

On August 25, 1999, The Habitat Company – the Receiver appointed in this case – filed a Request for Instructions, seeking guidance from this Court on the best way to proceed with its intent to revitalize the Cabrini-Green public housing development in light of the objections of the Cabrini Local Advisory Council (LAC), which currently has a lawsuit regarding the redevelopment of Cabrini-Green pending before Judge Coar. In its request, Habitat proposes to work with all interested parties – including the LAC – to draft and implement a new plan for the development of public and low income housing at Cabrini-Green. The LAC objects to Habitat’s proposal on several grounds, arguing, *inter alia*, that Habitat does not have the authority to undertake the action it proposes, and that any action by Habitat would interfere with the LAC’s right to pursue relief in its case in front of Judge Coar. As we explain below, we believe that Habitat’s plan is a suitable way to proceed, and we anticipate only minimal conflict with the lawsuit before Judge Coar, which can be resolved as the case progresses. We therefore approve Habitat’s plan to convene a "Working Group" to develop a revitalization program for Cabrini-Green.

In ruling on Habitat's request, we find ourselves again covering the familiar ground of the scope of its authority as Receiver to build public housing in Chicago and the ability of groups with agendas that differ from that of Habitat to challenge its actions. This segment of the *Gautreaux* litigation began in 1996 when the CHA announced its plan to use part of a \$50 million HOPE VI grant it received from HUD to revitalize Cabrini-Green. The LAC filed a lawsuit in front of Judge Coar in response to the CHA's proposal for Cabrini-Green (the "first plan"), claiming the plan violated the Fair Housing Act, the Civil Rights Act of 1964, the HOPE VI statute and grant requirements, and other statutes as well as a Memorandum of Agreement the CHA had entered into with the LAC. In January 1997, Judge Coar enjoined the demolition of a Cabrini Green high-rise that was called for in the first plan.

After filing the lawsuit, the LAC negotiated a consent decree with the CHA and the City which set forth a new plan for the development and revitalization of Cabrini Green (the "new plan"). The decree, *inter alia*, stayed the demolition of several more Cabrini-Green buildings until replacement housing was under construction. In August 1998, we granted Habitat – to which this Court had granted "all powers of CHA respecting the scattered site program necessary and incident to the development and administration of such program" – an injunction preventing the CHA from taking steps to implement the consent decree because Habitat had been excluded from its negotiation.

From late 1998 to mid-1999, the CHA, the LAC, the City and Habitat met regularly with a mediator to try to resolve their differences with respect to the future of Cabrini-Green. Although the parties made significant progress, their attempt to reach a final consensus ultimately failed.

Because of the impasse, presently there is no functioning plan for the development or revitalization of Cabrini-Green. The parties abandoned the first plan after the LAC filed suit, and the new plan – created pursuant to the consent decree – has been significantly altered and amended in the intervening years of negotiations. Given that Habitat must approve any plan that

involves the building or development of non-senior public housing in Chicago, and given that Habitat has not approved any such plan, the redevelopment of Cabrini-Green is at a standstill.

As Receiver, Habitat is expressly imbued with the power to make "all determinations governing the scattered site program" including but not limited to site selection and acquisition, the relocation of occupants, the construction and rehabilitation of dwelling units, and the design specifications of such units. Habitat also has the authority to negotiate and execute contracts incident to the scattered site program. We therefore believe that its plan to convene a Working Group to draft and implement a plan for building new public housing at Cabrini-Green is an appropriate and allowable first step in jump-starting the stalled process.

Furthermore, Habitat's plan will not significantly interfere with any relief the LAC may still wish to pursue in its case before Judge Coar. In its complaint, the LAC requests a variety of forms of relief, many of which relate to the new plan. Because the new plan is no longer viable, these elements of the LAC's case – such as its request that the CHA and the City be enjoined from taking any steps to implement the new plan, including the issuance of Requests for Proposals to find developers for the new plan and the expenditure of any community development block grant funds on the new plan – are moot.

Other aspects of the LAC's proposed remedy are consistent with Habitat's plan. For example, the LAC asks for an injunction preventing the defendants from failing to negotiate and consult with the LAC in planning and implementing the revitalization of Cabrini-Green. But Habitat's Working Group of interested parties in fact contemplates full participation by the LAC. And although the LAC's complaint requests an injunction preventing the parties from breaching the Memorandum of Agreement – which includes a promise by the CHA to rehabilitate certain buildings

- the agreement expressly states that it is "subject to . . . Federal Court guidelines under *Gautreaux*."¹

We recognize that the LAC's complaint also asks for injunctive relief preventing the demolition of certain Cabrini-Green buildings, and that Judge Coar has granted some such relief. Should the Working Group's plan for demolition and rebuilding conflict with these injunctions, Habitat will have to move to intervene in that case for the purpose of having the injunctions lifted. However, we hope that the LAC's involvement in the activities of the Working Group will enable the parties to resolve such issues by consensus, without having to resort to further litigation.²

The LAC is free to pursue the rest of its case in front of Judge Coar, as long as it does not ask for relief that infringes on Habitat's authority under *Gautreaux* to oversee all development of public housing in the City. The LAC acknowledges in its response brief that it needs Habitat's approval before any court can consider a plan for new or replacement public housing in Chicago. This requirement does not prevent the LAC from presenting other parts of its case to Judge Coar - it is free to litigate the merits and legality of the first plan (if it so chooses), to try to obtain promises for rehabilitation of non-residential buildings, and to create a tenant screening and services program for Cabrini-Green.³

¹ Additionally, to the extent that the CHA entered into any other contracts concerning the building of new or replacement housing at Cabrini-Green, those contracts are void if they were not negotiated with the input of Habitat.

² The LAC asks that we stay resolution of Habitat's request until after the resolution of Judge Coar's case, apparently anticipating that part of Judge Coar's relief would be to enjoin some or all demolition at Cabrini-Green until "a proper plan [is] developed." This we will not do. Because Habitat must approve any plan that calls for the construction of public housing units at Cabrini-Green, we see no reason to suspend the development of such a "proper plan" until after the resolution of Judge Coar's case, especially given that the LAC is a proposed participant in the Working Group.

³ If, after the Working Group develops a new revitalization plan for Cabrini-Green, the LAC feels the plan is violative of federal law or some other law or contract, we will allow it leave to intervene for the purpose of filing a motion to challenge the plan. However, we hope that the cooperation of the Working Group can eliminate the need for any such legal challenges.

Finally, we understand that there are more steps the parties will have to take before any redevelopment plan can become reality. The parties will have to seek a locational waiver of the *Gautreaux* decree and have the area designated a revitalizing zone, and this Court will have to approve any plan that is drafted. We believe, however, that Habitat's plan is a viable first step toward finally making significant progress at Cabrini-Green, and we hope that the parties will work together to create a plan that adheres both to the *Gautreaux* decree as well as to the federal housing laws, the HOPE VI statutes, and other applicable agreements. Thus, we approve Habitat's request to convene a Working Group to develop a plan for the redevelopment of Cabrini-Green. It is so ordered.


MARVINE. ASPEN
United States District Judge

Dated

11/3/99