

The Burger Court Opinion Writing Database

Sanks v. Georgia

401 U.S. 144 (1971)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



To: Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

SUPREME COURT OF THE UNITED STATES Submitted to the Chief Justice
JUN 19 1970

No. 266.—OCTOBER TERM, 1969

Circulated: _____
Recirculated: _____

Lelia Mae Sanks et al.,
Appellants,
v.
State of Georgia et al. } On Appeal From the Supreme
Court of Georgia.

[June —, 1970]

MR. CHIEF JUSTICE BURGER.

I join in the result reached by the Court on the assumption that the payment of the rent to the owner—or into the court—is a substitute for the bond *pendente lite*. There would of course be no basis—equitable or rational—for giving due process to the indigent tenant in the form of a hearing without bond or rent payment while denying the owner recovery of his premises. That would be an ironic twist of due process and indeed a taking from the owner without just compensation, since any post-litigation recovery against the indigent tenant—if he fails to make his case—would be a hollow prospect.

The Court's opinion and holding must therefore be read as granting the appellant relief but only on condition that he pay the full rental during pendency of the proceedings with eviction following automatically if he defaults in the payment of rent.

If on remand the Supreme Court of Georgia directs the Superior Court to consider again its original alternative of payment of rent in lieu of bond, pending litigation, that solution is one which is clearly within state power; reading the Court's opinion to permit this alternative remedy, I join in the result reached.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

changes as marked

TO: Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

SUPREME COURT OF THE UNITED STATES

From: The Chief Justice

No. 266.—OCTOBER TERM, 1969

Circulated: _____

Lelia Mae Sanks et al.,
Appellants,
v.
State of Georgia et al.

On Appeal From the Supreme
Court of Georgia.

Recirculated: JUN 23 1970

[June —, 1970]

MR. CHIEF JUSTICE BURGER.

I join in the result reached by the Court on the assumption that the payment of the rent to the owner—or into the court—is a substitute for the bond *pendente lite*. There would of course be no basis—equitable or rational—to undertake to give due process to the indigent tenant, in the form of a hearing without bond or rent payment, while denying the owner recovery of his premises. That would be an ironic twist of due process concepts and indeed might well be a taking without just compensation, since any post-litigation recovery against the indigent tenant for unpaid rent during litigation should he fail to make his case—would be a hollow prospect.

The Court's opinion and holding must therefore be read as granting the appellant relief on condition that he pay the full rental during pendency of the proceedings either to the owner or into the court.

If on remand the Supreme Court of Georgia directs the Superior Court to consider again its original alternative of payment of rent in lieu of bond, pending litigation, that solution is one which is clearly within state power; reading the Court's opinion to permit this alternative remedy, I join in the result reached.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Wenah Onions

June 11, 1970

Dear John,

Re: No. 266 - Sanks, et al. v. State of Georgia, et al.

I regret very much that it will be impossible for me to agree to your opinion in this case. I shall, therefore, in due course distribute an opinion stating my reasons.

Sincerely,

H. L. D.

Mr. Justice Harlan

cc: Members of the Conference.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Harlan
✓ Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

SUPREME COURT OF THE UNITED STATES

No. 266.—OCTOBER TERM, 1969

Filed: Black, J.

Circulated: JUN 24 1970

Lelia Mae Sanks et al.,
Appellants,
v.
State of Georgia et al. } On Appeal From the Supreme
Court of Georgia.

Recirculated: _____

[June —, 1970]

MR. JUSTICE BLACK, dissenting.

The Court, in its apparent haste to decide great constitutional issues on novel grounds, has overlooked defects in the record and procedural posture of this case which, in my view, make it extremely unlikely that the issue the Court would resolve is even presented here.

This case is not a class action. Rather it consists of two separate appeals in two cases decided together by the civil court of Fulton County: *Sanks v. Georgia*, and *Housing Authority of the City of Atlanta v. Momman*. Other similar companion cases were also decided by the Civil Court at the same time and appealed to the Supreme Court of Georgia, but none of them is appealed to this Court. On appeal the Supreme Court of Georgia decided against the claims of Mrs. Sanks and Mrs. Momman.

Mrs. Sanks filed a correct notice of appeal, and her case is properly here. But Mrs. Sanks' case simply does not present the issue which the Court decides. In her application for a rule *nisi*, contesting her eviction, Mrs. Sanks specifically denied that the relationship of landlord and tenant existed between her and the plaintiff. She alleged, on the contrary, that she and the plaintiff were married and were buying their house together. On these allegations Mrs. Sanks clearly has a remedy under the law of Georgia which will prevent her eviction. She needs only

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan ✓
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

SUPREME COURT OF THE UNITED STATES

No. 266.—OCTOBER TERM, 1969

From: Douglas, J.

Circulated: 6/11/70

Lelia Mae Sanks et al.,
Appellants,
v.
State of Georgia et al. } On Appeal From the Supreme
Court of Georgia.

[June —, 1970]

MR. JUSTICE DOUGLAS, concurring.

I reach the same result under the Equal Protection Clause that the Court reaches under the Due Process Clause. See my dissents in *Williams v. Shaffer*, 385 U. S. 1037, and *Simmons v. West Haven Housing Authority*, ante, p. —.

B
/

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas ✓
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall

2

From: Harlan, J.

SUPREME COURT OF THE UNITED STATES

Filed: JUN 10 1970

No. 266.—OCTOBER TERM, 1969

Recirculated: _____

Lelia Mae Sanks et al.,
Appellants,
v.
State of Georgia et al. } On Appeal From the Supreme
Court of Georgia.

[June —, 1970]

MR. JUSTICE HARLAN delivered the opinion of the Court.

Appellants are tenants, residing in Atlanta, Georgia, whose respective landlords seek to evict them from their dwellings, pursuant to the summary eviction procedure established by Georgia Code 61-301 to 61-305. Under this statutory scheme a tenant must post a defense bond as a condition precedent to a hearing. Appellants, because they lack the financial means to secure the necessary bond, are consequently subject to eviction without any prior judicial consideration of their defenses.

We noted probable jurisdiction over appellants' appeal from an adverse judgment of the Supreme Court of Georgia, 395 U. S. 974 (1969). The issue before us is whether a State may apply an otherwise valid defense bond requirement, designed for the protection of landlords, to one incapable of posting the bond, with the consequence of blocking his access to the courts and subjecting him to summary eviction without a prior opportunity to defend possession of his dwelling. We find that the State can otherwise effectuate its purpose of protecting landlords' property interests and conclude that Georgia has failed to meet its obligation under the Due Process Clause of the Fourteenth Amendment to

Dear John
Please
fine me
WLL

Circulated
6.16.70

SUPREME COURT OF THE UNITED STATES

No. 266.—OCTOBER TERM, 1969

Lelia Mae Sanks et al.,
Appellants,
v.
State of Georgia et al. } On Appeal From the Supreme
Court of Georgia.

[June —, 1970]

MR. JUSTICE BRENNAN, concurring.

I join the opinion of the Court. However, like my Brother DOUGLAS, I believe that Georgia's bond requirement denies equal protection of the laws to indigent defendants. See my separate opinion in *Boddie v. Connecticut, post*. In my view, this case, like *Boddie*, presents issues under both the Due Process Clause and the Equal Protection Clause. The Court's reasons for rejecting the proposed justifications for Georgia's bond requirement show that Georgia's effective denial of an appeal to indigent tenants cannot withstand scrutiny under either clause.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Circulated
6-18-70

SUPREME COURT OF THE UNITED STATES

No. 266.—OCTOBER TERM, 1969

Lelia Mae Sanks et al.,	} On Appeal From the Supreme Court of Georgia.
Appellants,	
v.	
State of Georgia et al.	

[June —, 1970]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE MARSHALL joins, concurring.

I join the opinion of the Court. However, in my view, this case, like *Boddie v. Connecticut, post*, presents issues under both the Due Process Clause and the Equal Protection Clause. See my separate opinion in *Boddie*. The Court's reasons for rejecting the proposed justifications for Georgia's bond requirement show that a State's effective denial of a hearing to indigent defendants cannot withstand scrutiny under either clause.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

June 11, 1970

No. 266 - Sanks v. Georgia

Dear John,

I am glad to join your opinion
for the Court in this case.

Sincerely yours,

P.S.

Mr. Justice Harlan

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

June 11, 1970

Re: No. 266 - Sanks v. Georgia

Dear Jehn:

Please join us.

Sincerely,

B.R.V.

Mr. Justice Harlan
on: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 18, 1970

Re: No. 266 - Sanks v. Georgia

Dear Bill:

Please join me in your concurrence.

Sincerely,


T.M.

Mr. Justice Brennan

cc: The Conference