

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

DOROTHY GAUTREUX, et al.,

Plaintiffs,

vs.

SAMUEL R. PIERCE, JR., Secretary  
of the Department of Housing and  
Urban Development, and CHICAGO  
HOUSING AUTHORITY, et al.,

Defendants.

Civil Action No. 65C1453  
66C1460  
(Consolidated)

O R D E R

This matter coming on to be heard pursuant to plaintiffs' motion dated May 8, 1987 for the appointment of a receiver for the scattered site program (defined below), due notice having been given and the Court having heard the presentations of the parties, the Court makes the following findings of fact and conclusions of law:

(A) The Chicago Housing Authority (the "CHA") has joined in plaintiffs' motion for the appointment of a receiver for the reasons which CHA has heretofore stated in this cause.

This Court has concluded that it has no reasonable alternative but to exercise its inherent power to effectuate its own orders and to so appoint said receiver for the scattered site program in accordance with the provisions of this order. It is the expectation of this Court that the appointment of a receiver will facilitate cooperation between the United States

Department of Housing and Urban Development ("HUD" CHA and the receiver respecting the scattered site program.

(C) For purposes of this Order the "scattered site program" shall mean i the buildings and vacant sites listed in Exhibit A attached hereto (collectively, the "Uncompleted Units") and (ii CHA Development Programs numbered Il 2-096, Il 2-098, Il 2-103 through Il 2-109, and Il 2-113 (excluding any completed buildings in such programs) and 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.

WHEREFORE, IT IS HEREBY ORDERED:

1. The Court hereby appoints Daniel E. Levin and The Habitat Company jointly as receiver ("Receiver") to develop and administer the scattered site program as effectively and expeditiously as possible in compliance with the orders of this Court, such appointment to be effective as of the Effective Date (defined below). Until the Effective Date, CHA shall continue to be responsible for implementing the scattered site program in compliance with the prior orders of this Court. On the Effective Date CHA shall turn over to the Receiver possession and control of the Uncompleted Units, it being understood, however, that title to the Uncompleted Units shall remain in the name of CHA.

2. The 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 including:

(a) Making all determinations governing the scattered site program in compliance with prior and future orders of this Court, including without limitation i) submission to HUD of applications for funding, development programs and other documents, (ii) site selection and acquisition including policies respecting the location of sites and buildings to be acquired), iii) the relocation of occupants, when necessary and iv) construction and rehabilitation of dwelling units and the design and specifications therefor in compliance with applicable laws and ordinances; and

(b) Carrying out the determinations so made, including without limitation i) negotiating and executing any contracts or other documents necessary or appropriate to implement the scattered site program, ii) employing, transferring and discharging staff for the scattered site program, iii) purchasing insurance insuring the Receiver, and the interest of CHA if feasible and available at no additional cost, against liability for such risks and in such amounts as the Receiver and HUD shall from time to time agree upon, (iv) managing and administering buildings included within the scattered site program prior to the turnover thereof to the CHA in accordance with Paragraph 5 below, and (v) doing such other acts and things, including site selection and acquisition in the name of CHA, construction and rehabilitation of dwelling units and retaining the services of such personnel, consultants, attorneys, accountants and other professionals, as are determined by the Receiver to be necessary and appropriate to implement the scattered site

program and to enable the Receiver to discharge its duties pursuant to the provisions hereof.

3. The Receiver shall have the right at any time, due notice to the parties hereto, to make application to the Court requesting that the Receiver be excused from complying with some or all of the provisions set forth in the Annual Contributions Contracts heretofore entered into between HUD and CHA (collectively, the "ACC"), the HUD Procurement Handbook for Public Housing Agencies No. 7460.8, the HUD Public Housing Development Handbook No. 7417.1, or other applicable rules and regulations, or applicable laws or ordinances, or that as to the Receiver, the requirements of such agreements, provisions, laws, ordinances, rules and regulations be modified, if the Receiver determines that compliance therewith would be costly, inefficient or otherwise impede or restrict its ability to carry out this Court's orders. Nothing contained herein shall be deemed to constitute a determination by the Court, or the consent or an acknowledgment by HUD or CHA, that the Court has the jurisdiction or authority to grant any of the foregoing relief

4. The Receiver shall have no obligation to make any expenditure except from funds provided by HUD in accordance with procedures to be agreed upon between HUD and the Receiver Receiver shall keep separate accounts for costs incurred in connection with the scattered site program from and after the Effective Date. The Receiver shall not be responsible for (i) payment of any costs or performance of any obligations incurred

by CHA prior to the Effective Date, except obligations incurred pursuant to the ACC unless the Receiver is excused from complying with the terms thereof pursuant to Paragraph 3 above, or (ii) payment of any costs or performance of any obligations incurred by CHA thereafter, except as may be specifically authorized by the Receiver in writing. Notwithstanding the foregoing, the Receiver shall not be responsible for (iii) compliance with the provisions of any ACC with respect to buildings and sites previously acquired or completed by CHA except those described in Exhibit A, or (iv) any act or omission of CHA either before or after the Effective Date.

5. The Receiver shall promptly turn over to CHA, and CHA shall accept, any building within the scattered site program upon completion of construction or rehabilitation of each such building. For purposes hereof, subject to the reasonable approval of HUD, construction or rehabilitation of a building shall be deemed to be completed when the Receiver's project architect determines that such building is ready for occupancy, and, if required by applicable law or ordinance, a certificate of occupancy has been issued for such building.

6. The Receiver shall prepare reports respecting the status and implementation of the scattered site program as of the end of each month in the year 1987, commencing with the month of September, 1987, and thereafter quarterly as of March 31, June 30, September 30 and December 31 of each year. Copies of the same shall be filed with the Court and served on

the parties within 20 days following the end of the period covered by each such report.

7. CHA, its agents, servants and employees shall provide full cooperation and assistance to, and shall not interfere with, the Receiver in the performance of the Receiver's responsibilities hereunder, including without limitation providing full access to all information, records, documents, files relating to the scattered site program.

8. There shall be paid to the Receiver from funds provided by HUD pursuant to the ACC or Annual Contributions Contracts entered into between the Receiver and HUD, or by CHA if appropriate, (i) all direct costs and expenses reasonably incurred by the Receiver in connection with the performance by the Receiver of its duties pursuant hereto, (ii) to the extent not included in clause (i), a pro-rata share of all salary, compensation and other direct costs of those employees of The Habitat Company (other than Daniel E. Levin, James P. McHugh and Douglas R. Woodworth), James McHugh Construction Co. (other than James P. McHugh) or other entities which are affiliates of or controlled either directly or indirectly by the Receiver, who at the direction of the Receiver perform services on behalf of the scattered site program, for the actual time devoted by said employees to the performance of services for the scattered site program, and (iii) a fee in the amount of three percent (3%) of the aggregate development costs (excluding the costs described in clause (ii) above and any costs previously incurred by CHA)

for each building in the scattered site program (except buildings developed pursuant to a turnkey development) as reflected on the original development budget(s) therefor submitted by the Receiver and approved by HUD, the fee for such building being payable upon the completion thereof as determined in accordance with Paragraph 5 hereof. The Court will set a reasonable fee with respect to turnkey developments. The Court hereby determines that included in the category of expenditures for which the Receiver shall be entitled to reimbursement are all costs, expenses and liabilities (including reasonable attorneys' fees and court costs) reasonably incurred or sustained by the Receiver by reason of the performance by the Receiver of its duties pursuant to the provisions hereof to the extent said costs expenses and liabilities are not covered by the insurance described in Paragraph 2(b)(iii) above.

9. Nothing in this Order shall (i) preclude or restrict the Receiver or any party hereto from asserting any claims against the Receiver or any other party hereto for any matter in connection with the scattered site program or otherwise; provided, however that the foregoing shall not constitute a waiver by the Receiver or any other party of any defense which it may have to such claim, including, but not limited to, a defense by the Receiver that it enjoys immunity from such claim, (ii) obligate HUD to furnish funds to the Receiver in addition to any funds which HUD would otherwise be obligated to provide

to CHA by virtue of any previous order of this Court or otherwise, or (iii) constitute a determination of the amount of funds which HUD is obligated to furnish by virtue of such previous orders or otherwise.

10. The Receiver is hereby excused from complying with 9(b) of the Civil Rules of the United States District Court the Northern District of Illinois

11. The effective date of this Order (the "Effective Date") shall be the date upon which the Receiver has filed with this Court and served upon the parties hereto a notice signifying that the Receiver is satisfied that there is in force the insurance coverage referred to in Paragraph 2(b)(iii) above.

12. Except as and to the extent specifically provided in this Order, this Court's judgment orders previously entered herein, as previously modified, remain in full force and effect. The Court retains jurisdiction of this matter for all purposes, including enforcement and issuance, upon proper notice and motion, of orders modifying or supplementing the terms of this order upon the presentation of relevant information or material changes in conditions existing at the time of this order or any other matter.

ENTER:

  
United States District Judge

August 14, 1987