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United States District Court, S.D. New York.

James BENJAMIN, et al., Plaintiffs,
v.
William J. FRASER, et al., Defendants.

No. 75 CIV 3073 HB. | Jan. 25, 2002.

Opinion

OPINION & ORDER

BAER, District J.

***1** The City of New York ("City") and the Department of Corrections ("Department") (collectively, "defendants") moved pursuant to Fed. R. Civ. Pro. ("FRCP") 60(b) to vacate certain provisions of the Order entered by this Court on April 26, 2001 (the "April 26 Order") and for a stay of the same provisions pending appeal of the April 26 Order and other decisions of the Court in this lawsuit. For the reasons discussed below, the defendants' motion is denied in its entirety, and the plaintiff is invited to seek an appropriate remedy.

Background

In 1975, pretrial detainees ("plaintiffs") in certain New York City jails brought seven related class actions alleging that the conditions of their confinement violated their constitutional rights. In 1978–79, the parties entered into consent decrees ("consent decrees") that spanned more than 30 discrete areas of prison administration, including environmental conditions. Following the enactment of the Prison Litigation Reform Act ("PLRA") in 1996, defendants moved to terminate the consent decrees, and in May 2000 the Court held hearings with respect to the environmental conditions in the City's jails.

On January 9, 2001, the Court found that while environmental conditions in 14 of New York City's jails[1] had generally improved in the 25 years since the entry of the consent decrees, many unconstitutional conditions remained, and as to those conditions the Court denied defendants' motion to vacate the consent decrees. Plaintiffs and defendants separately moved for clarification and reconsideration of the decision, and on March 20, 2001, I rendered a decision that amended certain findings of the January 9, 2001 opinion and requested recommendations from the parties on how to remedy the "current and ongoing" violations identified in that decision. On April 26, 2001, the Court issued the "Order On: Environmental Conditions," which (1) directed defendants to take specific actions to remedy "current and ongoing" violations of federal law that this Court identified in the 14 New York City jails ("prospective relief") and (2) instructed the Office of Compliance Consultants ("OCC") to monitor certain aspects of the prospective relief.

The parties separately moved to amend the April 26 Order, and on July 11, 2001, I rendered yet another opinion that: (1) denied defendants' motion to disband the OCC, (2) provided extensive provision-by-provision determinations that the relief imposed was necessary, narrowly drawn, and as unobtrusive as possible, (3) made a limited number of technical changes and clarifications, (4) denied defendants' across-the-board request for extensions of all deadlines imposed by the April 26 Order; and (5) denied defendants' motion to reconsider those provisions of the April 26 Order that required (i) beds to be spaced such that the head of each detainee is at least 6 feet from the head of his neighbor, (ii) the ventilation systems to be balanced on an annual basis and (iii) Department of Health inspectors to participate in the inspection of medical facilities. The July 11, 2001 opinion also extended by 60 days those deadlines that required defendants to complete remedial work during or before August 2001, and appointed John Doyle as Director of OCC.

***2** In November 2001, defendants appealed the January 9, 2001 opinion, the March 22 opinion, the April 26 Order, and the July 11 opinion, and at roughly the same time filed the instant motions for a stay pending appeal and for relief pursuant to FRCP 60(b). Although the motions seek different relief, they concern identical aspects of the April 26 Order—i.e., (1) power washing of showers with bleach solution on a quarterly basis (April 26 Order, ¶ 11a); (2) the submission of a complete list of the shower replacement schedules to OCC and the Court by July 2, 2001, with completion dates for the work not to extend beyond October 1, 2001 (*id.* ¶ 11b); (3) annual balancing of the ventilation systems (*id.* ¶ 15a); (4) inmate beds be placed so that prisoners' heads are at least 6 feet apart from each other while the prisoners are sleeping, and a certification of compliance thereof to the Court by September 1, 2001 (*id.* ¶ 15d); (5) all windows be operational by October 15, 2001 (*id.* ¶ 16c); (6) annual certification on October 15th of each year that the heating systems are in working order (*id.,* ¶ 16a); and (7)

complete implementation of the 20 foot candle lighting standard in all cells and dormitory housing areas by October 1, 2001, except to the extent that capital improvements are required, which capital improvements to accomplish this task are to be completed by January 2, 2002 (*id.* ¶ 17d).

Notably, these are not defendants' first objections to the foregoing. All of the objected-to provisions of the April 26 Order have been the subject of previous attacks by defendants and each has been unsuccessful. Be aware that this Court's patience with the city and its penchant for sound and fury signifying nothing other than a demonstration of its litigation skills is wearing thin. In my view, the continued suffering by detainees with unconstitutional conditions merits immediate attention and the requisite funds to right those wrongs that have been found to be violative of constitutional guarantees. Very shortly, the city will either be in compliance or find itself in contempt, and that moment is drawing nigh.

Defendants' Motion For A Stay Pending Appeal

"To determine whether a stay of an order pending appeal is appropriate, a court must evaluate the following factors: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Rodriguez ex rel. Rodriguez v. DeBuono,* 175 F.3d 227, 234 (2d. Cir.1999).

1. Success on the Merits

Once again, none of the issues raised by defendants in the current motion are new, each having been argued at least once, if not several times, and while defendants submitted additional affidavits in support of the instant motions, the essential facts are unchanged since the entry of the April 26 Order. For those facts, I commend the interested reader to the Court's more recent decisions in this lawsuit.[2] What follows, then, is a brief discussion of the "new" facts adduced by defendants and their impact of the merits of defendants' arguments.

***3** *power washing:* Defendants direct the Court's attention to revised Housekeeping Directive (3901R) and its new requirement that shower walls be cleaned with a sanitizing solution once per week. While I welcome this addition to the cleaning regimen, I have seen no evidence that the sanitizing solution is equal to the task, and therefore its use does not obviate the need for power washing.

annual ventilation balancing: Defendants state with respect to this requirement that compliance is costly (projected to be $4.2 million per year) time consuming (4 months per year for the larger facilities) and unnecessary, and propose as an alternative that the Public Health Sanitarians spot-check air flow at the ventilation registers in 15% of the housing areas and intake areas on a monthly basis. I am unconvinced. The April 26 Order specifically provides that annual balancing is unnecessary where the manufacturer's specifications call for a different schedule.

annual heating certification by October 15th of each year: Defendants argue that in order to certify by October 15th of each year that the heating systems are in working order, the Department would have to conduct tests during the summer, and that so doing would not only damage pipes (as a result of rapid heating and cooling) but discomfort inmates (charging the system can produce a 20–30 degree rise in temperature) as well. Although defendants' concern is not without foundation, if the Department waits for cooler weather to conduct testing, it is unclear to me how necessary repairs could be made before the need for functioning heating would arise. The record supports the position that temperature problems abound.

20 foot candle standard: Defendants claim to have done everything possible short of capital renovations, thus far with little success. The difficulties here appear to be that: (1) painting cells white, as the Department has done in some areas, does not elevate light reading to the 20 foot candle standard; (2) most light fixtures can't take a bulb with a high enough wattage (mostly fluorescent bulb fixtures); (3) the electrical system maxes out at system wide use of 60 watt bulbs; (4) the cost of installing new fixture is significant; and (5) there is no sufficient "swing space" into which to relocate inmates during cell renovations. I am not persuaded that the foregoing complications, considered collectively, constitute an adequate justification for further delay. If cost and inconvenience were the test for when relief is required, which defendants seem to believe is the case, the Court would have no power to remedy unconstitutional conditions in New York City jails and detainees would be without a remedy, neither of which outcomes can I accept.

shower replacement schedule: Again, it is the excuse of expense that defendants invoke for their failure to comply with the timetable imposed by the April 26 Order. Indeed, it is the expense issue which the city has used to object to the external imposition of any timetable at all. Defendants believe their own internal timetable—which projects completion of the shower renovations by June 1, 2004—is sufficient and reminds the Court of the high cost of hiring new employees and outside contractors, which, by the way, the city has done before and is competent to do

again. I am unconvinced. Even if the projected date of June 1, 2004 were reliable (the schedule has been revised numerous times over the years) it is not soon enough. Moreover, and this observation applies equally well to other aspects the April 26 Order to which defendants have objected, it is my understanding defendants have made no changes to their long-standing internal shower replacement schedule as a result of the April 26 Order, nor have they at any point devoted additional resources thereto. Put another way, in lieu of attempting to comply with the April 26 Order and returning to Court when best efforts proved ineffectual, defendants appear to have concentrated their energies on relitigating a decided issue and preparing their appeals. Motion practice is not a substitute for compliance with a court order.

***4** *operational windows:* Defendants argue that the vast majority of the windows that don't work have 1 of 2 problems, either the Department has removed the window handle for security reasons (prisoners having used such handles as weapons)[3] or the window's gearbox is broken and requires repair. With respect to the latter, defendants argue that they were unable to comply with the October 15, 2001 date by which all window repairs had to be completed because the Department employs insufficient machinists and has a limited number of metal shops in which to make the necessary gearbox repairs. The fact that defendants' own plans and current resource allocations don't coincide with the Court's timetable is not a cognizable reason for me to vacate provisions of the April 26 Order.

6 foot bed spacing standard: Of defendants' objections to the April 26 Order, this is perhaps the most litigated, initially because defendants contested the medical necessity for spacing detainees six feet apart while sleeping, and now because defendants protest the lack of physical space. Because beds spacing is 3 feet or less in many facilities, the Department would have to shift significant numbers of detainees into other cells and dormitory areas (in some cases every other detainee), and such dormitory areas are not available for various reasons, including: facility closures, ongoing construction and renovation projects, the requirement that inmates be housed according to their security classifications, and the need to preserve a "swing space" or reserve of beds for emergencies, spikes in detainee population, and overflow for other court mandated renovation projects. Additionally, increasing bed spacing will require the Department to unbolt and rebolt beds, a time consuming process that can cause damage to the floor. Plaintiffs believe the defendants' concern to be overstated. Although defendants claim that as of June 27, 2001 there was a "swing space" of only 1,771 beds (maximum physical capacity exceeds 22,000 beds, the actual population is around 14,000, the remainder being otherwise unavailable)[4], plaintiffs argue that the actual excess capacity is much greater.[5]

I don't doubt that achieving the 6 foot standard will require substantial efforts on the part of defendants, but the scale of defendants' obligation is not an excuse for its procrastination and avoidance of a constitutional imperative. Had defendants made some effort to comply with the 6 foot standard, which apparently they have not, their argument might have some force. In the 9 months since the April 26 Order evidently they have not removed the first bolt from the first bed.

2. Irreparable Harm

Although defendants cite several irreparable harms—inability to comply, compliance would require the Department to violate other court orders, security risks, unwarranted and unrecoverable financial burdens, and administrative burdens—all boil down to money. However, financial burdens are not the kind of irreparable harms for which 60(b) relief is given. *See Women Prisoners of D.C. Dept. of Corrections v. District of Columbia,* 899 F.Supp. 659, 673–74 (D.D.C.1995).

3. Public Interest

***5** The public has an interest in responsible and efficient allocation of limited financial resources. However, the public also has an interest in maintaining safe and habitable jails which protect the basic rights of pretrial detainees, and here that interest is greater.

4. Balancing the Hardships

Plaintiffs' constitutional interest in humane conditions of confinement far outweighs defendants' interest in avoiding the financial discomfiture of providing them. The expense of complying with the April 26 Order arises entirely from defendants' failure to maintain and manage its jails for at least the last quarter century. Its own history of neglect hardly excuses the continuation of such neglect.

Defendants' Motion To Vacate

Because defendants have already filed a notice of appeal of the Court's orders, the Court lacks jurisdiction to grant defendants' motion under FRCP 60(b). *See Ryan v. United States Line Co.,* 303 F.2d 430, 434 (2d. Cir.1962) (the docketing of a notice of appeal ordinarily ousts the district court of jurisdiction over the case). For this reason alone, defendants' motion is denied. Further, a FRCP 60(b) motion may be granted only under "extraordinary

circumstances" or to avoid "extreme hardship," *Rodriguez v. Mitchell,* 252 F.3d 191, 201 (2d. Cir.2001), and none of the facts asserted by defendants rise to that level for all the reasons described above with regard to the motion for a stay pending appeal.[6] Indeed, while defendants submitted affidavits that provided further factual support for arguments that had been previously made, defendants did not raise any new issues with the Court. Additionally, the newly asserted facts upon which defendants' rely in their motion are not newly discovered, and were available to defendants at the time that the April 26 Order was being fashioned.

Conclusion

For the reasons discussed above, defendants' motions for a stay pending appeal and for relief pursuant to FRCP 60(b) are denied.

SO ORDERED

Footnotes

1 The 14 facilities are: the Adolescent Reception and Detention Center ("ARDC"); the Anna M. Kross Center ("AMKC"), the George Motchan Detention Center ("GMDC"); the Rose M. Singer Center ("RMSC"); the James A. Thomas Center ("JATC"); the George R. Vierno Center ("GRVC"); the North Infirmary Command ("NIC"); Otis Bantum Correctional Center ("OBCC"); the Manhattan Detention Center ("MDC"); the Brooklyn House of Detention ("BKHD"); the Queens Detention Center ("QHD"); West Facility ("West"); the Vernon C. Bain Center ("VCBC"); and the Bronx Detention Center ("BXHD"). [The April 26 Order inadvertently omitted the last three facilities from the list of facilities in which this Court found constitutional violations. The April 26 Order is amended as provided *infra* by this decision.]

2 (1) power washing of showers (April 26 Order, ¶ 11a): I have addressed the need for quarterly power washing with bleach before, and I commend the interested reader to page 345 of the July 11, 2001 opinion (found at *Benjamin v. Fraser,* 156 F.Supp.2d 333 (S.D.N.Y.2001)) and to page 180 of the January 29, 2001 opinion (*Benjamin v. Fraser,* 161 F.Supp.2d 151 (S.D.N.Y.2001).
(2) shower replacement schedules (April 26 Order ¶ 11b): *See Benjamin,* 156 F.Supp.2d at 346; *Benjamin,* 161 F.Supp.2d at 179–180.
(3) annual balancing of the ventilation systems (April 26 Order ¶ 15a): *See Benjamin,* 156 F.Supp.2d at 348–349.
(4) 6 foot bed standard (April 26 Order ¶ 15d). *See Benjamin,* 156 F.Supp.2d at 349–350.
(5) operational windows (April 26 Order ¶ 16c). *See Benjamin,* 156 F.Supp.2d at 350; *Benjamin,* 161 F.Supp.2d at 160–166.
(6) annual heating certification on October 15th (April 26 Order ¶ 16a). *See Benjamin,* 156 F.Supp.2d at 348–349.
(7) implementation of the 20 foot candle standard (April 26 Order ¶ 17d). *See Benjamin,* 156 F.Supp.2d at 353; *Benjamin,* 161 F.Supp.2d at 180–182.

3 Plaintiffs take the position that even if window handles pose a valid security risk, their removal is not a constitutionally permissible solution since so doing would deprive detainees of adequate ventilation.

4 According to defendants, on June 27, 2001 (a random date) the swing space was 1,771 beds because: ongoing construction/renovation projects (5,326 beds on 6/27/01, 6,012 on Dec. 5, 2001), a 4% bed reserve to "accommodate inefficiencies," the use of space for other purposes, bed caps for spaces used for certain classifications of inmates, and facility closures.

5 Plaintiffs state that: (1) there are 800 empty beds at the West Facility (now closed) and 400 empty cells at MDC; (2) swing space can be increased by coordinating renovation projects; (3) under some circumstances the Department is permitted to house prisoners of different security classifications in the same area; and (4) defendants can reopen closed facilities, including the maritime facilities.

6 Defendants argued that "the Court has entered a remedial order that requires defendants to take measures that are impossible, or that are both extraordinarily burdensome and of little or no benefit to plaintiffs, or otherwise unrealistic." Def.'s Br., at 12.