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Access to Justice in America: A True Story

Sharon Ellis contacted the East St. Louis, Illinois office of Land of Lincoln Legal Assistance Foundation, Inc. in February 1995 because the city was refusing to pick up her garbage. She was buying her house on a contract for deed, and she was paying into escrow for taxes, insurance and garbage pick-up. When she contacted the city, she was told that they wouldn't pick up her garbage because the real estate management company hadn't paid their bill to the city.

The next week, Ms. Ellis got a notice from the management company stating that she was behind in her payments and that her taxes had not been paid because of her delinquency. According to her records, she was current in her payments, but the company refused to provide a record of her payments or the balance due. She had bought her house several years earlier from a local real estate investor. He had sold her contract to out of state investors, and she didn't know how to reach them. Her only local contact was an intimidating man who collected her payments.

For attorneys at Land of Lincoln, Ms. Ellis' complaints were all too familiar. In the summer of 1994, they had started to hear the same complaints from a number of clients. In July and August 1994, David Migoya, an investigative reporter for the local alternative paper, "The Riverfront Times", ran articles about out of state investors bilking local home buyers. Attorneys from Land of Lincoln met with Mr. Migoya and reviewed the results of his research. It appeared that low-income homebuyers in the East St. Louis area were the victims of a vast multi-state insurance scam.

Diane Thompson, a recent graduate of New York University School of Law and a new lawyer at Land of Lincoln, had received a Skadden Arps fellowship to do outreach on contract for deed problems and hopefully to enforce an ordinance that was under consideration by the City to prevent contract for deed abuses. At every outreach session she conducted, most of the residents who stayed afterwards to talk to her were buying property involved in the scam.

During the fall and winter of 1994, the number of clients contacting Land of Lincoln continued to grow, and the lawyers worked to piece together the complex facts and develop litigation to prevent hundreds of local residents from losing their homes.

Five years later, in February 2000, Sharon Ellis owns her home and is treasurer of a local housing development organization called Citizens for the Future that conveyed title to her when she made her last payment. Ms. Ellis' situation in 1995 has been described as a nightmare. But, because Ms. Ellis and other brave residents had access to free civil legal assistance, their dreams of owning their homes are being realized.

This is their story about access to justice.

Background

Historically, homeownership eluded low-income, African American residents of the East St. Louis area. Block-busting and redlining in the 1960's contributed to the unavailability of conventional home financing for African-American homebuyers. During the 1960's, a few local real estate investors systematically capitalized on white flight and bought up the housing stock. Between 1960 and 1990, the population of East St. Louis dropped from a high of over to 80,000 to about 40,000. A shocking 49% of all occupied housing units were abandoned during that time. By 1990, 44% of East St. Louis residents had incomes below the poverty line, three out of every four city households were eligible for some type of public assistance, and 98% of East St. Louis residents were African American.

The investors who bought property in East St. Louis and the surrounding communities refused to assist new buyers obtain conventional financing and sold only on contracts for deed, demanding down payments of as much as the buyers could come up with. For most residents, buying a home in East St. Louis meant buying contract for deed on the seller's terms.

Under the contract for deed arrangement, the buyer makes a down payment and the seller continues to hold title until the entire purchase price has been paid. In the East St. Louis area, these homes were sold "as is", and the seller, unlike a landlord, had the advantage of not making necessary repairs to the housing. When the seller made repairs, the inflated cost of the repairs was added to the balance due under the contract. Many buyers despaired of ever owning their homes and were forced to live in substandard housing. When buyers abandoned their homes or were forced out for missing payments, sellers typically applied a coat of paint and resold the property.

Many contract for deed purchasers experienced little or even negative amortization even after paying on the contract for many years. In some cases, monthly payments were set so low they did not cover the interest, and the contract could never be paid off. Few purchasers actually completed their contracts and took title to their homes. These practices predominately victimized very low income African Americans, because whites and higher income African Americans moved out of the city.

During this time, contract for deed sales were virtually unregulated under Illinois law. Attorneys at Land of Lincoln had represented hundreds of individual clients over the years using legal theories including fraud and Truth in Lending violations. In 1993, contract for deed abuses were exposed by a local newspaper, and East St. Louis alderwoman, Debra Powell (now mayor of East St. Louis) asked lawyers from Land of Lincoln to draft an ordinance regulating these sales in East St. Louis. The ordinance was enacted in October 1994.

The Litigation

Between May 1991 and January 1992, a local real estate investor transferred about 550 parcels to out of state investors from Massachusetts and North Carolina who took title in the names of DP Realty Trust and French Company. At the time of transfer, the seller of the properties was the largest private landowner in East St. Louis. The properties were sold subject to the existing contracts for deed on them.

At the time, the sale seemed unusual because of the distressed condition and questionable investment value of most of the properties. However, over the next few years, buyers and tenants of these homes only contacted Land of Lincoln sporadically about routine housing problems, such as repairs. Then, in the summer of 1994, complaints from residents of the properties increased, and by the fall, a pattern of systemic problems was emerging.

After extensive research, the following facts became evident. In a series of unrecorded transactions, the owners of DP Realty Trust ("DP") and French Company sold the properties and the contracts on them to troubled insurance companies in Pennsylvania, Oklahoma and Utah. In what appeared to be collusive arrangements with insurance company executives, the owners of DP and French Company obtained the cash reserves of the insurance companies. The insurance companies became insolvent and were liquidated in early 1994. The Insurance Commissioners in Pennsylvania and Oklahoma were in the process of filing litigation against the owners of DP and French Company, and grand jury investigations were ongoing.

In the meantime, in November 1993, the mortgage servicing company affiliated with DP and French Company quit collecting payments on the East St. Louis area properties. Local residents were instructed by the insurance company to send their payments to the local French Company office, managed by Mr. Knight[1]. Mr. Knight had a long history with the properties, having been employed by the prior owner and then by French Company to collect payments. He was also a precinct committeeman, on the local Board of Police and Fire Commissioners, and was known by the street name of Swamp Dawg.

Since January 1994, Mr. Knight had been collecting the payments on the properties and depositing them into an account in the name of French Management, Inc., a new company he had incorporated. He was not forwarding payments or accounting for them to the Oklahoma or Pennsylvania Insurance Commissioners. In February 1994, the Statutory Liquidator for the Pennsylvania Insurance Commissioner was placed in control of the assets of the company, including about 350 of the East St. Louis properties. However, because of the scope of the liquidation proceedings, the Liquidator had taken no steps to gain control of the East St. Louis properties.

Although homebuyers were paying into escrow for taxes, insurance and garbage pick-up, none of the 1993 taxes had been paid, and tax certificates on the properties had been sold with a 24-month redemption period that would expire in 1995, extinguishing any rights of the contract for deed buyers. There was no insurance on the properties, and the city had not been paid for

[1] A pseudonym.

garbage pick-up. Mr. Knight was occasionally sending his own trucks to pick up garbage. He also continued to sell the properties, although he had no legal interest in them.

It was clear to the lawyers at Land of Lincoln that only litigation could prevent the local low-income buyers of the properties from losing them altogether. However, the facts of the case were extremely complex, involving multiple potential corporate, individual, and state agency defendants in several states, and developing a legal theory to obtain the necessary relief was difficult.

For Lois Wood, the Directing Attorney of the East St. Louis Land of Lincoln office, the complexity of the potential litigation was not a deterrent. She had been an attorney in the office since 1974, and Directing Attorney since 1978. In that time, she had been counsel in and supervised many complex cases. She was lead counsel in a groundbreaking class action against HUD and the East St. Louis Housing Authority that resulted in HUD ultimately agreeing to commit $150 million to rehabilitate existing units and build new ones. However, the office had recently lost several experienced attorneys. Also, as a result of recent changes in Congress, continued federal support for legal services was being called into question, and she had concerns about ongoing resources to support the litigation if it was filed.

Notwithstanding these concerns, it was clear to Ms. Wood that litigation on behalf of these clients was a high priority, not only for the individual homebuyers, but also for the community as a whole. Over the years, she had seen the housing vacancy rate skyrocket, and it was impossible to drive more than few blocks without seeing several homes that needed to be demolished. In fact, over 2,500 houses in the city needed to be demolished. Out of town tax investors bought properties at tax sales, and then sold them back to the local low-income residents, some of whom had already been paying on the same house for years. The likelihood was great that if the DP Realty Trust and French Company houses could not be saved, they too would eventually be abandoned or re-sold by the tax buyers after the redemption period expired, extinguishing any rights of the current buyers.

Joseph Bartylak, Land of Lincoln's long time Executive Director, approved filing litigation, and Ms. Wood asked Linda Zazove to be lead counsel. Although Ms. Zazove had substantial complex litigation experience, it was primarily in the public benefits area. Because of the complexity of the potential litigation, the Land of Lincoln lawyers asked the Litigation Assistance Partnership Project of the ABA Litigation Section to find pro bono help for the case. Although a firm could not be found to co-counsel the case, the St. Louis firm of Peper, Martin, Jensen, Maichel & Hetlage agreed to provide legal research on specific issues in the case.

The issues in the potential litigation were daunting. DP and French Company were incorporated in Tennessee and Louisiana, but were not in good standing anywhere; and the former officers were somewhere in Massachussetts and North Carolina. Because of Eleventh Amendment concerns, the Insurance Commissioners were not willing to join the suit as either plaintiffs or defendants, and they were not willing to take action on their own to wrest control of the properties from Mr. Knight. However, the Pennsylvania Insurance Commissioner was willing to submit an Affidavit in support of litigation filed by the local low-income residents. After considering and rejecting legal theories including RICO, involuntary bankruptcy, and fraud, the LOL attorneys concluded that the most efficient way to obtain the needed relief was to file a state court class action for appointment of a receiver and for an accounting.

Nine of the low-income buyers who had contacted LOL became plaintiffs. Because of fear of retaliation by Mr. Knight, the plaintiffs proceeded under pseudonyms. On April 15, 1995, the lawsuit was filed.

The only defendants to file answers in the case were Mr. Knight and his company, French Management, Inc. The only other Defendant to respond at all was the President of DP, who, through counsel, agreed to provide plaintiffs' attorneys with payment records on the properties up through November 1993, when his company quit managing the properties. Agreeing that Mr. Knight had no authority to collect payments on the properties, he did not oppose appointment of a receiver.

Mr. Knight filed a Motion to Dismiss on a variety of grounds, all of which were rejected by the court. He also objected to plaintiffs proceeding under pseudonyms. The court heard testimony from several plaintiffs about their concerns, including a 76 year old woman who testified that when she met with Mr. Knight to ask about her payments, he kept a gun on his desk the entire time. The court allowed plaintiffs to proceed under pseudonyms.

Finally, after a hearing on the merits in November 1995, a temporary receiver was appointed to manage the properties, with a limited role for Mr. Knight in collecting payments and turning them over to a real estate management company hired by the receiver. Mr. Knight was also ordered to assist the company with an inventory of the properties. The inventory revealed that of the 550 properties, almost 150 were vacant, and outstanding real estate taxes on the properties were over $1 million. Needed repairs to the properties were estimated at almost $7 million. Many of the properties needed to be demolished.

After allegations that Mr. Knight had failed to account for and turn over payments made to the receiver, an order was entered on April 22, 1996 that terminated Mr. Knight's involvement with the properties completely. The Receiver opened a new office in East St. Louis to collect payments and handle repair requests. It was still unclear how title to the properties would ever be cleared so that the buyers could eventually own their homes.

Unfortunately, in the meantime, Congress had passed new legislation imposing draconian restrictions on recipients of funding from the Legal Services Corporation. One of the restrictions required programs to withdraw from all pending class actions by August 1, 1996. Despite the fact that the litigation was ongoing and there had been no resolution of the accounting claims, the Land of Lincoln attorneys had to withdraw from the case. A former Land of Lincoln attorney, Kathleen O'Keefe, had just received a NAPIL fellowship to start a new project in East St. Louis to work with community groups on demolition of derelict buildings. Under the sponsorship of the Catholic Urban Program, she opened the Neighborhood Law Center, and agreed to be substituted as the new lawyer for the plaintiffs.

Citizens for the Future

In the fall of 1995, the attorney for the Pennsylvania Insurance Commissioner, Zachary Grayson of the Philadelphia firm of Wolf, Block, Schorr, & Solis-Cohen, paid a visit to East St. Louis to take a drive by tour of the properties. After seeing the properties, Mr. Grayson suggested to plaintiffs' attorneys that the Insurance Commissioner might consider conveying her interest in the properties to a local not for profit so, as he put it, "some good might come out of this mess." It appeared that the Commissioner had a claim to about 350 of the properties.

Unfortunately, there was no existing organization with the capacity to manage such a large project. After a series of discussions, several of the plaintiffs in the lawsuit and representatives of local nonprofit charitable organizations, including the NAACP, Urban League, and Catholic Urban Program, decided to form Citizens for the Future, Inc., ("CFF") to respond to this unique opportunity to address a major housing problem affecting their community. Sharon Ellis suggested the name for the group, because, she said, she wanted her children to have a future in East St. Louis. The mission of CFF is to provide affordable housing to low and very low-income families in East St. Louis and the surrounding communities and to combat community deterioration.

The Land of Lincoln attorneys contacted James Head of the National Economic Development and Law Center to request assistance with the transactional work to incorporate and obtain tax-exempt status for CFF. Because the properties could not be conveyed until CFF had obtained tax-exempt status, time was of the essence. Brad Caftel of the Center provided Ms. Thompson and Ms. Zazove with technical assistance on the application for tax-exempt status.

Although everybody agreed that the Pennsylvania Insurance Commissioner had the best claim of ownership to about 350 of the properties, that interest had never been recorded, and the last record title holder was still DP Realty Trust. Because of the complexity of the potential acquisition, Land of Lincoln lawyers obtained pro bono assistance from the law firm of Peper, Martin in negotiating and drafting the acquisition agreement.

The agreement was finalized in August 1996, and at the same time, the president of DP Realty Trust agreed to execute deeds to CFF for all of the properties conveyed by the Insurance Commissioner. Under the agreement, CFF acquired all of the Commissioner's interest in the properties. The terms provided for $10 cash consideration at the time of execution, with annual payments by CFF to the Liquidator of 80% of the net income from the properties. Net income was to be determined after deduction of all expenses, including operating expenses and other liabilities on the properties, such as taxes and sewer liens. Because of the amount of the outstanding liabilities, little or no net income from the properties was anticipated for several years.

Under the agreement, CFF was to continue to collect payments on the properties until the contracts were paid off, but had discretion to lower the sales price on existing contacts in order to account for the physical condition of the properties, existing liens, both conventional and sweat equity, and overall affordability. Of the 346 properties acquired, about 140 of them were occupied by contract for deed purchasers and 22 by renters. Over 80 needed to be demolished, and another 80 were vacant and in various states of disrepair. In 1998, CFF acquired an additional 68 properties titled in the name of French Company by judicial deed.

Because a majority of CFF board members are low-income, attorneys from Land of Lincoln could represent CFF in a variety of legal matters and work with the board to build the capacity of the group. Because CFF was founded by low-income residents who had no prior board experience, Land of Lincoln provided training to the new board members on how to conduct business and carry out the mission of the organization.

The most immediate threat to CFF homebuyers was loss of ownership for unpaid 1993 and 1994 taxes. CFF concentrated its first efforts on prioritizing and paying delinquent taxes. Most homebuyers did not know their contract balances, and CFF calculated balances and made several adjustments to lower them. The interest rate on all contracts was lowered by CFF to 8% effective January 1, 1994 (some of the contracts had rates over 20%). If the balance was over $20,000, CFF ordered appraisals. Where the appraised value was less than the balance, CFF reduced the balance to the appraised value. Where no written contracts could be located, CFF reconstructed them and entered into reaffirmation contracts with the homebuyers.

There were tax and accounting implications of managing 350 properties, and early in 1997 Land of Lincoln contacted David Lander, an attorney with the St. Louis law firm of Thompson Coburn. Mr. Lander was President of Professional Housing Resources, Inc., a group that links local community housing groups with pro bono legal and accounting assistance. PHRI set CFF up with the accounting firm of Rubin, Brown, Gornstein & Company. The firm spent a year and a half reviewing payment records on the 150 properties occupied by buyers and setting up amortization tables. They also filed the 1996 income tax returns for CFF.

To date, CFF has issued fifty deeds to homebuyers, including Sharon Ellis. They have sold another 10 of the vacant properties to individuals or community groups who are going to rehabilitate them. CFF conducts individual homeownership counseling, and was recently granted status as a certified Community Housing Development Organization by the Department of Housing and Urban Development. Lois Wood and Diane Thompson continue to work with CFF. Katherine Tillery, a lawyer who volunteers three days a week at Land of Lincoln, has also been assisting individual homebuyers and recently helped CFF file grant applications to establish a revolving loan fund for home repairs.

At the heart of CFF's success are its dedicated board members, a majority of whom are low-income community residents. Of the current Board members, five have been board members for more than three years. Even though several of the Board members have paid off their contracts and received title to their homes from CFF, they continue to volunteer many hours a month so that other local residents can someday own their homes, too.

CFF remains responsive to the community it serves by holding quarterly public meetings for residents of its properties. At one of the first meetings, frustrated homebuyers understandably had numerous questions and complaints about the events of the past several years. Concerned that their anger was being directed at the wrong people, an elderly man stood up and quieted the room. He said he had been buying his home for over 30 years, and when CFF took over, it looked like he owed more than his original purchase price. After review of his contract and payments, he was one of the first buyers to receive a title from CFF.

He told the crowd, “I thought I would never own my home, but those lawyers at legal aid work miracles.”

Epilogue

As a result of the availability of free civil legal assistance, the promise of justice became a reality for the committed community residents who came forward to act as plaintiffs in the litigation and serve as board members of Citizens for the Future. Unfortunately, if Ms. Ellis contacted the East St. Louis office of Land of Lincoln Legal Assistance Foundation today, the lawyers there would not be able to file the class action that saved her home. Because Land of Lincoln receives funds from the Legal Services Corporation, its attorneys are prohibited from representing its clients in class actions of any kind. There is no unrestricted provider of free civil legal services in southern Illinois, and the complexity and time-consuming nature of the case would deter pro bono counsel.

If the timing had been different, this could have been a story about justice denied.