

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Civil Action No. 80-C-881

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FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

DEC 3 1980

JAMES R. MANSPEAKER
CLERK

PAULINE CORDREY,)
)
Plaintiff,)
)
v.)
)
THE HOUSING AUTHORITY OF THE)
TOWN OF HOLYOKE, A Public)
Body Corporate, JUDY ANN)
SNYDER, Individually and in)
Her Capacity as Executive)
Director of said Housing)
Authority, EVERETT HIATT,)
ROY KNIGHT, DOROTHY REIMER,)
VINCENT DUNN, and MAX STARBUCK,)
Individually and in Their)
Capacities as Commissioners)
of the Housing Authority of)
the Town of Holyoke, *)
)
Defendants.)

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

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LEGAL SERVICES

I. Statement of the Case.

THIS MATTER is before the Court on a complaint seeking declaratory relief and a permanent injunction. Pauline Cordrey seeks to enjoin the Housing Authority of the Town of Holyoke (the "Housing Authority"), Judy Ann Snyder, Everett Hiatt, Roy Knight, Dorothy Reimer, Vincent Dunn, and Max Starbuck from making further efforts to evict her from her apartment. Cordrey resides in a dwelling complex operated by the Housing Authority.

Cordrey complains that: (1) the defendants are trying to evict her without sufficient cause, (2) the defendants' attempt to evict her in these circumstances is inconsistent with the purposes of the United States Housing Act of 1937, 42 U.S.C. § 1437 et seq., (as amended) (the "Housing Act"), (3) the grievance procedure utilized in attempting to resolve this problem was based in part upon an agreement which constitutes an unlawful attempt to circumvent her lease and the federal regulations which mandated the lease terms, (4) the grievance procedure denied her due process because the grievance hearing officer explicitly refused to consider any remedy short of eviction, and (5) the defendants' attempts to evict her denied her equal protection of the laws since their asserted grounds discriminated against the aged and infirm.

The defendants deny Cordrey's allegations of wrongful conduct, and allege as affirmative defenses that: (1) the complaint fails to state a claim upon which relief can be granted, (2) this Court lacks subject matter jurisdiction, and (3) Cordrey is estopped from complaining about this eviction because she signed the agreement arrived at during the grievance proceedings.

II. Factual Background.

The basic facts are not in dispute. On or about May 28, 1977, Cordrey entered into a lease agreement with the Housing Authority. By this lease, she became a tenant at 330 West Kellogg, #31, Holyoke, Colorado. This apartment complex is a low-income housing complex funded in part by HUD. The Housing Authority is a corporate entity organized pursuant to the Colorado Housing Authorities Law, § 29-4-201, et seq., C.R.S. 1973. It is also a "public housing agency" as defined by the Housing Act, 42 U.S.C. § 1437a(6) (as amended). The other defendants are all officers or commissioners of the Housing Authority.

In January, 1980, the individual defendants determined that Cordrey should be evicted from her apartment. They informed Cordrey of this, and told her that they wanted her to leave because she failed to keep the apartment sufficiently clean and sanitary as required by her lease. HUD regulations require that this lease term be imposed upon tenants in low-income housing complexes. 24 C.F.R. § 866.4(f)(6), (7), and (11).

Cordrey objected to the proposed eviction, and was granted the hearing required by both HUD regulations (24 C.F.R. § 866.50 et seq.) and her lease. (See Pl. Ex. 1, cls. 16 and 17.) As a result of this hearing, held in February, 1980, Cordrey and the Housing Authority signed an "agreement." (See Pl. Ex. 3.) This "agreement" set forth specific housekeeping duties, and the required frequency of their performance. It was also agreed that some of the required tasks would be performed by persons other than Cordrey.

Some of the individual defendants inspected Cordrey's apartment after the execution of this "agreement." Written reports were made of three such visits. Essentially, the defendants were still not satisfied with Cordrey's housekeeping. They sought once again to evict her, and,

on April 25, 1980, gave her notice to quit.

Cordrey again objected and requested a hearing. This hearing was held on June 3, 1980, before County Court Judge Max Carlson who had been designated, by stipulation, as a Housing Authority Grievance Officer. After several hours of testimony, Judge Carlson took the matter under advisement. He later issued written findings concluding that the Housing Authority was justified in seeking Cordrey's eviction. Cordrey then filed this action on July 10, 1980.

III. Jurisdiction.

Cordrey here seeks a declaration that she is entitled to continue her tenancy under the lease. She invokes 28 U.S.C. § 2201 as the jurisdictional basis for her claims. Section 2201 grants this Court the power to enter a declaratory judgment, but only "[i]n a case of actual controversy within its jurisdiction." Section 2201 (emphasis added).

Cordrey's claims can be divided into two groups: civil rights and Housing Act. Her civil rights claims are that she was denied due process by the hearing officer's failure to consider remedies other than eviction, and was denied equal protection on the theory that the defendants' actions discriminate against the aged and infirm. Cordrey brings these claims under 42 U.S.C. § 1983, and invokes this Court's jurisdiction under 28 U.S.C. § 1343(3) and (4).

The Housing Authority is a local agency. See § 29-4-204, C.R.S. 1973. It acts under color of state law, and is a proper defendant in a Section 1983 action. See Monell v. New York City Department of Social Services, 436 U.S. 658 (1978).

All the individual defendants, whether commissioners or the executive director, hold their offices and act under color of state law. See § 29-4-205(1) and (5), C.R.S. 1973. Since Cordrey has alleged that all defendants have deprived her of federal constitutional rights while acting under color of state law, she has properly invoked this Court's jurisdiction.

Cordrey's claims based on the Housing Act are that the defendants are unjustifiably attempting to evict her in a manner inconsistent with the Act's purposes. She asserts that they improperly rely on an

agreement which attempts illegally to circumvent federal law. In support of these claims, Cordrey invokes the United States Housing Act of 1973, 42 U.S.C. § 1437 et seq., as amended, and the Department of Housing and Urban Development ("HUD") regulations promulgated pursuant to that Act. In particular, she relies upon 24 C.F.R. § 866.1 et seq.

Cordrey has not alleged proper statutory grounds for jurisdiction over her Housing Act claims.¹ A federal court, however, may hear under pendent jurisdiction a claim which is otherwise beyond its jurisdiction but arises out of a nucleus of operative facts in common with a substantial claim clearly within the Court's jurisdiction. See Hagans v. Lavine, 415 U.S. 528, 548 (1974); Ayala v. District 60 School Board of Pueblo, Colorado, 327 F.Supp. 980, 982 (D.Colo. 1971).

For purposes of pendent jurisdiction, an underlying claim is "insubstantial" only if it is "so . . . implausible, foreclosed by prior decisions of [the Supreme] Court or otherwise completely devoid of merit as not to involve a federal controversy within the jurisdiction of the District Court, whatever may be the ultimate resolution of the federal issues on the merits." Hagans v. Lavine, 415 U.S. at 543. The underlying claims in this action are Cordrey's claims under Section 1983, and they are of sufficient substance to support exercise of pendent jurisdiction.

This Court considers three factors in determining to exercise its discretion to hear Cordrey's housing claims. First, there is obvious judicial economy and convenience in hearing in one case all the issues raised by Cordrey. Second, hearing the Housing Act claims may permit this Court to decide the case on non-constitutional grounds. Avoiding a decision on constitutional grounds when not necessary to the disposition of the case is a firmly established principle of federal adjudication. Ashwander v. TVA, 297 U.S. 288, 347 (1936) (Brandeis, J., concurring).

¹ Cordrey suggests that 28 U.S.C. § 1337 gives this Court jurisdiction over her Housing Act claims. Since the Housing Act is an Act providing for the general welfare, and not an Act regulating commerce, Section 1337 cannot provide jurisdiction over her Housing Act claims. Cf. U.S. Const., Art. I, § 8, cls. 1 and 3; see also 42 U.S.C. § 1437.

Although the Housing Act claims clearly arise under the laws of the United States, Cordrey has not alleged the requisite amount in controversy. See 28 U.S.C. § 1331.

Finally, when the pendent claim arises under federal law, there is no reason to defer to a state court for decision on the pendent claim.²

See generally Hagans v. Lavine, 415 U.S. at 545-48.

IV. Specific Findings and Conclusions.

Cordrey has had two informal grievance hearings on the propriety of her eviction. However, the fact that the second hearing resulted in a finding against her is no bar to a trial de novo on those issues in this Court. See 24 C.F.R. § 866.57(c).³

The Court has reviewed the transcript of the June 3, 1980 hearing, as well as the written findings by Judge Carlson. With all due respect, this Court disagrees with his findings and conclusions. The evidence presented at that hearing showed that Cordrey failed to vacuum her carpet and wash her floor as often as she might have, that she accumulated empty food cans, and saved newspaper clippings for scrapbooks. There was not, however, sufficient evidence to support a finding that Cordrey was guilty of "serious or repeated violations" of her obligations to maintain her apartment (1) in a safe and sanitary manner, or (2) in a way that would not disturb her neighbors' peaceful enjoyment of their dwelling units. From a review of the evidence, this Court concludes that the defendants based their decision to evict Cordrey on their personal housekeeping standards, and disregarded the restrictive conditions for termination set forth in the lease and HUD regulations.

Judge Carlson obviously looked to the terms of the agreement between Cordrey and the Housing Authority in finding that eviction was

²The defendants argue that this Court lacks jurisdiction because Cordrey's federal rights can be adequately protected in an ejectment action in state court. They cite Anderson v. Denny, 365 F.Supp. 1254 (W.D.Va. 1973) as authority for this proposition. The Anderson court did not hold that the existence of a state forum denied it jurisdiction to hear a suit brought by a tenant challenging the propriety of an eviction. Anderson simply rejected the plaintiff's contention that permitting a landlord to bring a state action for ejectment would deny a tenant's federal right to procedural due process.

³Section 866.57(c) provides:

"A decision by the hearing officer, hearing panel, or Board of Commissioners in favor of the PHA or which denies the relief requested by the complainant in whole or in part shall not constitute a waiver of, nor affect in any manner whatever, any rights the complainant may have to a trial de novo or judicial review in any judicial proceedings, which may thereafter be brought in the matter."

proper. Cordrey is 62 years old and in poor health. Her testimony at the grievance proceeding shows that she is hard of hearing, has a poor memory, and does not always understand what she is told. The agreement in question was executed by her to avoid immediate eviction proceedings. In these circumstances, this Court will not find that she made a legally effective modification of her rights under her lease, or that she has freely waived her rights or estopped herself from now asserting them. The mere fact that she had counsel does not permit the defendants to exploit her infirmities by using the threat of eviction to undercut the rights granted her by her lease and guaranteed by the HUD regulations.

This is a proceeding for equitable relief. Balancing the equities compels the conclusion that a permanent injunction should issue. The defendants will be ordered not to seek to evict Cordrey based on the facts they here relied upon, or, on facts substantially similar. Of course Cordrey may commit repeated and sufficiently serious violations of her lease obligations to justify terminating her lease in the future. However, the defendants will have to make a stronger showing than they have here.

The defendants must bear in mind that they are dealing with an elderly woman who cannot take care of herself and her home with the skill, vigor, energy and alacrity of a young, healthy person. They should continue to encourage Cordrey as well as her relatives and friends to keep her apartment as clean as possible. But they may not use their authority to evict an indigent, older and dependent person from the only housing she can afford simply because her presence or her lifestyle offends their sensibilities. Youth, strength, and material comfort should not breed intolerance for those less fortunate. That intolerance is particularly deplorable in those who are entrusted with managing public resources earmarked to aid the indigent, the aged and the infirm.

Since Cordrey's Housing Act claims permit this Court to grant the relief requested, it is unnecessary to discuss her civil rights claims.

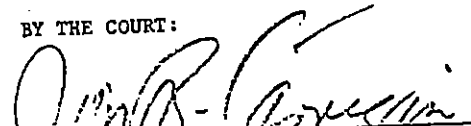
V. Order.

IT IS ORDERED that the Clerk of this Court enter judgment in favor of the plaintiff and against the defendants on the plaintiff's claims under the United States Housing Act of 1937, 42 U.S.C. § 1437,

et seq., and the HUD regulations promulgated thereunder. The defendants are hereby permanently enjoined from seeking to evict the plaintiff from her apartment based on the facts presented to this Court, or essentially similar future facts.

DATED at Denver, Colorado, this 31 day of December, 1980.

BY THE COURT:


Jim R. Carrigan, Judge
United States District Court

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JAMES R. MANSPEAKER
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