

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

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U.S. DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
EAST LANSING

TERRENCE BONNER, et al.,
Plaintiffs,

File No. 88-CV-10137-BC

v.

SAINT PAUL TOWNHOUSE VILLAGE,
Defendant.

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PRELIMINARY INJUNCTION

The motion of Plaintiff Terrence Bonner for a preliminary order of injunction having come on to be heard and the Court being fully advised in the premises,

IT IS ORDERED that the motion be and hereby is granted, and that during the pendency of this action and until further order of this Court, Defendant Saint Paul Townhouse Village, its agents and employees, be and they hereby are restrained and enjoined from initiating or continuing eviction proceedings against Plaintiff Terrence Bonner or otherwise taking steps to remove him from his apartment.

The following tentative conclusions indicate a likelihood of success on the merits:

- 1) that the Defendant appears to be performing the governmental function of determining eligibility for federal housing assistance;
- 2) that case law supports a direct cause of action against federal officials for violations of the due process clause of

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the fifth amendment, see Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971); Davis v. Passman, 442 U.S. 228 (1979);

3) that case law appears to support the proposition that Section 8 benefits constitute a property interest protected by due process, see Davis v. Mansfield Metropolitan Housing Authority, 751 F.2d 180, 184 (6th Cir. 1984); Ressler v. Pierce, 692 F.2d 1212, 1215 (9th Cir. 1982);¹

4) that no opportunity for a hearing was afforded before Defendant decided not to recertify Plaintiff for benefits, and that the regulatory scheme provides no procedure whereby tenants could communicate their complaints to HUD;

5) the Sixth Circuit has held that "due process requires a hearing prior to termination or denial of recertification" of participants in a Section 8 housing program, Davis, 751 F.2d at 185;

6) that, apart from any constitutional claim, there may well be a private right of action under the Housing Act in accordance with the factors enunciated in Cort v. Ash, 422 U.S. 66, 78 (1975) (setting forth four-part inquiry to determine whether private action may be maintained to enforce a statute that does not explicitly provide for enforcement);

a) Plaintiff Bonner is "one of the class for whose especial benefit the statute was enacted," id., as evidenced by his previous certification and receipt of benefits.

b) The U.S. Supreme Court has held that the Housing Act does not evince a congressional intent to foreclose private enforcement of the Act, Wright v. Roanoke Redev. & Housing Auth., 93 L.Ed.2d

781 (1987); rather, congressional and agency actions indicate "that private actions were anticipated." Id. at 789.

c) Private enforcement is consistent with the purposes of the legislative scheme. See 42 U.S.C. §1437(f) ("aiding lower-income families in obtaining a decent place to live); 24 C.F.R. §886.301 ("to increase and maintain the amount of decent, safe, and sanitary housing affordable by lower-income families, to minimize the displacement of tenants" in connection with disposing of HUD-owned housing).

d) The U.S. Supreme Court has rejected the contention that a cause of action under the Housing Act concerns an area traditionally relegated to state law. Wright, 93 L.Ed.2d at 792-93 & n.11.

7) that the basis for evicting Plaintiff appears to contravene the HUD Handbook.


The irreparable harm that could result if the injunction does not issue is that Plaintiff may be homeless and unable to secure his personal belongings at least during the pendency of this action. Moreover, he may be unable to find another place to live, notwithstanding his eligibility for federal housing assistance. In the mean time, his apartment may be leased to another tenant and a ruling in favor of the Plaintiff could result in the displacement of an innocent party. The Sixth Circuit has noted that participants in public housing programs who are denied recertification "are denied their present shelter. Their loss is greater than that of persons from whom a benefit it withheld through denial of initial eligibility." Davis,

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751 F.2d at 184. On the other hand, the potential cost to the Defendant as a result of the injunction will be relatively minimal considering the size of the apartment complex. Finally, public policy favors the issuance of an injunction in order to further the stated purposes in connection with the disposition of HUD-owned projects of maintaining the amount of decent housing for lower-income families and of minimizing the displacement of such tenants. 24 C.F.R. §886.301. The parties have represented on the record that this project was purchased from HUD.

The issuance of this injunction is based in part on representations made on the record concerning the nature of Defendant's role as a possible agent of HUD and the lack of oversight by HUD. Among the conditions for the injunction are Plaintiff's counsel's representation that she will add HUD as a party Defendant and that she will supplement the record with copies of the HUD Handbook, the contract between HUD and the Defendant, and the Plaintiff's lease agreement. The Court contemplates a reconsideration of the propriety of this injunction once the record is made more complete and HUD is in the lawsuit, so as to minimize any unnecessary loss of rent to the Defendant.

It is so ordered.



JAMES P. CHURCHILL
UNITED STATES DISTRICT JUDGE

1. But see Perry v. Royal Arms Apartments, 729 F.2d 1081 (6th Cir. 1984).

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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LORETTA GOODSON
PLAINTIFF
V.
STANLEY KENDZIERSKI ET AL.
DEFENDANTS

CIVIL No. N 87-55(JAC)

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U.S. DISTRICT COURT
NEW HAVEN, CONNECTICUT

ORDER

*and a hearing hearing
been held in the above*

The foregoing motion having been duly presented and it appearing that Loretta Goodson has received a notice to quit possession of her apartment by February 15, 1987 which alleges a ~~legally insufficient~~ reason for terminating a Section 8 tenancy, and, that date having expired, is threatened with the imminent commencement of an eviction action which would cause her irreparable harm;

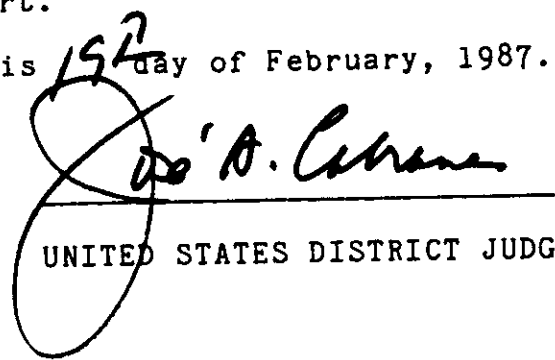
And that Defendants Coleman and Ansonia Housing Authority are ~~not~~ ^{prevented to resume} making housing assistance payments to her landlord, Defendant Kendzierski, as required by federal law and the terms of the Housing Assistance Contract executed between the Housing Authority and Defendant Kendzierski, it is hereby

ORDERED:

That Defendant Kendzierski is enjoined from commencing an eviction action against Plaintiff based on the legally insufficient notice to quit, issued January 27, 1987; and that Defendants Coleman and Ansonia Housing Authority are enjoined to immediately commence making housing assistance payments to Defendant Kendzierski on Plaintiff's behalf in the amount of

\$278 for February 1987 and every month thereafter until subsequent order of the Court.

Signed at New Haven this 15th day of February, 1987.


UNITED STATES DISTRICT JUDGE

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