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

DOROTHY GAUTREAUX, et al., Plaintiffs,	)	
v.	)	No. 66 C 1460
GEORGE W. ROMNEY, Defendant.	)	

MEMORANDUM OF CHICAGO HOUSING AUTHORITY IN OPPOSITION TO PLAINTIFFS' RULE 62(c) MOTION FOR INJUNCTION

The Chicago Housing Authority ("CHA") submits this memorandum in opposition to plaintiffs' "Motion Pursuant to Rule 62(c) of the Rules of Civil Procedure for the United States District Court and Rule 8(a) of the Federal Rules of Appellate Procedure for an Order to Preserve the Status Quo Pending a Hearing."

Rule 62(c) Does Not Give This Court Power to Grant the Injunction Sought by Plaintiffs

For a number of reasons, discussed below, Rule 62(c) does not authorize this Court to grant the relief requested by plaintiffs.

The relevant language of Rule 62(c) states as follows:

> "When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal***".

The plain language of the Rule demonstrates that plaintiffs' motion comes too late. Rule 62(c) permits a District Court to preserve the status quo "when an appeal is taken", i.e., the status quo as it existed at the time of the appeal. This common sense reading of Rule 62(c) was applied by the Court of Appeals for the 2d Circuit in Ideal Toy Corporation v. Sayco Doll Corporation 302 F.2d 623, 625 (2d Cir. 1962):

> "It was proper, to be sure, for Judge Bryan to take jurisdiction of the motion pursuant to Rule 62(c), Fed. Rules Civ. Proc., which permits modification of injunction orders during the pendency of an appeal. But this rule is described as 'merely expressive of a power inherent in the court to preserve the status quo where, in its sound discretion, the court deems the circumstances to justify.' [Citations]
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> "Once the appeal is taken, however, jurisdiction passes to the appellate court. Thereafter the appellant is not usually entitled as of right to present new evidence or argument to the trial court, which in the exercise of a sound discretion will exercise jurisdiction only to preserve the status quo as of the time of appeal. . ."

In the instant case, plaintiffs appealed on October 29, 1970,

from this Court's orders of September 1 and October 21, 1970, and it is the status quo on the date of appeal that is relevant under Rule 62(c). But plaintiffs' motion does not even address itself to the status quo as of either the time of appeal or as of the time of the dismissal of their action. Plaintiffs' motion speaks as of September 17, 1971, more than a year later.

The subject matter of plaintiffs' motion is a pool of funds under the control of either HUD or the City of Chicago; this particular pool did not even exist in the fall of 1970, and could not, therefore, be considered part of the "status quo" as of the time of appeal. If the fact of the availability of the Model Cities program to the City of Chicago be deemed the "status quo", then it is clear that what plaintiffs now seek for the first time is a substantial and far reaching change in the status quo. Thus, the Court lacks jurisdiction to grant the relief sought by plaintiffs' motion.

Second, Rule 62(c) is inapplicable because the relief which plaintiffs now seek under the Rule is completely different from the relief which plaintiffs seek in their complaint. If a plaintiff seeks an injunction, and is turned down, he may be injured unless he obtains an order enjoining his opponent from certain conduct during the pendency of the appeal; Rule

62(c) gives the court power to grant such an order. Nothing like that has happened in the present case. By their complaint, plaintiffs want HUD to stop making available to CHA funds to assist the latter in connection with housing; any order this Court might issue under Rule 62(c) should be directed toward the subject matter of the litigation, in this case, housing. But plaintiffs now seek, under Rule 62(c), to enjoin the payment of funds for all sorts of purposes to the City of Chicago, regardless of whether those funds are to go to CHA for housing purposes (which they are not). Plaintiffs could - - with the same degree of rationality that they demonstrate with this motion - - ask this Court for an order against Amtrack or the FAA to bar federal participation in providing mass transportation for the City of Chicago until the City Council approves public housing sites in a number agreeable to plaintiffs. Such a use of Rule 62(c) is a perversion of its purpose.

Third, Rule 62(c) only applies when there has been an order "granting, dissolving or denying an injunction". The orders on appeal in this case make no reference to injunctive relief; they simply dismissed plaintiffs' action. Accordingly, the nature of the order appealed from precludes reliance

upon the provisions of Rule 62(c).

Fourth. Plaintiffs' complaint was filed in 1966. They have had many years in which to seek to expand the scope of their action beyond housing to include the Model Cities Program. They did not do so at a time when the Rules contemplate changes in pleading and theory. They should not be permitted to do so at this time on any theory when their action is unsupported by any Rule.

To Allow the Relief Sought would Bring Great Hardship to the Class that Plaintiffs Purport to Represent

For the reasons discussed above, we submit that plaintiffs' motion under Rule 62(c) is technically without foundation and represents an attempted misuse of the rule's provisions. But even if the motion were technically sound, this Court should exercise its discretion against the motion because togrant it would cause great hardship to thousands of persons, including the black citizens of the City of Chicago who reside or have applied to reside in CHA facilities, i.e., members of the very class which plaintiffs claim to represent.

The monies which plaintiffs seek to tie-up are so-called "Model Cities Funds," to be paid by the federal government to

the City of Chicago for the latter's use in providing social services and facilities to (among others) its poor. Model Cities funds are to be used for numerous purposes, including day care centers, education and training facilities, and improved health and sanitation. These services are targeted, in large part, for the black citizens who reside in CHA housing. To cut off these funds would deprive these persons - - among others - - of essential services and would certainly cause them irreparable harm.

As this matter now stands, an indefinite time may pass before this Court enters its final order against HUD. To force all of HUD's urban assistance programs to a standstill to await such a final order would be to extract a drastic price from the black poor of this city.

For the foregoing reasons, CHA respectfully requests that this Court deny the motion now under consideration.

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CERTIFICATE OF SERVICE

Patrick W. O'Brien, one of the attorneys for CHA, certifies that on the 20th day of September, 1971 he served a copy of the above and foregoing Memorandum of Chicago Housing Authority upon the attorneys for the plaintiffs and upon the attorneys for the defendant and intervenors.

Patrick W. O'Brien