

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

MARY HILL, et al.,)	No. 98 C 2951
)	
Plaintiff,)	
)	Chicago, Illinois
v.)	May 14, 1998
)	9:58 a.m.
THE HONORABLE ANDREW CUOMO,)	
Secretary, Department of)	
Housing and Urban Development,)	
)	
Defendant.)	<u>Motions</u>

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JAMES F. HOLDERMAN

APPEARANCES:

For the plaintiffs: Law Offices of Martin J. Oberman,
by: MARTIN H. OBERMAN,
36 South Wabash Avenue,
Chicago, Illinois 60603

For the Development Corporation: Miner, Barnhill & Galland, P.C.,
by: WILLIAM A. MICELI,
14 West Erie Street,
Chicago, Illinois 60610

For the defendant: Scott R. Lassar, U.S. Attorney,
by: LINDA A. WAWZENSKI,
Assistant U.S. Attorney,
219 South Dearborn Street,
Chicago, Illinois 60604

1 THE CLERK: 98 C 2951. Mary Hill v. Andrew Cuomo.
2 Motion to intervene and join in TRO, and motion for
3 temporary restraining order.

4 MR. OBERMAN: Good morning, your Honor. Martin
5 Oberman on behalf of the plaintiffs.

6 THE COURT: Good morning.

7 MR. MICELI: Good morning, your Honor. William
8 Miceli on behalf of the Resident Development Corporation.

9 MS. WAWZENSKI: Linda Wawzenski on behalf of the
10 Department of Housing and Urban Development.

11 THE COURT: Good morning.

12 Ms. Wawzenski, is there any objection to the
13 intervention?

14 MS. WAWZENSKI: Well, I have not been able to
15 completely read it. I was just served with this about ten
16 minutes ago.

17 THE COURT: Oh. Well, I was only about five
18 minutes ahead of you, so --

19 MS. WAWZENSKI: Okay. I suppose not. I really
20 don't know what to say.

21 THE COURT: Okay.

22 MR. OBERMAN: Plaintiffs do not object, your
23 Honor.

24 THE COURT: All right. Well, if you want to take
25 a little more time to look at it --

1 MS. WAWZENSKI: I don't know that that will
2 necessarily make a difference, your Honor, you know, without
3 having a chance to consult with my client. I don't know
4 that it makes much difference to have them granted leave to
5 intervene at this point, and we can sort that out at --

6 THE COURT: It seems that they may fit the
7 criteria, but let me just ask, what is the government's
8 position with regard to the motion that's up today?

9 MS. WAWZENSKI: The temporary restraining order?

10 THE COURT: The temporary restraining order, yes.

11 MS. WAWZENSKI: Well, your Honor, I was served
12 with this yesterday around two o'clock, and I've been trying
13 to sort this out and get a response from my client since
14 that time, last night and this morning, and I don't have any
15 definite answer at this point. I can't tell the Court that
16 I agree to the imposition of the TRO. I would have to at
17 this point oppose it. I am still awaiting some formal
18 direction from headquarters.

19 Part of the complication here, your Honor, is
20 this week there is a national meeting of all HUD managers in
21 Washington, so everyone that I would need to talk to, at
22 least at the regional level here, is not in Chicago, they
23 are all in Washington and extraordinarily difficult to
24 reach.

25 MR. OBERMAN: Might I just interject in terms of

1 that, on the idea that there's movement, or possible
2 movement, we are aware, your Honor, that as of this morning,
3 I believe I'm correct in stating, Senator Carol
4 Moseley-Braun, who favors putting off this foreclosure, was
5 supposedly meeting with Secretary Cuomo. That may be going
6 on as we speak. We know the City of Chicago forces in
7 Washington are pushing in the same direction, as is
8 Congressman Davis, so there may be movement of which all of
9 us are unaware, but I can't tell you what that might be.

10 THE COURT: Okay, well, why don't we do this,
11 then: Why don't we continue the matter to 1:30. That will
12 give you a few more hours to try to check with your various
13 clients as well as other people to see if something can be
14 worked out. I can hold a temporary restraining order
15 hearing -- either I or the magistrate judge -- can hold a
16 temporary restraining order hearing, to the extent that one
17 is necessary, at 1:30 as well as now, and I'm hoping that
18 you're going to be able to work something out. In fact, I
19 was intending to sit down with you to assist in trying to
20 resolve at least the temporary restraining order.

21 But since that's already in the works, my
22 involvement isn't going to help much more. You talking with
23 people on the phone may do more good, so are you available
24 at --

25 MS. WAWZENSKI: Can we perhaps have it at two

1 o'clock instead?

2 THE COURT: Two o'clock? All right, let me check
3 with my clerk.

4 MR. OBERMAN: That's okay with me.

5 I wonder this, your Honor, without being
6 presumptuous, perhaps if we did meet now, and your Honor
7 came to the conclusion that an agreement to put this off was
8 wise, that word might be beneficial to the folks in
9 Washington in the next couple of hours. I don't want to
10 prejudge where we might end up, but --

11 THE COURT: All right, well, let me say this that
12 you can take back to Washington, that based on the papers
13 I've seen, and, of course, I haven't heard from the
14 government, based on the papers I've seen, it appears that
15 we should move cautiously on this. I know that it's a
16 matter of concern, and I think it might be in everyone's
17 best interests to take a careful look at this before a sale
18 proceeds tomorrow.

19 But I don't know that I can offer anything
20 beyond that to help you with the people in Washington, and
21 I'm not sure I have that much influence with the people in
22 Washington.

23 But let's do it at 2 o'clock -- or let me
24 check with my clerk to make sure.

25 MR. MICELI: Judge, for clarification --

1 (Court conferring with clerk.)

2 THE COURT: Yes?

3 MR. MICELI: Your Honor, are you granting leave
4 for us to intervene?

5 THE COURT: I'm going to grant you leave to attend
6 the two o'clock hearing, and we'll continue your motion
7 until then. I assume there is no objection. From re'ading
8 your papers, it appears that there should not be an
9 objection. You have an interest that is certainly covered
10 under the rule. But, again, I don't want to prejudge it
11 without having the government provide me with any input that
12 they desire to have. And merely because all these managers
13 are at a seminar, it seems to me the government shouldn't be
14 hampered. So hopefully you'll be able to reach people.

15 MS. WAWZENSKI: Thank you, your Honor.

16 THE COURT: And we'll see you at 2 o'clock.

17 MR. OBERMAN: Thank you, Judge.

18 THE COURT: Thank you.

19 (Recess until 2:00 p.m.)

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EASTERN DIVISION

MARY HILL, et al.,)	No. 98 C 2951
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Plaintiff,)	
)	Chicago, Illinois
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)	2:05 p.m.
THE HONORABLE ANDREW CUOMO,)	
Secretary, Department of)	
Housing and Urban Development,)	
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Defendant.)	<u>Motions</u>

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For the Development Corporation:	Miner, Barnhill & Galland , P.C., by: WILLIAM A. MICELI, 14 West Erie Street, Chicago, Illinois 60610
For the defendant:	Scott R. Lassar, U.S. Attorney, by: LINDA A. WAWZENSKI , Assistant U.S. Attorney, 219 South Dearborn Street, Chicago, Illinois 60604

1 THE CLERK: 98 C 2951, Mary Hill v. Andrew Cuomo.

2 MR. OBERMAN: Let me just tell the others that the
3 case has'been called.

4 (Brief pause.)

5 MR. OBERMAN: Good afternoon, your Honor. Martin
6 Oberman on behalf of plaintiffs.

7 THE COURT: Good afternoon.

8 MR. MICELI: Hello, Judge. Bill Miceli on behalf
9 of Residents Development Corporation, proposed intervenor.

10 MS. WAWZENSKI: And Linda Wawzenski on behalf of
11 the federal defendants.

12 THE COURT: Yes, good afternoon to all of you.

13 What is the status?

14 MS. WAWZENSKI: Well, your Honor, the government
15 is willing now to adjourn the foreclosure --

16 THE COURT: Okay.

17 MS. WAWZENSKI: -- pursuant to 12 USC 3710, and
18 the significance of that is by adjourning the foreclosure
19 rather than postponing it, from a statutory basis, we need
20 not begin the procedure from scratch if-we have to once
21 again institute the foreclosure, and the statute allows us
22 to adjourn the foreclosure for no less than 9 but no more
23 than 24 days, and, by my count, if we start with tomorrow,
24 that puts us at June 8th as the 24th day of the adjournment
25 period.

1 THE COURT: All right. Well, let me ask my clerk
2 to hand me back my diary, which she had borrowed from me.

3 All right, what's the position of other
4 counsel?

5 MR. OBEHMAN: Your Honor, two things. And I had a
6 chance to have a conversation with the U.S. attorney before
7 we came over. Two things we think are important to state,
8 but essentially we are in agreement. One is that during
9 this 24 days, among other things, HUD will use that period
10 to review CCDC's proposal and respond to it in a
11 nonarbitrary, noncapricious fashion, and I think we have
12 agreement on that, do we not?

13 MS. WAWZENSKI: Yes. We only received it Friday
14 last week so this is only six days since we received it.

15 MR. OBEHMAN: And so we think it does need more
16 time and so we're happy that's going to happen.

17 And, two, I think it's assumed, but I think
18 it should be stated clearly, that in the event agreement
19 cannot be reached and HUD's proposal is to go ahead with the
20 foreclosure sale as planned for tomorrow, then we preserve
21 all of the claims that we have alleged in terms of the
22 adequacy of the notice and so forth. In other words, we
23 aren't giving those up, but I think it's everybody's hope
24 that we'll never litigate those and we can resolve this, and
25 I think that's also the understanding of the government on

1 this.

2 MS. WAWZENSKI: I agree. Even if your Honor
3 ordered us to postpone it, his verified complaint would
4 still be alive.

5 THE COURT: All right.

6 MR. MICELI: And, Judge, with respect to Residents
7 Development Corporation, clearly we have a stake in this.
8 We're the fee owner of the real estate as well as the
9 managing general partner --

10 THE COURT: To some extent you're preaching to the
11 choir here. I just wanted to wait and hear what the
12 government's position on this was, so --

13 MS. WAWZENSKI: We have no objection to that, your
14 Honor. I mean they can be allowed to intervene, but I think
15 that perhaps they need not have to necessarily file papers
16 during this period unless they have a burning desire to do
17 so, but I'd like to prevent everyone from spending too much
18 money on this, and not having to file an actual complaint in
19 intervention might help them to devote more time to seeing
20 if a resolution can be achieved.

21 THE COURT: All right.

22 MR. MICELI: That's perfectly acceptable, Judge.

23 THE COURT: All right, then, Residents Development
24 Corporation's motion for leave to intervene and to join
25 plaintiffs' motion for temporary restraining order will be

1 allowed. The temporary restraining order motion, however,
2 will be held in abeyance because of the agreement that's
3 been reached by all parties, to allow for an adjournment.

4 Now, I haven't read Title 12 United States
5 Code 3710, since it was just mentioned now, and let me
6 inquire whether the 24 days is calculated in a manner that
7 the sale must proceed on the 24th day or on the 25th day?

8 MS. WAWZENSKI: Your Honor, it's a good question.
9 I asked that because I was first told that this would be
10 adjourned for 24 days, and I wasn't given the citation, and
11 it took me a few more calls to find the citation, and I have
12 not been able yet to get an explanation of exactly what your
13 Honor is asking.

14 What I have been told is that, you know, even
15 at the expiration of the 24th day, it is likely that the
16 foreclosure commissioner would have to, at minimum,
17 readvertise the new date, and so that there might be some
18 slippage, but at this point I really don't know, and, you
19 know, perhaps I can advise the Court and the other parties
20 as soon as I have a better idea of exactly, you know, what
21 happens on that 24th day. But I'm doubtful that it's the
22 sale that would occur on the 24th day. You know, I think
23 that that's the adjournment period. It would seem that the
24 earliest the sale could take place would be the date
25 following that.

1 THE COURT: Well, yes, and, of course, in order to
2 have an effective sale, you would have to readvertise --

3 MS. WAWZENSKI: Correct.

4 THE COURT: -- and provide a new date. That was
5 my question. Does the government have to pick a date --

6 MS. WAWZENSKI: I don't know.

7 THE COURT: -- and then target that date during
8 the 24 --

9 MS. WAWZENSKI: What I've also told the parties is
10 that if we're getting close to the end of the time limit and
11 we are all in agreement that we are at the point that we're
12 going to be able to reach an agreement, but that, you know,
13 this time is insufficient, that we would certainly be
14 willing to extend that time period, but that will depend on,
15 you know, the course of the negotiations as they go along:

16 THE COURT: Well, that was my next question.

17 MS. WAWZENSKI: Your Honor, I'm not going to try
18 to double-cross anybody in terms of having a surprise sale.
19 You know, most of the buyers -- many of the buyers, we
20 believe, may be coming from out of state, and, in fact, may
21 be on their way right now, and hopefully they will return
22 when we have a new sale date, but I think just in order to
23 have an effective sale, that we would have to have time to
24 advertise it and renotify people to return for it.

25 THE COURT: Okay, all right, well, that was --

1 well, you've answered some of my questions, and you've
2 raised some others. When should we set this case for
3 further status?

4 MS. WAWZENSKI: Perhaps the prior week.

5 THE COURT: All right.

6 MS. WAWZENSKI: Maybe Thursday or Friday,
7 depending on the Court's schedule, of that prior week,
8 because I think by that time we'll clearly know where we all
9 are.

10 MR. OBERMAN: We'll certainly know whether it's
11 worth continuing to talk.

12 MS. WAWZENSKI: Correct.

13 THE COURT: Okay. And if it is worth continuing
14 to talk, can the parties agree to a further adjournment
15 under the statute, or is the 24-day a drop-dead date that'
16 you can't --

17 MS. WAWZENSKI: It looks to me like it's a drop-
18 dead date from the standpoint of being able to piggyback on
19 the initial foreclosure decision.

20 THE COURT: Okay.

21 MS. WAWZENSKI: But, again, you know, if we are at
22 the point that everyone is pretty confident that we are
23 moving in the direction that this is going to be resolved,
24 and, frankly, you know, I don't think there are a lot of
25 issues that are here that are holding up a workout in this

1 case, that we will know by that time --

2 THE COURT: Okay.

3 MS. WAWZENSKI: -- whether it's likely that this
4 is going to be resolved or not.

5 THE COURT: All right, why don't we then set the
6 case for further status on Thursday, June 4. That's the
7 Thursday before the Monday, June 8th, date. It will be at
8 10:30 in the morning.

9 Can everybody be here then?

10 MR. OBERMAN: No problem.

11 MS. WAWZENSKI: Yes.

12 THE COURT: If you do reach an agreement before
13 that time, by all means, let me know.

14 MS. WAWZENSKI: Oh, definitely.

15 THE COURT: I'm looking forward to hearing that
16 news. Otherwise, you can let me know what the circumstances
17 are and what the status is on Thursday, June 4, at 10:30.

18 MS. WAWZENSKI: Thank you, your Honor.

19 MR. OBERMAN: Your Honor, will this just come out
20 in a minute order? You don't need a draft order?

21 THE COURT: I don't need a draft order, but,
22 frankly, I wasn't going to ask my clerk to mail you a copy
23 of the minute order from today since you were present to
24 address these.

25 Perhaps, Mrs. Branch, maybe we should prepare

1 a minute order with the citation that the parties have
2 agreed to an adjournment of the sale pursuant to 12 USC
3 Section 3710 for a period of 24 days, to June 8th, and then
4 the case is set for further status.

5 MR. MICELI: And, your Honor, --

6 THE COURT: We also should reflect the allowance
7 of the Residents Development people as well.

8 MR. MICELI: Thank you.

9 THE COURT: Okay.

10 MR. OBERMAN: Thank you very much, your Honor.

11 THE COURT: Thank you. I hope you can work
12 something out, and I'll look forward to hearing that news.

13 MR. OBERMAN: We intend to.

14 THE COURT: All right, thank you.

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CERTIFICATE

18 I certify that the foregoing is a correct transcript of the
19 record of proceedings in this matter on May 14, 1998.

20

21

James P. Dolan
Official Court Reporter

5/20/98
Date

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