



and resulted in the segregation of public housing in Minneapolis.

The lawsuit was settled by virtue of an extraordinarily complex agreement involving multiple plaintiffs and no fewer than six governmental agencies. Under its terms, housing and public housing policies were revisited throughout all of Hennepin County. As part of the settlement, a plan ("the Plan") was prepared to implement its goals. The proposed settlement was translated into at least four languages. The settlement was accomplished only after a several-month-long period during which each of the parties presented and debated its terms in the most extensive community-wide comment and explanation period known to the Court. The matter was widely reported in the local community and the major news media.

The public hearing and comment period, prior to securing each parties' assent, involved dozens of widely-attended public meetings. These meetings explained and allowed extensive public comment on the settlement and the resulting Plan. The meetings revealed community-wide assent and broad public support for the resulting Consent Decree.

The Decree's terms are encompassed in an Order, entered April 20, 1995. Under its terms, the entire Hennepin County metropolitan area agreed to broaden its public housing base and contribute to

the base of low and moderate income housing. Governmentally-assisted housing and rental units are to be disbursed, both within and beyond Minneapolis's city borders.

The land on which the original concentrated public housing was sited is to be developed into a mixed community of market-priced and subsidized housing. Beyond the participation of Minneapolis, other communities in Hennepin County, and the Metropolitan Council, the program is funded by over \$100,000,000 from the U.S. Department of Housing and Urban Development ("HUD").

A plan of this scope and complexity, obviously, takes several years to effectuate. The Consent Decree contemplates a term of at least seven years to accomplish this difficult and ambitious program. Since signing the Decree, the parties have labored to effectuate its terms, and occasionally have agreed to modify or amend those terms, all with the goal of effectuating the Plan encompassed by the Consent Decree.

A. The Decree

The Consent Decree, entered as an Order of the Court on April 20, 1995, sets forth the parties' agreement. Its stated purpose is:

[T]o set out a series of actions to be taken by Defendants which will promote equal housing opportunity, expand and maximize geographic choice in assisted

housing, and encourage racial integration, by (1) deconcentrating racially concentrated family public housing projects, (2) improving living conditions in remaining family public housing units, (3) relocating public housing units to areas outside of minority concentrations, (4) improving administration of the Section 8 Existing Housing program so as to remove barriers to effective choice, (5) expanding access to application opportunities for assisted housing, (6) developing means to encourage expansion of low-income housing opportunities in suburban cities in the metropolitan area, and (7) ensuring Defendants remain committed to preserving and expanding locational choices and the goals of fair housing.

(Consent Decree, ¶ 3.) The Decree, itself, provides a dispute resolution procedure to be followed when disagreements arise among the parties. (Id. at ¶ 97.) That procedure allows the parties to seek relief from the Court. (Id.)

In this regard, the Decree allows the Court to "retain jurisdiction over this matter for the purpose of enabling any party to this proceeding to apply to the Court for such further orders as may be necessary or appropriate for the enforcement of this Decree." (Id. at ¶ 107.) At the same time, the Decree explicitly provides that "[t]his Decree shall not be subject to any change, modification, amendment, or addition without the express written consent of all parties to this Decree, except as provided for in paragraph 107." (Id. at ¶ 117.) Paragraph 107 provides that "any party may apply to the Court for modification of this Decree, but

not to increase any party's obligations under the Decree." (Id. at ¶ 107.) (emphasis supplied)

B. The Glenwood/Lyndale Housing Projects

The Decree's express purpose is to develop high-quality, racially integrated, decentralized public housing. (Id. at ¶ 3.) To accomplish this goal, the Decree requires the demolition and replacement of 770 public housing units. (Id. at ¶ 22.) In recognition of the difficulty of building and disbursing housing on this scale, the Decree does not link the demolition of existing units to the construction of replacements. (Id. at ¶ 28-30.) The Decree does require all replacement units to be completed within six years of HUD's approval of the demolition application. (Id. at ¶ 44.)

A significant portion of the demolition has been completed. Two additional public housing projects, the Glenwood and Lyndale projects, which had previously contained approximately 300 units, were scheduled for demolition in August, 1999. In preparation for this action, the units were stripped of appliances and furnaces. The units are not currently habitable. As the scheduled demolition date approached, a number of local citizens, and particularly a

group of clergy,<sup>1</sup> came forward to oppose the demolition. In response, the Mayor of Minneapolis ordered a temporary halt to the demolition.

B. The NAACP's Motion

Shortly after these events, the NAACP, a signatory to the Decree, brought the present motion. The NAACP claims its motion is compelled by changes occurring in the Minneapolis housing market since the 1995 Decree. Since the entry of the Decree, Minneapolis's housing vacancy rate has fallen to approximately one to one and one-half percent. The NAACP claims this has created a shortage of affordable housing. It further claims this has contributed to increases in the number of homeless people.

In the face of the changed vacancy rate, the NAACP asks this Court to enjoin the demolition of the Glenwood/Lyndale units. It also seeks a Court Order modifying the Consent Decree to compel Minneapolis to rehabilitate the Glenwood/Lyndale units, and to open them for occupancy until the replacement housing is completed.

II. Legal Analysis

The NAACP's motion seeks two forms of relief: a preliminary

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<sup>1</sup>Several of the interested clergy, along with a number of individuals and certain community groups, have filed an amicus brief in support of the NAACP's motion. Their motion to file their brief is granted.

injunction preventing the demolition of the Glenwood/Lyndale units, and an order modifying the Consent Decree requiring the defendants to rehabilitate, allow reoccupation, and, necessarily, fund the operation of those units. The Court considers the requests in serial order.

A. Motion to Modify the Consent Decree

As an initial matter, the Court notes that, as of August, 1999, all parties were in compliance with the Decree. When faced with community opposition to the Glenwood/Lyndale demolition, however, the Mayor of Minneapolis halted the demolition, thereby putting herself in defiance of the Order and frustrating its intent. But for this action, the Glenwood/Lyndale units would have been demolished, and the question before the Court would be moot.

On the other hand, after the Mayor's action, the Court, the public media, and all parties know that an agreement in principle to resolve these issues was reached and preliminarily assented to by all parties. Had this agreement been effectuated, the Court's decision on this motion would have been unnecessary. This agreement in principle, of course, could not be put in place without the formal assent of all parties. (Consent Decree, at ¶ 117.) The assent of all parties could not be achieved. In the absence of the assent of a single party, the agreement fell

through.

The parties' failure to achieve an agreement for themselves, and on behalf of the whole community -- which each deeply feels it represents -- compels the Court to consider its own proper power along with its consideration of the pending motion. The Court certainly has the power, both in equity and under the terms of the Decree, to review its prior Orders. But the Court does not possess a generalized power to work its personal will. The Court cannot be a social and community planner empowered to solve all of the community's ever-changing problems. In a system of separated powers, the Court must be vigilant to maintain the line between its own judicial authority and the power placed in the political branches -- those which have the duty to define social goals, and to tax and expend public funds to accomplish them.

The NAACP's motion asks the Court to order changes in the Consent Decree because of a changed economic environment. But the lawsuit before the Court, and the Decree that resolves that dispute, are not based on questions of rental economics. The parties, themselves, defined the issues in the underlying Complaint and in the Consent Decree's terms.

The NAACP's brief is explicit when it tells the Court that "taxpayers will be better off having rehabbed these units and re-

occupied them on a temporary basis," and that "[i]t makes no sense to demolish the Glenwood/Lyndale units when so many people are homeless and there are so few homes for these families to live in." (Pl.'s Mem. Supp. Prelim. Inj. at 8.) These statements may be right or they may be wrong. But they are not questions the Court is empowered to answer.

The job of the Court is to enforce the law and the agreements into which the parties voluntarily entered. The Court cannot make its own law or rewrite the parties' agreement. The NAACP has failed to offer, either in its pleadings or in oral argument before this Court, any legal authority which grants the Court the power to provide the relief it seeks. The NAACP cannot point to a source for such power, because none exists.

1. Authority to Modify Under the Consent Decree

The NAACP contends the Consent Decree, itself, grants the Court the authority to order the rehabilitation and reoccupation of the Glenwood/Lyndale units. The plain language of the Decree refutes this contention. Paragraph 117 expressly prohibits "any change, modification, amendment, or addition without the express written consent of all parties to this Decree, except as provided for in paragraph 107." (Consent Decree, at ¶ 117.) Paragraph 107 of the Decree reads:

The Court will retain jurisdiction over this matter for the purpose of enabling any party to this proceeding to apply to the Court for such further orders as may be necessary or appropriate for the enforcement of this Decree. In the event any occurrences outside the control of the parties frustrate the completion of the actions agreed to herein, any party may apply to the Court for modification of this Decree, but not to increase any party's obligations under the Decree.

(Consent Decree, at ¶ 107) (emphasis supplied).

The Decree gives the Court authority to issue orders to enforce its terms. The NAACP does not, however, seek to enforce the Decree; it seeks to modify it based on its perceptions of changed conditions in the Minneapolis housing market. The Decree specifically forbids any party to seek -- and denies the Court the ability to grant -- a modification of the Decree "to increase any party's obligations." (Id.)

The NAACP seeks to increase the defendants' obligations by requiring them to spend a sum its own brief claims to be between 1.2 and 3 million dollars to rehabilitate the Glenwood/Lyndale units. (Pl.'s Mem. Supp. Prelim. Inj. at 7.) In the absence of an agreement, Minneapolis has no obligation to provide this sum. The cost of maintaining and operating the units would, presumably, be born by HUD. But HUD clearly advised the Court at oral argument it had no obligation to provide those funds. Each step the NAACP seeks is a massive increase in a party's obligations, and is

directly barred by Paragraph 107 of the parties' agreement.

The Consent Decree is a contract. When parties enter into a contract, they define for themselves their legal rights and obligations. Unless the contract is contrary to law, and this Decree is certainly in accord with the law, the Court cannot rewrite its terms. This is particularly emphasized here, where the Decree's terms explicitly deny the power to increase any party's obligations. The contract has been entered as an Order, and is enforceable with the power of contempt, but it remains a contract. The NAACP signed the contract, legally binding itself to its provisions and the terms of the Decree.

The NAACP tries to find the authority it seeks in the Consent Decree's term allowing the parties to return to Court if they cannot resolve a dispute under its terms. The clause does not provide the relief the NAACP seeks.<sup>2</sup>

## 2. Authority to Modify Under Rule 60(b)

The NAACP offers Rule 60(b) of the Federal Rules of Civil

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<sup>2</sup>The NAACP apparently relies on Paragraph 97, which outlines the dispute resolution procedure. That paragraph merely notes that "any party may seek relief from the Court." (Decree, at ¶ 97.) It does not define the type of relief available. It is a cardinal principle of contract interpretation that the specific controls the general. Restatement (Second) of Contracts § 203(c). Paragraph 97's simple mention of court-ordered relief does not undermine the specific limitation on such relief set forth in Paragraphs 107 and 117.

Procedure as a grant of authority to allow the Court to compel the relief it seeks. Rule 60(b) allows a court to modify a consent decree when the party seeking the modification establishes "that a significant change in facts or law warrants a revision of the decree and that the proposed modification is suitably tailored to the changed circumstance." Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367, 393 (1992). So, under the rule in Rufo, there must be both, 1) a significant change in facts warranting a revision; and 2) a showing that the proposed modification is suitably tailored to the changed circumstance. Rule 60(b) is not a general license to the courts to modify orders simply to achieve an otherwise desirable goal.

To support its motion for modification, the NAACP offers three changes in circumstances it believes "require that the decree be amended." (Pl.'s Mem. Supp. Prelim. Inj. at 14.) These changes are 1) the lowered vacancy rate, 2) the large number of homeless families in Minneapolis, and 3) the slow pace of reconstruction. (Id.) None of these circumstances justify a modification of the Consent Decree.

The Consent Decree's express purpose is to develop high-quality, racially integrated public housing. (Decree, ¶ 3.) While affordable housing may be a legitimate concern, it is not a concern

addressed within the four corners of the Complaint or the resulting Consent Decree. As the Decree does not address the need for increased affordable housing, a drop in the vacancy rate, and a corresponding drop in the availability of affordable housing, does not qualify as a changed circumstance justifying modification of the Consent Decree.

The NAACP next expresses concerns about Minneapolis's homeless population. Again, this issue is not addressed in the case before the Court or in the Consent Decree. The Decree is not focused on housing problems generally; it is, instead, carefully directed to the particular problem of racially-segregated, highly concentrated, public housing. Beyond this, the NAACP's requested rehabilitation of the Glenwood/Lyndale units would not realistically impact the homeless problem, as acknowledged by the NAACP's counsel at oral argument.

This is because the Glenwood/Lyndale units, even if rehabilitated, cannot be offered to homeless families. Under existing federal law and regulations, the Minneapolis Public Housing Authority cannot offer such units to families living in homeless shelters. The units simply cannot be given to the homeless. The NAACP finally argues that some of the housing vacated by those who move into the rehabilitated units may become available to homeless

persons. This argument places conjecture on top of conjecture to reach an unwarranted conclusion.

The Decree does not address the issue of homelessness. Thus, the increase in homelessness does not represent the sort of "significant change" that "warrants revision of the decree." Rufo, 502 U.S. at 393. Even if the Court rewrote the Decree as the NAACP asks, it would not ameliorate the homelessness problem. Such an action would not be "suitably tailored to the changed circumstance." Id. at 391.

The NAACP's last rationale for modification of the Consent Decree is "the slow pace of reconstruction." This rationale, too, fails as a basis for modifying the Decree. This is because the Decree, itself, anticipates that demolition of old units will outpace the construction of new units. It states that "where possible, permanent replacement units will be created prior to scheduled demolition."<sup>3</sup> (Consent Decree, ¶ 28) (emphasis supplied). But at the same time, it specifically provides for residents who must be relocated due to demolition before replacement units are

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<sup>3</sup>The Court is not, however, blind to the fact that Minneapolis has provided only eight replacement units since demolition began. While the question is not immediately before the Court, this sorry history might well fall within the Consent Decree's four corners. At oral argument, counsel for the Minneapolis Public Housing Authority ("MPHA") assured the Court that at least eighty such units will be on-line within a year's time.

available. (Id. at ¶ 28-30.)

The Supreme Court has made it clear that, as a general rule, "modification [of a consent decree] should not be granted where a party relies upon events that actually were anticipated at the time it entered into a decree." Rufo, 502 U.S. at 385. Because the Decree addresses the possibility of demolition outstripping new construction, the current conditions do not constitute the kind of unanticipated circumstances necessary to justify a modification under Rule 60(b)(5).

Even if the circumstances enumerated by the NAACP justified a modification of the Decree, its proposed modification would directly undermine the basic purpose of the Decree. The NAACP seeks an order requiring that a number of housing units -- units which have already been condemned, and are now entirely unfit for habitation -- be rehabilitated on a temporary basis. These units would then be reoccupied, presumably by inhabitants whose demographics roughly parallel the situation which prevailed at the time this case began.

This is the same situation which the NAACP's original lawsuit claimed to be an unconstitutional over-concentration of low-income minority families in public housing. It further claimed the situation resulted from de jure and de facto discrimination. This condition should not now be reimposed at the NAACP's request.

The NAACP has failed to present any authority empowering the Court to grant its motion to modify the Consent Decree. As a result, the motion must be denied.

B. The Preliminary Injunction

The NAACP seeks an order enjoining the City of Minneapolis from demolishing the Glenwood/Lyndale units. The Eighth Circuit Court of Appeals has set forth the standard to be considered in deciding such a motion. The Court must consider four factors: (1) the threat of irreparable harm to the movant; (2) the balance between that threat of harm and the injury that granting the injunction will inflict on the other parties; (3) the probability the movant will succeed on the merits; and (4) the public interest. Dataphase Systems, Inc. v. CL Systems, Inc., 640 F.2d 109, 113 (8<sup>th</sup> Cir. 1981). Applying these factors, the Court finds none favoring a grant of the motion.

First, when considering the threat of harm to the moving party, the Court acknowledges that demolition of a building is irreparable. But the NAACP has failed to show how, in the context of the Consent Decree, it will suffer harm from the demolition. The Decree, to which the NAACP originally gave its assent, calls for this demolition. And, ultimately, the parties are aware that many of the new replacement units will be built on the vacated site. This

reconstruction, at least in part, depends on that demolition.

As for the balance between the harm to the moving party, balanced against the harm to the other parties, it is clear that stopping demolition will likely jeopardize this entire complex redevelopment program. While there is a very scant record, at oral argument it was clear there is a development contract in place. A contract lapse, or a breakdown of the project, could well substitute a long-term disaster for a short-term "solution."

Third, as seen above, the movant's probability of success on the merits is extremely low. Its request does not comply with either the Consent Decree or the Supreme Court's rule in Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367, 393 (1992). The Court's analysis of the law shows that this Dataphase factor counsels denial of the motion.

Finally, the Court considers the public interest. The public does not, and indeed cannot, have an interest in seeing the Court overstep the bounds of its authority in a system of separated powers. Beyond this, in a representative democracy, the public's interest is usually expressed by the decisions of its elected officials. While their views are not determinative, virtually all of them were elected when they entered into the Consent Decree and have, to a large extent, been re-elected since. Both in policy and

in fact, the public interest weighs against the grant of the injunction.

Having denied the motion to modify the Consent Decree, no reason for delay of the demolition exists. Therefore, the Court expects the parties will move with dispatch to effectuate the Decree's terms. The motion for a preliminary injunction to halt demolition of the Glenwood/Lyndale housing projects is denied.

### III. Conclusion

In the last analysis, the NAACP does not ask the Court simply to enjoin demolition. It asks the Court to find funds to finance the rehabilitation of unsafe and uninhabitable housing units. It then asks the Court to reimpose the same racially and economically impacted public housing conditions which led it, among others, to bring its initial claims of constitutional deprivation. The NAACP's "solution" would undermine, and ultimately eviscerate, the central purpose of the Consent Decree. Even if the Court had the authority, or was given an arguable justification for imposing such a modification, it would decline -- indeed, it would be compelled to decline -- to do so.

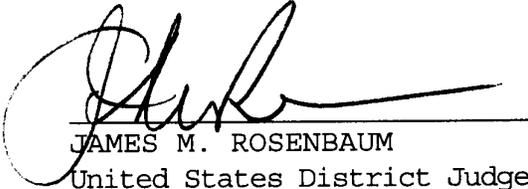
Accordingly, IT IS ORDERED that:

1. Plaintiff's motion for a preliminary injunction is denied.
2. Plaintiff's motion to modify the Consent Decree is denied.

3. In the event any party seeks an appeal of this Order, the parties are directed to approach the Court for consideration of an appropriate bond, pursuant to Rule 62 of the Federal Rules of Civil Procedure.

4. The petition to file a brief amicus curiae is granted.

Dated: September 30<sup>th</sup>, 1999



JAMES M. ROSENBAUM  
United States District Judge