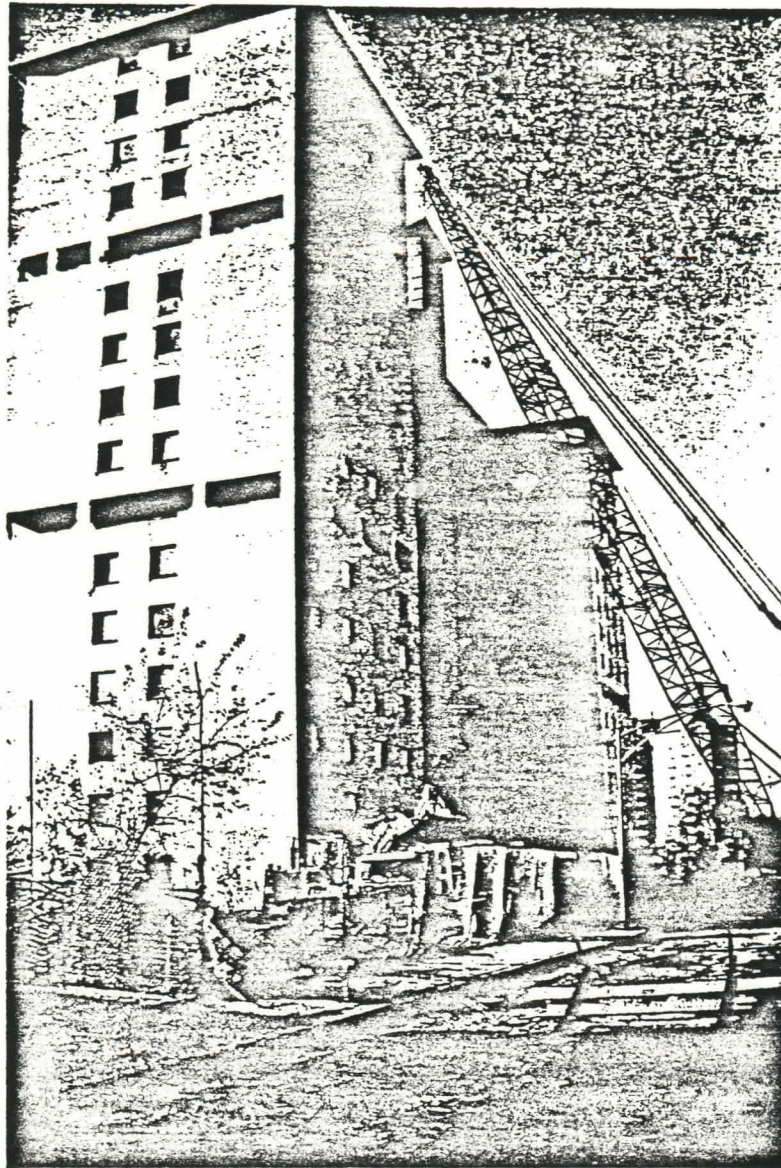
The Building at 1132 East 42nd Street – West Elevation
(North Elevation in shadow)



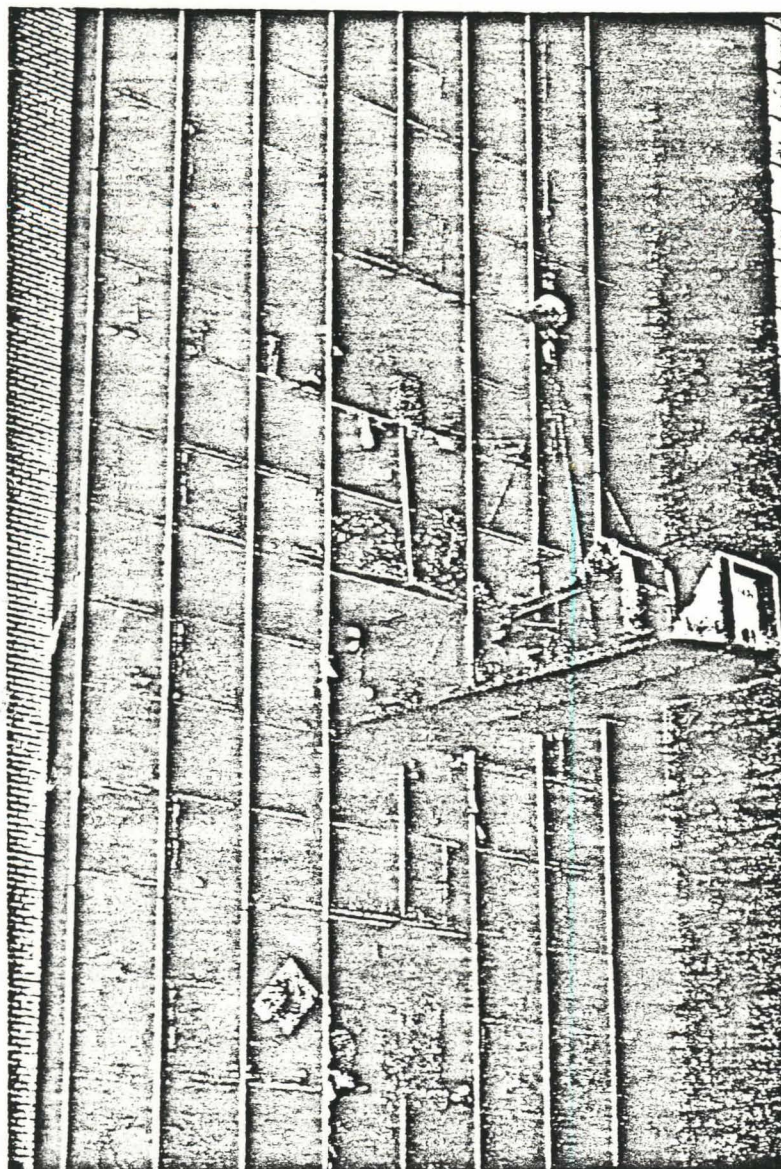
**The building at 1130 East 41st Street – North Elevation
(In the background is the building at 4155 South Lake Park Street – North Elevation)**



**In the foreground is the building at 1130 East 41st Street – North Elevation
In the center (and the rear) is the building at 1132 East 42nd Street – North Elevation
On the far right is the building at 4155 South Lake Park Street – North Elevation**



The building at 4040 South Oakenwald – East Elevation
(South Elevation in sunlight)



The building at 4040 South Oakenwald – East Elevation
(Bulldozer is being lifted by a crane to the 6th floor of the building)

**WASHINGTON PARK REPLACEMENT HOUSING PROGRAM - 187 UNITS and
LAKE FRONT PROPERTIES REPLACEMENT HOUSING PROGRAM - 130 UNITS**

STATUS SUMMARY FOR KENWOOD/OAKLAND UNITS	
Transferred and Completed	62 units
Under Construction	9 units
Bid-Process	44 units
Design Phase	0 units
Pre-Bid	148 units
Site Acquisition	54 units
TOTALS	317 units

Activity from July 1, 1998 through September 30, 1998 - Areas within Kenwood-Oakland: CHA has informed the leadership of the LCO that the site control requirements have been met and the City of Chicago has agreed to fund the demolition of the four (4) high-rises. The Receiver, together with the leadership of the LCO, CCC, City of Chicago, Alderman Preckwinkle and CHA are participating in the planning process for redevelopment of the Lakefront properties.

Construction continues for Program 184 with 26 units completed and transferred and seven (7) units under construction. Of the seven (7) units currently under construction, 4 are expected to be completed and transferred in October of 1998 and the remaining three (3) units (1 building) will be completed by December 30, 1998.

The design phase is complete in Program 206 with 21 units, but preliminary costing for the negotiated contract is over the allowable HUD TDC. Efforts by Habitat and the contractor are underway to reduce the unit costs to meet published TDC.

Effective September 30, 1998, the development pipeline is summarized below for the Lake Front Properties and Washington Park Replacement Programs:

UNITS WITHIN KENWOOD-OAKLAND REVITALIZING AREA		
PROGRAM	NUMBER OF UNITS	STATUS
IL06-P002-180T	15	Bid Process
IL06-P002-184	33	24 Transferred/Completed 9 Under Construction
IL06-P002-206	25	Bid Process
IL06-P802-193 Drexel	40	Pre-Bid
IL06-P802-193 Lakefront	88	Pre-Bid
IL06-P002-205	3	Bid Process
IL06-P002-180(P)	16	Pre-Bid
IL06-P002-207	20	Pre-Bid
TOTAL UNITS	241	

Activity from July 1, 1998 through September 30, 1998 - General Areas Outside of Kenwood-Oakland:
As of March 31, 1998, all 38 units have been transferred.

Activity from July 1, 1998 through September 30, 1998 - Limited Areas Outside of Kenwood-Oakland:
The Woodlawn area continues to be reviewed for appropriateness for replacement housing required outside the Kenwood-Oakland area. Habitat and Gautreaux counsel have been analyzing the area for a revitalization waiver. Community leaders and Aldermen have been contacted about replacement units in Woodlawn. Purchase contracts have been prepared for twenty-three (23) parcels of vacant land parcels in Woodlawn at this time. Seventeen (17) parcels have been closed.

UNITS OUTSIDE KENWOOD-OAKLAND REVITALIZING AREA		
PROGRAM	NUMBER OF UNITS	STATUS
IL06-P002-180	38	Site Acquisition
IL06-P002-194	38	Transferred/Completed
	124	Unfunded Units
TOTAL	200	

North Kenwood / Oakland Revitalization Program - Land Inventory

Program 184	UNITS	ADDRESS	NOTES
	3	827 E. Bowen	Construction Complete
	6	4248 S. Drexel	Construction Complete
	8	4630 S. Drexel	Under Construction (Jan 98)
	2	4546 S. Oakenwald	Construction Complete
	3	4416 S. University	Construction Complete
	1	4448 S. University	Construction Complete
	3	802 E. 41st Street	Construction Complete
	3	824 E. 42nd Street	Construction Complete
	3	1216 E. 46th Street	Construction Complete
	1	1218 E. 46th Street	Construction Complete
	3	900 E. 40th Street	Construction Complete
Units	33		

Program 206	UNITS	ADDRESS	NOTES
	0	4516 S. Drexel	To be included in Drexel RFP (market rate unit)
	3	4413 S. Oakenwald	December 1998 construction start
	3	4338 S. Greenwood	December 1998 construction start
	6	827-35 E. 45th	December 1998 construction start
	6	819-23 E. 45th	December 1998 construction start
	3	826 E. 42nd Street	December 1998 construction start / demolish exist. bldg.
Units	21		

Program 187 4300 Block RFP	UNITS	ADDRESS	NOTES
	3	4309 S. Berkeley	Spring 1999 construction start
	3	4311 S. Ellis	Spring 1999 construction start
	3	4331 S. Ellis	Spring 1999 construction start
	6	4328-32 S. Greenwood	Spring 1999 construction start
Units	15		

Drexel RFP	UNITS	ADDRESS	NOTES
	20	CHA Washington Park Site	Prepare development plan and RFP
	6	4140 S. Drexel	Prepare development plan and RFP
	6	4162 S. Drexel	Prepare development plan and RFP
	2	821 E. 42nd Place	Prepare development plan and RFP
	2	823 E. 42nd Place	Prepare development plan and RFP
	1	825 E. 42nd Place	Prepare development plan and RFP
	2	827 E. 42nd Place	Prepare development plan and RFP
	2	829 E. 42nd Place	Prepare development plan and RFP
	2	3975 S. Ellis	Prepare development plan and RFP
	2	3991 S. Ellis	Prepare development plan and RFP
	2	804 E. 41st Street	Demolish existing building - new construction
	2	806 E. 41st Street	Demolish existing building - new construction
	2	808 E. 41st Street	Demolish existing building - new construction
	1	810 E. 41st Street	Rehab only - due to duplex unit type
	0	4019 S. Cottage Grove	Vacant land - Closing shortly
Units	52		Final unit count must be verified

Misc. Properties	UNITS	ADDRESS	NOTES
	0	4027 S. Lake Park	This site is a contiguous part of the "Lakefront" site (existing building to be demolished)
Units	0		

44th Woodlawn Thruway	UNITS	ADDRESS	NOTES
	12	4556 S. Woodlawn	Purchase in Proposed Development
Units	12		

Pope Place	UNITS	ADDRESS	NOTES
	2	4356 S. Drexel	Purchase in Proposed Development
Units	2		Note: One blueprint for one or two units

Shakespeare School New Kenwood LLC	UNITS	ADDRESS	NOTES
	5	4630 S. Woodlawn	Purchase in Proposed Development
Units	5		Note: Five blueprints for five or ten units

Flips	UNITS	ADDRESS	NOTES
	2	4365 S. Greenwood	Construction complete
Units	2		

Program 205	UNITS	ADDRESS	NOTES
	0	1211 E. 44th Place	Existing structure should be auctioned - difficult rehab
Units	0		

Total 142 Units

* Actual Units per Site may vary.

** Recently proposed development

Kenwood-Oakland Revitalization Program Program Status

<u>Units Within North Kenwood / Oakland Communities</u>	<u>Units</u>	<u>Timetable</u>
• Total units with demonstrated site control.	142	NA
• Units completed as of 11/9/98.	30	3/97 - 11/98
• Units currently under construction.	5	10/98 - 1/99
• Units expected to be under construction within the next 60 days.	36	1/99 - 4/00
• Units by private developer commitment.	19	unknown***
• Public housing units currently proposed for the "Drexel" site.**	52	unknown***

Units Outside of North Kenwood / Oakland Communities

• 25 Sites are under contract in the Woodlawn Community.	43±	NA
• Units rehabilitated in General Areas (Rogers Park, etc.)	38	12/96 - 3/98

* Permits applied for.

**In design/development process.

*** Subject to determination of actual start date and absorption rate of market product.

DOROTHY GAUTREAUX, *et al.*

Plaintiffs,

v.

CHICAGO HOUSING AUTHORITY and
JOSEPH SHULDINER, Executive Director,

Defendants.

66 C 1459

Hon. Marvin E. Aspen

NOTICE OF FILING

TO: Counsel on attached service list

Please take notice that on December 2, 1998, the attached **Lakefront Community Organization's Reply In Support Of Its Emergency Motion To Intervene** was filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, a copy of which is herewith served upon you.

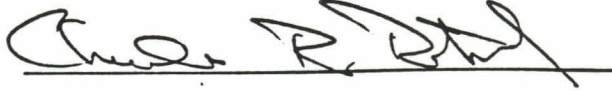
Charles F. Roth

One of the Attorneys for the Lakefront
Community Organization

Richard M. Wheelock
Diana White
Lawrence Wood
Charles Petrof
Legal Assistance Foundation of Chicago
111 W. Jackson, 3rd floor
Chicago, IL 60604
312/341-1070

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.



Service List

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Barry A. Miller
Edward W. Feldman
Miller, Shakman, Hamilton, Kurtzon &
Schlifke
208 S. LaSalle St., Suite 1100
Chicago, IL 60604

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

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

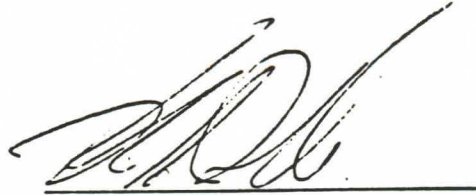
² At that meeting, Andrew Rodriguez, CHA Director of Redevelopment, informed LCO's representatives that the four Lakefront high-rises would remain structurally sound until the moment of implosion on December 12, 1998, despite preparatory work by the contractor. See Affidavit of Richard Wheelock, attached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

AFFIDAVIT

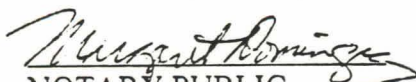
I, Richard M. Wheelock, being first duly sworn oath, deposes and states as follows:

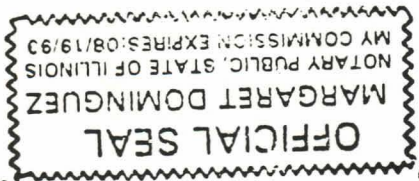
1. I am the Housing Supervisory Attorney at the Legal Assistance Foundation of Chicago (LAFC) and am one of the attorneys representing the Lakefront Community Organization (LCO).
2. On November 5, 1998 I first became aware, as a result of an article in the November 4, 1998 edition of the Hyde Park Herald, of the Chicago Housing Authority's plans to demolish the Lakefront Buildings some time 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.



Subscribed and sworn
to me on December 2, 1998

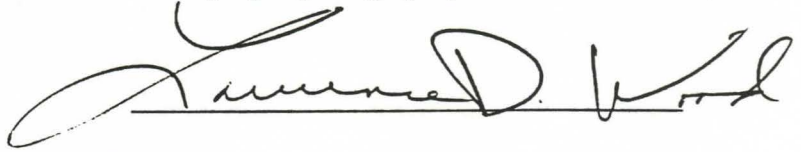

NOTARY PUBLIC



... ..

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.



Service List

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Barry A. Miller
Edward W. Feldman
Miller, Shakman, Hamilton, Kurtzon &
Schlifke
208 S. LaSalle St., Suite 1100
Chicago, IL 60604

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

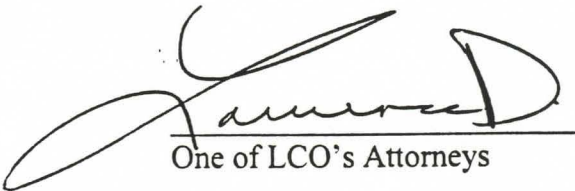
In arguing that a temporary restraining order will harm the public interest, the Gautreaux Plaintiffs reiterate the arguments they made while addressing the balance of harms. In effect, they claim that issuing such an order will delay implementation of the revitalization plan for the North-Kenwood Oakland 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,


One of LCO's Attorneys

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United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Marvin Aspen	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	66 C 1459	DATE	12/10/1998
CASE TITLE	Gautreaux` vs. CHA		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due _____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] The Organization's emergency motion to intervene (0-1) is denied. The Organization's motions for temporary restraining order and (0-1 & 0-2) and for preliminary injunction are denied as moot.

- (11) ☒ [For further detail see order on the reverse side of the original minute order.]

☐ No notices required, advised in open court. ☐ No notices required. ☒ Notices mailed by judge's staff. ☐ Notified counsel by telephone. ☐ Docketing to mail notices. ☐ Mail AO 450 form. ☐ Copy to judge/magistrate judge.	GL courtroom deputy's initials Date/time received in central Clerk's Office	number of notices date docketed docketing deputy initials 12/10/1998 date mailed notice GL mailing deputy initials	Document Number
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ORDER

Lakefront Community Organization (the Organization) has asked for permission to intervene in this case and, if we grant that request, for an order to halt the CHA's planned demolition of the so-called "Lakefront Buildings." Both of these motions stem from a 1995 agreement between the Organization and the CHA which appears to prohibit the CHA from demolishing those buildings before it satisfies certain conditions - conditions with which the CHA now admits it has only "substantially complied."

A motion to intervene must be "timely," according to FED. R. CIV. P. 24(a) and (b), and so we consider (1) for how long the Organization has known of its interest in this case; (2) how our granting the motion after this delay would hurt the parties already before us; (3) how badly our denial of the motion could hurt the Organization; and (4) any unusual circumstances. *See City of Bloomington v. Westinghouse Elec. Corp.*, 824 F.2d 531 (7th Cir. 1987). These factors cut sharply against the Organization. The CHA's Executive Director informed the Organization of the CHA's plans to demolish the buildings on June 2, 1998, by a letter in which he stated that the CHA believed that it had discharged its obligations under the 1995 agreement. The Organization did not even secure legal representation until November 2, and it did not move to intervene until November 23, almost six months later and less than three weeks before the December 12 demolition date. A six month delay might be harmless in some cases, but it is not when a demolition is in the works: the CHA informs us that part of its preparation was to render the buildings structurally unsound, a situation which presents immediate safety (and perhaps liability) concerns.

The Organization's emergency motion to intervene is denied.* It is so ordered.



* Had we allowed the Organization's motion to intervene, we would have denied on the merits its emergency motions for a temporary restraining order and preliminary injunction.

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

DOROTHY GAUTREAUX, *et al.*

Plaintiffs,

v.

CHICAGO HOUSING AUTHORITY and
JOSEPH SHULDINER, Executive Director,

Defendants.

66 C 1459

Hon. Marvin E. Aspen

RECEIVED

FEB 12 1999

NOTICE OF MOTION

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

TO: Counsel on attached service list

On February 23, 1999 at 9:30 a.m., or as soon thereafter as counsel may be heard, the Lakefront Community Organization shall appear before the Honorable Marvin E. Aspen of the United States District Court for the Northern District of Illinois in Room 2548 at 219 S. Dearborn Street, Chicago, IL, or before any other judge in his place, and shall then and there present the attached **SECOND MOTION OF THE LAKEFRONT COMMUNITY ORGANIZATION TO INTERVENE**, copies of which are herewith served upon you.


One of Movant's Attorneys

Richard M. Wheelock
Diana White
Lawrence Wood
Charles Petrof
Legal Assistance Foundation of Chicago
111 W. Jackson, 3rd floor
Chicago, IL 60604
312/341-1070

Certificate of Service

I, Charles R. Petrof, an attorney, certify that I caused a copy of Lakefront Community Organization's MOTION TO INTERVENE to be served 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 February 12, 1999.



Service List

Jerome M. Butler
Chicago Housing Authority
Office of General Counsel
200 W. Adams, Suite 2100
Chicago, IL 60606

Alex Polikoff
BPI
17 E. Monroe, Suite 212
Chicago, IL 60603

Michael L. Shakman
Barry A. Miller
Edward W. Feldman
Miller, Shakman, Hamilton, Kurtzon &
Schlifke
208 S. LaSalle St., Suite 1100
Chicago, IL 60604

**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.	)	

**SECOND MOTION OF THE
LAKEFRONT COMMUNITY ORGANIZATION TO INTERVENE**

The Lakefront Community Organization ("LCO"), by its attorneys of the Legal Assistance Foundation of Chicago, moves this Court for leave to intervene in order to assert the claims set forth in its proposed complaint, a copy of which is attached hereto. In support of this motion, LCO attaches its Memorandum in Support of its Motion to Intervene and states as follows:

1. On November 23, 1998 the LCO filed a motion to intervene for the purpose of halting the scheduled December 12, 1998 demolition of four vacant public housing high rises, because the CHA had not fulfilled its commitment under a 1995 agreement with the LCO to build more than 300 units of replacement housing before the vacant buildings were demolished.
2. On December 10, 1998 this court denied the LCO's motion to halt the demolition because it was not timely filed.
3. The CHA subsequently demolished the buildings on the scheduled date.

4. The LCO now files a second motion to intervene to seek relief for the CHA's breach. The LCO seeks a court-ordered construction schedule for the replacement units that the CHA promised to build prior to the demolition of the Lakefront Buildings.

5. Rule 24(a)(2) of the Federal Rules of Civil Procedure allows intervention of right where the applicant seeking intervention claims to be so situated that a ruling or disposition in the litigation may impair or impede the applicant's interest, and that interest is not adequately represented by the existing parties. See Gautreaux v. Pierce, 548 F. Supp. 1284, 1287 (N.D.Ill. 1982).

6. Rule 24(b)(2) of the Federal Rules of Civil Procedure also permits intervention when an applicant's claim or defense and the main action have a question of law or fact in common. A less stringent standard may be applied if an applicant seeks intervention for a very limited purpose rather than full participation in the litigation. 6 James Wm. Moore et al., Moore's Federal Practice ¶ 24.11 (3rd ed. 1998).

7. The LCO represents former tenants of 3939 South Lake Park Avenue, 3983 South Lake Park Avenue, 4040 South Oakenwald, 1130 East 41st Street, 4155 South Lake Park, and 1132 East 42nd Street (hereinafter "Lakefront properties").

8. These tenants were moved out of the Lakefront Properties in 1985. For the next ten years they waited for the Chicago Housing Authority (hereinafter "CHA") to rehabilitate the buildings, as it had promised to do in a written contract (hereinafter "the 1986 Agreement"). See 1986 Agreement, attached hereto as Exhibit A.

9. In 1995, LCO and CHA entered into a new written contract (hereinafter "the 1995 Agreement"), which gave CHA the right to demolish the four buildings located at 4040 South

Oakenwald, 1130 East 41st Street, 4155 South Lake Park, and 1132 East 42nd Street (hereinafter "the Lakefront Buildings"). See 1995 Agreement, attached hereto as Exhibit B.

10. Paragraphs 3-6 and 15 of the 1995 Agreement conditioned CHA's right to demolish these buildings on its having (a) secured land and/or funds for the construction of 341 off-site replacement housing units, and (b) completed construction on these units. After the Lakefront Buildings were demolished, the CHA was also obligated to build 100 replacement units back on site.

11. Although the CHA built only 68 off-site units, it demolished the Lakefront Buildings on December 12, 1998.

12. Demolishing these buildings before satisfying the preconditions to demolition constituted a clear violation of the terms of the 1995 Agreement. See Exhibit B, ¶¶ 3-6 and 15.

13. LCO now seeks an order requiring CHA to perform its obligations under the 1995 Agreement by completing construction on all 441 units of replacement housing within the next ten months.

14. In an order entered by this Court on June 3, 1996, this Court authorized the construction of 241 units of replacement housing in the North Kenwood/Oakland neighborhood, including 100 units back on-site. This Court also oversees the implementation of the scattered site program, under which 200 additional replacement units are to be built on sites throughout Chicago pursuant to the 1995 Agreement. Families displaced from the Lakefront Buildings have first priority for all 441 units. The LCO, as the representative of those families, now seeks CHA compliance with the 1995 Agreement upon which this Court's June 13, 1996 order was predicated, including a court-ordered construction schedule for the replacement units. As such,

the LCO should be granted permission to intervene as a matter of right, or, in the alternative, should be granted permissive intervention since there are common questions of fact and law between the LCO's claims and the Gautreaux litigation.

15. The LCO is not a party to the Gautreaux litigation, is not represented by either party, and has interests that are distinct from the interests of both parties.

16. The CHA is adverse to the LCO, in that it has breached the 1995 Agreement, as described above. The Gautreaux plaintiffs' are not signatories to the 1995 Agreement and therefore are not the proper parties to enforce the terms of the agreement.

WHEREFORE, the LCO moves this Court to permit it to intervene for the purpose of filing the attached complaint against the CHA.

Respectfully submitted,



One of LCO's Attorneys

Richard M. Wheelock
Diana White
Charles Petrof
Lawrence Wood
Legal Assistance Foundation of Chicago
111 W. Jackson, 3rd floor
Chicago, IL 60604
312/341-1070

**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.	)	

INTERVENOR LAKEFRONT COMMUNITY ORGANIZATION'S COMPLAINT

I. PRELIMINARY STATEMENT

1. The intervenor, Lakefront Community Organization (hereinafter "LCO"), represents the former tenants of 3939 South Lake Park Avenue, 3983 South Lake Park Avenue, 4040 South Oakenwald, 1130 East 41st Street, 4155 South Lake Park, and 1132 East 42nd Street (hereinafter "Lakefront Properties").

2. These tenants were moved out of the Lakefront Properties in 1985. For the next ten years they waited for the Chicago Housing Authority (hereinafter "CHA") to rehabilitate the buildings, as it had promised to do in a written contract (hereinafter "the 1986 Agreement"). A copy of this Agreement is attached as Exhibit A.

3. In 1995, LCO and CHA entered into a new written contract (hereinafter "the 1995 Agreement"), which gave CHA the right to demolish the four buildings located at 4040 South Oakenwald, 1130 East 41st Street, 4155 South Lake Park, and 1132 East 42nd Street (hereinafter "the Lakefront Buildings"). A copy of the 1995 Agreement is attached as Exhibit B.

4. Paragraphs 3-6 and 15 of the 1995 Agreement conditioned CHA's right to demolish these buildings on its having (a) secured land and/or funds for the construction of 341 off-site replacement housing units, and (b) completed construction on these units. After the Lakefront Buildings were demolished, the CHA was also obligated to build 100 replacement units back on site.

5. Although the CHA built only 68 off-site units, it demolished the Lakefront Buildings on December 12, 1998.

6. Demolishing these buildings before satisfying the preconditions to demolition constituted a clear violation of the terms of the 1995 Agreement. *See Exhibit B, ¶¶ 3-6 and 15.*

7. LCO now seeks an order requiring CHA to perform its obligations under the 1995 Agreement by completing construction on all 441 units of replacement housing within the next twenty months.

II. JURISDICTION AND VENUE

8. This Court has jurisdiction over LCO's claims pursuant to 28 U.S.C. §§ 1331 and 1367.

9. Venue in this judicial district is proper under 28 U.S.C. § 1391(b).

III. PARTIES

10. LCO is a non-profit organization incorporated in 1985 to represent the interests of the tenants who were moved out of the Lakefront Buildings. As the sole representative of these tenants, LCO has negotiated with CHA and entered into both the 1986 and 1995 Agreements.

11. Defendant CHA is an Illinois municipal corporation, created and existing under the Housing Authorities Act, 310 ILCS 10/1 *et seq.* It is also a Public Housing Agency administering federally subsidized and assisted low rent housing within the meaning of 42 U.S.C. § 1437.

12. Defendant Joseph Shuldiner is CHA's executive director. He is charged with establishing and implementing CHA's policies, including those related to the demolition of CHA housing.

13. The Habitat Company and Daniel E. Levin (The Habitat Company's chief executive officer) jointly serve as the court-appointed Receiver in this action. By this Court's order of August 14, 1987, the Receiver has responsibility for all future CHA non-elderly public housing development programs which may be authorized by United States Department of Housing and Urban Development ("HUD") during the pendency of this action.

IV. STATEMENT OF THE CASE

14. On May 27, 1986, CHA and LCO (and other parties) entered into the 1986 Agreement, which set forth a procedure for vacating and rehabilitating the Lakefront Properties. Exhibit A.

15. CHA renovated two of these properties (the highrises located at 3939 and 3983 South Lake Park, Chicago, Illinois) to create Lake Parc Place.

16. CHA did not rehabilitate the other four buildings, which remained vacant after the tenants moved out.

17. In or around the end of 1993 and beginning of 1994, CHA approached LCO to negotiate a revision of the 1986 Agreement.

18. These negotiations eventually led to the 1995 Agreement, which CHA and LCO signed on September 22, 1995. Exhibit B.

19. This Agreement provided that CHA could demolish the Lakefront Buildings, but only after first:

- a. securing funding from HUD to build 100 public housing units on the land where the Lakefront Buildings stood (Exhibit B, ¶¶ 3-4);
- b. securing funding from HUD to build 200 scattered site units outside of the North Kenwood-Oakland community (which is bordered by Oakwood Boulevard on the north, the Illinois Central right-of-way on the east, 47th Street on the south, and Cottage Grove Avenue on the west) (*Id.* at ¶¶ 3 and 5);
- c. identifying and obtaining control of land in the North Kenwood-Oakland community on which it could build 141 units of scattered-site housing (*Id.* at ¶¶ 3 and 6);
- d. obtaining permission from the United States District Court to construct 241 units in the North Kenwood-Oakland community (*Id.* at ¶¶ 3-6); and
- e. completing construction on all 341 off-site units. (*Id.* at ¶¶ 3 and 5-6).

20. On May 13, 1996, Alexander Polikoff (attorney for the Gautreaux plaintiff class) and Daniel Levin (Habitat's chairman) sent a letter to William Wilen, then employed by the Legal Assistance Foundation of Chicago and acting as attorney for LCO, stating that if the former Lakefront tenants became dissatisfied with the pace of development of the North Kenwood/Oakland replacement housing, the Gautreaux plaintiffs' counsel and the Receiver would

support a request by the former Lakefront tenants for a hearing in front of the presiding Gautreaux judge on that issue. A copy of this letter is attached hereto as Exhibit C.

21. On May 22, 1996, CHA and the *Gautreaux* plaintiffs filed a joint motion to obtain permission from this Court to build or rehabilitate 241 units of public housing in the North Kenwood-Oakland community. Exhibit D.

22. The Court granted this motion on June 3, 1996. Exhibit E.

23. Obtaining permission from this Court to construct 241 units in the North Kenwood-Oakland community is the only precondition to demolition that CHA has satisfied.

24. It has satisfied none of the other conditions set forth above in ¶ 13.

25. Nevertheless, on December 12, 1998, CHA demolished all four Lakefront Buildings.

26. CHA has willfully breached the terms of the 1995 Agreement by demolishing the Lakefront Buildings before satisfying the preconditions for demolition.

27. LCO has no adequate remedy at law because money damages will not make the former tenants of the Lakefront Buildings whole. In the 1995 Agreement, CHA promised to build new public housing – something that is unique in character. Furthermore, it will be difficult (if not impossible) to determine the amount of damages to which LCO is entitled as a result of CHA's breach.

WHEREFORE, LCO prays that this Honorable Court:

- A. Enter a binding order requiring CHA, The Habitat Company, and Daniel Levin to do the following within the next ten months:

1. Secure funding from HUD to build 100 public housing units on the land where the Lakefront Buildings stood;
2. Secure funding from HUD to build 200 scattered site units outside of the North Kenwood-Oakland community;
3. Identify and obtain control of land in the North Kenwood-Oakland community on which it can build 141 units of scattered-site housing; and
4. Complete construction of the 441 replacement units and the community center pursuant to ¶¶ 3-6 of the 1995 Agreement;
5. Comply with ¶ 13 of the 1995 Agreement providing for the employment and training of displaced families in connection with the construction identified in the 1995 Agreement.

B. Grant such other relief as may be proper and just.

Respectfully submitted,



One of the attorneys for the intervenor

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MEMORANDUM OF ACCORD REGARDING RELOCATION OF RESIDENTS
FROM THE LAKEFRONT PROPERTIES PURSUANT TO THE CIAP
REHABILITATION PROJECT

May 27, 1986

MEMORANDUM OF ACCORD REGARDING RELOCATION OF RESIDENTS
FROM THE LAKEFRONT PROPERTIES PURSUANT TO THE CIAP
REHABILITATION PROJECT

The parties hereto enter this Agreement based upon a common goal and objective that the proposed rehabilitation of the Lakefront Properties be completed in an expeditious and fair manner consistent with Federal Modernization Program requirements and to assure that the proposed rehabilitation be implemented in a manner which safeguards the rights of the affected resident community. The resident population of the Lakefront Properties as of October 1, 1985 and thereafter are the intended beneficiaries of this Agreement.

The Chicago Housing Authority (CHA) and the Lakefront Community Organization (LCO), individually and through their attorneys, hereby agree to the following procedures and requirements regarding the relocation of residents from the Lakefront Properties (the Olander Homes, 3939 S. Lake Park Avenue; Olander Extension, 3833 S. Lake Park Avenue; and the three (3) building complex in Lake Michigan Homes at 41st Street and Lake Park) pursuant to the Comprehensive Improvement Assistance Program ("Modernization Program") authorized by 42 U.S.C. § 1437(1) and 24 C.F.R. § 968. CHA has consulted with the Presidents of the Local Building Councils of the Lakefront Properties and they agree to support this Agreement.

By entry into this Memorandum of Accord the parties hereto agree to comply with all terms and conditions set forth herein, agree to cooperate and support implementation of this Memorandum of Accord and hereby acknowledge that substantial breach of this Agreement shall be enforceable by a party hereto pursuant to any existing administrative or legal remedy authorized by law.

Accordingly, the parties hereby agree follows;

1. The parties support and will urge adoption by the CHA Board of Directors at their May Board Meeting of this Memorandum of Accord and the first six recommendations previously made by the Lakefront Properties Task Force regarding the proposed rehabilitation. These six recommendations are attached hereto as Appendix 1 and are incorporated herein.

2. The parties support the proposed rehabilitation of these properties and recognize that all families will have to be moved at lease once in order that the rehabilitation can be completed.

3. Because some families will not be able to be moved to other CHA developments (e.g. large family, no unit available), or that some families will not be able to be relocated under the Section 8 program, (e.g., landlords unwilling to rent to families with teenage children), the parties agree upon a phased relocation proposal. To determine how units within the Lakefront Properties will be made available during rehabilitation, the following priorities shall be adopted:

(a) first priority for apartments will be given to current lease holders who satisfy CHA eligibility criteria and who are handicapped or who are seriously ill or who have handicapped or seriously ill family members;

(b) second priority shall be given to families that are eligible for 4 bedroom or larger size units under CHA occupancy guidelines;

(c) third priority shall be given to families with minor children above the age of 14;

(d) fourth priority shall be given to

families with minor children 14 years of age or younger facing unusual housing difficulties, e.g., day care needs for children of working mother;

(e) all other units shall be prioritized to families requesting to stay in the Lakefront Properties based upon seniority to be determined by the date that the original dwelling lease was signed by the family;

(f) families who wish to remain in the Lakefront Properties during rehabilitation shall be allowed to do so consistent with the above priorities. If the number of available vacant units is not sufficient to house all families who have requested to remain in the Lakefront Properties those families who cannot be accommodated will be offered apartments at the Wells/ Washington developments, and all other CHA developments, to the extent that units are available to all other residents;

(g) no CHA apartments shall be offered to affected residents as relocation housing in "as is" condition. All units under the program offered to residents must satisfy state, city and federal regulations regarding health and safety. No resident will be asked to move to a unit which is not properly repaired or brought up to code standard.

4. To facilitate the phased rehabilitation and relocation, the parties recognize that security considerations may require the temporary removal of fixtures from vacant apartments. However, the

removal of the "disturbances shall not eliminate the apartment from subsequently being made temporarily available to house families who remain in the Lakefront Properties during rehabilitation.

5. The increasing vacancy rate in the property requires that CHA provide additional security measures in the development. These may include:

(a) additional security personnel at the buildings;

(b) access to monthly reports indicating the number, nature and building location of alleged incidents; and

(c) establishment of a security "hotline" or other service to be made available to residents.

6. All families who currently reside in the Lakefront Properties and all families who have moved out of the Lakefront Properties since October 1, 1985 in connection with the proposed rehabilitation, shall have the right to return as a tenant in the Lakefront Properties after the rehabilitation is completed except those tenants:

✓ (a) who because of income or family composition are no longer qualified for CHA;

(b) who prior to their moving out of the Lakefront Properties had a court eviction order terminate their right to continue to occupancy in CHA.

✓ (c) who are evicted for "good cause" as set forth at 24 C.F.R. § 966.4(1)(1) or other

serious violations of their lease during
the period of relocation;

2. (d) who are relocated outside of CHA
housing during the period of rehabilitation
but who have committed acts, during the
period of rehabilitation, which constitute
a threat to the health and safety of other

2. — CHA tenants or employees as that term is
defined in CHA Administrative Circular 1798.
Provided, however, that families who are
determined ineligible to return based upon
such charge shall be entitled to written
notice and a hearing to challenge such
determination as set forth in CHA Adminis-
trative Circular 1797;

(e) who left CHA owing rent and who
after a reasonable opportunity to resolve
any account balance refuse or are unable to
resolve any rent arrearage.

7. CHA shall provide all residents with all relocation
benefits and assistance required by federal law according to standards
set forth under the Uniform Relocation Assistance Act at 24 C.F.R. Part
42, in both moving out of the Lakefront Properties and moving back into
the properties after rehabilitation. Families who elect to permanently
relocate under the Section 8 program shall be furnished with Section 8
certificate for the fullest term authorized by law.

8. In consideration of the Agreement by CHA to adopt and
commit to comply with the above procedures, the LCO agrees to provide

all reasonable assistance and cooperation with C.A. to insure the prompt and fair implementation of the plan.

9. C.A. shall agree to hire and train residents who were certified leaseholders on October 1, 1985 to perform certain of the work to be performed during rehabilitation. Residents shall have priority for jobs to the maximum extent feasible and available. C.A. shall further provide training for interested residents regarding management and operation of the building after rehabilitation.

The Presidents of the Local Building Councils for the Lakefront Properties, as representatives of the Local Advisory Council, and the President of the Local Advisory Council hereby acknowledge that C.A. consulted with them, that have reviewed the terms of this Agreement and hereby agree with its provisions. By signing this document we hereby agree to support this Memorandum of Accord.

2191 S. Smith
Executive Director
Chicago Housing Authority

Joseph Gardner
Deputy Executive Director
Chicago Housing Authority

James Thomas
General Counsel
Chicago Housing Authority
22 West Madison Street
Chicago, Illinois 60602

Dossie Evans
Dossie Evans
President, Building Council
4155 S. Lake Park

Hazel Gates
Hazel Gates
President, Building Council
3938 S. Lake Park

Gladys McKinney
Gladys McKinney
President, Building Council
4040 S. Oakwald

Carlos Rosen
Executive Dir. of
Lakefront Community
Organization

Anthony J. Fusco, Jr.
Anthony J. Fusco, Jr.
Leslie Ann Jones
Michael Pardys
Legal Assistant Foundation
of Chicago
343 S. Dearborn, Suite 700
Chicago, Illinois 60604

Charlotte Trotter
Charlotte Trotter
President, Building Council
1130 E. 42nd Street

Shirley Howard
Shirley Howard
President, Building Council
3939 S. Lake Park

Juanita Jackson
Juanita Jackson
President, Building Council
1132 E. 42nd Street

Ortensa Randolph
Ortensa Randolph
President
Washington Park Local
Advisory Council

**REVISED AGREEMENT REGARDING FORMER RESIDENTS
OF THE LAKEFRONT PROPERTIES AND
THE FUTURE USE OF THOSE PROPERTIES**

The Parties hereto enter this Agreement based upon a shared recognition and understanding that the rehabilitation of the four remaining Lakefront Properties, hereinafter identified, is neither desirable nor appropriate. The parties do share a common goal of providing suitable housing choices to the former residents of the Lakefront Properties, including the choice to move back into the North Kenwood - Oakland community.

The Chicago Housing Authority (CHA) and the Lakefront Community Organization (LCO), which is the sole representative of the displaced Lakefront tenant families¹, by their duly authorized representatives and attorneys, hereby agree as follows:

1. The CHA shall immediately apply to the Department of Housing and Urban Development ("HUD") for permission to demolish the four Lakefront Properties that have not been rehabilitated, namely the 453 units in the three building complex known as Lake Michigan Homes located at 1130 East 41st Street, 1132 East 42nd Street and 4155 South Lake Park, comprising HUD Project No. 2-41; and the 151 units in the building located at 4040 Oakenwald Street, part of HUD Project No. 2-34, Washington Park Homes.

2. In conjunction with its demolition application(s), CHA will submit to HUD replacement housing plans, as required by 42 U.S.C. 1437p(b)(3) and 24 CFR 970.11, for the provision of replacement housing units for each public housing unit to be demolished under its application(s). The replacement housing plans will provide for the acquisition or development of

¹ The "displaced Lakefront tenant families" means:

(i) all persons who were residing at the six Lakefront properties (i.e., 3939 S. Lake Park Avenue, 3983 S. Lake Park Avenue, 4040 S. Oakenwald Street, 1130 E. 41st Street, 4155 S. Lake Park Avenue and 1132 E. 42nd Street) as of October 1, 1985 and who were displaced by the proposed Lakefront properties rehabilitation project, except that "displaced Lakefront tenant families" does not include those tenant families who are leaseholders at Lake Parc Place on the date of this agreement;

(ii) the following tenant families who resided at 4040 Oakenwald Street from November, 1986 to November, 1991 and who were temporarily relocated to Lake Parc Place in 1991 and whose names are listed on attachment A hereto.

scattered site public housing units and the provision of Section 8 certificates.

3. No demolition of the four remaining Lakefront properties shall commence until: (a) HUD has entered binding funding commitments with CHA for the purposes set forth in paragraphs 4 and 5 of this Agreement; (b) the City of Chicago and CHA have identified, and CHA has obtained site control of, sufficient sites, which are acceptable to LCO, to develop 141 units of public housing in accordance with paragraph 6 of this Agreement; and (c) the United States District Court has entered (i) an appropriate order permitting construction or rehabilitation of public housing under paragraphs 4 and 6 of this Agreement and (ii) an appropriate order amending CHA's tenant selection and assignment plan to permit priority occupancy rights to units developed under paragraphs 4, 5 and 6 of this Agreement to displaced Lakefront tenant families. If the conditions set forth in this paragraph 3 and in paragraph 15 below are satisfied, CHA shall demolish the four remaining Lakefront properties.

4. The CHA, through the Gautreaux-appointed Receiver, subject only to satisfaction of the conditions set forth in paragraphs 3(a) and 3(c)(1) of this Agreement, shall build approximately 100 units, but not less than 80 units, of public housing and shall build or otherwise provide a community center on sites owned or otherwise provided by CHA as part of its Lakefront properties, including the 4040 Oakenwald building. CHA, through the Gautreaux-appointed Receiver, shall apply to the City of Chicago Zoning Board of Appeals for a variance or special use which would permit construction of the community center, and shall appeal, if warranted by counsel for CHA or LCO, any determination that prohibits construction of the community center. CHA and the Gautreaux-appointed Receiver shall consult and attempt to reach agreement with LCO in all matters regarding the community center and shall provide LCO with office space in the community center.

5. Subject only to satisfaction of the conditions set forth in paragraphs 3(a) of this Agreement, the CHA, through the Gautreaux-appointed Receiver and/or the Joint Venture, shall build or rehabilitate not less than 200 scattered site units in communities of the City of Chicago other than North Kenwood-Oakland on sites which are acceptable to LCO.

6. The CHA, subject only to satisfaction of the conditions set forth in paragraph 3(b) and 3(c)(i) of this Agreement, shall build 141 units of scattered site housing (new or rehabilitated), already funded pursuant to the Gautreaux Consent Decree, in the North Kenwood - Oakland community. These units will be developed by the Gautreaux-appointed Receiver and/or the Joint Venture, primarily on CHA owned vacant land and City of Chicago owned

sites, which are acceptable to LCO.

7. CHA shall apply to HUD for three hundred and two (302) Section 8 certificates for use as replacement housing. In the event CHA's Section 8 replacement housing application is not funded by HUD, either in whole or in part, CHA will make available up to 302 Section 8 certificates from its own inventory of Section 8 certificates to meet the replacement housing needs of displaced Lakefront tenant families.

8. Subject to the court order discussed in paragraph 3(c)(ii) of this Agreement, CHA shall offer, on a first priority basis, all units developed under paragraphs 4, 5 and 6 of this Agreement and all Section 8 certificates provided under paragraph 7 of this Agreement, (up to a combined maximum of 604 units and certificates), to eligible displaced Lakefront tenant families. Eligible families are all displaced Lakefront tenant families except those:

(a) who because of income are no longer eligible for CHA housing;

(b) who prior to moving out of the Lakefront Properties were subject to a written eviction order terminating their right to continued occupancy at CHA;

(c) who have been evicted from public housing for "good cause" as set forth at 24 CFR Section 966.4(1)(2) or other serious violation of their lease during the period of relocation;

(d) who have been relocated outside of CHA housing but who, during the period of relocation, have been convicted of a felony involving physical violence to persons or crimes against property that adversely affect the health, safety or welfare of other persons or the misdemeanors of aggravated assault, unlawful use of a weapon, battery or criminal damage to property;

(e) who left CHA owing rent and who after a reasonable opportunity to resolve any account balance refuse or are unable to resolve any rent arrearage within a reasonable time of any determination of ineligibility.

Any displaced Lakefront tenant family determined to be ineligible for replacement housing pursuant to the provisions of this paragraph will be entitled to appeal the determination of ineligibility to a committee composed of three members chosen by LCO and three members chosen by CHA. This committee shall have access to all relevant documents that led to the finding of ineligibility, shall consider any evidence of rehabilitation of the tenant family or any evidence of the tenant family's willingness to participate in social service or other appropriate counseling service programs, and shall be empowered to waive any

or all rent arrearages for good cause shown and to establish a reasonable installment payment plan.

This committee shall initially screen the tenants who shall reside in the housing to be provided under this Revised Agreement. After initial occupancy is completed the committee shall be expanded to nine (9) members, with the three (3) additional members to be selected from the residents who will reside in the new housing to be built under this Revised Agreement.

9. Up to a maximum of 604 eligible displaced Lakefront tenant families shall be afforded either their first or their second housing choice pursuant to paragraph 8 of this Agreement. CHA, through its tenant selection and assignment procedure, shall maintain a parity in the occupancy of public housing units developed pursuant to paragraph 4 of this Agreement between eligible low income and very low income families, as those terms are defined in 24 CFR Section 913.102. In the event that CHA's obligation to afford up to 604 displaced Lakefront tenant families with either their first or second housing choices cannot be reconciled with CHA's obligation to maintain a parity in the occupancy of public housing units, as required by this paragraph, CHA and LCO will negotiate a mutually agreeable amendment to this Agreement.

10. CHA shall negotiate and attempt to reach agreement with the LCO with respect to all matters involving the displaced Lakefront tenant families, including but not limited to agreement with the Gautreaux-appointed Receiver and/or the Joint Venture relative to the site selection and design of all housing units constructed, rehabilitated or otherwise made available for occupancy pursuant to the terms of this Agreement and with CHA relative to the management and operation of all housing units constructed, rehabilitated or otherwise made available for occupancy pursuant to the terms of this Agreement.

11. CHA, with the assistance of LCO, shall conduct an aggressive outreach campaign to contact eligible displaced Lakefront tenant families in order to determine whether they wish to avail themselves of the housing opportunities being provided under this Agreement. CHA and LCO shall enter a side agreement setting forth the timing, scope and terms of the outreach program. A bar date will be fixed after which there will be no further right to replacement housing under this Agreement. Consistent with the outreach program developed by and agreed to by CHA and LCO, CHA will make all reasonable efforts to locate displaced Lakefront tenant families up to the bar date.

12. All displaced Lakefront tenant families who avail themselves of the replacement housing opportunities being provided under paragraphs 4, 5, 6 and 7 of this Agreement

shall be moved by CHA, at CHA's expense, or paid by CHA the amount of actual, reasonable moving costs, including the actual, reasonable costs of utility reconnection.

13. The Gautreaux-appointed Receiver shall comply with Section 3 requirements in the demolition and construction identified in the Agreement, and shall work with CHA and LCO in identifying members of displaced Lakefront tenant families as eligible for training and employment opportunities pursuant to Section 3. CHA, directly or through its agent, shall provide training for interested residents regarding management and operation of the replacement housing units being provided pursuant to this Agreement.

14. By signing this document, LCO and CHA hereby agree that this Revised Agreement replaces and supplants the Memorandum of Accord entered into on May 27, 1986. However, if the conditions set forth in paragraph 3 of this Agreement for demolition of the four remaining Lakefront properties are not satisfied by January 1, 1996, LCO may give CHA seven days notice of its intent to declare a breach of this Agreement. If those conditions are not satisfied within that seven day notice period, LCO may declare a breach of this Agreement. Upon such a declaration of breach, this Revised Agreement shall be null and void, and the terms and conditions of the original Memorandum of Accord, dated May 27, 1986, shall be reinstated.

15. The construction or rehabilitation of the replacement housing required under paragraphs 5 and 6 of this Agreement shall commence within ten months after satisfaction of the conditions set forth in paragraph 3 of this Agreement for demolition of the four remaining Lakefront properties and shall be completed within a reasonable time, as that term is defined by current construction industry standards for the type of construction and rehabilitation contemplated by the agreement. If the construction or rehabilitation of the replacement housing required under paragraphs 5 and 6 of this Agreement has not commenced within ten months after satisfaction of the conditions set forth in paragraph 3 of this Agreement for demolition of the four remaining Lakefront properties or is not completed within ten months thereafter, LCO shall give CHA sixty days notice of its intent to declare a breach of this Agreement prior to instituting any suit to enforce the terms of this Agreement.

16. CHA's entry into this Revised Agreement in the context of the unique circumstances involving the displacement and relocation of the former residents of the Lakefront Properties shall not be deemed a precedent with respect to the relocation and replacement housing rights of other CHA tenants families who may be displaced and relocated from their present housing units as a consequence of future demolition of CHA housing units.

17. This agreement shall be governed as to performance and interpretation in accordance with the laws of the State of Illinois. In construing the terms of this Agreement, neither CHA nor LCO shall be deemed the drafter of this Agreement.

18. In consideration of the Agreement by the CHA to enter into the above obligations, the LCO agrees to support CHA's application to HUD for demolition of the Lakefront Properties. Both parties to this agreement agree to comply with all terms and conditions set forth herein, agree to cooperate and support implementation of this agreement and acknowledge that this agreement is intended by the parties to be a binding contract enforceable by either party in any court of competent jurisdiction.

19. CHA shall reimburse LCO for all reasonable expenses incurred by LCO members in connection with the implementation of this Revised Agreement, including car fare and transportation, telephone and copying expenses. Such reimbursement shall be provided by CHA within 30 days of submission by LCO of reasonable proof of expenditures to CHA.

EXECUTED THIS 22nd DAY OF September 1995
IN CHICAGO, ILLINOIS

FOR THE LAKEFRONT COMMUNITY
ORGANIZATION:

By:

Clara Dixon
CLARA DIXON, President

By:

Izora Davis
IZORA DAVIS
Executive Board Director

By:

Joan Williams
JOAN WILLIAMS
Executive Board Director

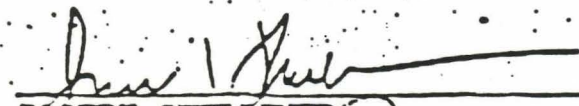
By:

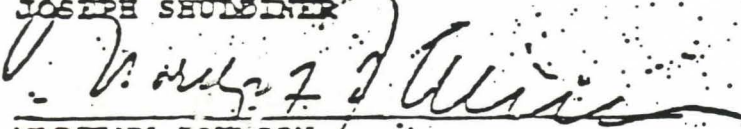
Darlene Rush
DARLENE RUSH
Executive Board Director

1116
WILLIAM P. WILEN
MICHAEL PARDYS
ALLISON ASHE-CARD
Legal Assistance Foundation
of Chicago
343 S. Dearborn Street
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Chicago, Illinois
Attorneys for LCO

FOR THE CHICAGO HOUSING AUTHORITY:

By:


JOSEPH SHUMAKER


MARILYN JOHNSON
Chicago Housing Authority
200 W. Adams Street
Suite 2100
Chicago, Illinois 60606
Attorney for CHA

May 13, 1996

Honorable Toni Preckwinkle
Alderman, 4th Ward
4646 South Drexel Boulevard
Chicago, Illinois 60653

Mr. William Wilen
Legal Assistance Foundation
343 South Dearborn Street
Chicago, Illinois 60604

Ms. Shirley Newsome, President
Conservation Community Council
4140 South Lake Park
Chicago, Illinois 60653

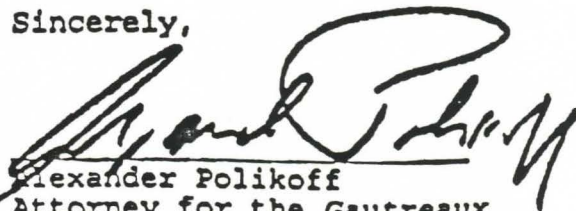
Dear Alderman Preckwinkle, Mr. Wilen and Ms. Newsome:

In connection with our anticipated request to Judge Aspen to designate North Kenwood-Oakland as a Revitalizing Area and to permit the development of public housing therein, we make the following assurances:

- (1) The Receiver will use its best efforts to achieve the development of market rate as well as public housing on both the Lakefront and Drexel corridor sites which have been the subject of discussion among us; and
- (2) In the event that community representatives or former Lakefront Properties tenants become dissatisfied with the pace of progress in developing either form of housing, Gautreaux plaintiffs' counsel and the Receiver will support the request of either or both groups for a hearing on that issue before the Gautreaux presiding judge.

Sincerely,


Daniel Levin
Gautreaux Receiver


Alexander Polikoff
Attorney for the Gautreaux
Plaintiff Class

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

DOROTHY GAUTREUX, et al.

Plaintiffs,

vs.

CHICAGO HOUSING AUTHORITY and
HENRY CISNEROS, Secretary of
Department of Housing and Urban
Development,

Defendants.

66 C 1459

66 C 1460

(Consolidated)

JOINT MOTION OF PLAINTIFFS, AND DEFENDANTS
CHICAGO HOUSING AUTHORITY AND DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT, FOR AN ORDER
DESIGNATING A NORTH KENWOOD-OAKLAND REVITALIZING AREA AND
AUTHORIZING THE DEVELOPMENT OF
SCATTERED SITE PUBLIC HOUSING UNITS THEREIN

Plaintiffs, and Defendants Chicago Housing Authority and
Department of Housing and Urban Development, by their respective
attorneys, move this court for an order in the form attached
hereto:

(1) designating as the North Kenwood-Oakland Revitalizing
Area that portion of the City of Chicago that lies between
Oakwood Boulevard on the north, the Illinois Central Railroad
right-of-way on the east, 47th Street on the south, and Cottage
Grove Avenue on the west (the "Revitalizing Area"), and

(2) authorizing the development, through new construction or
rehabilitation of existing buildings, of not more than 241 units
of public housing within the Revitalizing Area.

In support of this motion, the parties state as follows:

1. In 1986, the proposed Revitalizing Area contained

approximately 1,066 family public housing units. Nine hundred and three units were in six CHA high-rise buildings, known as the Lakefront Properties, located along Lake Park Avenue between Oakwood Boulevard on the north and 42nd Place on the south. Of the remaining 163 units, 151 were in a combination of high-rise and mid-rise buildings in CHA's Washington Park homes development, on a block bounded by 41st Street on the north, Drexel Boulevard on the east, Bowen Avenue on the south and Cottage Grove Avenue on the west (the "Washington Park site"). The remaining 12 were in a small building at 900 East 40th Street ("the 900 Building").

2. In 1986, CHA and the Lakefront Community Organization ("LCO"), representing the tenants of the Lakefront Properties, entered into a Memorandum of Accord. A copy of the 1986 Memorandum of Accord is attached hereto as Exhibit A. Under the Memorandum of Accord the tenants agreed to leave their homes voluntarily, and CHA agreed to rehabilitate the Lakefront Properties buildings and grant to the displaced families "the right to return as a tenant in the Lakefront Properties after the rehabilitation is completed." (§ 6)

3. In 1990 and 1991, CHA extensively rehabilitated the two northernmost Lakefront Properties high-rises, turning them into attractive, landscaped buildings, now known as Lake Parc Place. As authorized by Congressional legislation, CHA established a mixed-income tenancy for Lake Parc Place, reserving half the units for working families, i.e., families earning between 50%-80% of the median income for the Chicago Metropolitan Area (for a

family of four in 1996, income of \$27,500 - \$41,600).

4. Also in 1990-1991, the Receiver developed 15 new scattered site public housing units at 4525 South Lake Park Avenue.

5. In 1995, while discussions were underway concerning the remaining four Lakefront high-rises, CHA demolished the 151 units on the Washington Park site and the 12-unit 900 Building.

6. After lengthy discussions, in September, 1995, CHA and LCO entered into a supplemental agreement modifying the Memorandum of Accord ("Revised Agreement"). The Revised Agreement is attached hereto as Exhibit B. The Revised Agreement reflects a "shared recognition and understanding that the rehabilitation of the four remaining Lakefront Properties . . . is neither desirable nor appropriate," as well as a "common goal of providing suitable housing choices to the former residents of the Lakefront Properties, including the choice to move back into the North Kenwood-Oakland community." (p. 1)

7. The Revised Accord provides that, instead of rehabilitation, the four remaining high-rises, containing approximately 603 units, should be demolished. (§1) The Revised Accord provides further that replacement housing for the demolished units should take the following form: (1) up to 241 units in North Kenwood-Oakland, including 80-100 units on the site of the to-be-demolished Lakefront high-rises and an additional 141 units scattered throughout the area, including on the Washington Park site; (2) 200 additional units outside of North Kenwood-Oakland; and (3) up to 302 Section 8 certificates.

8. The Revised Accord also provides that CHA shall achieve mixed-income occupancy of the 80-100 new units on the site of the Lakefront high-rises by maintaining a "parity ... between eligible low income [50-80% of median income] and very low income families...." (19) Finally, the Revised Accord provides that the displaced Lakefront tenant families should have first priority, subject to Court approval, to all of the replacement units. (18)

9. Movants believe the replacement housing provisions in the Revised Accord are appropriate and desirable for a number of reasons. First, the proposed demolition and replacement housing would complete a radical transformation of public housing in the Revitalizing Area. The number of family public housing units in the Revitalizing Area would be reduced by approximately 50% from 1986 levels, i.e., from 1,066 to 538. In addition, the concentration of the remaining units would be greatly reduced. The family units in the Revitalizing Area would be privately managed and in mixed-income configurations.

10. Second, the proposed Revitalizing Area satisfies the Gautreaux "revitalizing" criteria, and would therefore be an appropriate location for the provision of low-rise public housing. The revitalizing character of the area is evidenced by the following:

- Major ongoing efforts by institutional actors, including the City and the Fund For Community Redevelopment and Revitalization (which is funded by the MacArthur Foundation), to bring about revitalization in North Kenwood-Oakland;
- An increasingly active private residential real estate market in the Revitalizing Area, including the

construction of new, market rate housing, and plans to develop additional market rate housing;

- Substantial and increasing investment by residents of the Revitalizing Area in home repair and rehabilitation;
- Steady increases in the number and value of bank loans within the Revitalizing Area;
- New commercial development, both completed and planned, along 47th Street;
- Substantial efforts to improve area schools, including two new public schools planned to open in the Revitalizing Area in September, 1996;
- Community amenities favoring continuation of the already-occurring revitalization, including a choice lakefront location, excellent access to transportation, and ample available land for development at reasonable prices; and
- Burgeoning development in nearby areas, particularly South Kenwood.

11. Movants are authorized to represent to the Court that the Receiver supports this motion and that the City of Chicago has no objection thereto.

12. Proposals to locate new public housing in the Revitalizing Area have been the subject of several meetings of community residents. The community is divided respecting the development of new public housing in the area, with some residents in support and many others opposed.

WHEREFORE, Plaintiffs, and Defendants Chicago Housing Authority and the Department of Housing and Urban Development, request the Court to enter an order in the form attached hereto, (1) designating as the North Kenwood-Oakland Revitalizing Area that portion of the City of Chicago that lies between Oakwood Boulevard on the north, the Illinois Central Railroad right-of-

way on the east, 47th Street on the south, and Cottage Grove Avenue on the west, and (2) authorizing the development of not more than 241 units of public housing within the Revitalizing Area.

May 22, 1956

[Signature]
One of the Attorneys for
Plaintiffs

Alexander L. Polikoff
Robert L. Jones, Jr.
Business and Professional People
for the Public Interest
17 East Monroe Street
Chicago, Illinois 60603

Respectfully submitted,

[Signature]
One of the Attorneys for
Defendant U.S. Department
of Housing & Urban
Development

Lewis M. Nixon
Assistant General Counsel
for the Midwest
77 West Jackson Boulevard
26th Floor
Chicago, Illinois 60604

[Signature]
One of the Attorneys for
Defendant Chicago Housing
Authority

Jerome Butler
General Counsel
Chicago Housing Authority
200 West Adams Street
21st Floor
Chicago, Illinois 60604

permitted public or assisted housing to be provided in census tracts not within the General Public Housing Area upon a sufficient showing of "revitalizing" circumstances such that a responsible forecast of economic integration, with a longer term possibility of racial desegregation, could be made; and

The Court being of the view that such a forecast can be made with respect to the North Kenwood-Oakland Revitalizing Area if the terms and conditions of this order are met; . . .

Now, therefore, IT IS HEREBY ORDERED:

1. The Court designates as the North Kenwood-Oakland Revitalizing Area ("Revitalizing Area") that portion of the City of Chicago that lies between Oakwood Boulevard on the north, the Illinois Central Railroad right-of-way on the east, 47th Street on the south, and Cottage Grove Avenue on the west; .

2. The Receiver, previously appointed by the Court to develop scattered site public housing on behalf of the defendant, Chicago Housing Authority, shall be free to develop, through new construction or rehabilitation of existing buildings, up to 241 units of public housing within the Revitalizing Area, subject to the following conditions:

- a) No more than 100 units of public housing shall be developed on CHA-owned land that is the site of CHA's Lakefront high-rise buildings (the area bounded by 40th Street on the north, the Illinois Central Railroad right-of-way on the east, 42nd Place on the south, and Lake Park Avenue on the west).

- b) No more than approximately 50 units of public housing shall be developed on the site of the demolished Washington Park buildings (the CHA-owned property bounded by 41st Street on the north, Drexel Avenue on the east, Cottage Grove Avenue on the west, and Bowen Avenue on the south) and adjacent property.
- c) The balance of such units of public housing within the Revitalizing Area, in addition to those referred to in subparagraphs (a) and (b) above, shall be developed on other sites distributed throughout the Revitalizing Area.
- d) One-half of the public housing units developed pursuant to subparagraphs (a) and (b) above shall be occupied by families whose incomes are in the range of 50-80% of the median income in the Chicago Metropolitan Area, and such units shall be geographically distributed approximately evenly among the units developed pursuant to subparagraphs (a) and (b).

3. The CHA Tenant Selection and Assignment Plan previously approved by this Court shall be modified to afford eligible displaced Lakefront tenant families, as defined in the "Revised Agreement Regarding Former Residents of the Lakefront Properties and the Future Use of Those Properties," dated September 22, 1995, between CHA and the Lakefront Community Organization, first

priority to all public housing units developed pursuant to
subparagraphs 2(a), (b) and (c) of this Order, subject only to
the provisions of subparagraph 2(d) of this Order.

ENTER:

Walter E. Cooper

Judge

Date: *June 3*
~~May 3~~, 1996

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

DOROTHY GAUTREAUX, *et al.*

Plaintiffs,

v.

CHICAGO HOUSING AUTHORITY and
JOSEPH SHULDINER, Executive Director,

Defendants.

66 C 1459

Hon. Marvin E. Aspen

RECEIVED

FEB 12 1999

NOTICE OF FILING

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

TO: Counsel on attached service list

Please take notice that on February 12, 1999, the attached **Lakefront Community Organization's Memorandum in Support of its Second Motion to Intervene** was filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, a copy of which is herewith served upon you.



One of the Attorneys for the Lakefront
Community Organization

Richard M. Wheelock
Diana White
Lawrence Wood
Charles Petrof
Legal Assistance Foundation of Chicago
111 W. Jackson, 3rd floor
Chicago, IL 60604
312/341-1070

Certificate of Service

I, Charles R. Petrof, certify that I caused to be served a copy of **Lakefront Community Organization's Memorandum In Support Of Its Second 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 February 12, 1999.



Service List

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Chicago Housing Authority
Office of General Counsel
200 W. Adams, Suite 2100
Chicago, IL 60606

Alex Polikoff
BPI
17 E. Monroe, Suite 212
Chicago, IL 60603

Michael L. Shakman
Barry A. Miller
Edward W. Feldman
Miller, Shakman, Hamilton, Kurtzon &
Schlifke
208 S. LaSalle St., Suite 1100
Chicago, IL 60604

1

The LCO now files a second motion to intervene to seek relief for the CHA's breach. The LCO seeks a court-ordered construction schedule for the replacement units that the CHA promised to build before it demolished the Lakefront Buildings, as well as a timetable for the 100 units to be built on the site where the now demolished high rises stood.

LCO's motion to intervene may be granted either as intervention of right (Rule 24(a)(2)) or as permissive intervention (Rule 24(b)(2)). LCO should be granted intervention of right because, by virtue of its agreement with the CHA, it has an interest in the subject matter of Gautreaux, i.e., the construction of replacement non-elderly public housing in the City of Chicago, and that interest will be impaired if it is not permitted to intervene. *A fortiori*, LCO satisfies the requirements for permissive intervention because its claims involve the construction of 441 public housing units in Chicago, approval for which has been or will be sought from the Gautreaux Court.

Habitat and the Gautreaux plaintiffs have indicated in the past that they do not 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 promised in the 1995 Agreement they would "support the request of [LCO] . . . for a hearing on that issue before the Gautreaux presiding judge." See Exhibit B.¹

¹ When the LCO filed its first motion to intervene, the Habitat took no position on LCO's petition to intervene. Receiver's Statement Concerning The Lakefront Community Organization's Motion For TRO And Preliminary Injunction, p. 1. The Gautreaux plaintiffs did not object to LCO's motion to intervene. Statement Of Gautreaux Plaintiffs Respecting Emergency Motion To Intervene And Motion For Temporary Restraining Order And Preliminary Injunction Of Lakefront Community Organization, p. 1. Indeed, both Habitat and the Gautreaux-Plaintiffs suggested that the appropriate resolution of this case might involve this Court enforcing

II. FACTS

The LCO represents former tenants of 3939 South Lake Park Avenue, 3983 South Lake Park Avenue, 4040 South Oakenwald, 1130 East 41st Street, 4155 South Lake Park, 1132 East 42nd Street (hereinafter "the Lakefront properties"). These former tenants were moved out of the Lakefront properties in 1985. For the next ten years they waited for the CHA to rehabilitate the buildings, as it had promised to do in a written agreement (hereinafter "the 1986 Memorandum," attached as Exhibit A to the complaint).

However, in or around the end of 1993 and the beginning of 1994, CHA approached LCO to negotiate a revision of the 1986 Memorandum. In 1995, LCO and CHA agreed to abandon their plans for rehabilitating the vacant high-rises and, instead, entered into a new agreement (hereinafter "the 1995 Agreement," attached as Exhibit B to the complaint). The 1995 Agreement provided that CHA could demolish four of the buildings (4040 South Oakenwald, 1130 East 41st Street, 4155 South Lake Park, 1132 East 42nd Street) (hereinafter "the Lakefront Buildings") once it built new replacement housing in the larger North Kenwood/Oakland area, and elsewhere in the City of Chicago.

Paragraphs 3 and 15 of the 1995 Agreement set forth the pre-conditions that CHA had to satisfy before starting the demolition procedure. First, the CHA was required to obtain both the funds and land necessary to construct replacement housing. Second, once the CHA secured the necessary funds and land, CHA had to comply with the construction schedule for the off-site units set forth in ¶ 15 of the Agreement. This schedule required the CHA to begin construction within

a compliance order for the provision of replacement housing. Gautreaux Plaintiff's Statement at 4, Habitat's Statement at 9-10.

ten months of satisfying the pre-conditions set forth in ¶ 3 of the Agreement, and complete construction within a reasonable time thereafter. Therefore, under the terms of the agreement, CHA could not demolish the Lakefront Buildings until it had actually completed construction of 341 units of replacement public housing.

On May 13, 1996, Alexander Polikoff (attorney for the Gautreaux plaintiff class) and Daniel Levin (Habitat's chairman) sent a letter to William Wilen, then employed by the Legal Assistance Foundation of Chicago and acting as attorney for LCO, stating that if the former Lakefront tenants became dissatisfied with the pace of development of the replacement housing, the Gautreaux plaintiffs' counsel and the Receiver would support a request by the former Lakefront tenants for a hearing in front of the presiding Gautreaux judge on that issue. Exhibit B.

On May 22, 1996, the Gautreaux plaintiffs and CHA filed a joint motion to designate the North Kenwood/Oakland neighborhood as a Revitalizing Area and to authorize the construction or rehabilitation of 241 units of public housing in the Revitalizing Area. See Exhibit C to the complaint. This motion, which received Habitat's approval, was provided for in the 1995 Agreement. Furthermore, entry of the order requested in the motion was a condition precedent to the demolition of the Lakefront Buildings. See ¶ 3 of Exhibit B to the complaint. On June 3, 1996, this Court entered the requested order, a copy of which is attached as Exhibit D to the complaint.

On June 2, 1998, CHA advised LCO by letter that the CHA sought to demolish the Lakefront Buildings in the near future. On November 4, 1998, LCO's counsel first learned through an article in the Hyde Park Herald that CHA intended to demolish the Lakefront Buildings in early December 1998. On November 23, 1998, LCO filed its emergency motion to

intervene and motion for a temporary restraining order seeking a hearing on LCO's claims that the CHA was in violation of the 1995 Agreement before the CHA demolished the Lakefront Buildings. On December 10, 1998, this Court denied LCO's emergency motion to intervene as untimely.

On December 12, 1998, without satisfying the preconditions in the 1995 Agreement, CHA demolished the Lakefront Buildings. As of the filing of this suit, CHA has failed to complete construction of all 341 scattered site units to be located in the North Kenwood/Oakland neighborhood and elsewhere in the City of Chicago, and has failed to meet other prerequisite conditions.

III. THE LCO SATISFIES THE REQUIREMENTS FOR INTERVENTION OF RIGHT UNDER FED. R. CIV. PRO. 24(a)(2).

The LCO satisfies the requirements of Rule 24(a)(2) to intervene as a matter of right.

Rule 24(a)(2) establishes four conjunctive criteria:

(1) timely application; (2) an interest relating to the subject matter of the action; (3) potential impairment, as a practical matter, of that interest by the disposition of the action; and (4) lack of adequate representation of the interest by the existing parties to the action.

Southmark Corp. v. Cagan, 950 F.2d 416, 418 (7th Cir. 1991), quoting Meridian Homes Corp. v.

Nicholas W. Prassas & Co., 683 F. 2d 201, 203 (7th Cir. 1982).

A. Timeliness of Motion

LCO's motion to intervene is timely under the four factors considered in City of Bloomington v. Westinghouse Electric Corp., 824 F.2d 531, 534 (7th Cir. 1987).² The four factors reviewed in that case were "(1) the length of time the intervenor knew or should have known of her or his interest in the case; (2) the extent of prejudice to the original litigating parties from the intervenor's delay; (3) the extent of prejudice to the would-be intervenor if her or his motion is denied; and (4) any unusual circumstances." Id. at 534.

The LCO seeks relief for the CHA's breach of the 1995 Agreement when it demolished the Lakefront Buildings on December 12, 1998. Only two months have passed since the time the LCO had cause to bring this breach of contract complaint. Therefore, the LCO satisfies the first City of Bloomington factor.

The second factor in City of Bloomington is the extent of prejudice to the original litigants caused by the intervenor's delay. Id. Nothing of a significant or relevant nature has transpired since December 12 to prejudice the CHA in its defense of LCO's breach of contract claim.

The third factor is whether LCO would suffer prejudice from a denial of its motion to intervene. LCO would be prejudiced because it would be denied the proper and experienced forum in which to raise its claims.

The fourth and final factor is whether any unusual factors exist in relation to the timing of the intervention. No such factors exist.

² These four factors are "[a]mong the factors to be considered" in judging timeliness, not a four prong test. See Id.

B. LCO Interest In The Subject Matter Of The Case

The CHA's commitment to build the 441 replacement public housing units promised under the 1995 Agreement undoubtedly relates to the subject matter of this action -- CHA's desegregation obligations under Gautreaux. 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 count toward CHA's obligation to build scattered-site units in "general areas" of the City.

C. Potential Impairment

The LCO's ability to protect its interest in the Court-approved replacement housing will be impaired if the LCO cannot obtain an order for the timely construction of the replacement units promised under the 1995 Agreement as a remedy for the CHA's breach. The LCO cannot realistically go to any other court to seek such a remedy while Gautreaux is pending, given that this Court is the only one that supervises both CHA, which signed the 1995 Agreement, and Habitat, which is the CHA's Receiver, charged with carrying out the CHA's responsibilities for the construction of all replacement non-elderly public housing in Chicago.

D. Inadequate Representation

Finally, LCO's interests are not adequately represented by the CHA, Habitat or plaintiffs' counsel. The CHA is the party that breached the 1995 Agreement and is adverse to the LCO.

Neither plaintiffs' counsel nor Habitat were signatories to the 1995 Agreement. Moreover, Habitat and plaintiffs' counsel have indicated in past correspondence and pleadings

that they 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 24(a)(2).

There is no principled basis for distinguishing this case from Gautreaux v. Pierce, 548 F. Supp. 1284 (N.D. Ill. 1982), *aff'd* 707 F.2d 265 (7th Cir. 1983), in which this Court allowed two groups to intervene as of right so that the Court could decide their conflicting 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.

IV. THE LCO SATISFIES THE REQUIREMENTS FOR PERMISSIVE INTERVENTION UNDER FED. R. CIV. PRO. 24(b)(2).

LCO satisfies the requirements for permissive intervention in Rule 24(b)(2). Permissive intervention is appropriate “when an applicant’s claim or defense and the main action have a question of law or fact in common,” and when application is timely made. F. Rule Civ. Pro. 24(b)(2). Here, the fact in common is the construction of new non-elderly public housing in Chicago, and the law in common is the body of law created in Gautreaux. There can be no dispute that the relief requested by LCO in its intervenor’s complaint is governed by the Gautreaux injunction. CHA’s obligation to build replacement housing for LCO under the 1995 Agreement is inextricably commingled with CHA’s obligations under Gautreaux. CHA cannot build non-elderly public housing without impacting the Gautreaux litigation. For that reason, the CHA and plaintiffs’ counsel, with Habitat’s concurrence, presented the 1995 Agreement to this Court to seek the necessary locational waiver.

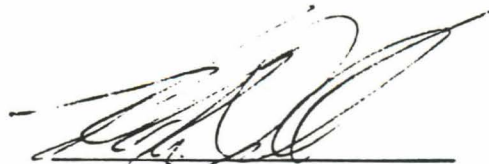
If LCO's motion to intervene is denied, LCO will be required to file its complaint in state court. Orders entered by a state court judge may contradict orders entered in Gautreaux and threaten to delay or impede the provision of public housing to Gautreaux class members. In the interest of judicial economy and to avoid such potential conflict, this Court should grant LCO's motion. See Venegas v. Skaggs, 867 F.2d 527, 531 (9th Cir. 1989), aff'd 495 U.S. 82 (1990)..

Finally, as discussed above at III. A., LCO's motion to intervene is timely under the four factors considered in City of Bloomington v. Westinghouse Electric Corp., 824 F.2d 531, (7th Cir. 1987).

V. CONCLUSION.

This Court should grant LCO's motion to intervene as a matter of right because CHA's commitment to build 441 replacement units of public housing (341 off-site, 100 where the high rises formerly stood) undoubtedly relates to the CHA's desegregation obligations under Gautreaux. 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 considerations of judicial economy favor intervention.

Respectfully submitted,

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

One of the Attorneys for
Intervenor

Richard M. Wheelock
Diana White
Lawrence Wood
Charles R. Petrof
Legal Assistance Foundation
of Chicago
111 West Jackson - 3rd Floor
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United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Marvin Aspen	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	66 C 1459	DATE	12/10/1998
CASE TITLE	Gautreaux' vs. CHA		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ☒ [Other docket entry] The Organization's emergency motion to intervene (0-1) is denied. The Organization's motions for temporary restraining order and (0-1 & 0-2) and for preliminary injunction are denied as moot.

(11) ☒ [For further detail see order on the reverse side of the original minute order.]

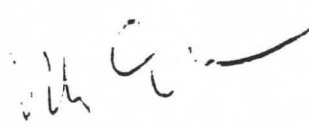
☐ No notices required, advised in open court. ☐ No notices required. ☒ Notices mailed by judge's staff. ☐ Notified counsel by telephone. ☐ Docketing to mail notices. ☐ Mail AO 450 form. ☐ Copy to judge/magistrate judge.		number of notices date docketed docketing deputy initials 12/10/1998 date mailed notice GL mailing deputy initials	Document Number
GL courtroom deputy's initials	Date/time received in central Clerk's Office		

ORDER

Lakefront Community Organization (the Organization) has asked for permission to intervene in this case and, if we grant that request, for an order to halt the CHA's planned demolition of the so-called "Lakefront Buildings." Both of these motions stem from a 1995 agreement between the Organization and the CHA which appears to prohibit the CHA from demolishing those buildings before it satisfies certain conditions - conditions with which the CHA now admits it has only "substantially complied."

A motion to intervene must be "timely," according to FED. R. CIV. P. 24(a) and (b), and so we consider (1) for how long the Organization has known of its interest in this case; (2) how our granting the motion after this delay would hurt the parties already before us; (3) how badly our denial of the motion could hurt the Organization; and (4) any unusual circumstances. *See City of Bloomington v. Westinghouse Elec. Corp.*, 824 F.2d 531 (7th Cir. 1987). These factors cut sharply against the Organization. The CHA's Executive Director informed the Organization of the CHA's plans to demolish the buildings on June 2, 1998, by a letter in which he stated that the CHA believed that it had discharged its obligations under the 1995 agreement. The Organization did not even secure legal representation until November 2, and it did not move to intervene until November 23, almost six months later and less than three weeks before the December 12 demolition date. A six month delay might be harmless in some cases, but it is not when a demolition is in the works: the CHA informs us that part of its preparation was to render the buildings structurally unsound, a situation which presents immediate safety (and perhaps liability) concerns.

The Organization's emergency motion to intervene is denied.* It is so ordered.



* Had we allowed the Organization's motion to intervene, we would have denied on the merits its emergency motions for a temporary restraining order and preliminary injunction.

May 13, 1996

Honorable Toni Preckwinkle
Alderman, 4th Ward
4646 South Drexel Boulevard
Chicago, Illinois 60653

Mr. William Wilen
Legal Assistance Foundation
343 South Dearborn Street
Chicago, Illinois 60604

Ms. Shirley Newsome, President
Conservation Community Council
4140 South Lake Park
Chicago, Illinois 60653

Dear Alderman Preckwinkle, Mr. Wilen and Ms. Newsome:

In connection with our anticipated request to Judge Aspen to designate North Kenwood-Oakland as a Revitalizing Area and to permit the development of public housing therein, we make the following assurances:

- (1) The Receiver will use its best efforts to achieve the development of market rate as well as public housing on both the Lakefront and Drexel corridor sites which have been the subject of discussion among us; and
- (2) In the event that community representatives or former Lakefront Properties tenants become dissatisfied with the pace of progress in developing either form of housing, Gautreaux plaintiffs' counsel and the Receiver will support the request of either or both groups for a hearing on that issue before the Gautreaux presiding judge.

Sincerely,


Daniel Levin
Gautreaux Receiver


Alexander Polikoff
Attorney for the Gautreaux
Plaintiff Class

EXHIBIT B

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

DOROTHY GAUTREAUX, et al.

Plaintiffs,

vs.

CHICAGO HOUSING AUTHORITY and
HENRY CISNEROS, Secretary of
Department of Housing and Urban
Development,

Defendants.

66 C 1459

66 C 1460

(Consolidated)

JOINT MOTION OF PLAINTIFFS, AND DEFENDANTS
CHICAGO HOUSING AUTHORITY AND DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT, FOR AN ORDER
DESIGNATING A NORTH KENWOOD-OAKLAND REVITALIZING AREA AND
AUTHORIZING THE DEVELOPMENT OF
SCATTERED SITE PUBLIC HOUSING UNITS THEREIN

Plaintiffs, and Defendants Chicago Housing Authority and
Department of Housing and Urban Development, by their respective
attorneys, move this court for an order in the form attached
hereto:

(1) designating as the North Kenwood-Oakland Revitalizing
Area that portion of the City of Chicago that lies between
Oakwood Boulevard on the north, the Illinois Central Railroad
right-of-way on the east, 47th Street on the south, and Cottage
Grove Avenue on the west (the "Revitalizing Area"), and

(2) authorizing the development, through new construction or
rehabilitation of existing buildings, of not more than 241 units
of public housing within the Revitalizing Area.

In support of this motion, the parties state as follows:

1. In 1986, the proposed Revitalizing Area contained

approximately 1,066 family public housing units. Nine hundred and three units were in six CHA high-rise buildings, known as the Lakefront Properties, located along Lake Park Avenue between Oakwood Boulevard on the north and 42nd Place on the south. Of the remaining 163 units, 151 were in a combination of high-rise and mid-rise buildings in CHA's Washington Park homes development, on a block bounded by 41st Street on the north, Drexel Boulevard on the east, Bowen Avenue on the south and Cottage Grove Avenue on the west (the "Washington Park site"). The remaining 12 were in a small building at 900 East 40th Street ("the 900 Building").

2. In 1986, CHA and the Lakefront Community Organization ("LCO"), representing the tenants of the Lakefront Properties, entered into a Memorandum of Accord. A copy of the 1986 Memorandum of Accord is attached hereto as Exhibit A. Under the Memorandum of Accord the tenants agreed to leave their homes voluntarily, and CHA agreed to rehabilitate the Lakefront Properties buildings and grant to the displaced families "the right to return as a tenant in the Lakefront Properties after the rehabilitation is completed." (§ 6)

3. In 1990 and 1991, CHA extensively rehabilitated the two northernmost Lakefront Properties high-rises, turning them into attractive, landscaped buildings, now known as Lake Parc Place. As authorized by Congressional legislation, CHA established a mixed-income tenancy for Lake Parc Place, reserving half the units for working families, i.e., families earning between 50%-80% of the median income for the Chicago Metropolitan Area (for a

family of four in 1996, an income of \$27,500 - \$41,600).

4. Also in 1990-1991, the Receiver developed 15 new scattered site public housing units at 4525 South Lake Park Avenue.

5. In 1995, while discussions were underway concerning the remaining four Lakefront high-rises, CHA demolished the 151 units on the Washington Park site and the 12-unit 900 Building.

6. After lengthy discussions, in September, 1995, CHA and LCO entered into a supplemental agreement modifying the Memorandum of Accord ("Revised Agreement"). The Revised Agreement is attached hereto as Exhibit B. The Revised Agreement reflects a "shared recognition and understanding that the rehabilitation of the four remaining Lakefront Properties . . . is neither desirable nor appropriate," as well as a "common goal of providing suitable housing choices to the former residents of the Lakefront Properties, including the choice to move back into the North Kenwood-Oakland community." (p. 1)

7. The Revised Accord provides that, instead of rehabilitation, the four remaining high-rises, containing approximately 603 units, should be demolished. (§1) The Revised Accord provides further that replacement housing for the demolished units should take the following form: (1) up to 241 units in North Kenwood-Oakland, including 80-100 units on the site of the to-be-demolished Lakefront high-rises and an additional 141 units scattered throughout the area, including on the Washington Park site; (2) 200 additional units outside of North Kenwood-Oakland; and (3) up to 302 Section 8 certificates.

8. The Revised Accord also provides that CHA shall achieve a mixed-income occupancy of the 80-100 new units on the site of the Lakefront high-rises by maintaining a "parity ... between eligible low income [50-80% of median income] and very low income families...." (9) Finally, the Revised Accord provides that the displaced Lakefront tenant families should have first priority, subject to Court approval, to all of the replacement units. (18)

9. Movants believe the replacement housing provisions in the Revised Accord are appropriate and desirable for a number of reasons. First, the proposed demolition and replacement housing would complete a radical transformation of public housing in the Revitalizing Area. The number of family public housing units in the Revitalizing Area would be reduced by approximately 50% from 1986 levels, i.e., from 1,066 to 538. In addition, the concentration of the remaining units would be greatly reduced. The family units in the Revitalizing Area would be privately managed and in mixed-income configurations.

10. Second, the proposed Revitalizing Area satisfies the Gautreaux "revitalizing" criteria, and would therefore be an appropriate location for the provision of low-rise public housing. The revitalizing character of the area is evidenced by the following:

- Major ongoing efforts by institutional actors, including the City and the Fund For Community Redevelopment and Revitalization (which is funded by the MacArthur Foundation), to bring about revitalization in North Kenwood-Oakland;
- An increasingly active private residential real estate market in the Revitalizing Area, including the

construction of new, market rate housing, and plans to develop additional market rate housing;

- Substantial and increasing investment by residents of the Revitalizing Area in home repair and rehabilitation;
- Steady increases in the number and value of bank loans within the Revitalizing Area;
- New commercial development, both completed and planned, along 47th Street;
- Substantial efforts to improve area schools, including two new public schools planned to open in the Revitalizing Area in September, 1996;
- Community amenities favoring continuation of the already-occurring revitalization, including a choice lakefront location, excellent access to transportation, and ample available land for development at reasonable prices; and
- Burgeoning development in nearby areas, particularly South Kenwood.

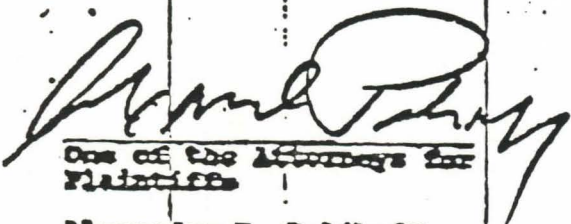
11. Movants are authorized to represent to the Court that the Receiver supports this motion and that the City of Chicago has no objection thereto.

12. Proposals to locate new public housing in the Revitalizing Area have been the subject of several meetings of community residents. The community is divided respecting the development of new public housing in the area, with some residents in support and many others opposed.

WHEREFORE, Plaintiffs, and Defendants Chicago Housing Authority and the Department of Housing and Urban Development, request the Court to enter an order in the form attached hereto, (1) designating as the North Kenwood-Oakland Revitalizing Area that portion of the City of Chicago that lies between Oakwood Boulevard on the north, the Illinois Central Railroad right-of-

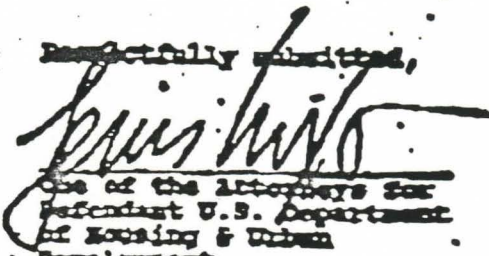
way on the east, 47th Street on the south, and Cottage Grove Avenue on the west, and (2) authorizing the development of not more than 241 units of public housing within the Revitalizing Area.

May 22, 1996

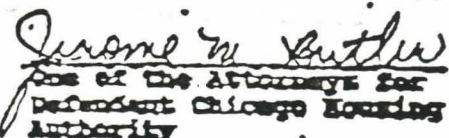

One of the Attorneys for
Plaintiffs

Alexander L. Palikoff
Robert L. Jones, Jr.
Business and Professional People
for the Public Interest
17 East Monroe Street
Chicago, Illinois 60603

Respectfully submitted,


One of the Attorneys for
Defendant U.S. Department
of Housing & Urban
Development

Lewis M. Nixon
Assistant General Counsel
for the Midwest
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25th Floor
Chicago, Illinois 60604


One of the Attorneys for
Defendant Chicago Housing
Authority

Jerome Butler
General Counsel
Chicago Housing Authority
200 West Adams Street
21st Floor
Chicago, Illinois 60604

DOROTHY GAUTREAUX, et al.
Plaintiffs,

66 C 1459

66 C 1460

(Consolidated)

permitted public or assisted housing to be provided in census tracts not within the General Public Housing Area upon a sufficient showing of "revitalizing" circumstances such that a responsible forecast of economic integration, with a longer term possibility of racial desegregation, could be made; and

The Court being of the view that such a forecast can be made with respect to the North Kenwood-Oakland Revitalizing Area if the terms and conditions of this order are met; . . .

Now, therefore, IT IS HEREBY ORDERED:

1. The Court designates as the North Kenwood-Oakland Revitalizing Area ("Revitalizing Area") that portion of the City of Chicago that lies between Oakwood Boulevard on the north, the Illinois Central Railroad right-of-way on the east, 47th Street on the south, and Cottage Grove Avenue on the west; .

2. The Receiver, previously appointed by the Court to develop scattered site public housing on behalf of the defendant, Chicago Housing Authority, shall be free to develop, through new construction or rehabilitation of existing buildings, up to 241 units of public housing within the Revitalizing Area, subject to the following conditions:

- a) No more than 100 units of public housing shall be developed on CHA-owned land that is the site of CHA's Lakefront high-rise buildings (the area bounded by 40th Street on the north, the Illinois Central Railroad right-of-way on the east, 42nd Place on the south, and Lake Park Avenue on the west).

- b) No more than approximately 50 units of public housing shall be developed on the site of the demolished Washington Park buildings (the CHA-owned property bounded by 41st Street on the north, Drexel Avenue on the east, Cottage Grove Avenue on the west, and Bowen Avenue on the south) and adjacent property.
- c) The balance of such units of public housing within the Revitalizing Area, in addition to those referred to in subparagraphs (a) and (b) above, shall be developed on other sites distributed throughout the Revitalizing Area.
- d) One-half of the public housing units developed pursuant to subparagraphs (a) and (b) above shall be occupied by families whose incomes are in the range of 50-80% of the median income in the Chicago Metropolitan Area, and such units shall be geographically distributed approximately evenly among the units developed pursuant to subparagraphs (a) and (b).

3. The CHA Tenant Selection and Assignment Plan previously approved by this Court shall be modified to afford eligible displaced Lakefront tenant families, as defined in the "Revised Agreement Regarding Former Residents of the Lakefront Properties and the Future Use of Those Properties," dated September 22, 1995, between CHA and the Lakefront Community Organization, first

priority to all public housing units developed pursuant to subparagraphs 2(a), (b) and (c) of this Order, subject only to the provisions of subparagraph 2(d) of this Order.

ENTER:

Walter E. Cooper

Judge

Date: *June 3*
~~May 3~~, 1996

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

RECEIVED

MAR 12 1999

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

DOROTHY GAUTREAUX, *et al.*

Plaintiffs,

v.

CHICAGO HOUSING AUTHORITY and
JOSEPH SHULDINER, Executive Director,

Defendants.

66 C 1459

Hon. Marvin E. Aspen

NOTICE OF FILING

TO: Counsel on attached service list

Please take notice that on March, 12 1999, the attached **Lakefront Community Organization's Reply In Support Of Its Second Motion To Intervene** was filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, a copy of which is herewith served upon you.



One of the Attorneys for the Lakefront
Community Organization

Richard M. Wheelock
Diana White
Lawrence Wood
Charles Petrof
Legal Assistance Foundation of Chicago
111 W. Jackson, 3rd floor
Chicago, IL 60604
312/341-1070

Certificate of Service

I, Charles R. Petrof, certify that I caused to be served a copy of **Lakefront Community Organization's Reply In Support Of Its Second 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 March 12, 1999.

Charles R. Petrof

Service List

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Michael L. Shakman
Barry A. Miller
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Schlifke
208 S. LaSalle St., Suite 1100
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREAUX, *et al.*,

Plaintiffs,

v.

CHICAGO HOUSING AUTHORITY and
JOSEPH SHULDINER, Executive Director,

Defendants.

66 C 1459

Hon. Marvin E. Aspen

RECEIVED
MAR 12 1999
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

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

INTRODUCTION

On February 23, 1999, the Lakefront Community Organization ("LCO") filed its second motion to intervene, requesting a scheduling order for the completion of the 441 units of replacement public housing provided for in the 1995 Revised Agreement. Plaintiffs' counsel, the Chicago Housing Authority ("CHA"), and the Habitat Company ("Habitat" or "CHA's Receiver") have all agreed that this Court is the only proper forum for the LCO to seek such relief.

The CHA does not oppose the LCO's second motion to intervene. Habitat does not oppose giving the LCO "an opportunity to be heard," but questions the legal sufficiency of the LCO's complaint and opposes the particular relief sought by the LCO. Plaintiffs' counsel apparently does not oppose the LCO's intervention, but would require the LCO to show that

there are eligible displaced Lakefront tenant families who have not been offered the replacement housing promised in the Revised Agreement.

No one disputes that the LCO satisfies the requirements of Rule 24(a)(2) to intervene as a matter of right. All parties agree that (1) timely application for intervention was made; (2) the LCO has an interest relating to the subject matter of the action; (3) that interest could be potentially impaired by disposition of the action; and (4) without intervention, no adequate representation exists for the LCO.¹ Because the LCO's motion satisfies the criteria of Rule 24(a)(2), the intervention should be granted without the additional strictures that plaintiff's counsel and Habitat would impose.

I. THE LCO HAS STANDING TO SUE FOR BREACH OF CONTRACT.

As one of parties that negotiated and signed the 1995 Revised Agreement, the LCO plainly has standing to sue for breach of that Agreement. Home Savings Assn. of Kansas City v. State Bank of Woodstock, 763 F. Supp. 292, 300 (N.D. Ill. 1991). All parties agree that any suit on the Revised Agreement must be brought in this Court, because of the Agreement's relationship to the CHA's obligations under Gautreaux. And no one seriously contends that either of the existing parties (the class plaintiffs and the CHA) or Habitat as CHA's Receiver can adequately represent the LCO's interests.

Plaintiffs' counsel argues, however, that the LCO should not be allowed to "present its concerns about the Receiver's performance" unless it can show that there are more

¹ Habitat does not dispute that inadequate representation exists for the LCO if the Revised Agreement is enforceable. Habitat's argument on this point is based solely on the contention that the Revised Agreement is unenforceable. See Receiver's Statement Concerning the Lakefront Community Organization's Second Motion to Intervene (Rec. Statement) at 13.

eligible displaced Lakefront tenant families than there are completed replacement units. Plaintiff's Response to Second Motion of the Lakefront Community Organization to Intervene (Pl. Resp.) at 2. That argument ignores the substance of the LCO's complaint, which is not merely that the LCO has "concerns" about Habitat's performance, but that the Revised Agreement has been breached. It further ignores that the Revised Agreement does not call for the construction of only enough replacement housing to meet the needs of eligible displaced Lakefront tenant families, but instead requires construction sufficient "for the provision of replacement housing units for each public housing unit to be demolished." Revised Agreement ¶ 2, attached as Exhibit B to LCO's Complaint. To satisfy this requirement, the Revised Agreement requires the construction of 441 hard public housing units (¶¶ 4, 5 and 6) and the distribution of 302 Section 8 Certificates (¶ 7).

There is thus no legal or factual basis for the additional hurdles plaintiffs' counsel would erect before the LCO can be heard.

II. THE LCO'S COMPLAINT STATES A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

We do not take issue with Habitat's contention that, on a motion to intervene, the proposed intervenor's complaint should be judged by the same standards that apply to a motion to dismiss under Rule 12(b)(6). Rec. Statement at 2. Under those standards, the Court must accept the well-pleaded allegations of the complaint as true, and must view them in the light most favorable to the LCO. Yeksigian v. Nappi, 900 F.2d 101, 102 (7th Cir. 1990). All reasonable inferences that follow from the allegations of the complaint must also be taken as true. Corcoran v. Chicago Park District, 875 F.2d 609, 611 (7th Cir. 1989). Moreover, the Court should consider only the complaint, not a defendant's challenges to or refutations of the complaint, or

defendant's own set of allegations. Gomez v. Illinois State Bd. of Educ., 811 F.2d 1030, 1039 (7th Cir. 1987). To prevail on Rule 12(b)(6) grounds, a defendant must show beyond doubt that the plaintiff can prove no set of facts in support of its claims that would entitle it to relief. Hishon v. King & Spaulding, 467 U.S. 69, 73 (1984); Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Accordingly, defendants must overcome "a high barrier" to prevail. Gomez, 811 F.2d. at 1040.

A. The Revised Agreement Is Enforceable.

Habitat argues that the Revised Agreement "suffer[s] from the same problem that the Court found with the proposed Cabrini-Green consent decree last August: CHA had no authority to make the promises it made to the tenants, including promises that the Receiver would develop units on any particular time schedule." Rec. Statement at 5-6. In fact, there is no comparison between the proposed Cabrini-Green consent decree, which was arrived at in litigation in which Habitat had no involvement, and the Revised Agreement, which all the Gautreaux parties – and Habitat – have until now endorsed.

The Revised Agreement was signed by the CHA and the LCO in September 1995. Intervenor Lakefront Community Organization's Complaint ("Complaint") at ¶ 18 and Revised Agreement attached as Exhibit B to LCO's Complaint. The Revised Agreement provided that the four Lakefront high-rises that had been vacated 10 years earlier for rehabbing would instead be demolished (Revised Agreement ¶¶ 1, 3) and 441 units of replacement public housing built: 141 units in North Kenwood-Oakland (¶6), 200 scattered-site units outside North Kenwood-Oakland (¶5), and 80-100 units and a community center on the site of the Lakefront high-rises after they were demolished (¶4). The Revised Agreement was clearly entered into with the Gautreaux litigation in mind. All the construction was to be done by CHA through the "Gautreaux-

appointed Receiver" (i.e., Habitat); and the 141 North Kenwood units were "already funded pursuant to the Gautreaux Consent Decree" (§§ 4, 5, and 6). Moreover, this Court's approval was required for the construction of all but the 200 scattered-site units outside the North Kenwood-Oakland area and for the parties' proposed tenant selection and assignment plan (§3).

Less than a year after the Revised Agreement was signed, Alexander Polikoff (counsel for the Gautreaux plaintiff class) and Daniel Levin (chairman of Habitat) sent a letter to William Wilen, then employed by the Legal Assistance Foundation of Chicago and acting as the attorney for the LCO, stating that, if the former Lakefront tenants became dissatisfied with the pace of development of the North Kenwood-Oakland replacement housing, both plaintiffs' counsel and Habitat would support a request by the tenants for a hearing in front of this Court. Complaint at ¶20 and Complaint Exhibit C.

Ten days later, plaintiffs' counsel, the CHA, and the U.S. Department of Housing and Urban Development filed a joint motion requesting that this Court authorize the construction of the 241 units slated for North Kenwood-Oakland and the site of the four Lakefront high-rises under the "Revitalizing Area" criteria of the Gautreaux consent decree. Complaint Exhibit D. The joint motion described the terms of the Revised Agreement and attached a complete copy as an exhibit. Id. at ¶¶6-9. The joint motion also recited that "[m]ovants are authorized to represent to the Court that the Receiver supports this motion." Id. at ¶12. In its order granting the joint motion, this Court made specific note of the fact that Habitat and Mr. Levin had "represented to the Court that they had examined the proposal respecting the appropriate number of public housing units to be provided therein and the conditions to be made applicable thereto, and that they support the Joint Motion." Complaint Exhibit E.

Taken together, these facts show that Habitat knew of and endorsed the Revised Agreement, which expressly provided for Habitat's role. Neither its letter to the LCO nor the joint motion contain any hint that Habitat viewed the Revised Agreement as an unenforceable, ultra vires agreement by CHA. Habitat's attempt to compare the Revised Agreement to the proposed consent decree in Cabrini-Green is revisionist history, and should be rejected.

B. CHA Breached the Revised Agreement

In its Statement, Habitat argues that the CHA (or Habitat as CHA's Receiver) has not breached the Revised Agreement. Habitat offers various theories in support of its claim of non-breach, including that:

- Habitat was not obliged to do anything but "commence" construction of any of the 341 off-site units, which it has done by building 73 units, with 24 more slated for completion by February 2000. Rec. Statement at 8; Reid Affid. ¶¶4-6.
- Habitat was not obliged to do anything at all, because the conditions set forth in Paragraph 3 were never satisfied (except for obtaining the waiver from this Court). Rec. Statement at 8.
- Even if the conditions of Paragraph 3 were satisfied, Habitat would have at least 20 months from that date, and maybe longer, to complete the construction of the off-site units. Rec. Statement at 9.
- The LCO cannot sue to enforce the Revised Agreement until it gives CHA 60 days' notice under Paragraph 15. Rec. Statement at 9.

All of Habitat's "non-breach" arguments rest on misreadings of the Revised Agreement and misconceptions about the LCO's complaint.

1. The breach at issue is the premature demolition of the Lakefront high-rises, not the failure to adhere to Paragraph 15's timetable for off-site, pre-demolition construction.

Habitat assumes that the breach the LCO complains of is the failure to build 441 units within 10 months of the demolition of the Lakefront high-rises, and spends several pages demonstrating that the Revised Agreement imposes no such obligation. Rec. Statement at 7-9. To the contrary, the LCO complains that the breach is demolishing the Lakefront high-rises without satisfying the conditions of Paragraph 3 or building the off-site units on the schedule described in Paragraph 15, which is what the last sentence of Paragraph 3 requires.²

The LCO's interpretation is borne out by the interlocking obligations and timetables set out in the Revised Agreement. First, Paragraph 3 requires the CHA to complete three undertakings: (1) secure funding for the unfunded replacement housing;³ (2) obtain site control for the units to be located in North Kenwood-Oakland; and (3) secure the appropriate waivers from this Court.

Paragraph 15 then sets out the timetable for completing the construction or rehabilitation of the off-site replacement units once those three conditions are fulfilled. The work must begin within 10 months after the CHA obtains the necessary funding, site control, and waiver described in Paragraph 3, and must be completed within a "a reasonable time, as that term is defined by current construction industry standards" If the work is not completed 10

² That sentence reads, "If the conditions set forth in this paragraph 3 and in paragraph 15 below are satisfied, CHA shall demolish the four remaining Lakefront properties."

³ Subparagraph 3(a) requires funding for the construction of the 80-100 units to be built on the site of the Lakefront high-rises and for the 200 units to be built outside North Kenwood-Oakland. Funding for the 141 units to be built in North Kenwood-Oakland was already provided for under the Gautreaux consent decree. (Revised Agreement ¶ 6.)

months after it begins, the LCO may give CHA 60 days' notice and sue.

Finally, Paragraph 3 provides that "[i]f the conditions set forth in this paragraph 3 and in paragraph 15 below are satisfied, CHA shall demolish the four remaining Lakefront properties." In other words, demolition is not to occur until the requisite funding, site control, and waiver have been secured, and the off-site construction called for in Paragraph 15 is completed. That sequence makes sense, because the CHA was clearly interested in demolishing the vacant high-rises, and would be motivated to work with the Receiver to fulfill the conditions and construct the off-site replacement housing promptly so that demolition could proceed.⁴

When CHA demolished the Lakefront high-rises in December 1998, without fulfilling the conditions of Paragraph 3 (apart from obtaining the waiver) and without building all of the off-site units as provided for in Paragraphs 3 and 15, it breached the Revised Agreement. Moreover, CHA's breach cannot be remedied by invoking either of the Revised Agreement's interim, pre-demolition enforcement provisions. Paragraph 14, which gives the LCO the option of nullifying the Revised Agreement and reinstating its 1986 predecessor if the pre-conditions of Paragraph 3 are not satisfied, is a dead letter: the 1986 agreement contemplated that all of the lakefront buildings would be rehabilitated -- and there is no possibility of rehabilitating buildings that no longer exist. Paragraph 15, which would have allowed the LCO to sue CHA (on 60 days'

⁴ The lack of any deadline for constructing the 80-100 units on the site of the high-rises also makes sense. Once the buildings were demolished (which could not happen until the 341 off-site units were built), the CHA would have every incentive to build on the demolition site, rather than having vacant, rubble-strewn land in the midst of a Revitalizing Area.

notice) for failing to meet the off-site construction schedule, never kicked in because the triggering event -- the satisfaction of the conditions of Paragraph 3 -- did not happen.⁵

2. **As a result of CHA's breach, there is no longer any contractual remedy for the failure to build any of the off-site replacement housing, nor any incentive to build the 80-100 on-site units in a timely fashion.**

This explanation of how the provisions of the Revised Agreement interrelate shows that the premature demolition of the Lakefront high-rises (i.e. demolition before Paragraph 3's conditions were satisfied and the 341 off-site public housing units were built) violates the Agreement. Habitat is mistaken in arguing that the sole remedy even theoretically available for that complete breach is notice and a suit to enforce the off-site construction timetable set out in Paragraph 15.

Moreover, because CHA went ahead with the demolition without satisfying any of its pre-demolition obligations, the basic incentive to build the on-site units has also been destroyed. Under the Revised Agreement as written, CHA and/or Habitat would have had the necessary funding secured, and the necessary sites under its control; the North Kenwood-Oakland and scattered site units would have been built; and CHA would have had no reason to delay completion of the redevelopment effort -- building 100 units and a community center back on the high-rise site to erase the last reminder of the blight caused by the vacant high-rises.

Now there is no timetable for any of the construction called for under the Revised Agreement. All we know for sure is that 35 units of the original 141 have been built in North

⁵ The parties disagree about whether CHA and/or Habitat have actually obtained site control for all 141 of the North Kenwood-Oakland units. But there is no disagreement that at least 124 of the other 200 off-site units are entirely unfunded. Rec. Statement at 11; Reid Affid. ¶ 8.

Kenwood-Oakland (Reid Affid. at ¶ 4) and that 38 scattered-site units have been built elsewhere in the City (*id.* at ¶ 6). Habitat hopes that 24 additional units in North Kenwood-Oakland will be ready in early 2000. *Id.* at ¶ 5. The remaining 344 units are variously “in the planning stage,” in the site-acquisition process, ten months away from having RFP’s out to developers, or wholly unfunded. *Id.* at ¶¶ 4, 6. Habitat insists that the 10-month deadline suggested in the LCO’s complaint is unrealistic – and that may be true. But it does not follow that no deadline should be imposed for any of the obligations CHA and Habitat undertook in the Revised Agreement and have failed to fulfill.

3. Injunctive relief is the appropriate remedy for the breach.

The remedy for the breach identified in the LCO’s complaint is not money damages (which are incalculable), nor specific performance of any particular contract term (because no term governs the situation where demolition has occurred with virtually all of the conditions for undertaking it unsatisfied). Rather the LCO seeks an enforceable commitment from CHA (or Habitat as CHA’s Receiver) to build all the replacement units called for under the Revised Agreement within some definite period of time.

Nor is it impossible to determine what the timetable should look like. The Revised Agreement contemplated that the funding, site-control, and waiver criteria could be satisfied by January 1, 1996, a little more than three months after the Agreement was signed. Ex. B, ¶ 14. Habitat says the process was delayed by strong opposition in the North Kenwood-Oakland community, but that it has now developed “support and approval” from the North Kenwood-Oakland Conservation Community Council, the Fourth Ward Alderman, and the City Council. Rec. Statement at 12. So the original timetable could be reinstated. Moreover, the parties

thought that, once funding, site-control, and the waiver were secured, construction of the off-site units could begin in 10 months and be completed in another 10 months thereafter. Revised Agreement ¶ 15. Some of that work has already occurred. Finally, the only impediment to building the on-site units and community center was that the demolition was not scheduled to occur until the off-site units had been built. Now that demolition has occurred, the land for the final phase of construction is also available, and it too should be addressed.

The LCO does not mean to prejudge the merits of the case, but only to suggest that some deadline, to which CHA and Habitat would adhere in the absence of extraordinary circumstances, is both appropriate and feasible. Otherwise the commitment to build replacement housing under the Revised Agreement -- which CHA made, Habitat endorsed, and all the Gautreaux parties presented to this Court when they sought the waiver for those units that required it -- will not be worth the paper it was written on.

III. HABITAT'S OBJECTIONS TO THE RELIEF SOUGHT ARE NOT RELEVANT TO LCO'S RIGHT TO INTERVENE.

In its Statement, Habitat argues that the relief the LCO requested in its complaint is "impossible and unwise." Rec. Statement at 9.⁶ These are largely merits issues, not issues relating to the LCO's motion to intervene. Habitat admits as much. Rec. Statement at 10, n.10.

⁶ Habitat uses the word "impossible" in a loose sense. It does not, and could not, assert that performance of the Revised Agreement has become legally impossible. Felbinger and Co. v. Traiforos, 76 Ill. App. 3d 725, 733-34, 394 N.E.2d 1283, 1289-90 (1st Dist. 1979). In fact, elsewhere in its Statement, Habitat maintains that it is performing and intends to complete the development called for in the Revised Agreement under its own, unspecified timetable. Rec. Statement at 2.

The only points that need to be made at this stage are the following. First, the 10-month deadline in LCO's complaint is merely a suggestion, based on the terms the parties themselves used in the Revised Agreement and on Habitat's representation that it has finally managed to quell community opposition. The 10-month timetable is no more unalterable as a demand than a plea for damages "in excess of" some substantial dollar amount would be. Second, the LCO does not hold Habitat directly responsible for the breach -- indeed it did not name Habitat as a defendant in its Complaint. The LCO's Complaint is directed at CHA, which went ahead with demolition in violation of the Revised Agreement. Habitat is implicated only because some of CHA obligations under the Revised Agreement (including the construction of the new non-elderly public housing units) have been assigned to Habitat as CHA's Receiver. We recognize, for example, that it is CHA's responsibility, not Habitat's, to seek governmental funding for public housing and, if such funding is not forthcoming, to find alternative ways to finance the construction. Finally, the LCO has been diligent in searching for non-judicial ways to resolve these issues -- first by negotiating the 1986 agreement, then by negotiating the 1995 Revised Agreement, and finally by engaging in meetings and discussions with CHA and Habitat that have, unfortunately, not proved fruitful.

Thirteen years after the Lakefront high-rises were vacated, the LCO is no closer to having what it bargained for than it was at the outset. The LCO therefore seeks the Court's assistance in setting a definite, enforceable deadline for the construction of all 441 units of replacement housing called for under the Revised Agreement.

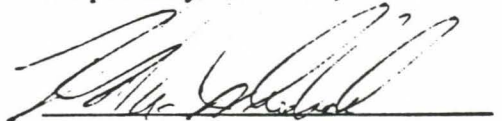
CONCLUSION

This Court should grant LCO's motion to intervene because CHA's commitment to build 441 replacement units of public housing relates to the CHA's desegregation obligations under Gautreaux, and no one but the LCO is prepared to enforce that commitment. The CHA does not oppose the motion. Plaintiff's counsel appears not to oppose the motion either, although it would require the LCO to produce families to fill the as-yet unbuilt replacement units. There is no factual or legal basis for that additional requirement.

Finally, Habitat acknowledges that the LCO should be given the opportunity to be heard, but attacks the sufficiency of the LCO's complaint and the wisdom of providing relief. But the Complaint states a viable claim under Rule 12(b)(6), and the scope of relief is a merits – not an intervention – issue.

The LCO should be permitted to intervene to present its claim for breach of the Revised Agreement to this Court.

Respectfully submitted,


One of the Attorneys for Intervenor

Richard M. Wheelock
Diana White
Larry Wood
Charles R. Petrof
Legal Assistance Foundation
of Chicago
111 West Jackson - 3rd Floor
Chicago, IL 60604
(312) 341-1070

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Marvin Aspen	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	66 C 1459	DATE	4/7/1999
CASE TITLE	Gautreaux` vs. CHA		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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DOCKET ENTRY:

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- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Second motion of the Lakefront Community Organization to intervene (0-1) is denied.
- (11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

☐	No notices required, advised in open court.		24 number of notices	Document Number
☐	No notices required.		APR 08 1999	
☒	Notices mailed by judge's staff.		date docketed	
☐	Notified counsel by telephone.		docketing deputy initials	
☐	Docketing to mail notices.		4/7/1999	
☐	Mail AO 450 form.		date mailed notice	
☐	Copy to judge/magistrate judge.		GL	
GL		courtroom deputy's initials	72:2 W 1-84866	
		Date/time received in central Clerk's Office	mailing deputy initials	

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

99 APR 29 PM 4:54

DOROTHY GAUTREAUX, et al.,

Plaintiffs,

v.

CHICAGO HOUSING AUTHORITY, et al.,

Defendants.

) CLERK
) U.S. DISTRICT COURT
)
)
)

66 C 1459

Chief Judge Marvin Aspen
)
)
)

NOTICE OF MOTION

TO: Jerome M. Butler	Alex Polikoff	Michael L. Shakman
CHA	BPI	Miller & Shakman
Office of General Counsel	17 E. Monroe, #212	208 S. LaSalle, Suite 1100
200 W. Adams, Suite 2100	Chicago, IL. 60603	Chicago, IL. 60604
Chicago, IL. 60606		

On May 4, 1999, at 9:30 a.m., or as soon thereafter as counsel may be heard, I shall appear before the **Honorable Marvin Aspen in Room 2548 of the Dirksen Building**, 219 South Dearborn Street, Chicago, Illinois, and present the attached **Motion for Clarification**.


One of the Movant's Attorneys

CERTIFICATE OF SERVICE

I, Lawrence D. Wood, an attorney, certify that I hand-delivered a copy of the attached Motion for Clarification to each of the attorneys listed above before the close of business on **April 29, 1999**.


One of the Movant's Attorneys

Diana White/Richard Wheelock/Lawrence Wood/Charles Petrof
Legal Assistance Foundation of Chicago
111 West Jackson Boulevard, 3rd floor
Chicago, Illinois 60604
Tel: 312/341-1070 Fax: 312/341-1041

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	66 C 1459
	)	
CHICAGO HOUSING AUTHORITY, et al.,	)	Chief Judge Marvin Aspen
	)	
Defendants.	)	

LAKEFRONT COMMUNITY ORGANIZATION'S MOTION FOR CLARIFICATION

Now comes the Lakefront Community Organization (hereinafter "LCO"), through its attorneys, the Legal Assistance Foundation of Chicago, and, pursuant to Fed. R. Civ. Proc. 59(e) or 60(b), moves this Court to set forth its reasons for denying LCO's second motion to intervene.

1. On April 7, 1999, this Court issued an order denying LCO's second motion to intervene. Exhibit A.

2. The order does not set forth any reasons for denying the motion.

3. The order was issued on April 7 and docketed on April 9, 1999. Exhibit A.

Although the form reflects that a deputy mailed copies of the order on April 7, 1999, none of LCO's lawyers received a copy. We first learned of the existence of the order on April 28, 1999, and obtained a copy of the order from chambers later that same day. See Lawrence Wood's affidavit, a copy of which is attached as Exhibit B.

This Court's Order Does Not Comply with Circuit Rule 50.

4. Circuit Rule 50 of the United States Court of Appeals for the Seventh Circuit provides, in pertinent part, that "[w]henver a district court resolves any claim or counterclaim on

the merits, terminates the litigation in its court, . . . or enters an interlocutory order that may be appealed to the court of appeals, the judge *shall* give his or her reasons, either orally on the record or by written statement” (emphasis added).

5. Rule 50 serves three important functions: “to create the mental discipline that an obligation to state reasons produces, to assure the parties that the court has considered the important arguments, and to enable a reviewing court to know the reasons for the judgment.” *Western States Insurance Co. v. Wisconsin Wholesale Tire*, 148 F.3d 756, 758 (7th Cir. 1998) (because district judge’s order granting summary judgment violated Rule 50, the reviewing court had to remand the with directions to comply with the rule), *citing, DiLeo v. Ernst & Young*, 901 F.2d 624, 626 (7th Cir.), *cert. denied*, 498 U.S. 941, 111 S.Ct. 347, 112 L.Ed.2d 312 (1990).

6. This Court’s order denying LCO’s second motion to intervene does not explain why the motion was denied (Exhibit A), and therefore violates Circuit Rule 50. Clarifying the basis for the decision will save the parties, this Court, and the Court of Appeals an unnecessary appeal and remand.

LCO Has Filed Its Motion In a Timely Manner.

7. Rule 59(e) motions must be filed no later than ten days after entry of the order. Fed. R. Civ. Proc. 59(e).

8. The order denying LCO’s motion was docketed on April 9, so the deadline for filing this motion for clarification expired on April 26, 1999. *See* Fed. R. Civ. Proc. 6(a) and (e).

9. LCO did not learn about or receive a copy of the order, however, until April 28, 1999. Exhibit B.

10. The day after receiving the order, LCO filed this motion.

11. Under these circumstances, LCO's motion must be considered a timely Rule 59(e) motion.

12. Alternatively, LCO's motion should be treated as a Rule 60(b) motion.

WHEREFORE, LCO respectfully requests that this Honorable Court clarify its order by setting forth its reasons for denying LCO's second motion to intervene. LCO also respectfully requests that this Honorable Court grant such other relief as may be proper and just.



One of the Movant's Attorneys

Diana White/Richard Wheelock/Lawrence Wood/Charles Petrof
Legal Assistance Foundation of Chicago
111 West Jackson Boulevard, 3rd floor
Chicago, Illinois 60604
Tel: 312/341-1070 Fax: 312/341-1041

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Marvin Aspen	Sitting Judge If Other than Assigned Judge	
CASE NUMBER	66 C 1459	DATE	4/7/1999
CASE TITLE	Gautreaux vs. CHA		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

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☐ No notices required, advised in open court.		24 number of notices APR 08 1999 date docketed docketing deputy initials 4/7/1999 date mailed notice GL mailing deputy initials	Document Number
☐ No notices required.			
☒ Notices mailed by judge's staff.			
☐ Notified counsel by telephone.			
☐ Docketing to mail notices.			
☐ Mail AO 450 form.			
☐ Copy to judge/magistrate judge.	7:22 PM 4-8-99 66-1459-7 Date/time received in central Clerk's Office		
GL		courtroom deputy's initials	

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS.

AFFIDAVIT OF LAWRENCE WOOD

I, LAWRENCE WOOD, being duly sworn, on oath depose and state that I have first-hand knowledge of the following facts and could competently swear thereto in a court of law:

1. I am an attorney in the Legal Assistance Foundation of Chicago's Housing Law Project, and was admitted and qualified as an attorney of the District Court of the Northern District of Illinois on December 9, 1991.
2. I am one of four attorneys representing LCO in its effort to intervene in the matter entitled *Gautreaux v. CHA*, 66 C 1459.
3. I helped draft both of LCO's motions to intervene.
4. My colleagues and I never received notice from the court of Judge Aspen's April 7th order denying LCO's second motion to intervene.
5. We first learned that such an order had been entered on April 28, 1999, when an LCO member called to tell us that she had heard about the order from CHA's general counsel.
6. Upon receiving this call from our client, we immediately called Judge Aspen's clerk, who told us we could come to the judge's chambers to get a copy of the order at 4:00 p.m.
7. I went to Judge Aspen's chambers at 4:00 p.m. on April 28, 1999, and obtained a copy of the order dated April 7, 1999.

FURTHER AFFIANT SAYETH NOT


LAWRENCE D. WOOD

Subscribed and sworn to before me

this 29th day of April, 1999


NOTARY PUBLIC

EXHIBIT B



United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Marvin Aspen	Sitting Judge If Other than Assigned Judge	
CASE NUMBER	66 C 1459	DATE	5/6/1999
CASE TITLE	Gautreaux vs. CHA		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

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(7)	☐	Trial[set for/re-set for] on _____ at _____.
(8)	☐	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	☐	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] ☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
(10)	☒	[Other docket entry] Lakefront Community Organization's motion for clarification is granted.
(11)	☒	[For further detail see order on the reverse side of the original minute order.]

No notices required, advised in open court. No notices required. ✓ Notices mailed by judge's staff. Notified counsel by telephone. Docketing to mail notices. Mail AO 450 form. Copy to judge/magistrate judge.	GL courtroom deputy's initials	Date/time received in central Clerk's Office	number of notices date docketed docketing deputy initials 5/6/1999 date mailed notice GL mailing deputy initials	Document Number
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ORDER

Lakefront Community Organization (LCO) has asked that we explain our earlier ruling denying its Second Motion to Intervene, as our first minute order stated only that the motion "is denied." This order sets forth the requested clarification.

We denied LCO's motion to intervene because to grant it would have been futile. LCO's Intervenor Complaint asks that we order the CHA and the *Gautreaux* Receiver to secure funding from HUD, obtain control of land, and build housing, all within 10 months and all pursuant to the terms of a 1995 contract between LCO and CHA. The problem is that the requested relief must come from the Receiver, and the Receiver was not a signatory to the deal. Or, to put it differently, because of the Receivership Order the CHA did not have the authority to enter into a contract concerning the development of non-elderly public housing — the Receiver's domain — and it did not have the authority to contract on the Receiver's behalf. (This principle is set out in greater detail in an order dated August 12, 1998.) Those parts of the contract concerning the development of non-elderly public housing are unenforceable, so to allow LCO to intervene to attempt to enforce them would have been a waste of time.

The motion for clarification is granted. It is so ordered.

A handwritten signature in black ink, appearing to be 'M R' followed by a long horizontal stroke.

Certificate of Service

I, Charles R. Petrof, certify that I caused to be served a copy of **Lakefront Community Organization's Reply In Support Of Its Second 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 March 12, 1999.



Service List

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Chicago Housing Authority
Office of General Counsel
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MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

Aspen

Defendants.

Hon. Marvin E. Aspen

1

there are eligible displaced Lakefront tenant families who have not been offered the replacement housing promised in the Revised Agreement.

No one disputes that the LCO satisfies the requirements of Rule 24(a)(2) to intervene as a matter of right. All parties agree that (1) timely application for intervention was made; (2) the LCO has an interest relating to the subject matter of the action; (3) that interest could be potentially impaired by disposition of the action; and (4) without intervention, no adequate representation exists for the LCO.¹ Because the LCO's motion satisfies the criteria of Rule 24(a)(2), the intervention should be granted without the additional strictures that plaintiff's counsel and Habitat would impose.

I. THE LCO HAS STANDING TO SUE FOR BREACH OF CONTRACT.

As one of parties that negotiated and signed the 1995 Revised Agreement, the LCO plainly has standing to sue for breach of that Agreement. Home Savings Assn. of Kansas City v. State Bank of Woodstock, 763 F. Supp. 292, 300 (N.D. Ill. 1991). All parties agree that any suit on the Revised Agreement must be brought in this Court, because of the Agreement's relationship to the CHA's obligations under Gautreaux. And no one seriously contends that either of the existing parties (the class plaintiffs and the CHA) or Habitat as CHA's Receiver can adequately represent the LCO's interests.

Plaintiffs' counsel argues, however, that the LCO should not be allowed to "present its concerns about the Receiver's performance" unless it can show that there are more

¹ Habitat does not dispute that inadequate representation exists for the LCO if the Revised Agreement is enforceable. Habitat's argument on this point is based solely on the contention that the Revised Agreement is unenforceable. See Receiver's Statement Concerning the Lakefront Community Organization's Second Motion to Intervene (Rec. Statement) at 13.

eligible displaced Lakefront tenant families than there are completed replacement units. Plaintiff's Response to Second Motion of the Lakefront Community Organization to Intervene (Pl. Resp.) at

2. That argument ignores the substance of the LCO's complaint, which is not merely that the LCO has "concerns" about Habitat's performance, but that the Revised Agreement has been breached. It further ignores that the Revised Agreement does not call for the construction of only enough replacement housing to meet the needs of eligible displaced Lakefront tenant families, but instead requires construction sufficient "for the provision of replacement housing units for each public housing unit to be demolished." Revised Agreement ¶ 2, attached as Exhibit B to LCO's Complaint. To satisfy this requirement, the Revised Agreement requires the construction of 441 hard public housing units (¶¶ 4, 5 and 6) and the distribution of 302 Section 8 Certificates (¶ 7).

There is thus no legal or factual basis for the additional hurdles plaintiffs' counsel would erect before the LCO can be heard.

II. THE LCO'S COMPLAINT STATES A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

We do not take issue with Habitat's contention that, on a motion to intervene, the proposed intervenor's complaint should be judged by the same standards that apply to a motion to dismiss under Rule 12(b)(6). Rec. Statement at 2. Under those standards, the Court must accept the well-pleaded allegations of the complaint as true, and must view them in the light most favorable to the LCO. Yeksigian v. Nappi, 900 F.2d. 101, 102 (7th Cir. 1990). All reasonable inferences that follow from the allegations of the complaint must also be taken as true. Corcoran v. Chicago Park District, 875 F.2d 609, 611 (7th Cir. 1989). Moreover, the Court should consider only the complaint, not a defendant's challenges to or refutations of the complaint, or

defendant's own set of allegations. Gomez v. Illinois State Bd. of Educ., 811 F.2d 1030, 1039 (7th Cir. 1987). To prevail on Rule 12(b)(6) grounds, a defendant must show beyond doubt that the plaintiff can prove no set of facts in support of its claims that would entitle it to relief. Hishon v. King & Spaulding, 467 U.S. 69, 73 (1984); Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Accordingly, defendants must overcome "a high barrier" to prevail. Gomez, 811 F.2d. at 1040.

A. The Revised Agreement Is Enforceable.

Habitat argues that the Revised Agreement "suffer[s] from the same problem that the Court found with the proposed Cabrini-Green consent decree last August: CHA had no authority to make the promises it made to the tenants, including promises that the Receiver would develop units on any particular time schedule." Rec. Statement at 5-6. In fact, there is no comparison between the proposed Cabrini-Green consent decree, which was arrived at in litigation in which Habitat had no involvement, and the Revised Agreement, which all the Gautreaux parties – and Habitat – have until now endorsed.

The Revised Agreement was signed by the CHA and the LCO in September 1995. Intervenor Lakefront Community Organization's Complaint ("Complaint") at ¶ 18 and Revised Agreement attached as Exhibit B to LCO's Complaint. The Revised Agreement provided that the four Lakefront high-rises that had been vacated 10 years earlier for rehabbing would instead be demolished (Revised Agreement ¶¶ 1, 3) and 441 units of replacement public housing built: 141 units in North Kenwood-Oakland (¶6), 200 scattered-site units outside North Kenwood-Oakland (¶5), and 80-100 units and a community center on the site of the Lakefront high-rises after they were demolished (¶4). The Revised Agreement was clearly entered into with the Gautreaux litigation in mind. All the construction was to be done by CHA through the "Gautreaux-

appointed Receiver" (i.e., Habitat); and the 141 North Kenwood units were "already funded pursuant to the Gautreaux Consent Decree" (§§ 4, 5, and 6). Moreover, this Court's approval was required for the construction of all but the 200 scattered-site units outside the North Kenwood-Oakland area and for the parties' proposed tenant selection and assignment plan (§3).

Less than a year after the Revised Agreement was signed, Alexander Polikoff (counsel for the Gautreaux plaintiff class) and Daniel Levin (chairman of Habitat) sent a letter to William Wilen, then employed by the Legal Assistance Foundation of Chicago and acting as the attorney for the LCO, stating that, if the former Lakefront tenants became dissatisfied with the pace of development of the North Kenwood-Oakland replacement housing, both plaintiffs' counsel and Habitat would support a request by the tenants for a hearing in front of this Court. Complaint at ¶20 and Complaint Exhibit C.

Ten days later, plaintiffs' counsel, the CHA, and the U.S. Department of Housing and Urban Development filed a joint motion requesting that this Court authorize the construction of the 241 units slated for North Kenwood-Oakland and the site of the four Lakefront high-rises under the "Revitalizing Area" criteria of the Gautreaux consent decree. Complaint Exhibit D. The joint motion described the terms of the Revised Agreement and attached a complete copy as an exhibit. Id. at ¶¶6-9. The joint motion also recited that "[m]ovants are authorized to represent to the Court that the Receiver supports this motion." Id. at ¶12. In its order granting the joint motion, this Court made specific note of the fact that Habitat and Mr. Levin had "represented to the Court that they had examined the proposal respecting the appropriate number of public housing units to be provided therein and the conditions to be made applicable thereto, and that they support the Joint Motion." Complaint Exhibit E.

Taken together, these facts show that Habitat knew of and endorsed the Revised Agreement, which expressly provided for Habitat's role. Neither its letter to the LCO nor the joint motion contain any hint that Habitat viewed the Revised Agreement as an unenforceable, ultra vires agreement by CHA. Habitat's attempt to compare the Revised Agreement to the proposed consent decree in Cabrini-Green is revisionist history, and should be rejected.

B. CHA Breached the Revised Agreement

In its Statement, Habitat argues that the CHA (or Habitat as CHA's Receiver) has not breached the Revised Agreement. Habitat offers various theories in support of its claim of non-breach, including that:

- Habitat was not obliged to do anything but "commence" construction of any of the 341 off-site units, which it has done by building 73 units, with 24 more slated for completion by February 2000. Rec. Statement at 8; Reid Affid. ¶¶4-6.
- Habitat was not obliged to do anything at all, because the conditions set forth in Paragraph 3 were never satisfied (except for obtaining the waiver from this Court). Rec. Statement at 8.
- Even if the conditions of Paragraph 3 were satisfied, Habitat would have at least 20 months from that date, and maybe longer, to complete the construction of the off-site units. Rec. Statement at 9.
- The LCO cannot sue to enforce the Revised Agreement until it gives CHA 60 days' notice under Paragraph 15. Rec. Statement at 9.

All of Habitat's "non-breach" arguments rest on misreadings of the Revised Agreement and misconceptions about the LCO's complaint.

1. The breach at issue is the premature demolition of the Lakefront high-rises, not the failure to adhere to Paragraph 15's timetable for off-site, pre-demolition construction.

Habitat assumes that the breach the LCO complains of is the failure to build 441 units within 10 months of the demolition of the Lakefront high-rises, and spends several pages demonstrating that the Revised Agreement imposes no such obligation. Rec. Statement at 7-9. To the contrary, the LCO complains that the breach is demolishing the Lakefront high-rises without satisfying the conditions of Paragraph 3 or building the off-site units on the schedule described in Paragraph 15, which is what the last sentence of Paragraph 3 requires.²

The LCO's interpretation is borne out by the interlocking obligations and timetables set out in the Revised Agreement. First, Paragraph 3 requires the CHA to complete three undertakings: (1) secure funding for the unfunded replacement housing;³ (2) obtain site control for the units to be located in North Kenwood-Oakland; and (3) secure the appropriate waivers from this Court.

Paragraph 15 then sets out the timetable for completing the construction or rehabilitation of the off-site replacement units once those three conditions are fulfilled. The work must begin within 10 months after the CHA obtains the necessary funding, site control, and waiver described in Paragraph 3, and must be completed within a "a reasonable time, as that term is defined by current construction industry standards" If the work is not completed 10

² That sentence reads, "If the conditions set forth in this paragraph 3 and in paragraph 15 below are satisfied, CHA shall demolish the four remaining Lakefront properties."

³ Subparagraph 3(a) requires funding for the construction of the 80-100 units to be built on the site of the Lakefront high-rises and for the 200 units to be built outside North Kenwood-Oakland. Funding for the 141 units to be built in North Kenwood-Oakland was already provided for under the Gautreaux consent decree. (Revised Agreement ¶ 6.)

months after it begins, the LCO may give CHA 60 days' notice and sue.

Finally, Paragraph 3 provides that "[i]f the conditions set forth in this paragraph 3 and in paragraph 15 below are satisfied, CHA shall demolish the four remaining Lakefront properties." In other words, demolition is not to occur until the requisite funding, site control, and waiver have been secured, and the off-site construction called for in Paragraph 15 is completed. That sequence makes sense, because the CHA was clearly interested in demolishing the vacant high-rises, and would be motivated to work with the Receiver to fulfill the conditions and construct the off-site replacement housing promptly so that demolition could proceed.⁴

When CHA demolished the Lakefront high-rises in December 1998, without fulfilling the conditions of Paragraph 3 (apart from obtaining the waiver) and without building all of the off-site units as provided for in Paragraphs 3 and 15, it breached the Revised Agreement. Moreover, CHA's breach cannot be remedied by invoking either of the Revised Agreement's interim, pre-demolition enforcement provisions. Paragraph 14, which gives the LCO the option of nullifying the Revised Agreement and reinstating its 1986 predecessor if the pre-conditions of Paragraph 3 are not satisfied, is a dead letter: the 1986 agreement contemplated that all of the lakefront buildings would be rehabilitated -- and there is no possibility of rehabilitating buildings that no longer exist. Paragraph 15, which would have allowed the LCO to sue CHA (on 60 days'

⁴ The lack of any deadline for constructing the 80-100 units on the site of the high-rises also makes sense. Once the buildings were demolished (which could not happen until the 341 off-site units were built), the CHA would have every incentive to build on the demolition site, rather than having vacant, rubble-strewn land in the midst of a Revitalizing Area.

notice) for failing to meet the off-site construction schedule, never kicked in because the triggering event -- the satisfaction of the conditions of Paragraph 3 -- did not happen.⁵

2. **As a result of CHA's breach, there is no longer any contractual remedy for the failure to build any of the off-site replacement housing, nor any incentive to build the 80-100 on-site units in a timely fashion.**

This explanation of how the provisions of the Revised Agreement interrelate shows that the premature demolition of the Lakefront high-rises (i.e. demolition before Paragraph 3's conditions were satisfied and the 341 off-site public housing units were built) violates the Agreement. Habitat is mistaken in arguing that the sole remedy even theoretically available for that complete breach is notice and a suit to enforce the off-site construction timetable set out in Paragraph 15.

Moreover, because CHA went ahead with the demolition without satisfying any of its pre-demolition obligations, the basic incentive to build the on-site units has also been destroyed. Under the Revised Agreement as written, CHA and/or Habitat would have had the necessary funding secured, and the necessary sites under its control; the North Kenwood-Oakland and scattered site units would have been built; and CHA would have had no reason to delay completion of the redevelopment effort -- building 100 units and a community center back on the high-rise site to erase the last reminder of the blight caused by the vacant high-rises.

Now there is no timetable for any of the construction called for under the Revised Agreement. All we know for sure is that 35 units of the original 141 have been built in North

⁵ The parties disagree about whether CHA and/or Habitat have actually obtained site control for all 141 of the North Kenwood-Oakland units. But there is no disagreement that at least 124 of the other 200 off-site units are entirely unfunded. Rec. Statement at 11; Reid Affid. ¶ 8.

Kenwood-Oakland (Reid Affid. at ¶ 4) and that 38 scattered-site units have been built elsewhere in the City (id. at ¶ 6). Habitat hopes that 24 additional units in North Kenwood-Oakland will be ready in early 2000. Id. at ¶ 5. The remaining 344 units are variously "in the planning stage," in the site-acquisition process, ten months away from having RFP's out to developers, or wholly unfunded. Id. at ¶¶ 4, 6. Habitat insists that the 10-month deadline suggested in the LCO's complaint is unrealistic – and that may be true. But it does not follow that no deadline should be imposed for any of the obligations CHA and Habitat undertook in the Revised Agreement and have failed to fulfill.

3. Injunctive relief is the appropriate remedy for the breach.

The remedy for the breach identified in the LCO's complaint is not money damages (which are incalculable), nor specific performance of any particular contract term (because no term governs the situation where demolition has occurred with virtually all of the conditions for undertaking it unsatisfied). Rather the LCO seeks an enforceable commitment from CHA (or Habitat as CHA's Receiver) to build all the replacement units called for under the Revised Agreement within some definite period of time.

Nor is it impossible to determine what the timetable should look like. The Revised Agreement contemplated that the funding, site-control, and waiver criteria could be satisfied by January 1, 1996, a little more than three months after the Agreement was signed. Ex. B, ¶ 14. Habitat says the process was delayed by strong opposition in the North Kenwood-Oakland community, but that it has now developed "support and approval" from the North Kenwood-Oakland Conservation Community Council, the Fourth Ward Alderman, and the City Council. Rec. Statement at 12. So the original timetable could be reinstated. Moreover, the parties

thought that, once funding, site-control, and the waiver were secured, construction of the off-site units could begin in 10 months and be completed in another 10 months thereafter. Revised Agreement ¶ 15. Some of that work has already occurred. Finally, the only impediment to building the on-site units and community center was that the demolition was not scheduled to occur until the off-site units had been built. Now that demolition has occurred, the land for the final phase of construction is also available, and it too should be addressed.

The LCO does not mean to prejudge the merits of the case, but only to suggest that some deadline, to which CHA and Habitat would adhere in the absence of extraordinary circumstances, is both appropriate and feasible. Otherwise the commitment to build replacement housing under the Revised Agreement -- which CHA made, Habitat endorsed, and all the Gautreaux parties presented to this Court when they sought the waiver for those units that required it -- will not be worth the paper it was written on.

III. HABITAT'S OBJECTIONS TO THE RELIEF SOUGHT ARE NOT RELEVANT TO LCO'S RIGHT TO INTERVENE.

In its Statement, Habitat argues that the relief the LCO requested in its complaint is "impossible and unwise." Rec. Statement at 9.⁶ These are largely merits issues, not issues relating to the LCO's motion to intervene. Habitat admits as much. Rec. Statement at 10, n.10.

⁶ Habitat uses the word "impossible" in a loose sense. It does not, and could not, assert that performance of the Revised Agreement has become legally impossible. Felbinger and Co. v. Traiforos, 76 Ill. App. 3d 725, 733-34, 394 N.E.2d 1283, 1289-90 (1st Dist. 1979). In fact, elsewhere in its Statement, Habitat maintains that it is performing and intends to complete the development called for in the Revised Agreement under its own, unspecified timetable. Rec. Statement at 2.

The only points that need to be made at this stage are the following. First, the 10-month deadline in LCO's complaint is merely a suggestion, based on the terms the parties themselves used in the Revised Agreement and on Habitat's representation that it has finally managed to quell community opposition. The 10-month timetable is no more unalterable as a demand than a plea for damages "in excess of" some substantial dollar amount would be. Second, the LCO does not hold Habitat directly responsible for the breach -- indeed it did not name Habitat as a defendant in its Complaint. The LCO's Complaint is directed at CHA, which went ahead with demolition in violation of the Revised Agreement. Habitat is implicated only because some of CHA obligations under the Revised Agreement (including the construction of the new non-elderly public housing units) have been assigned to Habitat as CHA's Receiver. We recognize, for example, that it is CHA's responsibility, not Habitat's, to seek governmental funding for public housing and, if such funding is not forthcoming, to find alternative ways to finance the construction. Finally, the LCO has been diligent in searching for non-judicial ways to resolve these issues -- first by negotiating the 1986 agreement, then by negotiating the 1995 Revised Agreement, and finally by engaging in meetings and discussions with CHA and Habitat that have, unfortunately, not proved fruitful.

Thirteen years after the Lakefront high-rises were vacated, the LCO is no closer to having what it bargained for than it was at the outset. The LCO therefore seeks the Court's assistance in setting a definite, enforceable deadline for the construction of all 441 units of replacement housing called for under the Revised Agreement.

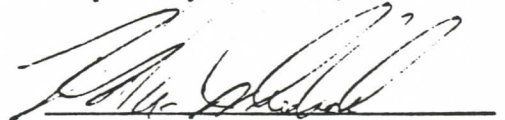
CONCLUSION

This Court should grant LCO's motion to intervene because CHA's commitment to build 441 replacement units of public housing relates to the CHA's desegregation obligations under Gautreaux, and no one but the LCO is prepared to enforce that commitment. The CHA does not oppose the motion. Plaintiff's counsel appears not to oppose the motion either, although it would require the LCO to produce families to fill the as-yet unbuilt replacement units. There is no factual or legal basis for that additional requirement.

Finally, Habitat acknowledges that the LCO should be given the opportunity to be heard, but attacks the sufficiency of the LCO's complaint and the wisdom of providing relief. But the Complaint states a viable claim under Rule 12(b)(6), and the scope of relief is a merits – not an intervention – issue.

The LCO should be permitted to intervene to present its claim for breach of the Revised Agreement to this Court.

Respectfully submitted,


One of the Attorneys for Intervenor

Richard M. Wheelock
Diana White
Larry Wood
Charles R. Petrof
Legal Assistance Foundation
of Chicago
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(312) 341-1070

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Marvin Aspen	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	66 C 1459	DATE	4/7/1999
CASE TITLE	Gautreaux` vs. CHA		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due _____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pre-trial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Second motion of the Lakefront Community Organization to intervene (0-1) is denied.
- (11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

No notices required, advised in open court.		24 number of notices	Document Number
No notices required.		APR 08 1999 date docketed	
☒ Notices mailed by judge's staff.		docting deputy initials	
Notified counsel by telephone.		4/7/1999 date mailed notice	
Docketing to mail notices.		GL	
Mail AO 450 form.		mailing deputy initials	
Copy to judge/magistrate judge.			
GL courtroom deputy's initials	99 APR -7 PM 2:27	Date/time received in central Clerk's Office	

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

99 APR 29 PM 4:54

DOROTHY GAUTREAUX, et al.,

Plaintiffs,

v.

CHICAGO HOUSING AUTHORITY, et al.,

Defendants.

) CLERK
) U.S. DISTRICT COURT
)
)
)

66 C 1459

Chief Judge Marvin Aspen
)
)
)

NOTICE OF MOTION

TO: Jerome M. Butler	Alex Polikoff	Michael L. Shakman
CHA	BPI	Miller & Shakman
Office of General Counsel	17 E. Monroe, #212	208 S. LaSalle, Suite 1100
200 W. Adams, Suite 2100	Chicago, IL. 60603	Chicago, IL. 60604
Chicago, IL. 60606		

On May 4, 1999, at 9:30 a.m., or as soon thereafter as counsel may be heard, I shall appear before the Honorable Marvin Aspen in Room 2548 of the Dirksen Building, 219 South Dearborn Street, Chicago, Illinois, and present the attached Motion for Clarification.


One of the Movant's Attorneys

CERTIFICATE OF SERVICE

I, Lawrence D. Wood, an attorney, certify that I hand-delivered a copy of the attached Motion for Clarification to each of the attorneys listed above before the close of business on April 29, 1999.


One of the Movant's Attorneys

Diana White/Richard Wheelock/Lawrence Wood/Charles Petrof
Legal Assistance Foundation of Chicago
111 West Jackson Boulevard, 3rd floor
Chicago, Illinois 60604
Tel: 312/341-1070 Fax: 312/341-1041

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	66 C 1459
	)	
CHICAGO HOUSING AUTHORITY, et al.,	)	Chief Judge Marvin Aspen
	)	
Defendants.	)	

LAKEFRONT COMMUNITY ORGANIZATION'S MOTION FOR CLARIFICATION

Now comes the Lakefront Community Organization (hereinafter "LCO"), through its attorneys, the Legal Assistance Foundation of Chicago, and, pursuant to Fed. R. Civ. Proc. 59(e) or 60(b), moves this Court to set forth its reasons for denying LCO's second motion to intervene.

1. On April 7, 1999, this Court issued an order denying LCO's second motion to intervene. Exhibit A.

2. The order does not set forth any reasons for denying the motion.

3. The order was issued on April 7 and docketed on April 9, 1999. Exhibit A.

Although the form reflects that a deputy mailed copies of the order on April 7, 1999, none of LCO's lawyers received a copy. We first learned of the existence of the order on April 28, 1999, and obtained a copy of the order from chambers later that same day. See Lawrence Wood's affidavit, a copy of which is attached as Exhibit B.

This Court's Order Does Not Comply with Circuit Rule 50.

4. Circuit Rule 50 of the United States Court of Appeals for the Seventh Circuit provides, in pertinent part, that "[w]henver a district court resolves any claim or counterclaim on

the merits, terminates the litigation in its court, . . . or enters an interlocutory order that may be appealed to the court of appeals, the judge *shall* give his or her reasons, either orally on the record or by written statement” (emphasis added).

5. Rule 50 serves three important functions: “to create the mental discipline that an obligation to state reasons produces, to assure the parties that the court has considered the important arguments, and to enable a reviewing court to know the reasons for the judgment.” *Western States Insurance Co. v. Wisconsin Wholesale Tire*, 148 F.3d 756, 758 (7th Cir. 1998) (because district judge’s order granting summary judgment violated Rule 50, the reviewing court had to remand the with directions to comply with the rule), *citing, DiLeo v. Ernst & Young*, 901 F.2d 624, 626 (7th Cir.), *cert. denied*, 498 U.S. 941, 111 S.Ct. 347, 112 L.Ed.2d 312 (1990).

6. This Court’s order denying LCO’s second motion to intervene does not explain why the motion was denied (Exhibit A), and therefore violates Circuit Rule 50. Clarifying the basis for the decision will save the parties, this Court, and the Court of Appeals an unnecessary appeal and remand.

LCO Has Filed Its Motion In a Timely Manner.

7. Rule 59(e) motions must be filed no later than ten days after entry of the order. Fed. R. Civ. Proc. 59(e).

8. The order denying LCO’s motion was docketed on April 9, so the deadline for filing this motion for clarification expired on April 26, 1999. *See* Fed. R. Civ. Proc. 6(a) and (e).

9. LCO did not learn about or receive a copy of the order, however, until April 28, 1999. Exhibit B.

10. The day after receiving the order, LCO filed this motion.

11. Under these circumstances, LCO's motion must be considered a timely Rule 59(e) motion.

12. Alternatively, LCO's motion should be treated as a Rule 60(b) motion.

WHEREFORE, LCO respectfully requests that this Honorable Court clarify its order by setting forth its reasons for denying LCO's second motion to intervene. LCO also respectfully requests that this Honorable Court grant such other relief as may be proper and just.



One of the Movant's Attorneys

Diana White/Richard Wheelock/Lawrence Wood/Charles Petrof
Legal Assistance Foundation of Chicago
111 West Jackson Boulevard, 3rd floor
Chicago, Illinois 60604
Tel: 312/341-1070 Fax: 312/341-1041

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Marvin Aspen	Sitting Judge If Other than Assigned Judge	
CASE NUMBER	66 C 1459	DATE	4/7/1999
CASE TITLE	Gautreaux vs. CHA		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
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- (3) ☐ Answer brief to motion due _____. Reply to answer brief due ____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Second motion of the Lakefront Community Organization to intervene (0-1) is denied.
- (11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

☐ No notices required, advised in open court.	72:2 PM 1-28465 APR 7 1999	24 number of notices	APR 08 1999 date docketed docketing deputy initials 4/7/1999 date mailed notice GL multimedia document initials	Document Number
☐ No notices required.				
☒ Notices mailed by judge's staff.				
☐ Notified counsel by telephone.				
☐ Docketing to mail notices.				
☐ Mail AO 450 form.				
☐ Copy to judge/magistrate judge.				
GL	courtroom deputy's initials	Date/time received in central Clerk's Office		

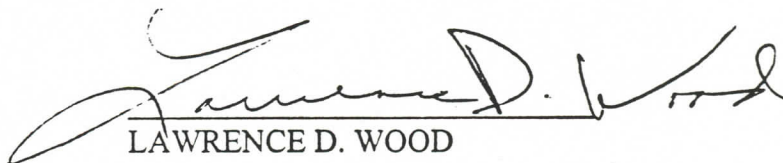
STATE OF ILLINOIS)
)
COUNTY OF COOK) SS.

AFFIDAVIT OF LAWRENCE WOOD

I, LAWRENCE WOOD, being duly sworn, on oath depose and state that I have first-hand knowledge of the following facts and could competently swear thereto in a court of law:

1. I am an attorney in the Legal Assistance Foundation of Chicago's Housing Law Project, and was admitted and qualified as an attorney of the District Court of the Northern District of Illinois on December 9, 1991.
2. I am one of four attorneys representing LCO in its effort to intervene in the matter entitled *Gautreaux v. CHA*, 66 C 1459.
3. I helped draft both of LCO's motions to intervene.
4. My colleagues and I never received notice from the court of Judge Aspen's April 7th order denying LCO's second motion to intervene.
5. We first learned that such an order had been entered on April 28, 1999, when an LCO member called to tell us that she had heard about the order from CHA's general counsel.
6. Upon receiving this call from our client, we immediately called Judge Aspen's clerk, who told us we could come to the judge's chambers to get a copy of the order at 4:00 p.m.
7. I went to Judge Aspen's chambers at 4:00 p.m. on April 28, 1999, and obtained a copy of the order dated April 7, 1999.

FURTHER AFFIANT SAYETH NOT


LAWRENCE D. WOOD

Subscribed and sworn to before me

this 29th day of April, 1999


NOTARY PUBLIC

EXHIBIT B



United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Marvin Aspen	Sitting Judge If Other than Assigned Judge	
CASE NUMBER	66 C 1459	DATE	5/6/1999
CASE TITLE	Gautreaux vs. CHA		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due _____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Lakefront Community Organization's motion for clarification is granted.

(11) ☒ [For further detail see order on the reverse side of the original minute order.]

☐ No notices required, advised in open court. ☐ No notices required. ☒ Notices mailed by judge's staff. ☐ Notified counsel by telephone. ☐ Docketing to mail notices. ☐ Mail AO 450 form. ☐ Copy to judge/magistrate judge.				
GL courtroom deputy's initials	Date/time received in central Clerk's Office	number of notices date docketed docketing deputy initials 5/6/1999 date mailed notice GL mailing deputy initials	Document Number	

ORDER

Lakefront Community Organization (LCO) has asked that we explain our earlier ruling denying its Second Motion to Intervene, as our first minute order stated only that the motion "is denied." This order sets forth the requested clarification.

We denied LCO's motion to intervene because to grant it would have been futile. LCO's Intervenor Complaint asks that we order the CHA and the *Gautreaux* Receiver to secure funding from HUD, obtain control of land, and build housing, all within 10 months and all pursuant to the terms of a 1995 contract between LCO and CHA. The problem is that the requested relief must come from the Receiver, and the Receiver was not a signatory to the deal. Or, to put it differently, because of the Receivership Order the CHA did not have the authority to enter into a contract concerning the development of non-elderly public housing — the Receiver's domain — and it did not have the authority to contract on the Receiver's behalf. (This principle is set out in greater detail in an order dated August 12, 1998.) Those parts of the contract concerning the development of non-elderly public housing are unenforceable, so to allow LCO to intervene to attempt to enforce them would have been a waste of time.

The motion for clarification is granted. It is so ordered.

A handwritten signature in black ink, appearing to be "M R" followed by a long horizontal stroke.