

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

MARY HILL and JESSIE JOHNSON,
individually and on behalf of
all others similarly situated;
and CHICAGO COMMUNITY DEVELOPMENT
CORPORATION, an Illinois corporation,

Plaintiffs,

-vs-

THE HONORABLE ANDREW CUOMO, Secretary,
Department of Housing and Urban
Development,

Defendant.

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MAY 13 1998

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT.

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MAGISTRATE JUDGE DENLOW

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

NATURE OF THE ACTION

~~RECEIVED~~ HOLDERMAN

1. This class action arises out of the illegal, arbitrary and capricious action of the U.S. Department of Housing and Urban Development ("HUD") which will conduct a foreclosure sale of the federally subsidized Barbara Jean Wright Courts Apartments ("Wright Courts") in Chicago on May 15, 1998, in violation of applicable law and its own regulations for the provision and preservation of low-income rental housing. In doing so, the defendant Secretary of HUD will injure the current residents of Wright Courts, containing 272 apartments, by failing to insure the rehabilitation of the unsound physical structure and threatening the ability of the current low-income tenants to remain there. Defendant's actions will violate these tenants' rights to decent, safe and sanitary housing.

2. At issue in this case are four sets of unreasonable, arbitrary and unlawful actions by HUD which harm the plaintiffs.

First, HUD failed to send adequate notice of its impending foreclosure sale to all of the current Wright Courts tenants, as required by federal law. Second, HUD is requiring private developers who bid at the foreclosure sale to commit to perform less than half of the structural repairs and rehabilitation, which HUD, itself, determined two years ago needed to be urgently performed, again in violation of federal law requiring HUD to act to promote safe, decent and sanitary housing. Third, HUD has failed to perform any analysis to comply with the statutory mandate that a finding be made that an adequate supply of housing affordable to very low-income households exists in the area for tenants with tenant-based assistance prior to its issuance of housing vouchers to tenants at Wright Courts and, furthermore, provision of such vouchers to the Wright Courts tenants will violate the 10% cap on issuance of such vouchers to tenants in properties sold at foreclosure by HUD. Fourth, HUD has illegally, arbitrarily and capriciously failed to consider alternatives to the foreclosure which will assure affordable low-cost housing, avoid harmful effects on the tenants and community, and will be less costly to HUD than the foreclosure, such as the plan submitted by the plaintiff Chicago Community Development Corporation ("CCDC").

3. Plaintiffs come before this Court seeking declaratory and injunctive relief that will preserve this housing for low-income families, protect the welfare of the residents, and prevent an ill-considered and illegal course of action by the defendant.

JURISDICTION AND VENUE

4. This Court has jurisdiction in this action pursuant to 28 U.S.C. §§ 1331 and 1361, 12 U.S.C. § 1702, 42 U.S.C. § 1404a, and 5 U.S.C. § 702, in that plaintiffs have been adversely affected and aggrieved by the unlawful action of an agency of the United States. Plaintiffs seek injunctive and declaratory relief against the defendant, pursuant to 28 U.S.C. § 2202.

5. Venue is properly laid in this judicial district pursuant to 28 U.S.C. § 1391(b) and (e) in that a substantial part of the events, actions, or omissions giving rise to the claims herein occurred in this judicial district and the real property that is the subject of this action is located in this judicial district.

THE PARTIES

6. Plaintiff Mary Hill is a resident of Wright Courts.

7. Plaintiff Jessie Johnson is a resident of Wright Courts.

8. Plaintiffs Hill and Johnson bring this action pursuant to Fed. R. Civ. P. 23(b)(2) on behalf of themselves and all others similarly situated. The class consists of all persons who are currently tenants at Wright Courts or who are low-income persons who seek residency at Wright Courts in the future. The class is so numerous that joinder of all members is impracticable; there are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members; the representative parties will fairly and adequately protect the interests of the class; and the class action is an

appropriate method for the fair and efficient adjudication of the controversy.

9. Plaintiff Chicago Community Development Corporation is an Illinois corporation whose headquarters is in Chicago, Illinois.

10. Defendant Andrew Cuomo is the Secretary of HUD and is responsible for administering the activities thereof.

11. Barbara Jean Wright Courts Apartments is a 272-unit property, located in a revitalizing area on the Near West Side of Chicago bounded by the east campus of the University of Illinois and the Brooks Extension of the **ABLA** Homes which is in the process of demolition with a plan for replacement with mixed-income housing. Wright Courts consists of 27 buildings, which were built in 1973 with a mortgage insured by HUD under Section 236 of the National Housing Act. 108 of the units are occupied by tenants receiving rent subsidies under the Section 8 project-based loan management set aside program. The purpose of this assistance was to allow very low-income residents to pay 30% of adjusted gross income as rent with HUD paying the difference up to the rent necessary to operate the unit. The remainder of the tenants at Wright Courts have relatively higher incomes but continue to benefit from below market rents under the Section 236 program.

STATEMENT OF FACTS

12. Acting under the approval and authorization of the United States Congress, HUD implements various programs to encourage private sector participation in the financing, ownership and management of low- and moderate-income rental housing. One such

program is FHA mortgage insurance, which is intended to make private sector mortgage financing available to owners of low- and moderate-income housing. In this program, HUD, acting through FHA, provides insurance to a mortgage that permits the mortgagee, in the event of an owner's default, to assign the loan to HUD in exchange for payment of FHA insurance benefits essentially in the amount of the loan.

13. HUD requires the owner of an **FHA** insured property to enter into a Regulatory Agreement, which is incorporated into the mortgage. The Regulatory Agreement governs all aspects of the ownership and management of the property, including rents charged. The Regulatory Agreement also gives HUD the right to exercise prior approval of sale or transfers of the property and certain conveyances or transfers of the interest of a general partner in the partnership owning the mortgaged property.

14. Wright Courts was developed by Residents Development Corporation ("RDC"), an Illinois non-profit corporation. HUD entered into a contract with RDC to **insure** the first mortgage of \$6,103,000 at a rate of 7% to attract private financing. In addition, HUD provided an Interest Reduction Payment Contract that wrote down the interest rate to a rate of 1% so that rents could be maintained at below market levels. In the late 1970's, the property experienced financial problems, including the impact of the energy crisis on operating costs. Rents could not be raised to levels to pay operating expenses without displacing low-income residents. As a consequence, RDC defaulted on its HUD insured

mortgage in 1981 and the private lender, now succeeded by **LaSalle** Bank FSB, assigned its mortgage to HUD in return for payment of-an insurance claim for 99% of the principal amount of the mortgage. HUD became the mortgagee. Since at least 1984, ownership has continued to make monthly mortgage payments of principal and interest to HUD but has been unable to address the \$1.3 million in delinquent principal and interest that accrued during the default period.

15. In the early 1980's, RDC entered into a partnership with Partnership Investment Services, Inc., which. was succeeded by **Westport** Housing Corporation in 1986 and formed Wright Court Limited, the current ownership entity of the property. The new limited partners invested \$700,000 in the property for physical repairs in return for participation in tax benefits of the property. RDC served, and continues to serve, as a co-general partner of the partnership and is responsible for the selection and supervision of the managing agent.

16. From its's inception, the property has been managed by entities whose principal has been Cornelius Goodwin and the property is presently managed by Central Cities Management Corporation, of which Cornelius Goodwin is a principal. Between 1991 and 1995, HUD issued annual management reviews finding that the management company's performance was unsatisfactory and that certain practices of the management company violated HUD regulations, handbooks or procedures.

17. In the late 1980's, the property began to experience physical difficulties due to the wear and tear of original systems and fixtures **and due to certain structural flaws in the foundation** of 16 of the buildings.

18. The partnership sought repeated rent increases from HUD to obtain funds to address the physical needs of the properties which were denied. In one instance, a rent increase was denied because HUD calculated that the property received rental income from 126 4-bedroom apartments when in fact only 26 4-bedroom apartments exist on site. As a result of HUD's failure to approve reasonable rent increases to allow the partnership to meet the physical needs of the **property**, the Wright Court Limited Partnership filed suit against HUD in 1995. The case which seeks damages is presently pending before the Court of Claims.

19. in 1994, **Westport** entered into an agreement to convey the property to a partnership organized by plaintiff CCDC so that the property's physical and financial needs could be met as part of a refinancing plan. In 1994, 1995 and 1996, CCDC presented HUD with alternative financing plans that would provide funding to complete \$5.3 million in repairs, maintain the existing rent structure and provide innovative resident-services programs. In 1996, HUD and the U.S. Department of Justice agreed to a settlement of the litigation brought by Wright Court Limited Partnership that involved a transfer of the property to CCDC. However, HUD required that the managing agent, Central Cities, be removed as part of the settlement. RDC was unwilling to agree to this term of the

settlement and the settlement was not implemented. HUD was unwilling to exercise its administrative remedies to remove the managing agent for cause. Thus, although HUD approved of CCDC's plan for ownership of Wright Courts, this transfer never occurred because the condition that the property manager be removed was not fulfilled, a condition within HUD's power but not CCDC's.

20. HUD's Midwest District Inspector General for Audit, Dale L. Chouteau, on December 11, 1995, reported that Wright Courts needed approximately \$5.3 million in project rehabilitation. (Dec. 11, 1995 Audit Related Memorandum, 96 CH-212-1804, attached hereto as Exhibit 1 at 6.) This report stated:

... However, because of the age of the Project, and its lack of substantive rehabilitation over the years, both HUD's construction analyst and an independent construction analyst concurred that the Project currently needs approximately \$5.3 million in rehabilitation work. More than sixty percent of the required rehabilitation was classified by the construction analysts as "high urgency" . . .

Id. at 6.

21. Despite the HUD Inspector General for Audits' determination, HUD in its foreclosure notice and bid package issued for the May 15, 1998 foreclosure sale has set forth a Wright Courts repair requirement of only \$2.9 million. (HUD bid package attached hereto as Exhibit 2 at 11.) Based on HUD's itemization of this amount, however, it turns out that HUD is actually requiring only \$2.4 million in repairs with the remaining \$.5 million representing contingency and overhead costs. (HUD repair requirements specification attached hereto as Exhibit 3.) Thus, HUD after two further years of deterioration to the structure is now requiring

less than 50% of the repair costs to Wright Courts estimated by HUD to have been required in 1995.

22. HUD's disposition plan set forth in its notice and bid package also specifies that it will provide 214 housing vouchers to current very low-income tenants of Wright Courts for them to seek housing.

23. On or about February 2, 1998, HUD issued notices of its intent to initiate foreclosure. This notice, however, was not delivered or mailed to all Wright Courts tenants. Plaintiff Hill did not receive this notice, nor did the other unit residents around her. Moreover, the actual notice sent by HUD does not contain the general terms and conditions of the foreclosure sale, the future use and operation of the project proposed by HUD, the time by which any offers must be made or comments submitted, or that the full disposition recommendation, analysis and other supporting information was available for inspection and copying at HUD. (HUD February 2, 1998 Notice attached hereto as Exhibit 4.)

24. On or about April 1, 1998, HUD issued a Notice of Foreclosure and made a bid package available to the general public. In exercising its power to foreclose on the mortgage after a monetary default 17 years ago, HW has provided terms and conditions of sale that are injurious to the Wright Courts tenants and to the community. Upon information and belief, a number of parties have raised issues with HUD regarding the foreclosure and its harmful impact, including Rep. Danny K. Davis (7th Cong. Dist.) . (See letters of Rep. Davis attached hereto as 5.) In

response to these complaints on **May 11, 1998**, HUD issued two amendments to the bid **terms** that purport to cure two of the numerous defects of the proposed sale and evidence HUD's failure to carefully and fully assess the effect of its foreclosure decision.

25. On May 8, 1998, CCDC filed a revised workout proposal and requested that HUD delay the foreclosure sale while it considers this proposal. The proposal is consistent with the 1996 plan approved by HW and has certain additional features which enhance its benefit, including: 1) payment of \$1.8 million to HUD to cure arrearages and reinstate the existing Section 236 mortgage insurance; 2) 55 replacement units for **ABLA displacees** that will be unavailable if the foreclosure proceeds; 3) servicing of the first mortgage on its original amortization schedule; and 4) no additional subsidy from HUD. HUD has not responded to this proposal.

26. Plaintiff Mary Hill has been a resident of Wright Courts for twenty-four years. She currently lives in a 4-bedroom townhouse at Wright Courts with her twenty-nine year old daughter who is mentally and physically disabled and uses a wheelchair. Ms. Hill is unemployed. Her rental payment for her apartment is \$77 per month due to Section 8 rental assistance. The contract rent for her apartment is \$616 per month.

27. Ms. Hill received no notice from HUD regarding its planned foreclosure on Wright Courts nor has she ever **received** a questionnaire from HUD to reassess her eligibility for rental assistance. Her present apartment, which she has been living in

since 1988, has never been painted or repaired, and currently needs new windows, roof repairs, plumbing work, and general rehabilitation work. She has convenient access to her daughter's physician from Wright Courts and believes the community provides a safe environment in which to live.

28. Plaintiff Jessie Johnson has lived at Wright Courts for 24 years. She currently lives in a 3-bedroom townhouse at Wright Courts with her grandchildren. Ms. Johnson is unemployed and receives project-based Section 8 rental assistance.

29. In early February, Ms. Johnson received a notice from HUD stating that Wright Courts would be subject to a foreclosure sale. She also received an income screening form that had to be returned within five (5) days in order to qualify for rental assistance. Because she was hospitalized when the HUD notice was delivered, she does not know if she returned the income screening form in time to be eligible for rental assistance.

COUNT I

30. The individual plaintiffs reallege and incorporate by reference paragraphs 1-29 of the Complaint as if fully set forth herein.

31. Pursuant to the Multi-Family Housing Property Disposition Reform Act of 1994, 12 U.S.C. § 1701z-11(c) (2) (D) (i) and (c) (3) (A), requiring HUD to obtain community and tenant input into its disposition plans and to provide notice to tenants of the proposed foreclosure sale, HUD has promulgated regulations governing the disposition and sale of HUD-held multi-family mortgages at 24

C.F.R. § 290. These regulations provide that HUD is required to deliver or mail to each unit in a project at least 60 days **before** HUD foreclosure on the project a notice specifying: the general terms and conditions concerning the sale, future use, and operation of the project as proposed by HUD; the time by which offers must be made or **any** comments must be submitted; and that the full disposition recommendation and analysis and other supporting information will be available for inspection and copying at the HUD field office. 24 C.F.R. § 290.11(b), (c) and (d).

32. By failing to provide plaintiff Hill and other tenants with notice of HUD's foreclosure plans, defendant has violated § 290.11(b) and 12 U.S.C. § 1701z-11(c) (3) (A).

33. By failing to provide information regarding the general terms and conditions of the foreclosure sale, the future use and operation of the project as proposed by HUD, the time by which offers or comments were to be made, and that HUD's disposition recommendation, analysis and supporting data were available for inspection and copying in the notice provided to some of the Wright Courts tenants, defendant has violated § 290.11(b) and (c) and the Administrative Procedure Act, 5 U.S.C. § 706.

34. Defendant's actions have prevented the individual plaintiffs and the plaintiff class from being fully informed of HUD's intended foreclosure and from exercising their rights under federal law to protect their homes and to qualify for rental assistance, and thus irreparably injuring them by the threat of the loss of their homes.

COUNT II

35. The individual plaintiffs reallege and incorporate -by reference paragraphs 1 through 29 as if fully set forth herein.

36. Under the Property Disposition Act, 12 U.S.C. § 1701z-11(c)(3)(B), the defendant is permitted to dispose of a multi-family housing project through foreclosure only to a purchaser that the Secretary of HUD determines is capable of implementing a sound financial and physical management program that is designed to enable the project to meet anticipated operating and repair expenses to ensure that the project will remain in a decent, safe and sanitary condition.

37. Despite having determined in 1995 that Wright Courts required approximately \$5.3 million in repairs, the defendant now, in violation of § 1701z-11(c)(3)(B), has only required bidders at the May 15, 1998 foreclosure sale to demonstrate capability of performing \$2.9 million in repairs at Wright Courts. No repairs at Wright Courts addressing the scope of work identified by the Midwest HUD Inspector General for Audit in December 1995 has been undertaken or initiated since that date. As explained above, this \$2.9 million amount actually requires only \$2.4 million in physical repairs to the Wright Courts buildings, thus representing less than half the amount of repairs that HUD stated was required over two years ago. Indeed, HUD determined that 60% of the \$5.3 million in repairs needed in 1995 were urgent. Defendant has arbitrarily and capriciously decided to drastically reduce the necessary repairs to Wright Courts which will result in the project is not being

maintained in a decent, safe and sanitary condition, in violation of the foregoing statutory provisions and the Administrative Procedure Act, 5 U.S.C. § 706. The effect of arbitrarily reducing the amount of necessary repairs is to increase the cash to HUD from the foreclosure sale at the expense of the low-income families residing in the complex.

38. Defendant's actions will result in threatened irreparable injury to any plaintiffs and class members who are able to remain at Wright Courts following HUD's foreclosure sale since the defendant has failed to comply with his duty of determining that the purchasers can implement all the repair expenses necessary at Wright Courts.

COUNT III

39. The individual plaintiffs reallege and incorporate by reference paragraphs 1 through 29 of the Complaint as if fully set forth herein.

40. Under the Property Disposition Act, 12 U.S.C. § 1701z-11(e) (2) (A), HUD may provide tenant-based assistance under Section 8 of the National Housing Act of 1937, 42 U.S.C. § 1437f, on the date the project is acquired by the foreclosure purchaser, only if defendant has previously determined that there is available in the area an adequate supply of habitable, affordable housing for very low-income families and other low-income families using tenant-based assistance.

41. Upon information and belief, the defendant has not made such a determination nor has he initiated any study whereby such a

determination could be made prior to the planned issuance of 214 tenant-based housing assistance vouchers to current Wright Courts tenants at the time of foreclosure of this project, in violation of this provision and the Administrative Procedure Act, 5 U.S.C. § 706.

42. Section 1701z-11(e)(3)(B) further limits the defendant's ability to use housing vouchers so that they represent assistance for no more than 10% of the aggregate units in subsidized or formerly subsidized projects disposed of by the defendant in any fiscal year.

43. Upon information and belief, just as the issuance of 214 vouchers to Wright Courts tenants represents more than 10% of the 272 units in this project, the defendant nationally during the current fiscal year has vastly exceeded the 10% cap on the number of disposed of subsidized housing units using housing vouchers, in violation of this provision and the Administrative Procedure Act, 5 U.S.C. § 706.

44. Defendant, by having failed to determine that the issuance of 214 vouchers to Wright Courts tenants at foreclosure will provide access to habitable, affordable housing and by having exceeded the 10% cap on issuance of such vouchers, threatens irreparable injury to the individual tenants and class members by jeopardizing their ability to obtain habitable, affordable housing for their families if the foreclosure sale occurs as planned. ;

COUNT IV

45. The plaintiffs reallege and incorporate by reference paragraphs 1-29 of the Complaint as if fully set forth **herein.**-

46. By statute, HUD is required to exercise its authority in an objective and impartial manner, consistent with national housing policy set forth in 42 U.S.C. § 1441. Further, pursuant to 12 U.S.C. § 1701z-11(c), HUD is also required to dispose of its property in the least costly fashion among available alternatives, that will preserve housing so that it can remain available to and affordable by low-income persons, maintain housing stock' in a decent, safe and sanitary condition, and minimize involuntary displacement of tenants.

47. By failing to implement the CCDC disposition plan approved by HUD in 1996 and by failing to stay foreclosure proceedings in order to respond to the CCDC revised disposition plan submitted to HUD on May 8, 1998, HUD has failed to act in accordance with the above statutory directives, and instead has acted arbitrarily and capriciously, in violation of the above statutes and the Administrative Procedure Act, 5 U.S.C. § 706.

48. Moreover, pursuant to 5 U.S.C. § 705, this Court may postpone the effective date of the HUD foreclosure sale to allow HUD to adequately review the existing alternative to its foreclosure plan and to remedy the existing illegal aspects of its plan. The ill-considered manner in which defendant has acted, as confirmed by its May 11, 1998 amendment to the bid terms for the May 15, 1998 foreclosure sale, demonstrates that the public interest will be served by a re-evaluation of HUD's disposition

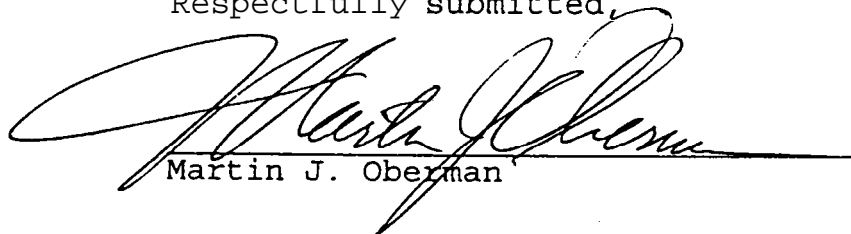
plan for Wright Courts, and avoiding the threatened irreparable injury of displacement of the individual plaintiffs and plaintiff class.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray that this Court grant the following relief:

1. declare that the defendant's implementation of HUD's announced May 15, 1998 foreclosure sale of the Barbara Jean Wright Courts Apartments violates the Administrative Procedure Act, 5 U.S.C. §§ 705 and 706, the National Housing Act, 42 U.S.C. § 1441, 12 U.S.C. § 1701z-11, and HUD's implementing regulation, 24 C.F.R. § 290.11;
2. enter an order determining that this action may proceed for the class defined herein;
3. enter a temporary restraining order and thereafter preliminarily and permanently enjoin the defendant from implementing a foreclosure plan not in compliance with the above-cited provisions;
4. award plaintiffs' attorneys' fees and costs; and
5. grant such additional or alternative relief as is just, proper and equitable.

Respectfully submitted,



Martin J. Oberman

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VERIFICATION

Under penalty of perjury under the laws of the United States, and pursuant to 28 U.S.C. § 1746, Anthony J. Fusco, **President** of the Chicago Community Development Corporation, certifies that the statements set forth in the foregoing Verified Complaint are true and correct.

A handwritten signature in black ink, appearing to read 'Anthony J. Fusco', written over a horizontal line.

Anthony J. Fusco, President
Chicago Community Development Corporation

Dated May 13, 1998