ALP. 33

Pre date

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

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| DOROTHY GAUTREAUX, ODELL JONES, DOREATHA R. CRENCHAW, EVA RODGERS, JAMES RODGERS and ROBERT M. FAIRFAX,<br><br>Plaintiffs,<br><br>v.<br><br>THE CHICAGO HOUSING AUTHORITY, a Corporation, and ALVIN E. ROSE, Executive Director,<br><br>Defendants. | CIVIL ACTION<br><br>No. 66 C 1459 |

BRIEF OF DEFENDANTS IN OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO AMEND COUNTS I AND II OF THE COMPLAINT

The Complaint in this case has been on file since the summer of 1966, or more than 1 1/2 years. The basic issue framed by the pleadings is simply and solely whether since 1950 the defendant Chicago Housing Authority, in selecting locations for regular family public housing, has deliberately chosen sites to avoid the placement of Negro families in white neighborhoods.

Thus, paragraph 7 of Counts I and II of the Complaint (the only counts remaining) speaks of the power of defendant CHA to select and acquire sites for regular family public housing, subject to approval by the Chicago City Council; paragraph 11 speaks of the selection of regular family public housing sites since 1950 and prior to April 7, 1965; paragraphs 13 and 14 speak of specific sites selected by CHA in 1955 and approved by

the Chicago City Council on or about April 7, 1965; paragraph 15 speaks of specific sites selected by CHA in 1966 and approved by the Chicago City Council on or about July 11, 1966; paragraphs 16 and 17 make the basic charge that since 1950 CHA, in selecting locations for regular family public housing has deliberately chosen sites to avoid the placement of Negro families in white neighborhoods; paragraphs 18 and 19 speak of the alleged effect of such alleged site selection; and, finally, the prayer for relief speaks specifically of alleged discrimination in site selection for regular family public housing projects. In short, the Complaint throughout addresses itself to the one issue of alleged discrimination in site selection; nowhere is there any mention made of tenant assignment.

Now, after all this time, after extensive discovery, plaintiffs seek in effect to make a new lawsuit out of this case by tacking on this additional and complicating issue -- the issue of alleged discrimination in tenant assignment. To do this they propose amendments to paragraphs 17, 18 and 19 and the prayer for relief, to bring into this suit the following charge (by amendment to paragraph 17):

> "The Authority has deliberately employed in the past and continues now to employ practices for the assignment of tenants to dwelling units provided by it which avoid the placement of Negro families in white neighborhoods."

Defendants respectfully submit that this attempt by plaintiffs now to broaden and extend the scope of this suit is without justification and prejudicial to defendants; and that accordingly plaintiffs' motion for leave to amend, insofar as the proposed

not taking on a new issue - simply moving it from evidentiary to pleading issue

amendments relate to alleged discrimination in tenant assignment, should be denied.

In seeking to amend their Complaint by interjection of the issue of alleged discrimination in tenant assignment, plaintiffs in their brief cite decisions of this jurisdiction indicating that liberality is favored under the applicable rule (Rule 15(a) Federal Rules of Civil Procedure) in the amendment and supplementing of pleadings. Liberality does not mean the absence of restraint, however; a motion to amend is always addressed to the sound discretion of the court, and therefore other decisions are advisory only and each case must rest upon its particular facts, A. L. B. Theatre Corporation v. Loew's Incorporated, 21 FRD 584, 585 (N.D. Ill. E.D. 1957) (one of the cases cited by plaintiff); Armstrong Cork Co. v. Patterson-Sargent Co., 10 FRD 534, 535 (D.C. Ohio 1950).

In A. L. B. Theatre Corporation the plaintiff's original complaint alleging antitrust violations sought injunctive relief predicated on plaintiff's inability to obtain rental films for its theatre. Subsequently, the plaintiff lost its theatre lease and, injunctive relief having become moot, plaintiff sought to amend the complaint to recover treble damages, inter alia. Judge Hoffman granted leave to amend, the two factors of significance in his decision being

(a) the change in plaintiff's circumstances subsequent to the filing of the complaint; and

(b) lack of any prejudice to the defendant as a result of the amendment.

As stated in Klee v. Pittsburgh and West Virginia Railroad Co., 22 FRD 252, 255 (D.C. Pa. 1958):

> "Because discretion is involved, it is evident that no single factor could be conclusive in every case on the question whether amendments or supplemental pleadings should be allowed, since exercise of discretion fundamentally depends upon a consideration of all circumstances presented in each individual case. However, in all of the decisions which have been examined the factors which have uniformly been treated as of significance are timeliness, excuse for delay and prejudice to the opposite party."

Accordingly, an amendment should not be allowed when its proponent has not been reasonably diligent and the rights of the opposing party will be unduly prejudiced or the trial of the issues unduly delayed. Rupe et al. v. Associated Electric Co., 6 FRD 309, 310 (D.C. Del. 1946); Woldow et al. v. Edgemoor Realty Co. et al., 81 F. Supp. 800, 802 (D.C. Del. 1949); Eisenmann v. Gould - National Batteries, Inc. 169 F. Supp. 862 (D.C. Pa. 1958); Hirshhorn v. Nine Safety Appliances Co., et al., 101 F. Supp. 549 (D.C. Pa. 1951).

Defendants submit that none of the relevant factors weighs in plaintiffs' favor in the present case; just the reverse.

At the threshold of this suit (October 10, 1966) defendants filed a motion to dismiss, asserting among other things plaintiffs' lack of standing to sue. Counteraffidavits and the brief filed by plaintiffs in opposition to this motion alleged discrimination in defendants' tenant assignment policies sufficient to give plaintiffs standing to sue. What plaintiffs seek to do now -- by way of amending their Complaint to include a charge of discrimination in tenant assignment -- they could have sought

to do then. There has been no change of circumstances in all the intervening time to justify such amendment now.

Moreover, to allow such amendment now would be extremely prejudicial to defendant Chicago Housing Authority. This case, which seeks injunctive relief to hold back a $54 million public housing program for the development and construction of almost 3,000 regular family housing units in the City of Chicago, has proceeded from the start as a "site selection" case. Defendants' written interrogatories to plaintiffs (served in March, 1967) were framed on that basis. A number of depositions have been taken by defendants on that basis. Plaintiffs have had extensive discovery of defendant CHA's records and files and plaintiffs have taken a number of depositions. If this Court were now to extend and complicate this action by permitting plaintiffs to tack onto their Complaint a charge of discrimination in tenant assignment, all or much of this ground would have to be retraced and covered again -- defendants would be obliged to serve additional interrogatories, take supplemental or additional depositions or both, conduct extensive interviews of CHA personnel involved over the years in tenant assignment, search out and review additional documents, and so on. The additional time and expense involved and the hampering of preparation for trial would, defendants submit, constitute prejudice to defendants clearly sufficient to justify this Court in its discretion denying plaintiffs leave to add the charge of discrimination in tenant assignment to their Complaint.

If it was not apparent at the outset of this suit, one fact

has since become quite apparent: the individuals named as plaintiffs are plaintiffs in name only. Civil rights organizations are the true moving force behind this suit, and their interests have been well represented by the attorneys who have appeared on their behalf. The Complaint was not simply thrown together but was carefully drawn to raise the one issue of alleged discrimination in site selection. Under these circumstances, defendants respectfully submit that this is not the time to add on the additional and separate issue of tenant assignment, simply because the attorneys have had an afterthought.

Respectfully submitted,

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their afterthought

RECEIVED a copy of the foregoing Brief this _____ day of March 1968.

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