

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

DOROTHY GAUTREAUX, et al.,) Docket No. 66 C 1459
)
) Plaintiffs,)
)
) v.) Chicago, Illinois
) August 16, 2005
CHICAGO HOUSING AUTHORITY,) 11:15 o'clock a.m.
et al.,)
)
) Defendants.)

TRANSCRIPT OF PROCEEDINGS - MOTION
BEFORE THE HONORABLE MARVIN E. ASPEN

APPEARANCES:

For the Plaintiffs : BUSINESS & PROFESSIONAL PEOPLE
 FOR THE PUBLIC INTEREST, by
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1 (Proceedings had in open court:)

2 THE CLERK: 66 C 1459, Gautreaux versus CHA.

3 MR. POLIKOFF: Good morning, your Honor.

4 THE COURT: Good morning.

5 MR. JOHNSON: Good morning, Judge. Tom Johnson on
6 behalf of the CHA.

7 MR. STAUNTON: Good morning, Judge. Tom Staunton on
8 behalf of the receiver.

9 MR. JOHNSON: This morning, Judge, we, No. 1,
10 appreciate your taking the time to see us on short notice. And
11 what we would like to talk about is Rockwell, the development
12 out essentially at Western just south of Madison.

13 Your Honor, previously entered an order permitting
14 Phase 1A of the Rockwell mixed-income development to proceed.
15 And we are now before you on Phase 1B. And the reason we came
16 in on relatively short notice is that Phase 1B, which involves
17 a total of 140 units, 57 of which are public housing, has two
18 components: A rental component and a home-ownership component.
19 About 40 percent of the units are going to be home ownership
20 units.

21 The rental phase of the closing is set to go on August
22 29, and that involves the work of not only CHA and the receiver
23 and HUD and the developer, East Lake Development, as well as
24 their various investors. There is a whole large circle of
25 activity going on. That's all pointing towards August 29.

1 The plaintiffs in Gautreaux, of course, are part of
2 that because in order to proceed with Phase 1B we need a waiver
3 of the locational restriction set forth in the Gautreaux
4 judgment order.

5 We have had lots of discussions, Alex and I and the
6 receiver as well, about Phase 1B, and we are at loggerheads on
7 a few issues. And we thought it would be, at least the CHA,
8 and I think Alex shares this, that it would be very helpful to
9 get your Honor involved at this point and to listen to some of
10 the issues that are out there, to see if you could help us
11 resolve them.

12 And in order to do that, we have brought today Terry
13 Peterson and Sharon Gist Gilliam. Sharon Gist Gilliam is the
14 CEO, of course, as you know from the Chicago Housing Authority.
15 And Terry Peterson is the executive director. In addition we
16 have here Mr. Elzie Higgenbottom and Eileen Rhodes from East
17 Lake Management. And we also have Denise Casalino, who is the
18 commissioner of planning for the City of Chicago.

19 You will see essentially that there are sort of -- and
20 I'm sorry. And also Greg Whitehead, who is the CHA's outside
21 counsel on the closing.

22 You will see as we get into this that there are
23 essentially five conditions or concerns that Mr. Polikoff has
24 about proceeding with Phase 1B. And originally discussion was
25 about putting something about these five concerns in an order.

1 We were very much opposed to that.

2 And then that has drifted to Mr. Polikoff asking us to
3 sign a side letter that presumably could be used in later
4 litigation addressing these five issues. The CHA is very much
5 unwilling to sign that because these conditions, we believe,
6 are really unwarranted and unnecessary. So what I want --

7 THE COURT: Let me interrupt for one moment. Are
8 these conditions that you feel are unwarranted and unnecessary
9 because they are not going to be relevant because you are going
10 to do all the things that he is concerned about in any event?
11 Or are these things that you contest in terms of whether it
12 should be done?

13 MR. JOHNSON: There is a little bit of both. There is
14 five, and each one is sort of specific. But there is a little
15 bit of both alternatives. And there is actually a third
16 alternative, which is some of the conditions have already been
17 satisfied.

18 So just to give you a taste of it, one of the concerns
19 by Mr. Polikoff is, there is a public school in the middle of
20 the Rockwell development. It's call Grant School. We
21 obviously don't run the schools and we just do housing. But
22 schools are important.

23 So one of the conditions that Mr. Polikoff has
24 insisted upon is that there be a written agreement that Mr.
25 Peterson will work with the school board to ensure and use best

1 efforts and good faith to make sure that that school is opened.

2 Now, lots of issues. We don't run the schools. We
3 are reluctant to enter into any sort of written agreements
4 putting responsibility on us for something beyond housing. But
5 as you will see from Mr. Peterson and as we have told Mr.
6 Polikoff, that school is opening in September.

7 THE COURT: I think as an inceptional matter, Mr.
8 Peterson has no problem with cooperating with the school
9 district.

10 MR. JOHNSON: In fact, Mr. Peterson cooperates weekly,
11 biweekly with not only the schools but with planning. And I
12 think part of why we are here is to have Mr. Peterson tell you
13 that there is a certain frustration level with being asked to
14 sign orders or side agreements as if by not signing it he
15 wouldn't be cooperating with the schools or with planning. And
16 so that's part of our controversy.

17 THE COURT: Well, Mr. Polikoff, if Mr. Peterson simply
18 said with the understanding that he doesn't run the schools and
19 doesn't make major decisions for schools, but certainly intends
20 to cooperate, facilitate, the new school, wouldn't that satisfy
21 you? I assume if he stands up here, he would tell me just
22 that.

23 MR. POLIKOFF: It might, your Honor.

24 THE COURT: If it might, let's do it.

25 What is the next issue?

1 MR. JOHNSON: Well, the next issue is that Mr.
2 Polikoff has insisted that we sign something saying, we will
3 use good-faith efforts and coordinate and help with commercial
4 development in the area. That is not CHA development but
5 commercial development, including a grocery store that's on the
6 southeast corner of Madison and Western.

7 Again, we don't do commercial development. Planning
8 is very involved. That's why Ms. Casalino has graciously come.
9 And the planning department has maps and projects and lots of
10 detail about what's going on. Ms. Casalino meets biweekly with
11 Mr. Peterson, with the commissioner of housing and with the
12 Mayor's Office on all these matters. Then biweekly all the
13 managers meet. And on each project there are all kinds of
14 meetings, as your Honor knows goes on at City Hall, about the
15 grocery store, about infrastructure improvement, about this
16 project and that project at different parts around Rockwell.

17 We don't feel that we should be in a spot, we don't
18 see what it has to do with the Gautreaux judgment order, for
19 Mr. Polikoff to have us sign an order or letter saying, yes, we
20 will continue meeting and we will make Rockwell a priority.
21 That already is happening.

22 And I think to seek -- maybe I can say it better than
23 the actual public official because I am not one of them, but
24 there is a certain sense in which they are -- I don't know,
25 maybe I want to use the word sort of offended by that in a

1 sense that it suggests that they are otherwise not meeting,
2 otherwise not making Rockwell a priority.

3 As your Honor knows, this is very, very difficult work
4 to do, takes the coordination of a lot of people. So again we
5 do not want to be in a spot where the suggestion is that we are
6 not doing this unless we sign a letter or an order.

7 If we do something that violates the Gautreaux
8 judgment order, we know -- I know for sure that Alex knows how
9 to get into court and tell you about it. But we don't think
10 it's the plaintiffs' role to get into setting the agendas
11 between various city officials. So that's the second issue,
12 commercial development.

13 We brought the commissioner of planning as well as her
14 staff to show you all the things that are going on out there.
15 We think that the ultimate issue for your Honor is, is there
16 enough activity happening here to warrant Phase 1B; that is, to
17 warrant the lifting of the locational restrictions.

18 We have shared this with Alex. We believe that there
19 is plenty going on there. Everyone is poised for closing. We
20 want to go forward.

21 MR. POLIKOFF: Thank you, your Honor.

22 A little background. An order was entered on the
23 off-site Phase 1A development of Rockwell more than 18 months
24 ago. We were concerned about the entry of the order that
25 authorized public housing to be developed right cheek by jowl

1 at Rockwell at that time and at that time began to raise
2 questions about the preconditions that ought to be met before
3 we feel comfortable recommending a change in a status quo over
4 at Rockwell to your Honor.

5 We agreed nonetheless at CHA's insistence to allow
6 that order to be entered on the off-site development with the
7 understanding stated in correspondence from us to CHA that the
8 issues that we are now beginning to talk about would be
9 addressed satisfactorily before we got to the on-site portion.

10 So what we are here today to talk about has a history
11 going back 18 months and more. It's not something that's just
12 arisen.

13 Secondly, in that 18-month period, we have sent a
14 number, a large number, of letters to CHA raising and
15 discussing these concerns and not getting a lot of feedback.
16 For a long time CHA wasn't responsive. There was one meeting
17 but only one meeting to deal with the concerns.

18 Thirdly --

19 THE COURT: Obviously the response is now they have --

20 MR. POLIKOFF: The response --

21 THE COURT: -- the executive --

22 MR. POLIKOFF: The response came recently in the form
23 of Tom Johnson's entering the discussions. And when Tom
24 enters, things always move forward pleasantly and with some
25 degree of rationality behind. So we are always glad to see Tom

1 enter.

2 We had several recent discussions about this proposed
3 order on the first phase of Rockwell. Until about ten days,
4 two weeks ago, three weeks maximum, we had a proposed motion
5 and order, and as Tom has characterized it a side letter on the
6 table with CHA. No significant comment about those.

7 We then began to meet with Tom, and no concern was
8 expressed about the motion. As we will move along, I will give
9 you a copy of the motion which lays out, as we have in all
10 previous revitalizing and waiver orders, the concerns of the
11 parties. I should add, by the way, that the letter we have on
12 the table with CHA and the motion and order along with it was
13 drafted very carefully with Habitat's participation. And they
14 were in full accord on the language in those documents that we
15 sent to CHA. So it's a careful process we've gone through.

16 And the concerns we've articulated in these documents
17 have to do, as Tom says, with five points. I'll just mention
18 one other to give you an illustration. He's picked the two
19 that CHA has the least direct control over, but that doesn't
20 mean that CHA's good efforts, best efforts, in attempting to
21 bring about a shared desired result aren't important.

22 But another one that Tom didn't mention, actually the
23 first one in the letter, has to do with a piece of land owned
24 by CHA immediately adjacent to the Rockwell development. It
25 used to house two big buildings called Maplewood Courts. And

1 what happens to the now vacant piece of land, or maybe not
2 quite completely vacant -- Maplewood is in the process of being
3 demolished -- since it's right next door to Rockwell is
4 obviously important to the Rockwell development.

5 So one of the suggestions we have made is that, okay,
6 when CHA proposes what the development is to be on this site
7 through the mechanism they use all the time and rightfully so
8 of requests of proposals and getting proposals back from
9 developers, because of its importance to the Rockwell
10 development, we would like you to give us a timely opportunity,
11 ten days or two weeks, to comment on the responses you get from
12 proposed developers for this Maplewood site, and then give
13 good-faith consideration to the comments we make. Period.

14 THE COURT: Seems pretty benign.

15 MR. JOHNSON: Can I speak to Maplewood?

16 THE COURT: Before you, let me step back a little.
17 Let's talk about process. How am I going to help you resolve
18 all these issues between you?

19 MR. POLIKOFF: May I say one word about process, your
20 Honor?

21 THE COURT: Yes.

22 MR. POLIKOFF: I was coming to that next until I got
23 too enamored with the Maplewood example. Until --

24 THE COURT: I haven't seen any problems so far.

25 MR. POLIKOFF: Until a week or ten days ago, we had a

1 motion with no negative comment from CHA on the table. We had
2 an order which not only was there no negative comment, but I
3 had some conversations with Tom about it. And my strong
4 impression was, there were no problems with the order.

5 And we had this side letter, which we originally
6 proposed to be attached to the order. But in deference to the
7 feelings of CHA we changed that and we attached it only to the
8 motion. So the order as we propose it doesn't contain a copy
9 of the letter. It makes a reference to no letter as such. It
10 just says that plaintiffs and defendants have agreed on a
11 process for addressing these issues. So we've come a long way
12 in deference to CHA's feelings.

13 Then Tom said, coming out of the process point, we
14 still don't think we want to sign the letter, not raising
15 objections about the language of the letter but saying that the
16 letter in principle was not a good idea. And it might help,
17 Tom said, if Terry Peterson could come to court and explain
18 this. We said, of course. That's -- we are happy to have him
19 do that. But that would be in addition to not in place of a
20 letter as you understand. Tom didn't agree with that, but that
21 was our view.

22 So we've now come here this morning with CHA having
23 made a kind of an informal motion for a conference with you,
24 with our acquiescence. I understood that Terry was going to
25 make a presentation to your Honor. We now have a quite

1 additional group of people to make a presentation. Tom advised
2 me of that sort of briefly over the telephone late last week.

3 We don't object to any of this. But what I want to
4 say to your Honor is that this should not be a substitute for
5 the procedures we followed in the past. The parties have
6 jointly filed motions which spell out the facts and
7 circumstances to your Honor. Based on that, you have acted.
8 And that's what ultimately we think needs to have a hearing.

9 THE COURT: Am I wrong in assuming that you don't want
10 to sign this letter, for whatever reasons. But the substance
11 of the letter is really something that is not problematic?

12 MR. JOHNSON: No, that's wrong. And there are issues
13 in the substance of the letter. But -- and let me just be
14 clear. Alex --

15 THE COURT: If there are issues in the substance of
16 the letter, putting process aside -- or putting process to the
17 forefront I should say, how do we resolve those issues of
18 substance?

19 MR. JOHNSON: Well, that's why we brought all these
20 people, Judge, is to give you -- and it wouldn't take that very
21 long. But to give you a little background on each of the
22 topics.

23 THE COURT: Does everyone agree that, you know, you
24 are going to come up and you are going to give me Point 1F and
25 say, we can't agree on Point 1F, you decide, Judge. And

1 everybody is going to be happy? Is that the kind of process?

2 MR. JOHNSON: That --

3 MR. POLIKOFF: We have had no articulation of what
4 these issues are.

5 MR. JOHNSON: Let me get a chance. The issues are the
6 five that you raised in the letter. That is really what we
7 have in mind, Judge, probably done perhaps a little bit more
8 informally. But that is exactly what we have in mind in order
9 to get us to the point where you can sign an order.

10 Let me say one -- just one quick thing. The motion
11 that Alex gave us, it's like a lot of these other revitalizing
12 motions. All of that is fine, except the motion lays out this
13 process that is embodied in the letter. The order is fine
14 except for that makes a reference back to the letter.

15 So it really -- these five conditions in the letter
16 are the key. Otherwise, there is really no problem with his
17 motion and his order. It does authorize what we need, which is
18 locational restriction waiver.

19 But what I thought is, if your Honor understood these
20 five issues, you would assist us in coming really to an
21 agreement. So it would be less of a ruling but it would assist
22 us in coming to an agreement.

23 And I think as we mentioned on the school and the
24 commercial development, I think what your Honor said is very
25 apt; which is, they are doing this. If the bottom line of that

1 is, why then do we have to have a side letter, that would help
2 us get to an agreement.

3 Now, let me give you one that's a little bit of a
4 substantive issue, Maplewood. Maplewood Courts is -- we did --
5 have two large buildings, are in the process of being
6 demolished. It is close to Rockwell. It is a city-state
7 project.

8 We did last time -- about a year ago we sent out an
9 RFP to see if we can get a developer for it. We worked with
10 Alex. We said, here look at our RFP. What else do you want in
11 here? He gave us comments. We incorporated that. We sent the
12 RFP out. There was no response whatsoever. As a result, we
13 proceeded with the demolition.

14 We have not yet prepared an RFP for Maplewood Courts.
15 And quite frankly, it appears that Maplewood Courts may end up
16 to be a park as opposed to any housing whatsoever. But Alex
17 wants --

18 THE COURT: You would love that, right, Alex?

19 MR. POLIKOFF: Yes.

20 MR. JOHNSON: But it's -- we are at a point --

21 THE COURT: All he wants to do apparently, unless I
22 missed something, is for you to tell him what you are doing,
23 let him comment, and then you make your own decisions, having
24 in good faith listened to his comments.

25 MR. JOHNSON: In the letter what he wants -- we

1 offered that you can look at the RFP, what our plan is. But he
2 wants to be involved in commenting on the responses and who the
3 developer would be of that park. That's where we drew the
4 line, and that's really the only substantive issue.

5 THE COURT: A comment is a comment. Unless you are
6 bound to, you know, put into effect every comment that is made,
7 what is the harm of letting him comment?

8 MR. JOHNSON: Well, we feel pretty strongly --

9 THE COURT: In good faith read the comments and then
10 make your own decisions.

11 MR. POLIKOFF: The exact language, your Honor, is one
12 sentence: CHA will provide the receiver and Gautreaux counsel
13 copies of responses to the RFP, invite their comments and give
14 good-faith consideration to the same. Period.

15 MR. JOHNSON: Essentially the fear is that we don't
16 believe that the plaintiffs in Gautreaux have a role in
17 procurement at CHA. What they are asking for is essentially to
18 be on the panel that looks at the responses.

19 THE COURT: Add another sentence: It is agreed by the
20 parties that Gautreaux people have no role to contribute.

21 MR. JOHNSON: These are the ideas that we were hoping
22 to sort of ferret out.

23 THE COURT: I will give you the idea.

24 MR. JOHNSON: Now, if it turns out to be a park, then
25 I assume Mr. Polikoff would not have a problem.

1 THE COURT: Sure. Sure. You should have told him
2 it's going to be a park. He probably wouldn't have even raised
3 it.

4 MR. JOHNSON: We might as well, as we are making
5 progress then, here is the third issue. The third issue is
6 that there is two closings: Rental, for-sale.

7 THE COURT: All right.

8 MR. JOHNSON: I have talked to Alex at length about
9 this. I have said, what is it that we are not doing with
10 respect to the for-sale closings? Because that's one of his
11 conditions that we have to use our best efforts to move forward
12 because it's lagging behind, and we are not going to do the
13 for-sale closing. And I have said, we have Mr. Whitehead. He
14 is representing us. We have the plat of subdivision completed
15 for the for-sale closing. We have a sales trailer out there.
16 They've signed up 18 purchasers who have put earnest money
17 deposits down. The for-sale closing, everybody, HUD, the
18 investors, the developer, everybody understands that follows
19 from the rental closing.

20 I mean, the reality is, that same document that's used
21 in the rental closing, environmental remediation agreement,
22 ground lease, whatever it is, that goes through all that back
23 and forth. They reach an agreement. Then they lift it up and
24 say, okay, we are going to do this for the for-sale closing.

25 Somehow we are being asked to sign an agreement that

1 we will sort of make sure the for-sale closing happens when
2 everybody on our side, our outside counsel, the developer,
3 everybody said, we are fine. There is -- we are moving
4 forward. It's going the way every one of these real estate
5 transactions goes. And I cannot figure out what it is that we
6 have done wrong.

7 THE COURT: Would you be happy with a statement saying
8 just that? We are going forward and doing all these things?

9 MR. POLIKOFF: This is really a Habitat point, your
10 Honor. And in deference to Habitat's concern and CHA's
11 unhappiness with it, we have put in the word "if any," the
12 phrase "if any." So all this says is that CHA would use its
13 best efforts in the timely completion of closing documents with
14 respect to the for-sale, if any, if any further best efforts
15 are needed, any further documents are needed. If not, it
16 doesn't apply.

17 MR. JOHNSON: Okay.

18 MR. POLIKOFF: So what's the issue?

19 MR. JOHNSON: First of all, Judge, we have a receiver
20 who's in charge of the whole process. Okay. That's why you
21 appointed him, to make sure this kind of stuff happens. We
22 never on any of these closings for Horner, Cabrini, Lake --
23 they go on all the time. We've never had the Court involved
24 making sure when documents go to different places. The
25 receiver's job is that. If they feel that we are doing a bad

1 job, they'll come in here and tell you.

2 MR. POLIKOFF: The receiver has asked us to put this
3 paragraph in the letter.

4 MR. JOHNSON: You know what --

5 THE COURT: No one is going to send a copy of this
6 transcript to Representative DeLay. Are you?

7 MR. POLIKOFF: I promise not to, Scouts' honor.

8 THE COURT: Talk about judicial finetuning of --

9 MR. JOHNSON: See, that's --

10 MR. POLIKOFF: Your Honor --

11 MR. JOHNSON: That's the point. There is tremendous
12 amounts of activity just around this closing. Why would the
13 Court, either through this order or a side letter -- why would
14 the Court get in the middle of that until it's at least gone
15 off the track. There is no suggestion, including by the
16 receiver, that this for-sale closing is off the track. And yet
17 we are in here in court arguing about whether documents went to
18 the right party. This is micromanaging.

19 THE COURT: How about, it is agreed that this
20 foreclosure is proceeding in a proper manner as it always was.
21 And, therefore, it is anticipated that --

22 MR. JOHNSON: Well, what I am saying is -- I am going
23 to say right on the record exactly where we are. I've got Mr.
24 Whitehead here.

25 THE COURT: I agree.

1 MR. JOHNSON: I don't think that we should be in a
2 spot where we are making promises and agreements and trying to
3 work out language if there is a problem.

4 THE COURT: You are not making comments or agreements.
5 You are just stating what has occurred, what you have told me
6 today.

7 MR. JOHNSON: I stand by what I say on the record.
8 And again, by way of an offer of proof --

9 THE COURT: What's --

10 MR. POLIKOFF: Your Honor, this is all getting to be a
11 little embarrassing. In previous rounds of this sort, Taylor,
12 et cetera, we have worked this kind of thing out ahead of time
13 and come to your Honor with an agreed presentation. In fact,
14 the typical pattern -- there have been some exceptions, the
15 typical pattern has been that you take a mutually agreed
16 presentation reciting all the facts and circumstances, sign an
17 order without our even coming to court.

18 For a reason I do not understand, this particular
19 Rockwell situation has deviated from that pattern. It's been
20 hard to learn what substantive disagreements they are, if any.
21 Every time we raise an issue, we make a change. Every time
22 they raise an issue we make a change in the language. We moved
23 the letter from the order to the motion so you don't even have
24 to see the letter. We stick in the word, if any. We ask only
25 for comments being given good-faith consideration. No role

1 beyond that.

2 But at the last moment, instead of the horse drinking
3 from the water, what happens is the horse reared up and said,
4 no, we want to make a presentation. And I don't fully
5 understand it.

6 THE COURT: We have resolved those three issues. What
7 is four and five and you can sit down and get a copy of the
8 transcript and put it all together.

9 MR. JOHNSON: Okay. That's an excellent suggestion.
10 You are not going to let me respond to that?

11 THE COURT: You know --

12 MR. JOHNSON: It's not really --

13 THE COURT: It's like a lovers' quarrel. Why do you
14 want to regurgitate the past?

15 MR. JOHNSON: Let my silence not be deemed
16 acquiescence because that's not really the process. These
17 issues have always been the problem on Rockwell. And we
18 couldn't solve them like we solve most issues.

19 Okay. Another one is, there are social services being
20 provided to the Rockwell residents. They -- prior to moving
21 into the new units, social service providers through the
22 developer work to get people into employment positions, day
23 care, deal with all manner of issues, back rent obligations,
24 utility obligations, et cetera.

25 You remember, we were just here on lease-up and social

1 services delivery across the city to all the different
2 developments. Remember, we all sat right at the table, and
3 we -- you assisted us in working out a plan where Alex withdrew
4 his motion, and we came up with a way of reporting to him on
5 all the sites all over the city, what's happening in leasing
6 and the delivery of social services. And we have done that
7 each month since then.

8 So then here as a condition for getting this order at
9 Rockwell, Alex wants reporting on social services. I asked
10 him, what is different about this than what we are already
11 doing? He said, well, I don't see anything that's different.
12 But this needs to be referenced in the order and the side
13 letter.

14 I said, we have a system. We solved that problem.
15 That's over with at this point. He mentioned that the Rockwell
16 working group did not get one of the social services reports.
17 So we sent it to him.

18 But why this continues to be an issue I have no idea
19 because we've already agreed to do it and we are doing it.

20 MR. POLIKOFF: That's not quite fair, your Honor. I
21 think Tom knows why it continues to be an issue. The answer is
22 that notwithstanding the promises about providing social
23 service data, CHA has not complied with those promises,
24 including at Rockwell. There have been grievous failures to
25 provide it and it's been like pulling teeth to get the reports.

1 I got a report -- I wasn't in the office yesterday. I
2 got a report most recently on August 15, which may be complete.
3 I haven't had a chance to look at it yet. But regardless, what
4 we have inserted in this document in deference to CHA's
5 feelings is the following: But if CHA provides such data in
6 monthly reports to the Rockwell working group, it need not
7 separately provide the same to the Gautreaux plaintiffs.

8 So we have taken account of the point that documents
9 we seek and which they say they are willing to provide may be
10 provided through another mechanism. If they are, this whole
11 paragraph becomes unnecessary and irrelevant by the language
12 stated in here unambiguously.

13 MR. JOHNSON: This is really -- you know, we get along
14 well. But this is a little irritating because we entered into
15 this agreement to provide lots of data. I mean, lots of data,
16 takes lots of staff hours. We were supposed to do it the 15th
17 of each month. So yesterday is the 15th. We gave the monthly
18 reports for all the developments in the city.

19 Last month we also gave it for all the developments in
20 the city, and that's citywide leasing, citywide social
21 services. And then there are working group documents that are
22 specific to each development. All right.

23 True enough, the Rockwell working group, I don't know
24 what happened. Maybe the developer forgot to give it to them
25 or whatever, for that first month didn't give them that third

1 level of report. Okay. Alex raised it. We gave it to him.

2 But why now is this a condition for entry of the
3 Rockwell order? Why can't we say what we said in
4 correspondence when we were last before your Honor after he
5 withdrew his motion or right now? We are making these reports.
6 If there is a slip-up, let us know, and we will give it to you.

7 That should be enough as lawyers, that representation
8 in court. I don't see why Terry Peterson has to be signing
9 orders or letters. It is micromanaging a complex job, and it's
10 not something the Court really should be involved in.

11 THE COURT: Why not be satisfied with a simple
12 representation that these reports are being made, that you are
13 invited to let them know if there has been any slip-ups, and
14 that they will respond promptly if --

15 MR. POLIKOFF: No doubt that would be. In fact, I
16 asked Tom to sit down with me and work over --

17 THE COURT: But --

18 MR. POLIKOFF: -- the letter --

19 THE COURT: How about the artful language I just
20 suggested?

21 MR. POLIKOFF: I think that's fine.

22 THE COURT: Let's go.

23 MR. POLIKOFF: I used the word -- I told Tom I thought
24 all of this could be handled by the phrase I used was word
25 smithing. He said, it wasn't a question of word smithing.

1 It's a question that they don't want to sign any letter.

2 MR. JOHNSON: It is not a question of word smithing.

3 Okay. And I want to be really clear about that. We do not
4 want to get into a posture at Rockwell or anyplace else where
5 the Gautreaux plaintiffs through side letters, orders,
6 whatever, are micromanaging these detailed discussions, whether
7 it's with the City on schools or whether it's with the --
8 around the closing table, or whether it's in terms of details
9 of social service reports. This is not the Court's business.
10 If we run off the track, they can come in here.

11 THE COURT: You have any problem with the language I
12 suggested?

13 MR. JOHNSON: We have problem with language in orders
14 that -- or in side letters along the lines of anything that's
15 being suggested.

16 THE COURT: How about a statement in open court?

17 MR. JOHNSON: Yes, that we are fine with. And that's
18 why we asked to come in to see your Honor.

19 THE COURT: All right. So the language that I
20 suggested is something you can work with. All right? What we
21 can do is do all these things. We got four issues resolved.
22 You don't want a letter. Just read what you have agreed onto
23 the record.

24 MR. JOHNSON: Well, here is my thought, and just
25 processwise -- we actually somehow covered all five. I don't

1 know how we -- it's Maplewood, social services, the closing,
2 commercial development and school.

3 THE COURT: I think we have agreement in principle on
4 all.

5 MR. JOHNSON: The process is important. Okay. And I
6 think what Terry Peterson would say if he got a chance to be up
7 here, and I hope he does, Judge, I am just a lawyer. But is
8 that --

9 THE COURT: A country lawyer, right?

10 MR. JOHNSON: What we want to -- what we would like to
11 do is to say, look, here is the transcript. I was hoping to
12 have Terry's words on the transcript or Denise or whatever.
13 But here is the transcript. Here is what we are doing. Okay.
14 Here is our representation. That should be sufficient on these
15 five points to get this order entered. And we don't want to
16 get into orders, you know, side letters.

17 THE COURT: Let me make a suggestion. We could
18 prolong this. We can take all kinds of testimony. But I think
19 there has been agreement already on the record today as to the
20 principles of all the matters that have been at issue. I think
21 it would be a very simple thing, with or without refreshing
22 your recollection with a copy of the transcript, sitting down
23 and putting them in the language that I have suggested,
24 obviously a little bit more artfully, without compromising
25 either side.

1 And then simply as the attorneys on both sides coming
2 into court, you don't need any formal letter of understanding.
3 You don't have to have the entire city executive staff
4 testifying before me. I think that's more of an imposition
5 than simply stating on the record the things that we have all
6 agreed to today.

7 MR. POLIKOFF: We would be agreeable to that, your
8 Honor, with the understanding that the motion, which as I
9 understand is basically agreed to without problem, lays out the
10 facts so that the record, what goes into the Rockwell order, as
11 in all previous cases is there.

12 THE COURT: Well, I will state for the record that, of
13 course, the Rockwell order that is signed would be construed in
14 light of this hearing and in light of what you are going to
15 read into the record, which is a more refined summary of what
16 we all agreed today.

17 MR. JOHNSON: Can I make a suggestion? I have no
18 problem, I think, and I should check with Gail, but I have no
19 problem saying that we would stand by what we say on the record
20 here. And that maybe what we should do is like we do sometimes
21 in other -- they do it a lot in Circuit Court where the Judge
22 makes a ruling, there is argument, and they just write an order
23 and refer back to the transcript. And maybe that's the
24 reference that should be made in any order.

25 THE COURT: I think so. But again, I mean, to satisfy

1 anybody, satisfy you just as well as the Gautreaux people, I
2 think it makes sense that you refer to the transcript. But
3 there are five specific points that we are concerned about. I
4 think we can resolve them with language that satisfies both
5 sides.

6 But you both sit down and agree on the language and
7 simply read it into the record at some time.

8 MR. JOHNSON: I am wondering if we didn't already do
9 that essentially, make a record.

10 THE COURT: If you are satisfied, fine.

11 MR. JOHNSON: I am certainly satisfied with what I
12 have said and --

13 MR. POLIKOFF: I think we should follow your Honor's
14 suggestion, work out --

15 THE COURT: I am not asking you to do anything more
16 than what we have agreed to today. Or, you know, there should
17 be no hidden agenda on either side, start renegotiating at this
18 point.

19 MR. POLIKOFF: We are perfectly willing to follow your
20 suggestion, work out the language, the agreed language, I trust
21 that would be stated on the record to supplement what we said
22 so far, have the motion filed in agreed form, have the order
23 entered in agreed form.

24 MR. JOHNSON: I see that as -- frankly, Judge, I am
25 just being frank because you have been very helpful with us all

1 the time on this. We got to get this closing done. We've got
2 to get an order that allows us to go forward. I don't think
3 there is anybody in this room that's really opposed to that.

4 THE COURT: I will sign an order today. That's not a
5 problem.

6 MR. JOHNSON: All --

7 THE COURT: Work on the other stuff. Look, we have
8 done all the stuff that goes into the sausage, you know, on the
9 conveyor belt already. All I am asking you to do is package it
10 a little bit more neatly. I will sign the order today. Okay?

11 MR. JOHNSON: Okay. He's got a version that refers
12 back to this whole process. And we got one that just says the
13 locational restrictions are waived. It's actually his order
14 without that reference.

15 MR. POLIKOFF: The objectionable language in the
16 proposed order is --

17 MR. JOHNSON: I can show him mine.

18 MR. POLIKOFF: The Court being apprised that the
19 parties have reached agreement regarding a process to address
20 issues that plaintiffs believe threaten to undermine the
21 realization of the mixed-income objective at Rockwell.

22 MR. JOHNSON: Can I tender the motion?

23 MR. POLIKOFF: Sure.

24 (Document tendered to the Court.)

25 MR. JOHNSON: That's the difference, the demarcated

1 lines.

2 MR. POLIKOFF: Did you mark this?

3 MR. JOHNSON: Yes.

4 THE COURT: And --

5 MR. JOHNSON: So the circumstances described in the
6 motion are all these agreements on the five different issues.
7 That's the problem. So I want to be clean that all we are
8 doing here is a locational waiver. And it's based on -- it can
9 be based on everything we said today. But the bottom line is,
10 that's what the Gautreaux --

11 THE COURT: How about instead of reach an agreement,
12 how about reach an understanding regarding the concerns of the
13 plaintiffs?

14 MR. POLIKOFF: That would be acceptable too, your
15 Honor. No problem.

16 Tom did make one rare misstatement. The motion that
17 was submitted --

18 MR. JOHNSON: I have to just check with my client,
19 Judge. Can I do that?

20 (Brief pause.)

21 MR. JOHNSON: Sorry, Judge.

22 MR. POLIKOFF: I just want to correct one point. Tom
23 said the motion -- at least I think you said the motion refers
24 to all of this process. The motion, as I recall it, Tom,
25 simply states facts and doesn't refer to the process of

1 agreement.

2 MR. JOHNSON: Here, it's paragraph 6. Okay.

3 Plaintiffs and CHA have reached an agreement how all these
4 issues are to be addressed. Among other things, the parties
5 have agreed, plaintiffs will participate in the process to
6 select the developer for the Maplewood site. CHA will use its
7 best efforts to ensure that the developer adheres to a timeline
8 for completion of homeownership units. It's the whole -- it's
9 your whole letter incorporated in the motion.

10 MR. POLIKOFF: You are right. That paragraph is in
11 the motion. I'd forgotten.

12 THE COURT: Okay. Can I read you my substitute?

13 MR. JOHNSON: Sure.

14 THE COURT: The Court notes that the parties have
15 reached an understanding as to plaintiffs' concerns regarding
16 the mutual goal of the parties to realize the mixed-income
17 objective at Rockwell.

18 MR. POLIKOFF: Fine, your Honor.

19 THE COURT: Okay?

20 MR. JOHNSON: Okay.

21 THE COURT: If you can read my scribble, here is your
22 pen.

23 MR. JOHNSON: Thanks. Why don't I put it in a final
24 form of an order and deliver it over to your chambers.

25 THE COURT: Anything else?

1 MR. POLIKOFF: Well, wait a minute. Deliver -- we are
2 going to also agree on the language to go into the transcript,
3 as we have discussed, as the Judge suggested.

4 THE COURT: Yes, I said --

5 MR. POLIKOFF: We are not skipping over that just to
6 go to an order.

7 MR. JOHNSON: Let me just be clear because the order
8 obviously -- I am getting pressure to get the order for the
9 closing.

10 THE COURT: It's not an order. My addendum is simply
11 a statement that we are going to put in the record, read into
12 the record. I don't even care if a formal piece of paper is
13 filed. But we are going to put in the record a summary of
14 everything that we have agreed to.

15 MR. JOHNSON: Then my only question, and I am just
16 being dumb here, didn't we just do that? Or --

17 THE COURT: Yes, we did do that. But as I use my
18 ineloquent sausage factory, it might be helpful, since we have
19 reached some understanding as to these issues, to simply state
20 what they are and again put them into the record in summary
21 form. Okay? We have done the brief. All I am saying is we
22 ought to have a paragraph of conclusion.

23 MR. POLIKOFF: So we got the order, reverse order, we
24 got the summary which we will work on promptly and hand you
25 today. And finally, taking out this paragraph, if you want.

1 We want the motion to be filed as a predicate for the order.

2 MR. JOHNSON: We are just --

3 MR. POLIKOFF: The motion -- until now the motion has
4 been unobjectionable, particularly if we now delete the
5 paragraph that --

6 MR. JOHNSON: Okay. That's fine.

7 THE COURT: Sure. Great.

8 MR. JOHNSON: Let us work it out. Maybe we will --
9 could we show back up here later?

10 THE COURT: Sure. Why don't you have lunch together.

11 MR. JOHNSON: That's a lot to ask, Judge. Thank you.

12 (Hearing recessed until 2:15 o'clock p.m. of the same day.)

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

DOROTHY GAUTREAUX, et al.,) Docket No. 66 C 1459
)
Plaintiffs,)
)
v.) Chicago, Illinois
) August 16, 2005
CHICAGO HOUSING AUTHORITY,) 2:15 o'clock p.m.
et al.,)
)
Defendants.)

TRANSCRIPT OF PROCEEDINGS - MOTION
BEFORE THE HONORABLE MARVIN E. ASPEN

APPEARANCES:

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1 (Proceedings had in open court:)

2 THE CLERK: 66 C 1459, Gautreaux versus CHA.

3 MR. POLIKOFF: Good afternoon, your Honor.

4 MR. JOHNSON: Good afternoon, Judge. Tom Johnson on
5 behalf of the CHA.

6 MR. STAUNTON: Tom Staunton on behalf of the receiver.

7 MR. JOHNSON: Well, we have worked out something to
8 say.

9 THE COURT: Good.

10 MR. JOHNSON: And we essentially also have worked out
11 a motion that is agreeable. I shouldn't say essentially. We
12 worked out a motion that's agreeable and an order that's
13 agreeable. We didn't quite have enough time to sort of
14 reformulate it and retype it. So with your permission, we
15 thought we would say on the record a summary of what we said
16 earlier today, and then deliver to you, what tomorrow?

17 MR. POLIKOFF: No later than tomorrow morning a motion
18 and order but without an appearance.

19 THE COURT: That's fine.

20 MR. POLIKOFF: Unless you want one.

21 THE COURT: No.

22 MR. JOHNSON: And that motion and order would have the
23 agreement of the receiver, plaintiffs' counsel and CHA.

24 So with respect to the five issues that we discussed
25 earlier, taking them in order, first with respect to Maplewood

1 Courts, the present plan is to make the Maplewood Courts site
2 into a park. If this plan changes and the Maplewood site is to
3 be developed other than for a park, the parties are in
4 disagreement respecting the proceedings to be followed and
5 agree that this issue may then be brought before the Court for
6 resolution. That's Maplewood.

7 With respect to social services reporting and
8 services, CHA has agreed to and is providing social services
9 data and leasing data to plaintiffs' counsel in the form of the
10 replacement housing leasing report, the move-in time line and
11 the monthly social service data on all developments, including
12 Rockwell. And if plaintiffs' counsel has a problem with this
13 reporting, they will advise CHA.

14 With respect to the for-sale dimension of the closing,
15 the closing for the for-sale units at Rockwell is proceeding at
16 a reasonable pace, according to outside real estate counsel for
17 the CHA and according to Habitat.

18 Fourth with respect to commercial development, CHA's
19 CEO and staff have met and will continue to meet with the City
20 Departments of Planning, Housing and the Mayor's Office. In
21 these meetings these parties are seeking to, among other
22 things, foster commercial development in the Rockwell area.

23 And on the school, believing quality education is
24 important to a mixed-income redevelopment, CHA has worked
25 regularly with the Board of Education to ensure that a school

1 will reopen in the Grant School facility. The Board of
2 Education says that a military school will open there in the
3 fall of 2005.

4 So with that, we really offer our thanks to you,
5 Judge.

6 THE COURT: Thank you very much. I am glad you are
7 able to work it out.

8 MR. JOHNSON: And we will present the order and trust
9 the closing will go forward and things will proceed at
10 Rockwell.

11 THE COURT: Good.

12 MR. JOHNSON: Thanks.


13 MR. POLIKOFF: Thank you again.

14 THE COURT: You're welcome.

15 (Which were all the proceedings had at the hearing of the
16 within cause on the day and date hereof.)

17 CERTIFICATE

18 I HEREBY CERTIFY that the foregoing is a true, correct
19 and complete transcript of the proceedings had at the hearing
20 of the aforementioned cause on the day and date hereof.

21
22 
23 Official Court Reporter
24 U.S. District Court
25 Northern District of Illinois
Eastern Division

8-17-05
Date