

Defendants' obstructionist conduct following its March 25, 2009 Order, Plaintiffs are still entitled to a finding of contempt for Defendants' actions leading up to the March 25, 2009 Order, as well as payment of fees, costs, and damages incurred in bringing the Parish and the Council's violation of the February 2008 Consent Order to the Court's attention and prevailing on their motion to enforce that Consent Order. Controlling Fifth Circuit case law and undisputed facts concerning the dispute that led to the March 25, 2009 ruling make clear why this is the case.

First, the elements required to find a party in contempt are straightforward and easily met here. An order was in effect; the order required certain conduct by Defendants; and, as found by the Court, the Parish and Council failed to comply with that order. *American Airlines, Inc. v. Allied Pilots Ass'n*, 228 F.3d 574, 581 (5th Cir. 2000). Second, payment of full fees, costs, and damages is justified because GNOFHAC and Provident's actions were necessary to enforce the February 2008 Consent Order. Failure to award full costs, fees, and damages would deny Plaintiffs the full benefit of the 2008 Consent Order and leave them in a worse position for having brought the matter to the Court's attention and prevailed.

The dispute in this case could have been resolved quickly and without resort to litigation. Plaintiffs gave Defendants many opportunities to voluntarily comply with their obligations under federal law and the 2008 Consent Order, but Defendants repeatedly refused. From the moment the dispute over the 2008 moratorium began, Plaintiffs put Defendants on notice early and often that their actions violated the Consent Order. Even after the Council refused to rescind the moratorium and Plaintiffs were forced to file their Motion to Enforce, counsel for Plaintiffs contacted counsel for Defendants multiple times in an attempt to resolve the matter out of court and mitigate damages. Defendants were uncooperative.

Instead, leading up to the hearing, Defendants filed copious and repetitive unsuccessful motions in defense of their discriminatory and contemptuous conduct, which Plaintiffs were forced to oppose at significant time and expense. Weeks before the evidentiary hearing, at the initial hearing

on the Motion to Enforce, Plaintiffs tried yet again, without success, to engage the Defendants in settlement discussions. Even after this Court encouraged the parties to try to resolve the matter near the close of Plaintiffs' presentation of evidence at the evidentiary hearing, the Parish and the Council refused to settle. All of this required Plaintiffs to spend considerable time at each stage of the matter—including the drafting of lengthy findings of fact and conclusions of law at the conclusion of the hearing—to ensure that their rights under the existing order were enforced.

In short, the Parish and the Council left Plaintiffs with no choice but to take on the costly task of enforcing this Court's Order through litigation. For this reason, and those explained in greater detail below, the Parish and the Council should be held in contempt and ordered to make Plaintiffs whole by bearing the full costs of their contemptuous conduct prior to the date of the Court's ruling on March 25, 2009. For the reasons set forth separately in Plaintiffs' earlier-filed June 9, 2009 Motion for Contempt, the Parish and the Council should also be held in contempt and ordered to pay Plaintiffs' full costs, fees, and damages for their continuing obstruction of Provident's affordable housing developments following the March 25, 2009 ruling.

BACKGROUND

St. Bernard Parish and the St. Bernard Parish Council passed the offending moratorium on construction of multi-family housing on September 16, 2008. GNOFHAC and Provident filed their Motion to Enforce the 2008 Consent Order and rescind the moratorium in December 2008. (Docket #126.) In the intervening three months between the time the moratorium was enacted and the Motion to Enforce was filed, Plaintiffs contacted the Parish repeatedly to advise them that the moratorium violated both the Consent Decree and the Fair Housing Act. Plaintiffs met with representatives for the Parish in an effort to resolve the dispute without the need to file a Motion to Enforce. As explained in greater detail below, those efforts proved fruitless.

After the Motion to Enforce was filed, Plaintiffs continued to attempt to reach a negotiated compromise. The Parish responded with a defiant litigation strategy that involved the filing of no

fewer than five pre-hearing motions—each of which was denied by the Court. Pre-hearing litigation would have been even more extensive had Plaintiffs not succeeded in obtaining a protective order that precluded Defendants from proceeding with an unnecessary and irrelevant discovery and deposition campaign to be held in the final days leading up to the evidentiary hearing.

In March 2009 the Court held a two-day evidentiary hearing. After extensive post-trial briefing, the Court determined that the moratorium had been enacted with both the purpose and effect of discriminating against potential African-American renters in violation of the Fair Housing Act and the February 2008 Consent Order. (Docket #233.) The Court held that the 2008 moratorium “is strikingly similar to one of the ordinances challenged in the 2006 litigation that resulted in the voluntary consent decree” and that such similarity is evidence of “repeated attempts to restrict certain types of housing.” (*Id.* at 8-10.) The Court found that Defendants’ purported non-discriminatory explanations for the moratorium “appear[ed] contrived” and held that the 2008 moratorium had a discriminatory effect on African Americans. (*Id.* at 17, 23-26.)

Finally, the Court stated that it would “entertain evidence of damages suffered by plaintiff and intervenor, including attorney fees, and whether defendants should be held in contempt of the February 27, 2008 Order.” (*Id.* at 26.)

ARGUMENT

I. Defendants Were in Contempt of the February 2008 Consent Order When They Passed the Moratorium on Construction of Multi-family Housing

Under Fifth Circuit case law, a party is in contempt of a court order when it is established by clear and convincing evidence “1) that a court order was in effect, 2) that the order required certain conduct by the respondent, and 3) that the respondent failed to comply with the court's order.”

American Airlines, Inc. v. Allied Pilots Ass’n, 228 F.3d 574, 581 (5th Cir. 2000) (quoting *Martin v. Trinity Indus., Inc.*, 959 F.2d 45, 47 (5th Cir.1992)) (internal quotation marks omitted). Each of these elements is satisfied here.

A. *The February 2008 Consent Order Was in Effect When the 2008 Moratorium Was Passed*

The first element required for contempt is not in dispute. In February 2008, Defendants entered into a Consent Order enjoining them from violating the Fair Housing Act, and 42 U.S.C. §§ 1981, 1982, and 1983 for three years. (Docket #114.) The Court signed the Order on February 27, 2008. “A consent order, while founded on the agreement of the parties, is nevertheless a judicial act, enforceable by sanctions including a citation for contempt.” *Whitfield v. Pennington*, 832 F.2d 909, 913 (5th Cir. 1987). Thus, there can be no question that the February 2008 Consent Order constitutes a court order that was in effect when the moratorium was passed and remains in effect to this day.

B. *The February 2008 Consent Order Enjoined Defendants From Discriminating on the Basis of Race*

The second element – that the Order required certain conduct by the Parish and the Council – is also clearly met. The Consent Order enjoined Defendants from:

violating the terms of the federal Fair Housing Act, and 42 U.S.C. §§1981, 1982, and 1983. Specifically, St. Bernard Parish agrees that it shall not:

- A. Refuse to rent a dwelling unit, or otherwise make unavailable or deny a dwelling unit, to any person because of race or national origin;
- B. Deny minority citizens the same rights as are enjoyed by white citizens to make and enforce contracts;
- C. Deny minority citizens the same rights as are enjoyed by white citizens to lease, hold and otherwise enjoy real property;
- D. Deny any person equal protection of the law by discriminating on the basis of race and national origin in the leasing of real property; and,
- E. Retaliate against Plaintiffs or any other person who alleges that Defendants have violated the Fair Housing Act, 42 U.S.C. §3601 et seq.

(Docket #114.) The Consent Order makes clear that St. Bernard Parish and the Parish Council are prohibited from engaging in racially discriminatory conduct.

C. *Defendants Failed to Comply With the Consent Order by Passing and Enforcing the Moratorium*

In its Order of March 25, 2009, this Court determined that St. Bernard Parish and the St. Bernard Parish Council violated the terms of the February 2008 Consent Order when the Council passed a moratorium on construction of multi-family housing. (Docket #233 at 23, 26.) The Court found that Defendants engaged in intentional discrimination and that their actions had a discriminatory effect in violation of the Fair Housing Act and the February 2008 Consent Order. (*Id.*) Under the clear holding of the Court, Defendants violated the Consent Order by passing and enforcing the 2008 moratorium and therefore should be held in contempt.

II. The Parish and the Council Should Be Sanctioned to Compensate Plaintiffs for Their Damages, Including Attorneys' Fees and Costs

A. *Compensation of GNOFHAC and Provident for Attorneys' Fees and Costs Ensures That They Receive the Full Benefit of the 2008 Consent Order*

The Court has broad discretion to award damages in a civil contempt proceeding. *See, e.g., American Airlines, Inc. v. Allied Pilots Ass'n*, 228 F.3d 574, 585 (5th Cir. 2000); *Cook v. Ochsner Found. Hosp.*, 559 F.2d 270, 272 (5th Cir. 1977). The "proper aim" of such sanctions "is 'full remedial relief.'" *Florida Steel Corp. v. N.L.R.B.*, 648 F.2d 233, 239 (5th Cir. 1981) (quoting *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 193 (1949)).

An essential function of civil contempt is to "compensate a party who has suffered unnecessary injuries or costs because of the contemptuous conduct." *Petroleos Mexicanos v. Crawford Enterprises, Inc.*, 826 F.2d 392, 400 (5th Cir. 1987). The expense of bringing contemptuous conduct to the attention of the Court is one of those costs. As the Fifth Circuit has explained, "[i]n ordering the award of attorneys' fees for compensatory purposes . . . the court is merely seeking to insure that its original order is followed. Otherwise, the benefits afforded by that order might be diminished by the attorneys' fees necessarily expended in bringing an action to enforce that order violated by the disobedient parties." *Cook*, 559 F.2d at 272. Thus, in order to

make the injured party whole, contemnors may be ordered to compensate that party for all attorneys' fees and costs necessarily incurred to bring the violation to the Court's attention. *See id.* ("The theory for allowing attorneys' fees for civil contempt is that civil contempt is a sanction to enforce compliance with an order of the court or to compensate for losses or damages sustained by reason of noncompliance.") In *Cook*, the Fifth Circuit affirmed the district court's award of attorney's fees as compensatory sanctions after a contempt finding. *Id.* To do otherwise, the Court reasoned, "would reduce any benefits gained by the prevailing party from the court's violated order." *Id.*

Provident and GNOFHAC devoted a great deal of time, money, and resources to enforcing the Consent Order after the Council's contemptuous passage of the 2008 moratorium. Provident was illegally barred from developing its affordable housing properties by the moratorium. The attorneys' fees and costs that the Plaintiffs incurred were reasonable and necessary to bring Defendants' contempt to the attention of the court and vindicate the 2008 Consent Order. Just as in *Cook*, here, full compensation of the attorneys' fees and costs that Plaintiffs incurred is justified in order to ensure that Plaintiffs receive the full benefit of the 2008 Consent Order. Moreover, GNOFHAC is entitled to diversion of resources damages for the time spent bringing the Parish and the Council's contempt to the Court's attention. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378-79 (1982) (holding that fair housing organizations suffer an injury in fact when their resources are diverted to address Fair Housing Act violations). Finally, Provident is entitled to damages for the expenses it incurred traveling to New Orleans and St. Bernard Parish in order to attend meetings with Parish officials and court hearings. (*See* Declaration of Matthew B. Harris ¶¶3-4.)¹

¹ Provident has also incurred great cost in preparing for construction of its proposed developments. These costs, in addition to its anticipated profits from the developments would be forfeited should the Parish and the Parish Council ultimately succeed in blocking Provident's developments. Plaintiffs reserve the right to assert those damages if and when they occur.

B. GNOFHAC and Provident's Actions Were Necessary to Enforce the 2008 Consent Order

Prior to and throughout the litigation regarding the 2008 multi-family moratorium, the Parish and the Council had multiple opportunities to rescind the moratorium, prevent litigation, and mitigate damages, but they refused on each and every occasion. GNOFHAC and Provident attempted to limit their attorneys' fees by offering to compromise and settle the suit, but Defendants refused. Instead, Defendants adopted a defiant, harassing litigation strategy, forcing Plaintiffs to respond to a plethora of repetitive, unnecessary, and uniformly unsuccessful motions. Because of Defendants' refusal to remedy its violation of the Consent Order, it was necessary for GNOFHAC to divert resources and for GNOFHAC and Provident to incur substantial attorneys' fees and costs in order to bring Defendants' contemptuous conduct to the attention of the court.

1. Defendants Knew, or Should Have Known, That the 2008 Moratorium Violated the Consent Order

One of the ordinances at issue in the original complaint that led to the 2008 Consent Order was a 2005 moratorium on the construction of multi-family housing. Plaintiffs' challenges to the legality of the 2005 moratorium as well as other prior ordinances were settled by the Consent Order. As this Court stated: "the similarity between the 2005 multi-family ordinance, the 2008 ordinance . . . is striking." (Docket #233 at 10.) Moreover, the Court noted that the same public officials were involved in the passage of both the 2005 ordinance and the 2008 moratorium. (*Id.*) Given the similarity of the two ordinances, it should have been abundantly clear to the Parish and the Council that the 2008 moratorium constituted a violation of the 2008 Consent Order. Defendants' failure to acknowledge that the 2008 multi-family moratorium violated the 2008 Consent Order and to take remedial action forced Plaintiffs to move to enforce the Consent Order.

2. Even if the Parish and the Council's Violation of the Order Was Not Obvious, GNOFHAC and Provident Repeatedly Notified Them of the Violation and Asked the Parish Council to Rescind the Moratorium Before Filing the Motion to Enforce

After the Parish Council passed the 2008 moratorium on construction of multi-family housing, Plaintiffs notified Defendants on multiple occasions that they were in violation of the February 2008 Consent Order. Defendants rejected all invitations to rescind the moratorium before Plaintiffs resorted to litigation. On November 21, 2008, counsel for Provident and Matthew Harris, a Managing Director of Provident, met with Parish officials, including Parish President Taffaro and Parish Attorney Michael Gorbaty, and notified them that Provident believed that the moratorium violated the Fair Housing Act. (Declaration of Matthew B. Harris in support of Motion to Enforce, Docket #126-5, hereinafter "M. Harris Decl." at ¶ 34.) Parish officials informed counsel for Provident and Mr. Harris that they needed time to discuss this and scheduled another meeting for November 25, 2008. (*Id.*) Only one Councilman came to the November 25, 2008 meeting and he indicated that the moratorium would not be rescinded. (*Id.* at ¶ 35.)

On December 1, 2008, GNOFHAC notified the Council by letter that it objected to the multi-family moratorium and detailed how the moratorium violated the Fair Housing Act. (Exhibit 32 to the Declaration of Katherine A. Gillespie in Support of the Motion to Enforce, hereinafter "K. Gillespie Decl.," Docket #126-38.) GNOFHAC also put the Council on notice that it was in violation of the February 27, 2008 Consent Order. (*Id.*) Defendants did not respond to GNOFHAC's letter.

On December 2, 2008, counsel for Plaintiffs contacted Mr. Gorbaty to notify Defendants of their view that the enactment of the multi-family moratorium violated the 2008 Consent Order and to request an opportunity to discuss their concerns. (Exhibit 33 to K. Gillespie Decl., Docket #126-39.) Counsel for Plaintiffs and St. Bernard Parish conferred by telephone on December 4, 2008. (Exhibit 34 to K. Gillespie Decl., Docket #126-40.) Plaintiffs' counsel explained that the moratorium would

have a disproportionate impact on minorities and that it therefore violated the Fair Housing Act and the Consent Order. Plaintiffs requested that the Parish repeal the moratorium. (*Id.*) On December 9, 2008, counsel for Plaintiffs again contacted counsel for the Parish and repeated their request that the Parish repeal the moratorium. (Exhibit 35 to K. Gillespie Decl., Docket #126-41.) Defendants did not comply with Plaintiffs' request. Plaintiffs were left with no choice but to file a Motion to Enforce the Consent Decree, which they did on December 18, 2008. (Docket #126.)

3. Notwithstanding That GNOFHAC and Provident Informed the Parish and the Council That They Were In Violation of the Consent Order, Defendants Rejected Plaintiffs' Further Efforts to Compromise

Even after filing the Motion to Enforce, Plaintiffs attempted to resolve the issue with Defendants out of court. On February 4, 2009, immediately after the hearing on Plaintiffs' Motion to Enforce, Plaintiffs' counsel approached Defendants' counsel and attempted to discuss settlement, but the discussions led nowhere. (Declaration of Dennis L. Roossien, Jr., hereinafter "D. Roossien Decl.," at ¶3.) This Court also encouraged settlement on that occasion. On February 25, Plaintiffs proposed settlement, but Defendants again failed to respond. (*Id.* at ¶4.)

4. Defendants Needlessly Increased the Cost of Litigation

Not only did Defendants refuse to discuss settling the matter out of court, but they also adopted a prolific and defiant litigation strategy that resulted in Plaintiffs incurring great expense. Defendants filed two separate motions making essentially the same arguments. First, they appealed the Magistrate Judge's Order granting Provident's Motion to Intervene. (Docket #152.) Second, they filed a Motion for Declaratory Judgment; or in the Alternative, to Amend and/or Strike Provisions of the Consent Decree. (Docket #155.) In both, Defendants argued that Provident lacked standing to enforce the Consent Order and that the Consent Order was overly broad and vague. (Dockets #152, 155.) This Court denied both motions. (Docket #178.) Next, reiterating verbatim the same arguments that they made in their Motion for Declaratory Judgment and their Opposition to the Motion to Enforce the Consent Decree, Defendants filed a Motion to Dismiss. (Docket #190.)

Plaintiffs were forced to oppose this motion and brief the same issues that they had twice before briefed and that this Court had already considered and rejected.

Defendants also filed a Motion *in Limine* to strike Plaintiffs' expert, Dr. Calvin Bradford. (Docket #183.) Then they recycled the arguments made in that Motion in a second Motion *in Limine* to strike Plaintiffs' expert Kalima Rose, notwithstanding the fact that the arguments did not apply to Ms. Rose's proffered testimony. (Docket #207.) All told, Defendants filed five motions in just over two months and each one was denied by this Court. (Docket #178, 226.) Plaintiffs' counsel had to spend significant time responding to Defendants' frequent, repetitive, and borderline frivolous motions.

In addition to these motions, Defendants attempted to serve discovery. The Parish tried to serve discovery requests and notice a deposition of Plaintiffs' expert to be held in the few remaining weeks before the evidentiary hearing – at which that witness would testify – and despite the fact that the Court had not ordered discovery. (Docket #170,194.) Plaintiffs then had to file a Motion for a Protective Order, which Judge Shushan granted. (Docket #169, 194.) Defendants then filed an appeal to that ruling *two days* before the evidentiary hearing was set to begin, and pressed the issue at the hearing, despite the Court's observation that it was moot. (Docket #217.)

5. Facing the Likelihood of an Adverse Ruling, Defendants Refused to Compromise

Halfway through the second day of the evidentiary hearing and near the end of Plaintiffs' case, the Court informed counsel that it thought settlement discussions might be worthwhile. Counsel for both parties then met with Magistrate Judge Shushan during the lunch hour. (D. Roossien Decl. at ¶5.) Even faced with Plaintiffs' overwhelming evidence presented over the last day and a half, Defendants would not settle. (Minute Order 3/12/09, Docket #224.) As a result, the parties returned to Court and completed the evidentiary hearing. A few days later, Defendants apparently met again with Magistrate Judge Shushan, but again, no progress was made. (Minute

Order 3/17/09, Docket #229.) After the hearing, Plaintiffs produced over ninety pages of proposed findings of fact and conclusions of law to facilitate the Court's enforcement of the Consent Order. These costly efforts were necessary because Defendants were unwilling to resolve the matter.

6. Even After the Court's March 25, 2009 Order Finding That Defendants Engaged in Race Discrimination, the Parish and the Council Refused to Settle and Continue to Violate the 2008 Consent Order

After the Court's March 25, 2009 Order holding that Defendants had violated the 2008 Consent Order and federal law, Plaintiffs' counsel again reached out to counsel for the Parish in an effort to limit the damages that the Parish and the Council may have to pay and to avoid the costs of filing this motion. On April 23, 2009, Plaintiffs' counsel called counsel for Defendants to discuss settlement. (D. Roossien Decl. at ¶7.) Plaintiffs made a settlement offer. (*Id.*) One week later, counsel for Defendants requested the offer in writing. (*Id.*) Plaintiffs' counsel promptly provided Defendants with the requested written offer, but Defendants never responded. (*Id.*) During the entire course of the litigation to enforce the 2008 Consent Order, Defendants never initiated settlement discussions. (*Id.* at ¶8.)

Evincing their clear intention to evade and defy this Court's ruling, the Parish and the Council continue to block Provident's developments through the Parish's re-subdivision process. (*See* Plaintiffs' Motion for Contempt and Sanctions, Docket #241.) As detailed in Plaintiffs' June 9, 2009 Motion for Contempt and Sanctions, Defendants have employed the Parish's re-subdivision process to block Provident's proposed developments for racially-motivated reasons. (*See id.*) Defendants' continuing contemptuous conduct has effectively halted construction on Provident's developments. (*Id.*)

The Parish and the Council's refusal to acknowledge its clear violation of the Consent Order, to compromise at any stage of the proceedings, or to mitigate damages, has left Plaintiffs with no other choice but to advocate vigorously to enforce the 2008 Consent Order. The attorneys' fees and costs incurred in pursuing this litigation were necessary and unavoidable. Defendants should be

ordered to compensate Provident and GNOFHAC for their damages, costs, and fees incurred to enforce the Consent Order through March 25, 2009, in the amount of \$768,751.84. This amount reflects \$748,528.52 in costs and fees paid by Provident for its legal representation in this matter; \$15,455.92 in diversion of resources and attorney's fees incurred by GNOFHAC; and \$4,767.40 in damages to Provident. (*See* Declaration of John P. Relman, Declaration of Dennis L. Roossien, Declaration of M. Lucia Blacksher, Declaration of James Perry, Declaration of Matthew B. Harris.)

CONCLUSION

For the foregoing reasons, GNOFHAC and Provident respectfully request that the Court hold the Parish and the Council in contempt of court and impose sanctions to compensate Plaintiffs for the damages, costs, and fees incurred as a result of Defendants' contemptuous conduct. For purposes of this Motion, the Court should award Plaintiffs the full amount of the costs, fees, and damages incurred for the actions they were forced to take to enforce the Consent Order leading up to the March 25, 2009 ruling by the Court. By way of the earlier filed June 9, 2009 Motion for Contempt, Plaintiffs request additional compensation for costs, fees, and damages incurred as a result of Defendants post-March 25 conduct that is part of their ongoing campaign to obstruct and ultimately foreclose the construction of Provident's affordable housing developments in St. Bernard Parish. Plaintiffs further request that should the Court wish to hear oral argument on this Motion that such argument be scheduled for the same date as any future hearing that may be ordered with respect to Plaintiffs June 9, 2009 Motion for Contempt and Sanctions. (Docket #241.)

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Respectfully submitted,

/s/ Brook Hopkins

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