

The Burger Court Opinion Writing Database

Lindsey v. Normet

405 U.S. 56 (1972)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



(3)

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

CHAMBERS OF
THE CHIEF JUSTICE

February 18, 1972

Re: No. 70-5045 - Lindsey v. Normet

Dear Byron:

Please join me.

Regards,

WJ

Mr. Justice White

cc: The Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-5045

Circulated: 2-2

Recirculated:

Donald Lindsey et al.,
Appellants,
v.
Dorothea M. Normet
et al.

On Appeal from the United
States District Court for the
District of Oregon.

[February —, 1972]

MR. JUSTICE DOUGLAS, dissenting in part.

I

I agree with the Court that the Oregon eviction statute denies tenants who are affected by forcible entry and wrongful detainer procedures (called FED) that Equal Protection guaranteed against state action by the Fourteenth Amendment insofar as the double-bond provision is concerned.

The ordinary or customary litigant who appeals must file a bond with one or more sureties covering "all damages, costs, and disbursements which may be awarded against him on the appeal."¹ To obtain a stay of execution pending the appeal the undertaking must also provide: (1) if the suit is for recovery of money or personal property (or its value), that the appellant will satisfy the claim if he loses the appeal and (2) if the judgment is for the recovery of possession of real property, for a partition or for the foreclosure of a lien, that during possession the appellant will not commit waste and that if he loses the appeal, he will pay the value of the use of the property during the appeal.

By contrast, if a tenant in an FED action appeals, he must give "in addition to the undertaking now required

¹ Ore. Rev. Stat. § 19.040 (1).

3
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Chang's
you have joined

1st The Chief Justice
2nd The Associate Justices
3rd The Clerk of the Court
4th The Reporter of Decisions
5th The Marshal of the Court
6th The Secretary of the Court
7th The Treasurer of the Court
8th The Librarian of the Court
9th The Stenographer of the Court
10th The Sergeant at Arms of the Court

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-5045

2/8/72

Donald Lindsey et al.,	} On Appeal from the United	
Appellants,		States District Court for the
v.		District of Oregon.
Dorothea M. Normet		
et al.		

[February —, 1972]

MR. JUSTICE DOUGLAS, dissenting in part.

I

I agree with the Court that the double bond provision in the Oregon eviction statute denies tenants who are affected by forcible entry and wrongful detainer procedures (called FED) that Equal Protection guaranteed against state action by the Fourteenth Amendment.

The ordinary or customary litigant who appeals must file a bond with one or more sureties covering "all damages, costs, and disbursements which may be awarded against him on the appeal."¹ To obtain a stay of execution pending the appeal the undertaking must also provide: (1) if the suit is for recovery of money or personal property (or its value), that the appellant will satisfy the claim if he loses the appeal and (2) if the judgment is for the recovery of possession of real property, for a partition or for the foreclosure of a lien, that during possession the appellant will not commit waste and that if he loses the appeal, he will pay the value of the use of the property during the appeal.

By contrast, if a tenant in an FED action appeals, he must give "in addition to the undertaking now required

¹ Ore. Rev. Stat. § 19.040 (1).

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Souter

4, 5
6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-5045

From: [illegible]

Circulation: [illegible]

Recirculated: 2-14

Donald Lindsey et al.,
Appellants,
v.
Dorothea M. Normet
et al.

On Appeal from the United
States District Court for the
District of Oregon.

[February —, 1972]

MR. JUSTICE DOUGLAS, dissenting in part.

I

I agree with the Court that the double bond provision in the Oregon eviction statute denies tenants who are affected by forcible entry and wrongful detainer procedures (called FED) that Equal Protection guaranteed against state action by the Fourteenth Amendment.

The ordinary or customary litigant who appeals must file a bond with one or more sureties covering "all damages, costs, and disbursements which may be awarded against him on the appeal."¹ To obtain a stay of execution pending the appeal the undertaking must also provide: (1) if the suit is for recovery of money or personal property (or its value), that the appellant will satisfy the claim if he loses the appeal and (2) if the judgment is for the recovery of possession of real property, for a partition or for the foreclosure of a lien, that during possession the appellant will not commit waste and that if he loses the appeal, he will pay the value of the use of the property during the appeal.

By contrast, if a tenant in an FED action appeals, he must give "in addition to the undertaking now required

¹ Ore. Rev. Stat. § 19.040 (1).

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Stewart
Mr. Justice White
✓ Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Brennan, J.

Circulated: _____

No. 70-5045

Recirculated: 2-14-72 ✓

Donald Lindsey et al.,
Appellants,
v.
Dorothea M. Normet
et al.

On Appeal from the United
States District Court for the
District of Oregon.

[February —, 1972]

MR. JUSTICE BRENNAN dissenting.

In my view the District Court erred in declining to apply the doctrine of abstention with respect to the availability of defenses in FED actions.* The issue is whether Oregon would violate the Fourteenth Amendment if its substantive law in some circumstances recognized tenants' rights to withhold rent and retain possession based on the landlord's breach of duty to maintain the premises, but its procedural law would not permit assertion of those rights in defense of an FED action. This constitutional issue is ripe for decision if, and only if, Oregon law (1) recognizes substantive rights of the tenant based on the landlord's breach of duty; (2) recognizes, because of such breach, that a tenant may remain in possession while withholding rent during the term or may hold over after expiration of the term, and (3) excludes the assertion of these rights to continued possession as a defense to an FED action.

The Court's opinion exposes the fallacy of the District Court's conclusion that Oregon law is "clear" and that "[i]t is unlikely that an application of state law

*Abstention on the double-bond provision is not required in light of the Oregon Supreme Court's decision in *Scales v. Spencer*, 246 Ore. 111, 424 P. 2d 242 (1967). I agree with the Court that this provision violates the Equal Protection Clause.

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 3, 1972

70-5045 - Lindsay v. Normet

Dear Byron,

I think this is a fine job and am glad to join it in toto. Because I think you have done a particularly good job with the double bond provision, and because I agree with it, I hope you will keep it in the opinion.

I do have one very minor request: In footnote 23 on page 16, I should much appreciate your moving the "Cf." one case to the left, i.e., before Harper. (I have never been persuaded that the right to vote is a constitutional right.)

Sincerely yours,

P.S.

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 2, 1972

MEMORANDUM TO THE CONFERENCE

Re: No. 70-5045 - Lindsay v. Normet

A proposed opinion in this case is attached. I have included my view of the double bond provision in Part III. Whether we should decide that question is another matter. If the Court rejects the other challenges to the FED statute as this circulation suggests, appellants, if they remain in possession, will face a FED action (not yet begun) in which the issue will be nonpayment of rent, a fact they have already admitted. Whether they would defend what would seem to be a hopeless case or press an apparently frivolous appeal from an adverse judgment, we do not know. Perhaps case and controversy requirements are met here but the pressures to reach the issue at this time are de minimus. Cf. Sanks v. Georgia, 401 U.S. 144. Nevertheless, the District Court's judgment approving the double bond remains on the books.

B.R.W.

Please form the
your opinion "as is"
HJ

To: The Chief Justice
 Mr. Justice Douglas
 Mr. Justice Brennan
 Mr. Justice Stewart
 ✓ Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist

From: White, J.

2nd DRAFT

Circulated: 2-2-7

SUPREME COURT OF THE UNITED STATES

Recirculated: _____

No. 70-5045

Donald Lindsey et al.,	} On Appeal from the United States District Court for the District of Oregon.
Appellants.	
v.	
Dorothea M. Normet et al.	

[February —, 1972]

MR. JUSTICE WHITE delivered the opinion of the Court.

This case presents the question of whether Oregon's judicial procedure for eviction of tenants after nonpayment of rent violates either the Equal Protection Clause or the Due Process Clause of the Fourteenth Amendment.

The material facts were stipulated. Appellants were the month-to-month tenants of appellee¹ and paid \$100 a month for the use of a single family residence in Portland, Oregon. On November 10, 1969, the City Bureau of Buildings declared the dwelling unfit for habitation

¹ The original complaint was filed on behalf of Donald and Edna Lindsey, seven other named plaintiffs (one of whom was an intervenor), and all other persons similarly situated. Permission to maintain the suit as a class action was granted, R., at 33, but the class was not further defined. The other named plaintiffs raised claims essentially similar to the Lindseys, who were the only two plaintiffs to appeal and who are hereafter termed "appellants." Appellee Normet was the owner of the seller's interest in the property rented to the appellants and held the legal title to secure the purchaser's performance of the contract of sale. An assignee of the purchaser's interest in the contract had rented the residence to appellants. The trial court found, however, that there was a landlord-tenant relationship between appellee and appellants at the time the suit was filed. R., at 71.

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3/14
you have joined
5, 6, 10, 18, 19

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

3rd DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 70-5045

Recirculated: 2-16-

Donald Lindsey et al.,	} On Appeal from the United	
Appellants.		States District Court for the
v.		District of Oregon.
Dorothea M. Normet		
et al.		

[February —, 1972]

MR. JUSTICE WHITE delivered the opinion of the Court.

This case presents the question of whether Oregon's judicial procedure for eviction of tenants after nonpayment of rent violates either the Equal Protection Clause or the Due Process Clause of the Fourteenth Amendment.

The material facts were stipulated. Appellants were the month-to-month tenants of appellee¹ and paid \$100 a month for the use of a single family residence in Portland, Oregon. On November 10, 1969, the City Bureau of Buildings declared the dwelling unfit for habitation

¹ The original complaint was filed on behalf of Donald and Edna Lindsey, seven other named plaintiffs (one of whom was an intervenor), and all other persons similarly situated. Permission to maintain the suit as a class action was granted, R., at 33, but the class was not further defined. The other named plaintiffs raised claims essentially similar to the Lindseys, who were the only two plaintiffs to appeal and who are hereafter termed "appellants." Appellee Normet was the owner of the seller's interest in the property rented to the appellants and held the legal title to secure the purchaser's performance of the contract of sale. An assignee of the purchaser's interest in the contract had rented the residence to appellants. The trial court found, however, that there was a landlord-tenant relationship between appellee and appellants at the time the suit was filed. R., at 71.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL


February 3, 1972

Re: No. 70-5045 - Lindsay v. Normet

Dear Byron:

Please join me in your opinion
"as is."

Sincerely,



T.M.

Mr. Justice White

cc: The Conference

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2 (file)
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 4, 1972

Re: No. 70-5045 - Lindsay v. Normet

Dear Byron:

This is a good opinion and I am glad to join it. I understand your concern about Part IV, but I am not averse to its inclusion in the opinion.

Sincerely,

H. A. B.

Mr. Justice White

cc: The Conference