

The Burger Court Opinion Writing Database

United States v. Key

397 U.S. 322 (1970)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



BY
COW
TR

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

CHAMBERS OF
THE CHIEF JUSTICE

March 25, 1970

Re: No. 402 - U. S. v. Key

Dear Thurgood:

I join in the above.

W. E. B.

W E B

Mr. Justice Marshall

cc: The Conference

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U. S. DEPARTMENT OF CONGRESS

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

March 23, 1970

Dear Thurgood:

No. 402 - United States v. Key

Please join me in your opinion for the
Court in this case.

Sincerely,

H. L. B.
H. L. B.

Mr. Justice Marshall

cc: Members of the Conference

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

SUPREME COURT OF THE UNITED STATES

No. 402.—OCTOBER TERM, 1969

From: Douglas, J.

Circulated: 3/18/70

United States, Petitioner, } On Writ of Certiorari to
v. } the United States Court
Sheldon A. Key, Trustee. } of Appeals for the Seventh
Circuit.

[March —, 1970]

MR. JUSTICE DOUGLAS, concurring.

With all respect, I believe that the Chandler Act does provide the standard for treatment of claims of the United States as "a secured or unsecured creditor" of the debtor. Those are the words of § 199. 11 U. S. C. 599. Section 199 goes on to provide that "no plan which does not provide for the payment" of such claims shall be "confirmed" by the judge, "except upon the acceptance of a lesser amount by the Secretary of the Treasury."

The question therefore is what kind of "payment" the claim of the United States must receive in a Chapter X proceeding.

There is no doubt but that the claim of the United States has priority by reason of § 3466. But even priority claims can be dealt with by a Chapter X plan; indeed they always are so treated. The standards are provided in § 216 which makes provision for assenting and dissenting creditors. Section 216 (7) says that where "any class of creditors" affected by the plan does not accept the plan, those claims can be dealt with in several ways including a method which "equitably and fairly" protects them. And § 221 (2) provides that the judge shall confirm the plan if satisfied that it is "fair and equitable, and feasible."

File
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SUPREME COURT OF THE UNITED STATES

No. 402.—OCTOBER TERM, 1969

United States, Petitioner, } On Writ of Certiorari to
v. } the United States Court
Sheldon A. Key, Trustee. } of Appeals for the Seventh
Circuit.

[March —, 1970]

MR. JUSTICE DOUGLAS, concurring.

With all respect, I believe that the Chandler Act does provide the standard for treatment of claims of the United States as "a secured or unsecured creditor" of the debtor. Those are the words of § 199. Section 199 goes on to provide that "no plan which does not provide for the payment" of the claims of the United States shall be "confirmed" by the judge, "except upon the acceptance of a lesser amount by the Secretary of the Treasury."

The question therefore is what kind of "payment," as used in § 199, the claim of the United States must receive in a Chapter X proceeding.

There is no doubt but that the claim of the United States has priority by reason of § 3466. But even priority claims can be dealt with by a Chapter X plan; indeed they normally must be so treated, as a Chapter X debtor usually lacks the cash needed to pay creditors, apart from those whose claims accrue in operations under the Chapter X proceeding. That is why the debtor is under Chapter X.

Section 216 provides the standards for dealing with the priorities among creditors. Section 216 (7) says that where "any class of creditors" affected by the plan does not accept the plan, those claims can be dealt with in several ways including a method which "equitably and

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The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

No. 402.—OCTOBER TERM, 1969

From: Douglas, J.

United States, Petitioner, }
v. }
Sheldon A. Key, Trustee. }
On Writ of Certiorari to
the United States Court
of Appeals for the Seventh
Circuit.

Dated: 3/21/70

[March —, 1970]

MR. JUSTICE DOUGLAS, concurring.

I join the opinion of the Court. As it holds, the Chandler Act provides the standard for treatment of claims of the United States as "a secured or unsecured creditor" of the debtor. Those are the words of § 199. Section 199 goes on to provide that "no plan which does not provide for the payment" of the claims of the United States shall be "confirmed" by the judge, "except upon the acceptance of a lesser amount by the Secretary of the Treasury."

The question therefore is what kind of "payment," as used in § 199, the claim of the United States must receive in a Chapter X proceeding.

There is no doubt but that the claim of the United States has priority by reason of § 3466.

Section 216 provides the standards for dealing with the priorities among creditors. Section 216 (7) says that where "any class of creditors" affected by the plan does not accept the plan, those claims can be dealt with in several ways including a method which "equitably and fairly" protects them. And § 221 (2) provides that the judge shall confirm the plan if satisfied that it is "fair and equitable, and feasible."

The words "fair and equitable" are words of art; we have made unmistakably clear that compromising the rights of senior creditors to protect junior creditors is

omission

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OFFICE OF THE CLERK OF THE SUPREME COURT

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

CHAMBERS OF
JUSTICE JOHN M. HARLAN

March 23, 1970

Re: No. 402 - United States v. Key

Dear Thurgood:

I am glad to join your opinion in
this case.

Sincerely,

J.M.H.

J. M. H.

Mr. Justice Marshal

CC: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. DEPARTMENT OF CONGRESS

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 23, 1970

RE: No. 402 - United States v. Key

Dear Thurgood:

I agree with your opinion as circulated
on March 20.

Sincerely,


W. J. B. Jr.

Mr. Justice Marshall

cc: The Conference

BT
TC
GDW

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 20, 1970

No. 402 - United States v. Key

Dear Thurgood,

I am glad to join the opinion you have
written for the Court in this case.

Sincerely yours,

P.S.
✓

Mr. Justice Marshall

Copies to the Conference

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U.S. SUPREME COURT

BY
TK
COW

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 19, 1970

Re: No. 402 - U.S. v. Key

Dear Thurgood:

Anticipating the change in
your opinion in this case, please
join me.

Sincerely,



B.R.W.

Mr. Justice Marshall

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. DEPARTMENT OF JUSTICE

Memorandum & review

James

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas

SUPREME COURT OF THE UNITED STATES

From: Marshall, J.

No. 402.—OCTOBER TERM, 1969

Circulated: MAR 17 1970

Recirculated: _____

United States, Petitioner, } On Writ of Certiorari to
v. } the United States Court
Sheldon A. Key, Trustee. } of Appeals for the Seventh
Circuit.

[March —, 1970]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

In this case the United States challenges the treatment given to its claim for unpaid taxes against an insolvent corporation in reorganization under Chapter X of the Bankruptcy Act, 11 U. S. C. §§ 501-676. Under the reorganization plan approved by the District Court, the debtor, Hancock Trucking, Inc., will sell its chief asset, a certificate of convenience and necessity issued by the Interstate Commerce Commission, to Hennis Freight Lines, Inc., for \$935,000. The sale contract provides for a \$300,000 down payment, with the balance to be paid in 78 monthly installments. Under the reorganization plan, the down payment will be used to satisfy certain wage and state and local tax claims in full, to satisfy 20% of the claims of the unsecured creditors, and to satisfy about 10% of the United States' tax claim of \$375,400. The remainder of the United States' claim will be paid out of the monthly installments. The plan, an atypical one for a corporate reorganization, does not contemplate the continued existence of the debtor as a going concern, but amounts in substance to a liquidation.

The United States objects to that aspect of the plan which provides for partial or complete payment of the

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 18, 1970

Memorandum for the Conference

Re: No. 402 - United States v. Key

It is difficult to gainsay Brother Douglas on the subject of corporate reorganization, and upon examining his concurring opinion in this case, I think his objections to my treatment of §216(7) are well taken. I will revise my opinion accordingly.


T.M.

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas

SUPREME COURT OF THE UNITED STATES

From: Marshall, J.

Circulated: _____

No. 402.—OCTOBER TERM, 1969

Recirculated: MAR 20 1970

United States, Petitioner, } On Writ of Certiorari to
 v. } the United States Court
Sheldon A. Key, Trustee. } of Appeals for the Seventh
 } Circuit.

[March —, 1970]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

In this case the United States challenges the treatment given to its claim for unpaid taxes against an insolvent corporation in reorganization under Chapter X of the Bankruptcy Act, 11 U. S. C. §§ 501-676. Under the reorganization plan approved by the District Court, the debtor, Hancock Trucking, Inc., will sell its chief asset, its Interstate Commerce Commission operating rights, to Hennis Freight Lines, Inc., for \$935,000. The sale contract provides for a \$300,000 down payment, with the balance to be paid in 78 monthly installments. Under the reorganization plan, the down payment will be used to satisfy certain wage and state and local tax claims in full, to satisfy 20% of the claims of the unsecured creditors, and to satisfy about 10% of the United States' tax claim of \$375,386.55. The remainder of the United States' claim will be paid out of the monthly installments. The plan, an atypical one for a corporate reorganization, does not contemplate the continued existence of the debtor as a going concern, but amounts in substance to a liquidation.

The United States objects to that aspect of the plan which provides for partial or complete payment of the