

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JACKIE McDOWELL, et al. : CIVIL ACTION
: :
v. : :
: :
PHILADELPHIA HOUSING AUTHORITY, :
et al. : NO. 97-02302-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

November 15, 2005

In this class action between the Philadelphia Housing Authority ("PHA") and its public-housing tenants, the parties entered into a consent decree in January 1998. In October 2002, the tenants filed a motion to enforce the decree, asserting that the defendant PHA was not in compliance and should be sanctioned. On March 9, 2004, I rejected the tenants' application, finding that they had suffered no actual damage. They appealed, and, on September 13, 2005, the Court of Appeals reversed, and directed this court to impose the requested sanctions.

While the appeal was pending, and before it was decided, the defendant PHA filed a motion to vacate the consent decree in its entirety. Although the application was filed on March 9, 2005, I concluded that it should not be entertained by this court while the appeal was pending.

On September 30, 2005, the same day as the Court of Appeals rendered its decision, PHA filed an "emergency motion" to stay enforcement of the consent decree, pending disposition of the motion to vacate.

In my view, the application for emergency stay should be granted only if respondent has established a likelihood of success on the merits of its application to vacate the decree itself. While the parties have presented numerous arguments, pro and con, as to whether the consent decree should remain in effect, the issues are complex, and not so clearly one-sided as to warrant interim relief. Instead, I believe a prompt hearing on the motion to vacate the decree would be preferable, and is permissible now that the Court of Appeals has ruled.

An Order follows.

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ORDER

AND NOW, this 15th day of November 2005, IT IS ORDERED:

1. The motion of respondent Philadelphia Housing Authority for emergency relief in the form of a stay of enforcement of the consent decree is DENIED.

2. A hearing on the pending motion to vacate the consent decree will be held on Tuesday, November 29, 2005, at 1:30 p.m.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.