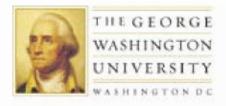
The Burger Court Opinion Writing Database

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









l'o:	Mr.	Justice	DIACK
	Mr.	Justice	Douglas
	Mr.	Justice	Harlan
	Mr.	Justice	Brennan
	Mr.	Justice	Stewart
		Justice	
	Mr.	Justice	Marshall
	Mr.	Justice	Blackmun

1

SUPREME COURT OF THE UNITED STATES to Chief Justice JUN 1 9 1970

No. 266.—October Term, 1969

Recirculated:_____

Lelia Mae Sanks et al.,
Appellants,
v.

On Appeal From the Supreme Court of Georgia.

State of Georgia et al.

[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.

changes as emarked

Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

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SUPREME COURT OF THE UNITED STATES

From: The Chief Justice

No. 266.—Остовек Текм, 1969

Circulated:_____

Lelia Mae Sanks et al.,

Recirculated: JUN 23 1970

Appellants,

On Appeal From the Supreme Court of Georgia.

State of Georgia et al.

[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.

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.

diam'rely.

de Justie Marie

To the Chief Justice

Mr. Justice Pouglas

Mr. Justice Harlan

Mr. Justice Brennen

Mr. Justice Stewart

Mr. Justice White

Mr. Justice Marshall

Mr. Justice Blackmun

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SUPREME COURT OF THE UNITED STATES

No. 266.—October Term, 1969

Edom: Black, J. Garageted, JUN 2 4 1970

Lelia Mae Sanks et al., Appellants, v.

On Appeal From the Supreme Court of Georgia.

State of Georgia et al.

[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

To: The Chief Justice

Mr. Justice Black

Mr. Justice Harlan

Mr. Justice Brennan

Mr. Justice Stewart

Mr. Justice White Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES. Justice Blackmun

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No. 266.—October Term, 1969

From: Douglas, J.

Lelia Mae Sanks et al.,

Appellants,

On Appeal From the Supreme-Court of Georgia.

State of Georgia et al.

[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. —.

To: The Chief Justice Mr. Justice Black

Mr. Justice Douglas

Mr. Justice Brannan

Mr. Jugilio Slewart

Mr. Justice White

Mr. Jastice Marshall

From: Harlan, J.

SUPREME COURT OF THE UNITED STATESted: JUN 1 0 1970

No. 266.—October Term, 1969

Recirculated:

Lelia Mae Sanks et al., Appellants,

v.

On Appeal From the Supreme Court of Georgia.

State of Georgia et al.

[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

bear John

No. 266.—Остовек Текм, 1969

Lelia Mae Sanks et al., Appellants,

v.

On Appeal From the Supreme Court of Georgia.

State of Georgia et al.

[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.

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SUPREME COURT OF THE UNITED STATES

No. 266.—October Term, 1969

Lelia Mae Sanks et al., Appellants,

υ.

On Appeal From the Supreme-Court of Georgia.

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.

Supreme Court of the Anited States Washington, P. C. 20543

CHAMBERS OF JUSTICE POTTER STEWART

June 11, 1970

No. 266 - Sanks v. Georgia

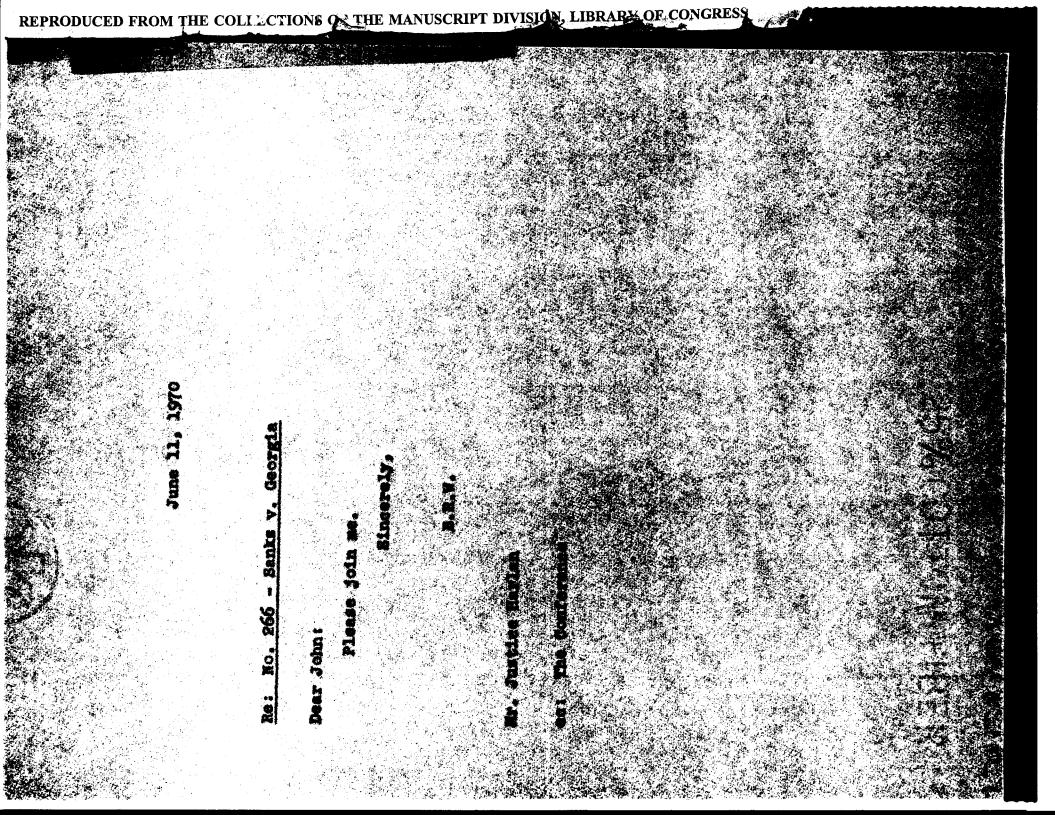
Dear John,

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

Sincerely yours,

Mr. Justice Harlan

Copies to the Conference



Supreme Court of the United States Washington, P. 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