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Activity in Case 1:66-cv-01459 Gautreaux, et al v. Chgo Housing Auth, et al response in opposition to motion

1 message

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Case Name: Gautreaux, et al v. Chgo Housing Auth, et al
Case Number: 1:66-cv-01459
Filer: Cabrini-Green Local Advisory Council
WARNING: CASE CLOSED on 02/26/1988
Document Number: 421

Docket Text:
RESPONSE by Cabrini-Green Local Advisory Councilin Opposition to MOTION by Defendant Chicago Housing Authority to reassign case *A Newly-Filed Complaint and*MOTION by Defendant Chicago Housing Authority to dismiss *That Complainant Without Prejudice to the Right of Plaintiffs Therein to Seek Leave to Intervene in This Case*[416] (Rosenthal, R. Elizabeth)

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

DOROTHY GAUTREAUX, et al.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 66 C 1459
	)	Judge Aspen
CHICAGO HOUSING AUTHORITY,	)	
	)	
Defendant.	)	

CABRINI PLAINTIFFS' OPPOSITION TO DEFENDANT CHICAGO HOUSING AUTHORITY'S MOTION TO REASSIGN AND TO DISMISS

INTRODUCTION

In May 2013, more than 40 years after entry of a judgment order in *Gautreaux*, residents of and relocatees from the Cabrini-Green Rowhouses, along with their representatives, filed suit against the Chicago Housing Authority for violations of the Fair Housing Act, among other claims. *See* Complaint, *Cabrini-Green Local Advisory Council v. Chicago Hous. Auth.*, 13-cv-03642, (N.D. Ill. May 16, 2013) (D.I. 1), attached as Exhibit A to Defendant's Motion ("Compl."). The plaintiffs in that newly-filed case (the "*Cabrini* Plaintiffs") have challenged CHA's recent decision to convert the Rowhouses from 100% public housing to "mixed-income." This was a reversal after more than 10 years of planning the rehabilitation of the Rowhouses, and after 25% of the Rowhouses had actually been rehabilitated as public housing units. The Rowhouses are part of what was once known as the Cabrini-Green Development, one of the only public housing developments on the North Side of Chicago.

Defendant Chicago Housing Authority ("CHA") now brings its "Motion to Reassign a Newly-Filed Complaint and to Dismiss that Complaint Without Prejudice to the Right of Plaintiffs Therein to Seek Leave to Intervene in This Case" (D.I. 416) ("Motion" or "Motion to

Reassign and to Dismiss").[1] CHA's Motion is procedurally and substantively deficient. Reassignment would be inconsistent with the governing local rule, as there is no discovery and no proceedings left to coordinate between the newly-filed *Cabrini* case and *Gautreaux*. And, contrary to CHA's suggestion, the *Cabrini* case seeks only to preserve the Rowhouses as 100% public housing, not to interfere with the development of new public housing—the subject of *Gautreaux*. Accordingly, this Court should deny CHA's Motion to Reassign and to Dismiss.

ARGUMENT

I. *CABRINI* CANNOT BE REASSIGNED UNDER LOCAL RULE 40.4(B).

This Court has used a random assignment system for over fifty years in order to secure an "equitable distribution" of cases among the judges. Local R. 40.1(a) & comment. Local Rule 40.4(b) allows "an exception—but only in carefully circumscribed circumstances—to [this] guiding polestar" of random assignment in order to facilitate the efficient disposition of related cases. *Targin Sign Sys., Inc. v. Preferred Chiropractic Ctr., Ltd.*, 714 F. Supp. 2d 901, 901-02 (N.D. Ill. 2010). The criteria for reassignment are "stringent." *Williams v. Walsh Constr.*, No. 05-cv-6807, 2007 WL 178309, at *2 (N.D. Ill. Jan. 16, 2007). As a general rule, if two cases cannot be efficiently coordinated or consolidated through common "discovery, legal findings, defenses or summary judgment motions," reassignment is improper. *Id.*; *see also Hullum v. Sullivan*, No. 90-cv-4311, 1990 WL 115777, at *1 (N.D. Ill. Aug. 3, 1990) (noting that this Court's local rules "clearly seem to indicate" that a newly filed action should not be reassigned merely because there is a related "ancient class action" on another judge's calendar).

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[1] *Cabrini* Plaintiffs note that *Gautreaux* Plaintiffs' counsel has filed a "Statement in Support of Defendant Chicago Housing Authority's Motion . . ." *Gautreaux v. Chicago Hous. Auth.*, No. 66-cv-1459, (May 17, 2013) (D.I. 418). As it does not raise arguments distinct from those in CHA's Motion, *Cabrini* Plaintiffs do not respond separately to it.

CHA seeks the reassignment of the newly-filed *Cabrini* case so that proceedings can be coordinated with a case that was resolved on the merits at summary judgment in 1969. *See Gautreaux v. Chicago Hous. Auth.*, 296 F. Supp. 907 (N.D. Ill. 1969). CHA's motion comes more than four decades too late under Rule 40.4(b), for there is no hope of saving time through coordinated discovery or common disposition at summary judgment or trial. *See* Local R. 40.4(b)(2), (4). (At the same time, the motion is premature in that it was filed before CHA answered or otherwise pleaded to the *Cabrini* Complaint. *See* Local R. 40.4(c).) CHA is left to resort to offering "only conclusory statements as to how reassignment will result in substantial savings of judicial time and resources." *Machinery Movers v. Joseph/Anthony, Inc.*, No. 03-cv-8707, 2004 WL 1631646, at *3 (N.D. Ill. July 16, 2004). But bare conclusions do not suffice. *See Lawrence E. Jaffe Pension Plan v. Household Int'l, Inc.*, No. 02-cv-5893, 2003 WL 21011757, at *3 (N.D. Ill. May 5, 2003) ("The judges of this Court have interpreted subsection (c) to impose an obligation on the moving party to specifically identify why each of the four conditions for reassignment under LR 40.4(b) is met."). The *Cabrini* case could only be reassigned if CHA were to show that each of the four independent requirements of Local Rule 40.4(b) is met. However, as discussed further below, CHA has failed to show that any of the requirements is satisfied in this case. CHA's motion should therefore be denied.

A. *Gautreaux* Is Not "Pending In This Court."

First, *Gautreaux* is not "pending in this Court" within the meaning of Local Rule 40.4(b)(1). *See U.S. v. Bd. Of Educ.*, No. 80-cv-5124, 1994 WL 159366, at *2 (N.D. Ill. Apr. 25, 1994) (holding that prior case was not "pending in the sense contemplated by this Rule" where it had been "settled by Consent Decree in 1980," regardless of the Court's continuing "jurisdiction to enforce that Decree"). As in the *Board of Education* case, "all substantive issues" raised in *Gautreaux* were resolved decades ago. *Id.* Indeed, this Court long-ago denied a similar motion

to reassign on the ground that *Gautreaux* "has been 'concluded' with the entry of a consent decree." *Mabry v. Village Mgmt., Inc.*, 109 F.R.D. 76, 80-81 (N.D. Ill. 1985). The Court recognized that its "sole role" in the closed litigation was to monitor compliance with the decree. *Id.* Twenty-eight years after *Mabry*, the *Gautreaux* case is just as "concluded" as ever. In fact, according to this Court's e-filing system, *Gautreaux* has been "terminated" since February 26, 1988. And the Clerk's office does not even maintain the files from the original *Gautreaux* litigation anymore. Those files are now maintained by the National Archives and Records Administration.

B. Reassigning *Cabrini* Is Not "Likely To Result In A Substantial Saving Of Judicial Time And Effort."

Second, reassigning *Cabrini* is not "likely to result in a substantial saving of judicial time and effort." Local R. 40.4(b)(2). CHA nowhere specifies "*how* combining the cases will result in a substantial savings of judicial resources, nor does it pinpoint what issues for discovery will be the same in both cases." *Machinery Movers*, 2004 WL 1631646, at *3 (emphasis in original). Nor could it. There are no ongoing proceedings in *Gautreaux* that would possibly be duplicated by *Cabrini*, and there is no discovery to coordinate—unless CHA intends to suggest that the *Cabrini* Plaintiffs be limited to deposition testimony and interrogatory responses from the 1960s. There is also scant legal or factual overlap between the cases. The *Cabrini* Plaintiffs have brought a challenge under the Fair Housing Act to CHA's decision to eliminate two-thirds of the public housing units from the Francis Cabrini Rowhouses and ultimately move 400 families into poor, racially segregated areas of the city. Compl., at ¶¶ 60-68. But the Fair Housing Act was not at issue in *Gautreaux*—it was not even enacted at the time the case was filed—and the decision to convert the Rowhouses to mixed-income housing was not announced until 2011. *See* Compl., Exhibit B. And whereas *Gautreaux* concerned the development of new public housing,

the *Cabrini* Plaintiffs seek to bar CHA from eliminating existing public housing. As a result, "the predominate portion of judicial time will be spent on issues that are not common to both cases." *Clark v. Insurance Car Rentals, Inc.*, 42 F. Supp. 2d 846, 848 (N.D. Ill. 1999).

C. *Gautreaux* Has Progressed Too Far

Third, CHA's motion comes too late under Local Rule 40.4(b)(3), which bars reassignment where the earlier case has "progressed to the point where designating a later filed case as related would be likely to delay the proceedings in the earlier case substantially." Because *Gautreaux* has been closed for decades, there is nothing left to "delay" as a formal matter. But the purpose of this third requirement is to ensure that later-filed cases are not reassigned where the earlier case has progressed too far. *See, e.g.*, *Sunstar, Inc. v. Alberto-Culver Co.*, No. 01-cv-736, 2003 WL 21801428, at *2 (N.D. Ill. Aug. 1, 2003) (denying reassignment in part because first case had "progressed to the eve of trial"). A motion to reassign that would have been too late on the eve of trial does not become timely after final judgment.

D. These Two cases Are Not "Susceptible Of Disposition In A Single Proceeding."

Fourth, the cases are not "susceptible of disposition in a single proceeding." Local R. 40.4(b)(4). The claims in *Cabrini* cannot be disposed in a common proceeding with those in *Gautreaux* because *Gautreaux* was disposed of at summary judgment decades ago. 296 F. Supp. 907. Accordingly, and as this Court recognized in *Mabry*, "it would be impossible to 'consolidate' these cases for the purposes of . . . trial." 109 F.R.D. at 80.

CHA attempts to skirt these four requirements by suggesting that the Court can simply dismiss the *Cabrini* case and force the *Cabrini* Plaintiffs to litigate as intervenors in *Gautreaux*. CHA does not explain the legal basis for such dismissal, *see infra* Part III, but more to the point

here, dismissal is the antithesis of coordinated proceedings under Local Rule 40.4(b). The point of reassignment is to eliminate duplicative discovery and to shepherd co-pending cases toward a common and efficient disposition. But by filing the instant motion, CHA sought to wipe *Cabrini* off the docket before CHA had even answered the Complaint.

Moreover, forcing the *Cabrini* Plaintiffs to litigate as intervenors would drastically limit the relief available to them, as well as the scope of the claims they may raise. *See, e.g.*, *Gautreaux v. Chicago Hous. Auth.*, 475 F.3d 845, 852 (7th Cir. 2007) (holding that Central Advisory Council could not appeal the *Gautreaux* Court's denial of a motion to modify a 1996 revitalization order). The *Cabrini* Plaintiffs are entitled to a meaningful opportunity to be heard on the merits of their claims, and to a just determination of the action they have filed. *See, e.g.* Fed. R. Civ. P. 1. For its part, CHA can (and no doubt will) argue that the judgment in *Gautreaux* precludes the *Cabrini* Plaintiffs' claims. But preclusion is an affirmative defense on the merits, and its availability counsels *against* reassignment, not in favor of it. *See Sunstar*, 2003 WL 21801428, at *3 (denying reassignment in part because "a decision rendered in the Consolidated Cases could collaterally estop relitigation of those issues in *Alberto II*, and the court could apply those rulings when deciding this latter-filed case"); *Research Res., Inc. v. Dawn Food Products, Inc.*, No. 01-cv-1906, 2001 WL 1223556, at *9 (N.D. Ill. Oct. 11, 2001) (concluding that allowing preclusion to attach would be more efficient than reassigning and coordinating two co-pending cases).CHA has failed to show that any of the four independent criteria for reassignment has been satisfied. Its motion should therefore be denied.

II. THE *GAUTREAUX* COURT DOES NOT HAVE JURISDICTION OVER THE CLAIMS PRESENTED OR THE RELIEF SOUGHT IN THE NEWLY-FILED *CABRINI* CASE.

CHA attempts to sidestep the requirements of Local Rule 40.4(b) by arguing that *Cabrini* Plaintiffs are members of the *Gautreaux* class who should raise their claims in a motion to

intervene. But even if membership in the *Gautreaux* class were relevant to the question of reassignment under the Local Rules—which it is not—the claims asserted in *Cabrini* are not within the scope of the *Gautreaux* court's judgment order against CHA. CHA cannot extinguish the *Cabrini* Plaintiffs' rights under the Fair Housing Act by channeling the claims into an action in which those rights lie beyond the Court's jurisdiction.

A. The Relief Sought By The *Cabrini* Plaintiffs Is Outside The Jurisdictional Bounds Of The 1969 *Gautreaux* Order Against CHA.

CHA's Motion to Reassign and to Dismiss should be denied because the relief sought by the *Cabrini* Plaintiffs is outside the jurisdictional bounds of the 1969 *Gautreaux* judicial order against CHA. The *Cabrini* Plaintiffs seek to enjoin CHA's decision not to rehabilitate the Cabrini Rowhouses as 100% public housing. The *Cabrini* case has nothing to do with the development of new public housing, which is the subject of the 1969 *Gautreaux* order against CHA.

In 1969, this Court granted summary judgment to the *Gautreaux* plaintiffs, finding that CHA had violated the Fourteenth Amendment by using race as a criterion in its selection of sites for the development of new public housing. *Gautreaux*, 296 F. Supp. at 913-14. In the remedial phase of the proceedings, the Court entered an order requiring the construction of three housing units in an area where the population is less than 30% non-white for every unit built in an area where the population is greater than 30% non-white. *Gautreaux v. Chicago Hous. Auth.*, 304 F. Supp. 736, 737-38 (N.D. Ill. 1969). This ratio was later changed from 3-to-1 to 1-to-1, and in 1987 the Court appointed a Receiver for the development of all new, non-elderly housing by the CHA. The Receiver was given broad power to develop and administer the new housing developments.

There is no doubt that, since 1969, the judgment order issued against CHA in *Gautreaux* has affected how CHA constructs new public housing projects. However, Plaintiffs in this current litigation are not attempting to force CHA to build new public housing projects. Instead, the *Cabrini* Plaintiffs are simply seeking an injunction prohibiting CHA from rehabilitating pre-existing public housing units at anything less than 100% public housing. Compl., at ¶ IXA. Indeed, one fourth of the Rowhouses have already been rehabilitated—an action CHA took without having to seek permission from the Receiver or this Court because rehabilitation of existing public housing does not implicate the 1969 *Gautreaux* judgment order. *See Cabrini-Green Local Advisory Council v. Chi. Hous. Auth.*, No. 04-cv-3792, 2008 WL 4679364, at *4 (N.D. Ill. May 30, 2008) (explaining, in rejecting CHA's argument that relief was limited by the *Gautreaux* order, that *Gautreaux* posed no obstacle so long as plaintiff was "not concerned with the construction of new units").

B. The *Gautreaux* Court Has Never Had Jurisdiction Over The Rehabilitation of the Rowhouses And Previous *Gautreaux* Matters Are Not Analogous.

CHA also argues that this case should be reassigned because "the future of development at the Rowhouses has already been submitted to the *Gautreaux* court." Motion, at ¶¶ 6-8. However, any motions involving the Rowhouses have not been given any binding consideration by the *Gautreaux* Court, and thus are not the basis for jurisdiction.

In support of its argument that the Rowhouses have already been submitted to the *Gautreaux* Court, CHA relies on two motions, both of which were heard but which did not address or assume *Gautreaux* jurisdiction. The first motion, filed by *Gautreaux* plaintiffs on September 8, 2009, sought a "Conference" on the Rowhouses and simply reported that the

Gautreaux plaintiffs were opposed to CHA maintaining the Rowhouses as 100% public housing.[2] Motion, at ¶ 7; Motion, Exhibit H. On August 30, 2011, CHA then filed a second motion to report on the status of its discussions regarding the Rowhouses in the context of the Plan for Transformation. Motion, at ¶ 7; Motion, Exhibit I. CHA was simply seeking "an opportunity to orally advise the Court." Motion, Exhibit I, at 2. After hearing the status of the Rowhouses from CHA's representative, this Court stated, "Thank you… You were asked to give an oral report. I have heard it." Motion, Exhibit J, at 6. When the LAC representative attempted to ask a question regarding CHA's position, this Court stated, "If there [are] any legal issues that have to be decided that I have jurisdiction to decide, come on back and see me." *Id.*.

CHA apparently construes this comment to mean that the *Gautreaux* Court intends to, and should, exercise sole jurisdiction over any matter pertaining to the Rowhouses, regardless of whether the matter implicates a *Gautreaux* order. (The only exception CHA acknowledges is a lawsuit pertaining to relocation issues. Motion, at ¶ 5 n.2.) There is simply no basis for such an interpretation.

CHA also states that the *Gautreaux* court has "regularly…entered orders permitting various parts of the Cabrini redevelopment to proceed," but it fails to say that the Rowhouses were not the subject of any of those orders. Those orders pertained to the building of new "public housing units…all within a few city blocks of CHA's Francis Cabrini Rowhouses," but no order was needed from the *Gautreaux* Court when CHA "commenced rehabilitation of about one-quarter of the Rowhouse units." Motion, Exhibit H. The Rowhouses are a distinct part of the historic Cabrini-Green public housing development, which also consisted of the William

[2] It is noteworthy that if the Rowhouses were subject to the *Gautreax* Order, the *Gautreaux* plaintiffs would not have had to file a motion seeking Conference, but could have negotiated with the Receiver and CHA directly regarding the status of the Rowhouses.

Green Homes, Cabrini Extension North, and Cabrini Extension South. Compl., at ¶ 40. While new public housing units were built at some of those locations, neither that construction nor those units are the subject matter of the current litigation. Consequently, the *Gautreaux* order is not implicated.

Relatedly, in support of its motion to reassign, CHA attempts to analogize the *Cabrini* Plaintiffs with those in *Cabrini-Green Local Advisory Council, et al. v. CHA, et al.,* 96 C 6949 (commonly known as "*Cabrini I*") and *ABLA v. CHA*, 99 C 4959 ("*ABLA*"). Motion, at ¶¶ 3-4. However, the current litigation is not analogous to *Cabrini I* or *ABLA*

On August 14, 1987, long before the initiation of either *Cabrini I* or *ABLA*, the *Gautreaux* Court appointed a Receiver to "have and exercise all powers of CHA respecting" all CHA non-elderly public housing development programs . . . ." See Receivership Transition Order, a copy of which is attached as Exhibit 1. More than a decade later, when CHA tried to negotiate a settlement with the *Cabrini I* plaintiffs, the *Gautreaux* Court protected its receivership by enjoining CHA from proceeding with the settlement because it had been negotiated without proper authority. Ultimately, the parties executed a consent decree, and because it provided for the construction of new public housing it required and received approval from both Judge David Coar (the judge assigned to *Cabrini I*) and the *Gautreaux* Court.

For the following three reasons, therefore, *Cabrini I* does not support CHA's motion to reassign. First, *Cabrini I* was never reassigned to the *Gautreaux* Court. In fact, a motion to reassign was never even filed. Second, the plaintiffs in the instant case are not seeking the construction of new public housing. Third, there is no longer a *Gautreaux* Receiver. On May 20, 2010, the *Gautreaux* Court approved a Receivership Transition Plan that restored CHA's power to manage its public housing developments and, as the *Gautreaux* Court noted, satisfied

the objective "of diminishing (with the prospect of ending) the Court's involvement in the operations of CHA . . . ." Receivership Transition Order, Exhibit 1, at 4.

CHA's reliance on the *ABLA* case is also misplaced. *See* Motion, at ¶ 9(B). The plaintiffs in that case challenged the terms of a *Gautreaux* Court order that designated an ABLA revitalizing area and authorized the *Gautreaux* Receiver to construct new public, low income, and market rate housing in that area. Motion, Exhibit K, at 2. The *ABLA* lawsuit, therefore, constituted a "direct[] attack" on an existing *Gautreaux* Court order. *Id.* Accordingly, the *Gautreaux* Court held that it was "appropriate to reassign the case to this Court and then dismiss it without prejudice to the ABLA plaintiffs' right to intervene." *Id*; *see also* Joint Motion of Gautreaux Plaintiffs and Daniel E. Levin and the Habitat Company, Gautreaux Receiver, for Orders Whose Effect Would Be to Dismiss the ABLA Complaint Without Prejudice to the Right of the ABLA Plaintiffs to Seek Leave to Intervene in This Case, *Gautreaux v. Chicago Hous. Auth.*, No. 66-cv-1459, (August 18, 1999), a copy of which is attached as Exhibit 2.

ABLA also constituted an attempt to interfere with the *Gautreaux* Receiver. Although the Receiver had not been named as a defendant in the lawsuit, the relief requested would, if granted, have prevented the Receiver from implementing the remedial actions set forth in the *Gautreaux* Court's ABLA-related orders. The *Gautreaux* Court, therefore, had a duty to prevent such interference with its receiver. *See Matter of Linton*, 136 F.3d 544, 545 (7th Cir. 1998) (citing *Barton v. Barbour*, 104 U.S. 126, 128-29 (1881)). As noted above, of course, the *Gautreaux* court lifted the receivership more than three years ago.

Plaintiffs' complaint in the instant case does not constitute either a direct or a collateral attack on an existing *Gautreaux* Court order because it does not involve construction of new public housing. Indeed, CHA fails to identify a single order in *Gautreaux*'s 47-year history that

is alleged to be under attack by the *Cabrini* Complaint. Contrary to CHA's contention, therefore, this case is not comparable to *ABLA*, and the Motion to Reassign and to Dismiss should be denied.

III. CHA'S MOTION TO DISMISS SHOULD BE DENIED BECAUSE IT IS INAPPROPRIATE AND VIOLATES THE FEDERAL RULES OF CIVIL PROCEDURE.

CHA bring its motion to reassign "*and to dismiss*." Even if reassignment were appropriate, which it is not (*see* Parts I-II, *supra*), CHA has stated no basis for dismissal, and dismissal is inappropriate.

Congress authorizes District Courts to "prescribe rules for the conduct of their business." 28 U.S.C. § 2071(a). Such rules, however, must be consistent with the Federal Rules of Civil Procedure, and are intended only to be procedural, not substantive. *See U.S. v. Hvass*, 147 F. Supp. 594, 596 (N.D. Iowa 1956), *rev'd on other grounds* 385 U.S. 57 (1958). Local rules "may not create or affect substantive rights, or institute basic procedural innovations." *Stern v. U.S. Dist. Ct. for Dist. Of Mass.*, 214 F.3d 4, 13 (1st Cir. 2000) (internal quotations and citations omitted).

It would be inappropriate, therefore, to construe the local rule as allowing dismissal. Local Rule 40.4 does not contain any language that could be construed as allowing dismissal. In fact, Local Rule 40.4 states that a motion to reassign "should not generally be filed until *after* the answer or motions in lieu of answer have been filed in each of the proceedings involved." Local Rule 40.4(c) (emphasis added). At the time it filed its motion to reassign, CHA had not filed an answer or any motion in lieu of an answer. Because Local Rule 40.4 does not provide for dismissal, CHA's request that this matter be dismissed is inappropriate.

Although CHA provides no analysis of why the cases should be consolidated pursuant to Federal Rule of Civil Procedure 42, it nevertheless cites Rule 42 as a basis for its motion.

However, Rule 42 also does not provide a basis for dismissal. *See* Fed. R. Civ. P. 42 (allowing the court to join for hearing or trial any or all matters at issue in actions involving common questions of law or fact, consolidate such actions, or issue other orders to avoid unnecessary cost or delay). Because Rule 42 does not provide a basis for dismissal, dismissing this action is inappropriate.

Furthermore, the matter is not in front of the Honorable Judge Aspen at this time; what is pending is the question of reassignment. It has not been reassigned, and it would not be proper for the *Gautreaux* Court to decide a motion to dismiss. *Cabrini* is still pending before the Honorable Judge Gettleman.

Dismissal of a suit prior to filing an answer is generally a matter that falls in the purview of Federal Rule of Civil Procedure 12. *See* Fed. R. Civ. P. 12. CHA has not cited any Rule 12 basis for dismissal nor stated any facts or law as to why dismissal is warranted. *See* Fed. R. Civ. P. 7(b)(1) ("A request for a court order must be made by motion. The motion must . . . state with particularity the grounds for seeking the order"). *Cabrini* Plaintiffs cannot opine on what basis CHA seeks to the matter dismissed, but it is inappropriate for it to cloak a motion seeking dismissal on the merits in a motion regarding procedural case management. Plaintiff also notes that Defendants have filed their Answer in this matter in front of the Honorable Judge Gettleman and have not filed a Motion to Dismiss. Defendant's Answer To Complaint, *Cabrini-Green Local Advisory Council v. Chicago Hous. Auth.*, 13-cv-03642, (July 25, 2013) (D.I. 22).

CONCLUSION

For all the foregoing reasons, Cabrini-Green Local Advisory Council, Carol Steele, Travaughn Steele, and Gloria Franklin, Plaintiffs in the *Cabrini* case, respectfully request that this Honorable Court deny Defendant Chicago Housing Authority's Motion to Reassign and to Dismiss.

Dated: August 6, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

R. Elizabeth Rosenthal, an attorney, hereby certified that on August 6, 2013, she served a copy of *CABRINI* PLAINTIFFS' OPPOSITION TO DEFENDANT CHICAGO HOUSING AUTHORITY'S MOTION TO REASSIGN AND TO DISMISS upon the attorneys of record in this case by the court's efiling system.

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

DOROTHY GAUTREAUX, et al.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 66 C 1459
	)	Judge Aspen
CHICAGO HOUSING AUTHORITY,	)	
	)	
Defendant.	)	

EXHIBITS TO *CABRINI* PLAINTIFFS' OPPOSITION TO DEFENDANT CHICAGO HOUSING AUTHORITY'S MOTION TO REASSIGN AND TO DISMISS

Exhibit 1: Receivership Transition Order, *Gautreaux v. Chicago Hous. Auth.*, No. 66-cv-1459, (May 20, 2010).

Exhibit 2: Joint Motion of Gautreaux Plaintiffs and Daniel E. Levin and the Habitat Company, Gautreaux Receiver, for Orders Whose Effect Would Be to Dismiss the ABLA Complaint Without Prejudice to the Right of the ABLA Plaintiffs to Seek Leave to Intervene in This Case, *Gautreaux v. Chicago Hous. Auth.*, No. 66-cv-1459, (August 18, 1999).

EXHIBIT 1

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 66 C 1459
	)	
CHICAGO HOUSING AUTHORITY,	)	Judge Aspen
	)	
Defendant.	)	

RECEIVERSHIP TRANSITION ORDER

This matter comes to the Court pursuant to agreement of the parties, following the suggestion by the Court that the parties develop a plan for the termination of the receivership of the Chicago Housing Authority (the "CHA") and the restoration of the powers and duties regarding development of non-elderly public housing in a responsible manner to the CHA. Plaintiffs, the CHA and the Receiver (Daniel E. Levin and The Habitat Company LLC) have engaged in extensive discussions among themselves and with the Court, and the CHA and the Receiver have agreed to the entry of this Order. Based upon that agreement, the prior discussions with the Court concerning this matter, the presentations of the parties, and the Court's knowledge of the record and of the history of the Receivership since its inception in 1987, the Court makes the following findings of fact and conclusions of law:

A. On August 14, 1987, the Court entered an uncontested Order appointing the Receiver ("Receivership Order"). That Order provided in part that

"[t]he Receiver shall have and exercise all powers of CHA respecting the scattered site program necessary and incident to the development and administration of such program." Receivership Order ¶2. It defined the "scattered site program" to include "all CHA non-elderly public housing development programs which may in the future be authorized by HUD during the pendency of Civil Action No. 66 C 1459." *Id.* at 2, Finding (C).

B. Since August 1987, the Receiver has developed directly, or overseen the development of, over 4,000 units of public housing. The Receiver has gained substantial expertise in mixed-income public housing development in a manner consistent with the desegregation remedies in this lawsuit, including development of public housing within complex and large developments of public and private residential housing and commercial space, financed by a diverse mix of governmental funding, tax credits, private debt and private equity.

C. In recent years, the working relationship between and among the plaintiffs, the CHA and the Receiver has substantially improved and has become collaborative.

D. The Court is mindful of decisions by the United States Supreme Court and Court of Appeals for the Seventh Circuit stating that a federal court should be respectful of the independence of local governmental entities and should not prolong unduly its involvement in the management and affairs of local government.

E. The Court finds that substantial progress has been made to ameliorate the conditions that warranted the Receivership and that a responsible transition

should occur to restore to the CHA the powers and functions that had been transferred to the Receiver by the Receivership Order.

F. There are many ongoing and planned developments that include public housing in the City of Chicago in which the Receiver has been deeply involved, garnered substantial knowledge and brought substantial skills. Currently, the Receiver is actively involved in several ongoing development projects in different areas of Chicago, such as, Cabrini (Parkside), ABLA (Roosevelt Square), Taylor (Legends South), Madden-Wells (Oakwood Shores), Stateway (Park Boulevard), Horner (West Haven), Rockwell (West End), Maplewood Courts, Lathrop, Ogden North, and the Property Investment Initiative. The parties and the Receiver have determined that time is required to effectively transfer to the CHA the acquired knowledge and experience of the Receiver respecting these developments and for the CHA to develop the capacity to assume control over the full range of responsibilities that the Receiver has been fulfilling. The parties properly desire to retain the benefits of the Receiver's expertise, capacity and skills during this transition to provide continuity and avoid needless disruption to the objectives of this lawsuit. An immediate termination of the Receivership without a deliberate and comprehensive transition plan creates a risk of harm to the parties and the public interest, including the desegregation remedies in this lawsuit.

G. The parties have reached agreement regarding a Receivership Transition Plan ("Plan"), a copy of which is attached as Exhibit A. Pursuant to this agreed Plan, the CHA and the Receiver would "begin transition of the Receivership responsibilities effective June 1, 2010 and to conclude on May 31, 2013." Exhibit A

at 2. This Plan would satisfy the multiple objectives of diminishing (with the prospect of ending) the Court's involvement in the operations of the CHA, allowing an orderly transition to occur, and permitting the CHA and the public to continue to benefit from the Receiver's expertise, all while furthering the desegregation remedies entered by the Court. The Court has reviewed the attached Plan and finds it reasonable and consistent in advancing the Court's desegregation remedies.

H. To facilitate the Court's and the plaintiffs' ability to monitor CHA's continued compliance with the 1969 Judgment Order (as amended), the quarterly reporting currently performed by the Receiver should continue through the completion of the Plan, with the additional requirement that the reports shall include narrative reporting on the progress of the transition of responsibilities pursuant to the Plan and on any agreed-upon adjustments to the Plan as it is implemented.

WHEREFORE, to effectuate the restoration of development authority to the CHA and to accomplish a responsible transition consistent with continuing to advance the remedies in this case,

IT IS HEREBY ORDERED:

1. Upon entry of this Order, the CHA and The Habitat Company LLC ("Habitat") shall implement the transition of responsibilities pursuant to the Plan. Effective June 1, 2010 ("Effective Date"), and subject to paragraph 2 below, this Order shall be deemed to supersede the Receivership Order and remain effective through May 31, 2013. On the Effective Date, the powers of CHA transferred to the Receiver by the Receivership Order will revert in full to the CHA, except that

Habitat shall thenceforth serve as "Gautreaux Development Manager" ("GDM") and shall have and exercise those powers, duties and responsibilities set forth below and in the Plan, including the power to enter into contracts with third parties pursuant to the Plan. As they gain experience with the implementation of the Plan, the parties and the GDM may agree to modifications of the Plan without prior Court approval, but the GDM shall advise the Court of such modifications in its quarterly reports pursuant to paragraph 5 below.

2. Habitat, as the GDM, shall continue to have the status of officer and agent of this Court, and as such shall continue to be vested with such immunities as previously vested in it by the Receivership Order and by law. This paragraph shall survive the expiration of this Order with respect to any claims or matters arising with respect to the GDM's actions or role prior to its expiration.

3. As provided in paragraph 4 of the Receivership Order, the GDM shall continue to have no obligation to make any expenditure of its own funds. Rather, the GDM will continue to administer and disburse funds provided by HUD and/or CHA in accordance with procedures agreed upon as needed between or among HUD, the CHA and the GDM. The GDM shall continue to keep separate accounts for costs incurred in connection with the projects in which it is involved under this Order and the Plan, provided, however, that responsibilities for maintaining such accounts may be transferred to the CHA as provided in the Plan. The GDM shall not be responsible for the payment of any costs or performance of any obligations not specifically authorized by the GDM in writing.

4. The GDM shall continue to be compensated in the same manner as provided in the Court's orders of November 30, 2000 and August 7, 2001 with respect to all developments in which the GDM participates under the Plan.

5. The GDM shall continue to provide quarterly reports respecting the status and implementation of the development of new, non-elderly public housing pursuant to the Plan and this Order, with the additional requirement that the reports shall include narrative reporting on the progress of the transition of responsibilities pursuant to the Plan and on any agreed-upon adjustments to the Plan as it is implemented.

6. Except as specifically provided in this Order, this Court's orders previously entered, as modified, remain in full force and effect. The Court continues to retain jurisdiction of this matter for all purposes, including enforcement or modification of this or other orders.

7. This Order shall be effective until May 31, 2013. As of that date, the CHA may perform or cause such other party as it may determine to perform those functions provided by the GDM under the Plan in such manner as the CHA may determine in its sole discretion, it being agreed that Habitat shall be free to seek to provide such functions in the future.

Enter:

Marvin Aspen

United States District Judge

Dated: May 20, 2010

EXHIBIT A

CHICAGO HOUSING AUTHORITY
Receivership Transition Plan
May 20, 2010

On July 1, 1969, the United States District Court for the Northern District of Illinois ("the Court") entered a Judgment Order in the case of Dorothy Gautreaux et al., Plaintiffs, versus Chicago Housing Authority, et al., Defendants, Civil Action No. 66 C 1459 ("Gautreaux Order"). The Order directed the Chicago Housing Authority ("CHA") to affirmatively administer its public housing system in a manner that would disestablish developments segregated based upon race, resulting from CHA's site selection and tenant assignment procedures, including:

- Requiring CHA to plan the design, development, and occupancy of Dwelling Units in conformance with the order (Article III);
- Limiting the concentration of large numbers of Dwelling Units (Article IV);
- Modifying CHA's tenant assignment policy (Article V; CHA Board Resolution No. 68-CHA-232);
- Modifying CHA's tenant assignment plan (Article VI); and,
- Requiring the reporting of information related to each location with one or more Dwelling Units approved by CHA, and to demonstrate compliance semi-annually with the Order (Article VII).

After it was determined that CHA needed assistance in sufficiently complying with the Gautreaux Order, a Receiver was appointed on August 14, 1987, and an Order was entered appointing Daniel E. Levin ("Levin") and The Habitat Company, subsequently amended to substitute The Habitat Company LLC for The Habitat Company ("Habitat"), jointly as Receiver to develop and administer CHA's scattered site program in compliance with the Gautreaux Order. The scattered site program refers to CHA development programs and vacant sites listed in Exhibit A of the Order, in addition to the programs numbered Il 2-096, Il 2-098, Il 2-103 – Il 2-113, and all CHA non-elderly public housing development programs authorized by HUD during the pendency of the Gautreaux Order.

Between 1987 and the present, Levin and Habitat have faithfully discharged their duties and obligations as the Court appointed Receiver. Over that time, Levin, Habitat, and CHA, collectively, have developed policies and practices in conformance with the Gautreaux Order. As a result, the Court has recently considered whether the Receivership remained necessary and requested that CHA and Receiver develop a proposed plan to end the Receivership and return all associated responsibilities to CHA. In response, a joint Task Force was formed with representation from both CHA and Habitat to collaboratively develop a Receivership Transition Plan.

Together, CHA and Habitat have developed this joint proposal which comprehensively addresses all aspects of the duties and responsibilities of the Receivership and Receiver. The Receivership function is comprised of five primary work flows:

I. Program Management
II. Transaction Management
III. Construction Management
IV. Financial Management
V. Acquisition Management

For each of the work flows, the major activities and their respective custodians – CHA, Receiver, and other related parties – were identified. The parties determined that the majority of Receivership activities are currently being performed by both CHA and Receiver. As a result, Receivership transition planning efforts focused on those activities for which Receiver is sole or primary custodian, and emphasized key transition issues and their correlative resolutions. Program Management is the core work flow of the Receivership function. Program Management deals with each development's primary objectives and parameters, and culminates in the development of a Master Plan. The outcomes of Program Management lay the foundation for each development's compliance with the Gautreaux Order.

CHA and Receiver fully recognize the impact that termination of the Receivership may have on stakeholders to the Gautreaux judgment. Accordingly, CHA and Receiver have included counsel for the Gautreaux plaintiffs in the planning

and analysis of the proposed Master Transition Plan. Counsel for the Gautreaux plaintiffs has had an opportunity to review and comment on the specifics of the proposed plan.

It is the recommendation of CHA and Receiver to begin transition of the Receivership responsibilities effective June 1, 2010 and to conclude on May 31, 2013. An overview of the Receivership Transition Plan for each work flow is included below.

Primary Workflows – Program, Transaction, Construction, Financial, and Acquisition Management

Program Management
Program Management is the function most closely associated with the tenets of the Gautreaux Order. Program Management involves consensus-building with appropriate community stakeholders, city officials, and HUD; Procurement and management of Developers; Negotiation, approval, and continual development of the Master Plan, including determination of income mix and other critical factors in conformance with Gautreaux standards, and ancillary plans (including, but not limited to: Phasing, Public Utilities, Community and Social Services Plans); Setting and adhering to Plan budgets; and, Regular reporting to HUD. During the Receivership, Habitat was intensely involved in brokering confidential discussions with community stakeholders such as Gautreaux Plaintiffs, as well as, other advocates and interested parties, to build consensus on Program Management issues. During the transition, CHA will be included in these conversations to achieve greater transparency and the deliberation of issues through shared, open discussions. Inclusion of the CHA will become the norm; however, this does not preclude private conversations between Habitat and stakeholders if the need arises, with the goal that CHA will be brought into the discussions at the earliest possible time in support of the agreed upon collaborative approach. Due to intensive stakeholder involvement and the consensus-building nature of Program Management, full knowledge transfer and conversion of the Program Management functions will take the longest of the primary four workflows to fully transition from Habitat to CHA. It is anticipated that, for the full Receivership Transition Process period, Habitat will continue to participate in both active and knowledge transfer advisory roles. The detailed transition of this process is set forth in the attached Master Transition Plan. The Receiver and CHA anticipate that the final transition can be completed by May 31, 2013.

Transaction Management
Transaction Management is a function that CHA has broad familiarity with, as it has been successfully managing transactions for non-Receivership programs and activities since the Authority's inception. Moreover, both CHA and Habitat have been jointly and actively involved in primary Transaction activities during the Receivership, so transition issues are anticipated to be minimal. However, Habitat has been the sole party responsible for certain Transaction Management activities, such as Pre-Development Loan preparation and leading negotiations with Gautreaux plaintiffs, thus effective knowledge transfer will be critical to ensuring that these activities are smoothly transitioned to CHA. Moreover, Habitat's legal representation and advisor, Reno and Cavanaugh, PLLC, has been, and will continue to be, closely aligned with the legal processes around securing HUD approval for projects and issuing formal responses to HUD comments, collating evidentiaries, and preparing other legal documentation, such as Affidavits. For deals that close in calendar year 2010, CHA will engage in knowledge transfer with Habitat, while Habitat will maintain its active Transaction Management role. By 2011, CHA will be the party primarily responsible for Transaction Management and Habitat will offer advisory guidance to further the transition. The detailed transition of this process is set forth in the attached Master Transition Plan. The Receiver and CHA anticipate that the final transition can be completed by December 31, 2011.

Construction Management

Construction Management is another function that CHA has widely-applied expertise in, as it has been successfully managing construction, both in concert with Habitat on Receivership projects, as well as independently for non-Receivership projects. This collaboration with Habitat during the Receivership enables the transition of Construction Management activities to be more seamless. The focus areas for transition will be: Securing HUD approval of Design and Development drawings, Permit Drawing Review, and Conduction of the Cost Review. It is important to note that other parties, such as the Chicago Department of Community Development ("DCD"), are actively engaged in certain phases of Construction Management, namely the officiating of pre-construction conferences. In order to ensure the seamless transition, CHA will need to acquire new hires with the requisite construction management experience. For properties that close in calendar year 2010, Habitat will retain primary responsibility for Construction Management activities to the end of development when the final unit of that Phase is delivered for public housing occupancy. During 2010, CHA will engage in knowledge transfer with Habitat, while maintaining its collaborative Construction Management role. CHA will be the party primarily responsible for Construction Management of projects that break ground after January 1, 2011 and Habitat will offer advisory guidance to further the transition. The detailed transition of this process is set forth in the attached Master Transition Plan. The Receiver and CHA anticipate that the final transition can be completed by December 31, 2011.

Financial Management

Financial Management is another area in which CHA has significant expertise, both independently on non-Receivership projects, and in concert with Habitat throughout the Receivership. In developing the overall Receivership Transition Process, special attention was paid to identifying the activities that Habitat has been solely responsible for (Developing the Master Budget, Procurement Budget, and Administrative and Planning Budget and obtaining HUD approval thereof) and the tools and methodologies used to capture the proper information (Yardi). Financial functions previously performed by Habitat will be absorbed into the usual CHA financial management systems, processes and procedures (Lawson). Habitat will continue to manage the payout and closeout of HOPE VI funds that are already under its control, as the vast majority of those funds have been expended. The detailed transition of this process is set forth in the attached Master Transition Plan. The Receiver and CHA anticipate that the final transition can be completed in 2011.

HOPE VI Management

Habitat has been solely responsible for HOPE VI financial management activities since the Receivership was enacted. It is anticipated that the current HOPE VI awards of approximately $258 million will be 90% expended by the close of 2010 (exclusive of the new $20 million grant for Stateway Gardens). During 2010, CHA will engage in knowledge transfer with Habitat; and in 2011, with Habitat advising, CHA will assume the lead role in managing the Stateway Gardens award. As CHA has been previously responsible for applying for rounds of HOPE VI funding, it is expected that CHA will apply to HUD for future available rounds of funding from HOPE VI program's successor, The Choice Neighborhoods Initiatives program, and become the sole manager of any awards granted.

Acquisition Management

Acquisition Management is an activity area where CHA has applied expertise, both with non-Receivership projects, and in concert with Habitat on activities related to Receivership projects. Acquisition Management deals primarily with the identification and inspection of properties for purchase, including conferring with related City Officials and Departments, and other stakeholders such as Gautreaux Plaintiffs, to determine if CHA should purchase the cited properties. If the decision is made and agreed-upon by stakeholders to acquire and develop a property, Habitat has acted as the sole proprietor for submitting applications to secure approval from HUD, and then worked collaboratively with CHA to purchase the property, provide construction oversight, and accept units for occupancy. These responsibilities are expected to be fully transitioned to CHA in 2011.

Property Investment Initiative Program Management

Properties purchased for rehabilitation will be managed under the parameters of the Property Investment Initiative ("PII"), a scattered-site development program that is geared toward acquiring and rehabilitating 3+ bedroom units in Gautreaux General Areas as well as certain Limited Areas of opportunity for families. The program is focused on putting vacant and foreclosed buildings back into productive use. Habitat is currently responsible for selection and management of contractors, architects, and brokers. Concurrently, CHA and Habitat engage City Officials to secure approval for property purchase and development. Once rehab is complete, CHA is responsible for occupancy and transition of residents to the newly developed unit. It is estimated that at least 12 units will be available by the end of 2010. During the first twelve months of the Receivership Transition Plan, CHA will engage in knowledge transfer with Habitat, while maintaining its collaborative PII role. By June 1, 2011, CHA will be the party primarily responsible for administration of the PII and Habitat will offer advisory guidance to further the transition. By December 31, 2011, the Receiver and CHA will co-evaluate to determine whether sufficient transition activities have taken place. If additional transition activities are necessary, an appropriate future target date will be set to fully actualize the PII transition to CHA.

Conclusion

It is the recommendation and request of CHA and Receiver that the Court enter an order by which it will end the Receivership effective June 1, 2010, and simultaneously order the implementation of the Master Transition Plan (Exhibit I), allowing Habitat to continue to participate in both active and knowledge transfer advisory roles throughout the transition period. Full transition of four of the five primary workflows of Transaction, Construction, Financial, and Acquisition Management are anticipated to be actualized in 2011. A review date of December 31, 2011 has been established for the Property Investment Initiative Management workflow, a secondary workflow within Acquisition Management, to determine the best final transition date. It is projected that the Program Management workflow will be fully transitioned by May 31, 2013.

In summary, the Receivership functions are proposed to transition as follows:

Workflow	Transition Complete
Program Management	May 31, 2013
Transaction Management	December 31, 2011
Construction Management	December 31, 2011
Financial Management *(Includes HOPE VI Management)*	In 2011
Acquisition Management *(Includes PII Management)*	In 2011; PII – Evaluate on December 31, 2011

EXHIBIT 2

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	66 C 1459
	)	
CHICAGO HOUSING AUTHORITY,	)	Hon. Marvin Aspen
	)	
Defendant.	)	

JOINT MOTION OF GAUTREAUX PLAINTIFFS AND DANIEL E. LEVIN AND THE HABITAT COMPANY, GAUTREAUX RECEIVER, FOR ORDERS WHOSE EFFECT WOULD BE TO DISMISS THE ABLA COMPLAINT WITHOUT PREJUDICE TO THE RIGHT OF THE ABLA PLAINTIFFS TO SEEK LEAVE TO INTERVENE IN THIS CASE.

The Gautreaux plaintiffs, and Daniel E. Levin and The Habitat Company jointly as Gautreaux Receiver, move for entry of orders whose effect would be to dismiss the newly filed ABLA complaint (99 C 4959) without prejudice to the right of the ABLA plaintiffs to seek leave to intervene in this case. The new ABLA lawsuit substantially overlaps Gautreaux, particularly a specific, ABLA-related Gautreaux order (June 19, 1998) which is not mentioned in the ABLA complaint, and under well-established law involves issues that should only be litigated in Gautreaux.

In support of this motion, movants state:

1. Gautreaux is a class-action concerning racial discrimination in the location of public housing that resulted in segregated housing. The Gautreaux Court's

numerous remedial orders, including the appointment of a Receiver and a June 19, 1998 Order designating an "ABLA Revitalizing Area" and conditionally authorizing the development of public housing in such area, are directed toward remedying that segregation by, among other things, promoting opportunities for desegregation in the development of new public housing in mixed-income contexts.

2. In June 1998, on the joint motion of CHA, the Receiver and the Gautreaux plaintiffs, the Gautreaux Court entered an order, "[s]ubject to such terms and conditions as are specified by further orders of the Court," designating the ABLA Revitalizing Area and authorizing the Receiver to develop therein specified numbers of new public housing units, mixed with affordable and market units. Such order, attached hereto as Exhibit A, provides:

> "This matter coming on to be heard on the joint motion of the parties and the Receiver for an order designating an ABLA Revitalizing Area ("Revitalizing Area") and authorizing the development of non-elderly public housing units therein; and
>
> "The Court having heard the presentations of the parties and the Receiver respecting, and being advised that the City of Chicago supports entry of, the proposed order; and
>
> "The Court being further advised that the Receiver and the defendant, Chicago Housing Authority, in collaboration with the City of Chicago, are engaged in the preparation of an application for a FY1998 HOPE VI grant of $35 million for the ABLA Revitalizing Area to be submitted by them to the United States Department of Housing and Urban Development (HUD) on or before June 29, 1998; and
>
> "The Court also being advised that by arrangement with the plaintiffs and HUD, CHA received a HOPE VI grant of $24,483,250 in FY1996 for a portion of the Revitalizing Area, and that the current HOPE VI application contemplates and proposes that this prior grant be utilized in conjunction with the grant currently being applied for; and

"The Court being cognizant that the principal remedial purpose of the orders previously entered in this case has been and is to provide plaintiff class families with desegregated housing opportunities; and

"The Court also being cognizant that on occasion it has permitted public or assisted housing to be developed in census tracts not within the General Public Housing Area upon a sufficient showing of "revitalizing" circumstances such that a responsible forecast of economic integration, with a longer term possibility of racial desegregation, could be made; and

"The Court being of the view, based on the presentations of the parties and the Receiver, that subject to appropriate terms and conditions such a forecast can be made with respect to the Revitalizing Area should the Receiver and the defendant, Chicago Housing Authority (CHA), be awarded a FY1998 HOPE VI grant therefor pursuant to their proposed joint application;

"IT IS HEREBY ORDERED:

"1. Effective upon advice to the Court from the parties that a FY1998 HOPE VI grant has been made to the Receiver and CHA pursuant to a joint application to be submitted by them to HUD respecting the Revitalizing Area, the Court designates as the ABLA Revitalizing Area that portion of the City of Chicago that lies within the following boundaries: on the west, Ashland Avenue; on the south, the Burlington Northern Railway tracks immediately south of 15th Street; on the east along Racine Avenue from such Burlington Northern Railway tracks to Blue Island Avenue, northeast along Blue Island Avenue to Roosevelt Road, west along Roosevelt Road to Racine Avenue, and north along Racine Avenue to Cabrini Street; and on the north, along Cabrini Street to Loomis Street, north along Loomis Street to Polk Street, and west along Polk Street to Ashland Avenue; and

"2. Subject to such terms and conditions as are specified by further orders of the Court, the Receiver is authorized to develop such number of new public housing units within the Revitalizing Area as will result in public housing units comprising approximately 1,084 of a total of approximately 2,895 residential units within the Revitalizing Area, which is the approximate number of public housing and total residential units within the Revitalizing Area presently contemplated by such grant application, as part of an overall development including approximately 845 non-public housing units to be occupied by persons with incomes 36-120 percent of area median income, and 966 non-public housing units to be occupied by persons with incomes in excess of 120 percent of area median income."[1]

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[1] On May 19, 21 and 22, 1998, the Court had entered three orders in the wake of the failure of CHA's prior administration to cooperate with the Receiver in connection

3. Since the entry of this Court's June 19, 1998 ABLA Order: (a) HUD has made a FY 1998 HOPE VI award of $35 million to the Receiver and the Chicago Housing Authority pursuant to a joint application submitted by them respecting the ABLA area; and (b) various parties – the Receiver, the City of Chicago, CHA, HUD, counsel for the Gautreaux plaintiffs, and the elected representatives of the ABLA tenants – have met regularly concerning HOPE VI-funded redevelopment plans for the ABLA area. Among other things, a Memorandum of Understanding outlining how such parties will make development-related decisions at ABLA has been prepared and executed (copy attached hereto as Exhibit C), and on July 19, 1999, with the concurrence of all of such interested parties, the City of Chicago issued a Request for Proposals for a "development manager" for the ABLA HOPE VI development (copy attached hereto as Exhibit D). The Request for Proposals contemplates that it will be the responsibility of the selected development manager to propose a specific ABLA development plan, after which the parties to the Memorandum of Understanding will determine the precise number, location, density and mix of residential units as part of the ABLA HOPE VI plan.[2]

4. On July 29, 1999, certain CHA waiting list applicants and current and former residents of ABLA (who are not, however, the elected representatives of the

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with the preparation of the 1998 HOPE VI application for ABLA. Copies of these orders are attached hereto as Exhibit B.

[2] The RFP expressly provides, contrary to the allegations in the ABLA complaint, that "new public housing units are to be dispersed to the maximum extent throughout the redeveloped neighborhood, and in the full range of housing types and unit sizes developed." RFP, Ex. D hereto, at 18; see also id. at 3. (To reduce the bulk of this filing, some of the exhibits to the RFP are not included in Exhibit D.)

ABLA tenants), most or all of whom are members of the Gautreaux plaintiff class of black tenants in and applicants for public housing, Gautreaux v. CHA, 265 F.Supp. 582, 583 (N.D. Ill. 1967), filed an asserted class action concerning the proposed HOPE VI redevelopment of the ABLA area. Concerned Residents of ABLA, et al. v. Chicago Housing Authority, et al., No. 99 C 4959 (N.D. Ill.). A copy of the ABLA complaint is attached hereto as Exhibit E. The ABLA litigation was assigned to Judge Gettleman, and a courtesy copy of this motion is being delivered to Judge Gettleman.

5. The ABLA complaint describes itself as a "civil rights class action lawsuit." (¶1) Its thrust is to attack a "plan" – i.e., the ongoing HOPE VI redevelopment process described in paragraph 3 above – "which fails to alleviate the blight of segregation." (¶8.) It asks the Court to "forc[e] these public agencies [CHA and HUD] to . . . create a plan which provides the maximum amount of integrated housing . . ." (Id.) Other claims, such as an alleged breach of a duty to consult with the ABLA plaintiffs in the HOPE VI process (¶¶32-35), are intertwined with the carrying out of the HOPE VI plan. The relief sought includes, "Enjoining defendants from implementing the defendants' present ABLA redevelopment plans," and "Enjoining the awarding, transfer, or expenditure of any ABLA-related HOPE VI . . . funds until a new revitalization plan for the ABLA development is developed . . .'" (p. 33) Because the Receiver will receive from HUD much or all of the funds to be used in developing new public housing at ABLA, the relief sought in the ABLA complaint would, if granted, effectively prevent the Receiver from taking steps to implement the remedial effort begun with this Court's ABLA-related orders of May and June, 1998.

6. When the central allegations of the ABLA complaint are laid alongside the ABLA orders already entered in Gautreaux, it is obvious that the ABLA complaint is a collateral attack on relief already ordered in Gautreaux. Respecting such a collateral attack on an ongoing desegregation program, the cases make plain what must be done: the separate action attacking the desegregation program must be dismissed, with the collateral plaintiffs given leave to seek intervention in the original desegregation case; the dismissal is on procedural, not substantive, grounds, and is not an assessment of the merits of the collateral attackers' claims. Hines v. Rapides Parish School Bd., 479 F.2d 762, 765 (5th Cir. 1973); Davis v. Board of Sch. Comm'rs, 517 F.2d 1044, 1049 (5th Cir. 1975); Miller v. Board of Educ., 667 F.2d 946, 948-49 (10th Cir. 1982); Rivarde v. Missouri, 930 F.2d 641, 642-43 (8th Cir. 1991); Tompkins v. Alabama State University, 15 F.Supp. 2d 1160, 1161-67 (N.D. Ala. 1998), aff'd mem., 174 F.3d 203 (11th Cir. 1999); Harris v. Birmingham Bd. of Educ., 90 F.R.D. 263, 265 (N.D. Ala. 1981); Mannings v. School Bd. of Hillsborough County, 796 F.Supp. 1491, 1497 (N.D. Fla. 1992); Parents Against Controlled Choice v. Board of Educ., 1998 U.S. Dist. LEXIS 20547, No. 97 C 50326 (N.D. Ill. Jan. 8, 1999). A few brief quotations from the opinions will suffice to explain why this is a proper course to pursue:

> "To allow these actions to proceed independently would result in a duplication and waste of the time and effort of the litigants and the Court. The issue which plaintiffs seek to raise herein are already before the Court in Brown . . . . Furthermore, the continued prosecution of these actions risks inconsistent judgments." Miller, supra, 667 F.2d at 948.

> "'. . . separate actions attacking the implementation of [a] desegregation program . . . should not proceed separately,' but rather should be dismissed so that the collateral plaintiffs may petition for intervention in the original desegregation case." Tompkins, supra, 15 F.Supp. 2nd at 1164, quoting from Miller.

> "'The petition for intervention would bring to the attention of the district court the precise issues which the new group sought to represent . . . . If the court felt that the new group had a significant claim which it could best represent, intervention would be allowed.'" Hines, supra, 479 F.2d at 765.
>
> "Hines and its progeny can be boiled down to the following proposition: when absent members of a class of school desegregation plaintiffs seek to challenge an actively administered desegregation plan in a collateral action, the collateral action should be dismissed so that the class members can petition to intervene in the existing desegregation action. The dismissal is on procedural, rather than substantive, grounds and should not be interpreted in any way as an assessment of the merits of the class members' claims." Tompkins, supra, 15 F.Supp. 2d at 1165.

7. Another line of authority leads to the same conclusion. It has long been established that a receiver may not be sued without leave of the court that appointed him. Matter of Linton, 136 F.2d 544, 545 (7th Cir. 1998), citing Barton v. Barbour, 104 U.S. 126, 128-29 (1881). This "Barton Doctrine," as it is called, Matter of Krikava, 217 B.R. 275, 278 (Bankr. D.Neb. 1998), is not limited to suits against the receiver itself, but extends to suits against all "receivership entities." SEC v. Wencke, 622 F.2d 1363, 1365, 1367, 1369-72 (9th Cir. 1980). The power of the appointing court to prevent interference with the court's receiver includes enjoining parties and all "other persons" from proceeding with actions in another court. See Wencke, 622 F.2d at 1365 (affirming a blanket nationwide stay of all proceedings in other courts against receivership entities, entered without notice to, yet held to be binding upon, non-parties to the litigation); In re Lehal Realty Associates, 101 F.3d 272, 276-78 (2nd Cir. 1996); Eller Indus., Inc. v. Indian Motorcycle Manu., Inc., 929 F.Supp. 369, 372-73 (D. Col. 1995).

Here, although the Court's Receiver is not named as a defendant in the ABLA complaint, the relief requested is directed squarely against the development functions of

CHA that have been transferred by this Court's 1987 order to the Receiver, as well as against HUD's funding thereof – enjoining CHA and HUD "from implementing defendants' present ABLA redevelopment plans" and enjoining the "awarding, transfer, or expenditure of any ABLA-related HOPE VI . . . funds . . ." (ABLA complaint, p. 33.) Plainly the choice not to name the Receiver as a defendant, while seeking a broad injunction against activities which by repeated prior orders of this Court have been lodged exclusively with the Receiver, does not remove the ABLA complaint from the ambit of the Barton Doctrine.[3] This Court has recognized the appropriateness of exercising Barton Doctrine powers to protect its receivership by enjoining CHA from proceeding with a settlement in another matter, the Cabrini LAC case, 96 C 6949, which had been negotiated without authority. See 8/12/98 Order, Ex. G hereto. CHA's appeal from this Court's August 12, 1998 Order was dismissed for want of appellate jurisdiction. 178 F.3d at 958.

8. To implement the approach of Hines and its progeny, or to apply the Barton Doctrine, the Court may proceed in either of the following ways:

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[3] The Seventh Circuit recently summarized the Receiver's powers as follows:

> "all powers of CHA, respecting the scattered site program necessary and incident to the development and administration of such program, including: (a) Making all determinations governing the scattered site program in compliance with prior and future orders of this Court . . ."

Gautreaux v. CHA, 178 F.3d 951, at 953 (7th Cir. 1999). The Receivership Order also includes within the Receiver's powers "site selection and acquisition (including policies respecting the location of sites and buildings to be acquired) . . . and . . . [c]arrying out the determinations so made," Receivership Order at 3. A copy of the Receivership Order of August 14, 1987 is attached hereto as Exhibit F.

A. The Hines Approach. The ABLA complaint and Gautreaux are plainly related under Local General Rule 2.31A (they involve the same ABLA property and grow out of the same HOPE VI-funded development plan, among other commonalities), and the ABLA case may therefore be reassigned to this Court given that the conditions of Rule 2.31B are met, namely: both cases are pending in this District; the handling of both by the same judge is likely to result in a substantial saving of judicial time and effort (since the central issues in both are segregation and the remedies therefore); the ABLA phase of Gautreaux is just beginning (the RFP which is to lead to the formulation of a plan has not even been responded to yet and thus will not be substantially delayed by the designation of the ABLA case as related); and both Gautreaux and ABLA are of course susceptible of disposition in a single proceeding. Upon reassignment by the Executive Committee, this Court could then dismiss the ABLA complaint without prejudice to the right of the ABLA plaintiffs to seek leave to intervene in Gautreaux if they so choose.

B. The Barton Doctrine. Alternatively, applying the Barton Doctrine, the Court could simply enter an injunctive order in the exercise of its broad powers to prevent interference with its Receiver, enjoining the ABLA plaintiffs from carrying forward their ABLA complaint and directing them to promptly file a motion before Judge Gettleman to dismiss the same without prejudice to their right to seek leave to intervene in Gautreaux if they so choose.

WHEREFORE, the Gautreaux plaintiffs and the Gautreaux Receiver respectfully move this Court to enter orders as suggested in either paragraph 8A or paragraph 8B of this motion, whose effect will be to dismiss the ABLA complaint without prejudice to the right of the ABLA plaintiffs to seek leave to intervene in this case if they so choose.

Respectfully submitted,

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