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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Linda Forrester, et al. *
 *
 * Civil No. JFM-85-3350
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 *
Housing Authority of the *
City of Annapolis *

MEMORANDUM AND ORDER

This action for declaratory and injunctive relief brought by Linda Forrester and Jean Dorsey against the Housing Authority of the City of Annapolis involves the question of whether or not Ms. Forrester and her five children should be permitted to continue to reside in an apartment in a public housing project owned and operated by defendant. This Court previously entered a preliminary injunction prohibiting defendant from removing Ms. Forrester and her children from their apartment.

The facts may be briefly stated. On July 23, 1984, a fire destroyed a four bedroom apartment unit owned by defendant. Residing in the unit at the time were Ms. Dorsey, her son, John Dorsey, her daughter, Linda Forrester, and Ms. Forrester's five children. Ms. Dorsey had been a resident of public housing for twenty-three years and the other members of her household had, with the approval of defendant, moved into her apartment sometime before the fire. The cause of the fire may be in dispute between the parties; plaintiffs contend that the fire department found that it was "accidental" while defendant suggests that the fire may have been due to occupant negligence. In any event, after the fire Ms. Dorsey (with the approval of defendant) moved

into another public housing unit leased by her niece. According to defendant, Ms. Dorsey has not made any further requests for new housing.

After the fire Ms. Forrester and her five children began to reside (without the approval of the Housing Authority) with a friend, La Tanya Gwinn, who resided in another public housing unit with her three children. Ms. Forrester requested defendant to place her and her children into another unit because the unit in which she was residing with Ms. Gwinn and her children was overcrowded but defendant did not do so. In February 1985 Ms. Gwinn and her children moved out of the apartment. Thereafter, defendant sought to evict Ms. Forrester and her children and this suit eventually ensued.

Defendant has filed a motion to dismiss, contending that this Court lacks subject matter jurisdiction and that plaintiffs have failed to state a claim upon which relief can be granted.

Defendant first argues that the Housing Act of 1937 is not an act of Congress regulating commerce and that therefore jurisdiction does not lie under 28 U.S.C. Section 1337. Although one case has so held, see Potrero Hill Community Action Comm'n v. Housing Authority, 410 F.2d 974 (9th Cir. 1969), the Fourth Circuit has, at least implicitly, found that Section 1337 does provide jurisdiction over Housing Act claims. See Perry v. Housing Authority, 486 F.Supp. 498, 500 (D.S.C. 1980), aff'd 664 F.2d 1210 (4th Cir. 1981).

Defendant's next jurisdictional challenges are related to

its contentions on the merits. Defendant argues that Ms. Dorsey has no claim because she still resides in the public housing project and that Ms. Forrester and her family have no statutory or constitutional rights to continue to reside in public housing. Plaintiffs, on the other hand, assert that they both have a due process right and a parallel statutory right under 42 U.S.C. Sections 1437 et. seq. and 24 C.F.R. Section 966.50 et. seq., not to be evicted from the project absent good cause. Plaintiffs assert related claims under 42 U.S.C. Section 1437 et. seq., 24 C.F.R. Section 966.4(h) and 42 U.S.C. Section 1983.

24 C.F.R. Section 966.53(f) defines a tenant for purposes of grievance procedures and requirements as "any lessee or the remaining head of the household of any tenant family residing in housing accommodations covered by this part." Defendant concedes that if Ms. Dorsey had moved out of the housing project after the fire, Ms. Forrester would have had a right under this Section to have a grievance hearing before she and her children could be evicted. Defendant argues, however, that the use of the word "or" in Section 966.53(f) prevents both Ms. Dorsey and Ms. Forrester from being "tenants." As a matter of abstract analysis, defendant is correct in its contention. However, defendant has blinded itself to the facts of this case. Plaintiffs are not seeking to obtain greater rights than they had before the fire by splitting tenancy rights between them. Rather, they are attempting to restore the status quo ante by obtaining an apartment unit which they can live in as a single

household. The fact that defendant had no such unit to offer them immediately after the fire - thereby forcing Ms. Dorsey to move in with a niece and Ms. Forrester and her children to move in with a friend - certainly should not work to plaintiffs' detriment and to defendant's benefit.

For these reasons the Court remains persuaded, as it was persuaded when it issued its preliminary injunction, that it has subject matter jurisdiction and that plaintiffs have stated cognizable claims for relief. To the extent that plaintiffs' claims arise under the Fourteenth Amendment, see Swann v. Gastonio Housing Authority, 675 F.2d 1342 (4th Cir. 1982), jurisdiction is conferred by 28 U.S.C. Section 1343(3). To the extent that their rights arise under the Housing Act or Section 1983, jurisdiction lies under 28 U.S.C. Section 1331 as well as under 28 U.S.C. Section 1337. Cf. Maine v. Thiboutot, 101 S.Ct.

The Fourth Circuit has decided a trilogy of cases which held that the Housing Act of 1937, did not, either by itself or as a predicate for a Section 1983 action, provide a source for private rights of action which plaintiffs there sought to assert. See Perry v. Housing Authority, 664 F.2d 1210 (4th Cir. 1981); Phelps v. Housing Authority, 742 F.2d 816 (4th Cir. 1984); Wright v. City of Roanoke Redevelopment and Housing Authority, No. 85-1086 slip op. (4th Cir. Aug. 26, 1985). Each of these cases is distinguishable from the instant case in that here plaintiffs are within the specific class of persons specifically intended to be benefitted by the provisions upon which they rely. Thus, under the two-pronged test established by Middlesex County Sewage Authority v. National Sea Clammers Ass'n, 101 S.Ct. 2599 (1981) and Penhurst State School and Hospital v. Halderman, 101 S.Ct. 1531 (1981), it seems clear that plaintiffs here may assert their rights under Section 1983. It is substantially less clear that they have an implied right of action directly under the Housing Act itself. See Wright v. City of Roanoke Redevelopment and Housing Authority, *supra* (Gordon, J. concurring). See generally Court v. Ash, 422 U.S. 66 (1975).

2502, 2506 n.6 (1980). Accordingly, defendant's motion to dismiss is denied and defendant is directed to file an Answer to the Complaint within fourteen days.

Date: September 15, 1985

J. Frederick Motz
Frederick Motz
United States District Judge