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United States District Court, N.D. Illinois, Eastern Division.

DOROTHY GAUTREAUX, et al., Plaintiffs,
v.
SAMUEL R. PIERCE, Secretary of the U. S. Department of Housing and Urban Development, and CHICAGO HOUSING AUTHORITY, et al., Defendants.

Nos. 66 C 1459, 66 C 1460. | July 9, 1987.

Opinion

MEMORANDUM ORDER

ASPEN, District Judge:

***1** On May 14, 1987, this Court entered an order granting the plaintiffs' motion to appoint a receiver to administer the scattered site housing program of defendant Chicago Housing Authority ('CHA') pursuant to the consent decree in this case. We delayed implementation of that order for a sixty-day period in order to allow the parties an opportunity to work out an alternative remedy acceptable to the Court. In the interim, CHA has moved that the Court reconsider its order, and, although we find ample documentation in the record as it exists today to fully warrant appointment of a receiver, the Court has granted CHA's request that an evidentiary hearing be held on the motion for reconsideration. Although we have refused to further delay implementation of our order, we have stated that whenever CHA so requests, we will promptly schedule the evidentiary hearing. CHA claims it needs discovery for this hearing. The parties have submitted numerous motions regarding discovery and the scope of evidence for the hearing. We deal in this opinion with three of these motions: (1) CHA's Proposed Scope of Discovery for the evidentiary hearing which this Court ordered CHA to submit; (2) CHA's Request for Expedited Document Production from its co-defendant, the United States Department of Housing and Urban Development ('HUD'); and (3) the Federal Defendant's motion to quash CHA's Request for Production of Documents.

I.

The threshold issue is CHA's proposed scope of discovery, since the remaining motions really turn on that issue. CHA has requested that the Court open up discovery so that CHA can inquire into: (1) the reasons for the temporary suspension by CHA of the scattered sites program required under previous orders entered by this Court; (2) the extent to which HUD's acts, omissions, policies or rules have impaired or interfered with CHA's compliance with this Court's orders; and (3) whether CHA's proposed remedial plan constitutes a 'reasonable alternative' to the appointment of a receiver to conduct the scattered sites program.

As indicated in open court on June 2, 1987, we agree with plaintiffs' counsel that the only issue ripe for litigation respecting the appointment of a receiver is CHA's failure to follow the mandate of this Court as embodied in the consent decree and as reflected by our previous orders regarding the scattered sites program. CHA insists on opening up discovery broadly to encompass disputes between itself and HUD regarding regulations and HUD's application of those regulations which CHA apparently contends are to blame for CHA's failure to adequately pursue the acquisition, construction and rehabilitation of scattered site housing (e.g., the reasonableness of HUD's calculation of prototypical costs for scattered site housing units). The elephantine scope of discovery proposed by CHA would clearly encumber this Court and the parties with the burden of addressing issues wholly irrelevant to the receivership order. As Judge Crowley wrote in this case nearly seven years ago in denying '[w]ith great reservation' the plaintiffs' motion to appoint a receiver, 'compliance will be measured by results not intentions. Bureaucratic inefficiency will no longer be tolerated by this Court.' Gautreaux v. Landrieu, 498 F.Supp. 1072, 1075 (N.D. Ill. 1980) (emphasis added). On January 13, 1984, based on promises of compliance which were not kept, we vacated an earlier order to appoint a receiver and afforded CHA still another opportunity to get its own house in order. Enough is enough. It is fundamentally clear that in light of CHA's track record, not only in CHA's present form but also in its multitude of previous incarnations, this case is well beyond the point where bureaucratic squabbles between local and federal agencies will be tolerated as an excuse for noncompliance with the important remedies sought by the plaintiffs, agreed to by the parties and ordered by the Court.

***2** Any complaints CHA had with HUD's cooperation

with respect to scattered site housing development during the relevant period could have, and indeed should have, been brought to this Court's attention at the time. Rather than sufficing as an excuse for CHA's inability to comply with the Court's orders, CHA's failure to bring these disputes to the Court's attention at an earlier date may actually be another indication of its lack of competence to administer this program so critical to the needs of the low-income individuals who are the intended beneficiaries of this litigation.

Finally, to the extent that CHA seeks discovery on issues regarding its good faith efforts to comply with the court-ordered scattered site housing program, we deem that information to be irrelevant to the plaintiffs' motion to appoint a receiver as well. To our knowledge, no party has questioned the good faith of the current administration regarding the construction and rehabilitation of public housing under the Gautreaux decree. However, all the good faith in the world on the part of CHA will not provide a single shelter to a low-income individual or his or her family for a single night where CHA, as it has demonstrated, lacks the ability and competence to comply with the orders of this Court.

In effect, by seeking broad discovery, CHA is asking the plaintiffs and the Court to wait idly while CHA has it out with HUD over broad issues of funding policy. While those issues are of great import, they are not this Court's nor the plaintiffs' primary concern. Plaintiffs have waited for too long for implementation of an agreed order which should have been complied with by CHA years ago.

Accordingly, we limit the scope of discovery on the receivership issue to facts directly related to CHA's actual compliance with the consent decree and this Court's previous orders. Thus, the Court will permit discovery on objective evidence of CHA's compliance such as the number, location and status of ordered units acquired, the number and location of units remaining to be completed and their current status, etc. In other words, the evidentiary hearing will address only 'results,' not intentions or bureaucratic infighting. Therefore, issues respecting HUD acts, omissions, rules or regulations and their purported impact on CHA's compliance are irrelevant, and the Court will preclude discovery on them. Furthermore, no discovery will be permitted on CHA's proposed remedial plan and its reasonableness as an alternative to our receivership order. We have already allowed the parties, particularly CHA and HUD, an opportunity to arrive at a settlement proposal which would be satisfactory to this Court as an alternative to the appointment of a receiver. Finally, the 'reasons' for CHA's suspension of the scattered sites program shall be the subject of discovery only to the extent that they are unrelated to any bureaucratic disputes between CHA and HUD.

II.

We now turn to the two motions regarding document production. CHA has submitted a request for expedited document production from HUD. It is readily apparent from even a cursory review of the production request that CHA is planning a fishing expedition in which they seek every conceivable document related to issues on which we are not permitting discovery (i.e., HUD's conduct which has purportedly interfered with CHA's ability to comply with this Court's previous orders). Accordingly, we deny CHA's request for expedited document production on the ground that the documents which it seeks are irrelevant to the issues to which we have limited discovery and which will be the subject of any evidentiary hearing.

***3** Finally, HUD has filed a motion to quash CHA's request for production of documents. This motion is clearly moot now that we have denied CHA's request for expedited production and ruled on the scope of discovery. Accordingly, we need not address HUD's motion with respect to the request to quash. HUD also sought further relief in the form of an order prohibiting CHA to file further discovery requests until our ruling on the scope of the evidentiary hearing, granting the Secretary leave to respond to CHA's proposed scope of discovery and granting the Secretary leave to conduct discovery on the issues which we do determine relevant to the motion to appoint a receiver. The first two requests are denied as moot, but the third is granted.

III.

In accordance with this order, the scope of discovery respecting the plaintiffs' motion to appoint a receiver is limited to facts related to demonstration of the extent of CHA's compliance with the consent decree and this Court's orders. The parties should now proceed expeditiously with discovery on the narrow issues which we have set forth in this opinion. Should CHA, after this discovery, still wish to pursue an evidentiary hearing, we will promptly schedule one. It is so ordered.