1989 WL 88698
Only the Westlaw citation is currently available.
United States District Court, S.D. New York.

UNITED STATES of America, Plaintiff,
and
Yonkers Branch, NAACP, et al.,
Plaintiff–Intervenors,
v.
CITY OF YONKERS, Yonkers Community Development Agency, Yonkers Board of Education, Defendants.
and
U.S. Department of Housing and Urban Development, Samuel Pierce, Secretary,
Added–Defendants,
and
the State of New York; Mario Cuomo, as Governor of the State of New York; the Board of Regents of the State of New York; et al., Added–Defendants.

No. 80 CIV. 6761(LBS).
|
Aug. 1, 1989.

Attorneys and Law Firms

United States Department of Justice, Civil Rights Division, Washington, D.C. (James P. Turner, Acting Assistant Attorney General, Sandra Lynn Beber, of counsel), for U.S.

Michael H. Sussman, Arthur J. Levy, Brooklyn Heights, N.Y., for plaintiff-intervenors N.A.A.C.P. Yonkers, N.Y.

Vedder, Price, Kaufman, Kammholz & Day, Michael W. Sculnick, Robert Abrams, Attorney General of the State of New York, New York City (Harvey Golubock, Deputy Assistant Attorney General Marion R. Buchbinder, Stephen M. Jacoby, Assistant Attorneys General, of counsel), for defendants City of Yonkers and Yonkers Community Development Agency.

Anderson Banks Moore Curran & Hollis, Mount Kisco, N.Y. (Maurice Curran, Lawrence W. Thomas, of counsel), and Hogan & Hartson, Washington, D.C. (David S. Tatel, Elliot M. Mincberg, Steven J. Routh, Nancy J. Taylor, of counsel), for Yonkers Board of Education.

OPINION

SAND, District Judge.

***1** The State of New York and the Urban Development Corporation have moved to dismiss the complaint on two principal grounds: A) that continuation of this action would violate the sovereign immunity provision of the Eleventh Amendment, and B) that the suit is untimely.

Movants' sovereign immunity argument is based on the contention that the action is brought solely in an effort to obtain funding from the State for the school desegregation remedial program although the State is not currently violating any constitutional rights of the plaintiff class and a remedy order already is in place which the City is bound to implement. This claim is coupled with contentions that vestiges of past unlawful conduct are inadequate to overcome the Eleventh Amendment barrier to suit and that movants will be unable to show a causal relationship between any action by the State and the segregation in the Yonkers schools. Moreover, movants contend this Court has already identified the causes of the Yonkers school segregation in its findings of liability in the action as against the City and School Board, which findings preclude a subsequent determination that the State was a substantial contributor to school segregation.

The issues raised by the motion to dismiss are serious and cannot lightly be rejected. We are of the opinion, however, that they are not appropriately addressed by a motion to dismiss.

Movants' objections go, not so much to the face of the complaint, but to the claim that proof will be lacking to support its allegations. The contention with respect to causality well illustrates this point.

It may well be that the complaint against the movants cannot survive a motion for summary judgment, at which time the Court will be free to consider the several arguments advanced by the movants which relate more to the merits than to the face of the complaint. But at this stage of the proceedings, prior to full discovery, the Court cannot say that as a matter of law, respondents will not be able to establish a cause of action which, because of its continuing nature, is not barred by the doctrine of sovereign immunity.

As to timeliness, movants assert that they have suffered

prejudice by virtue of their absence from the lengthy discovery and trial proceedings involving the liability of the City and School Board. They are unable, however, to identify a single witness no longer available or other specific instance of prejudice. One may well argue whether from movants' standpoint, their belated joinder in this litigation is a bane or a blessing. The voluminous record thus far compiled in this litigation provides a comprehensive backdrop for their research and discovery. Of course, movants are not bound by any testimony given in proceedings to which they were not privy.

The School Board and Plaintiff–Intervenors have stated their reasons for pursuing a remedy against the State rather than moving to amend the present school desegregation order to require a greater commitment of resources from the City already found to be liable. They contend that experience has now shown the inadequacy of the existing school remedy order but that placing greater fiscal burdens on the City would be counterproductive to the desegregation effort. Were there some more persuasive showing by the State of prejudice resulting from the timing of this proceeding as against the State, the validity of this reasoning and the availability, if any, of other options would be subject to closer scrutiny.

***2** We deny the motion to dismiss the action as untimely. Equitable considerations raised by the State concerning all of the circumstances surrounding this proceeding may of course appropriately be presented again by the State if the stage is ever reached in this litigation in which remedies are being considered.

The motion to dismiss is denied without prejudice to the bringing of a motion for summary judgment following completion of discovery. The stay of discovery is lifted. The parties are to confer and advise the Court in writing no later than August 18, 1989 of their views as to when all discovery can be completed.

SO ORDERED.

All Citations

Not Reported in F.Supp., 1989 WL 88698