

# The Burger Court Opinion Writing Database

## *Reliance Electric Co. v. Emerson Electric Co.*

404 U.S. 418 (1972)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543  
December 28, 1971

CHAMBERS OF  
THE CHIEF JUSTICE

No. 70-79 -- Reliance Electric Company v. Emerson  
Electric Company

Dear Potter:

Please join me.

Regards,

WESB

Mr. Justice Stewart

Copies to the Conference

3/7

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-79

From: Douglas, J.

Manipulated: 12/22/71

Reliance Electric Company, } On Writ of Certiorari to  
Petitioner. } the United States Court  
v. } of Appeals for the Eighth  
Emerson Electric Company. } Circuit.

[January —, 1972]

MR. JUSTICE DOUGLAS, dissenting.

On June 16, 1967, Emerson Electric Company, in an attempt to wrest control from the incumbent management, acquired more than 10% of the outstanding common stock of Dodge Manufacturing Company. Dodge successfully resisted the take-over bid by means of a defensive merger with petitioner, Reliance Electric Company. Emerson then sold the shares it had accumulated, within six months of their purchase, for a profit exceeding \$900,000.

Because this sale purportedly comprised two "independent" transactions, the first of which reduced Emerson's holdings to 9.96% of the outstanding Dodge common, the Court today holds that the profit from the second transaction is beyond the contemplation of § 16 (b) of the Exchange Act.<sup>1</sup> So Emerson need not

<sup>1</sup> 15 U. S. C. § 78p (b) (1964).

For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to the issuer, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such issuer (other than an exempted security) within any period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the issuer, irrespective of any intention on the part of such beneficial owner, director, or officer in entering into such transaction of holding the security purchased or of not

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-79

From: Douglas, J.

Circulated: 12/11/71

Reliance Electric Company, } On Writ of Certiorari to  
Petitioner. } the United States Court  
v. } of Appeals for the Eighth  
Emerson Electric Company. } Circuit.

[January —, 1972]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN concurs, dissenting.

On June 16, 1967, Emerson Electric Company, in an attempt to wrest control from the incumbent management, acquired more than 10% of the outstanding common stock of Dodge Manufacturing Company. Dodge successfully resisted the take-over bid by means of a defensive merger with petitioner, Reliance Electric Company. Emerson then sold the shares it had accumulated, within six months of their purchase, for a profit exceeding \$900,000.

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<sup>1</sup> 15 U. S. C. § 78p (b) (1964):

"For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to the issuer, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such issuer (other than an exempted security) within any period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the issuer, irrespective of any intention on the part of such beneficial owner, director, or officer in entering into such transaction of holding the security purchased or of not

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

4th DRAFT

SUPREME COURT OF THE UNITED STATES

Stewart, J.

No. 70-79

Circulated: \_\_\_\_\_

Recirculated: 1-6

Reliance Electric Company, } On Writ of Certiorari to  
Petitioner. } the United States Court  
v. } of Appeals for the Eighth  
Emerson Electric Company. } Circuit.

[January —, 1972]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN and MR. JUSTICE WHITE concur, dissenting.

On June 16, 1967, Emerson Electric Company, in an attempt to wrest control from the incumbent management, acquired more than 10% of the outstanding common stock of Dodge Manufacturing Company. Dodge successfully resisted the take-over bid by means of a defensive merger with petitioner, Reliance Electric Company. Emerson then sold the shares it had accumulated, within six months of their purchase, for a profit exceeding \$900,000.

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<sup>1</sup> 15 U. S. C. § 7Sp (b) (1964):

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

December 27, 1971

RE: No. 70-79 - Reliance Electric Co. v.  
Emerson Electric Co.

Dear Bill:

Please join me in your dissent in the  
above.

Sincerely,



Mr. Justice Douglas

cc: The Conference

*CS*  
*Please find me*  
*M*

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Stewart, J.

Circulated: DEC 7 1971

No. 70-79

Recirculated: \_\_\_\_\_

Reliance Electric Company, } On Writ of Certiorari to  
Petitioner, } the United States Court  
v. } of Appeals for the Eighth  
Emerson Electric Company. } Circuit.

[December —, 1971]

MR. JUSTICE STEWART delivered the opinion of the Court.

Section 16 (b) of the Securities Exchange Act of 1934, 15 U. S. C. § 78p (b), provides, among other things, that a corporation may recover for itself the profits realized by an owner of more than 10% of its shares from a purchase and sale of its stock within any six-month period, provided that the owner held more than 10% "both at the time of the purchase and sale."<sup>1</sup> In this

<sup>1</sup> Section 16 (b) provides:

"For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to the issuer, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such issuer (other than an exempted security) within any period of less than six months . . . shall inure to and be recoverable by the issuer, irrespective of any intention on the part of such beneficial owner, director, or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six months. . . . This subsection shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase of the security involved, or any transaction or transactions which the Commission by rules and regulations may exempt as not compre-

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

From: Stewart, J.

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Circulated: \_\_\_\_\_

Recirculated: JAN 5 1972

No. 70-79

Reliance Electric Company. } On Writ of Certiorari to  
Petitioner, } the United States Court  
v. } of Appeals for the Eighth  
Emerson Electric Company. } Circuit.

[January —, 1972]

MR. JUSTICE STEWART delivered the opinion of the Court.

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

January 5, 1972

Re: No. 70-79 - Reliance Electric  
Co. v. Emerson Electric  
Co.

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Dear Bill:

Please join me in your  
dissent in this case.

Sincerely,



Mr. Justice Douglas

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

December 9, 1971

Re: No. 70-79 - Reliance Electric Co. v. Emerson  
Electric Co.

Dear Potter:

Please join me.

Sincerely,

  
T.M.

Mr. Justice Stewart

cc: The Conference

B N

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 10, 1971

Re: No. 70-79 - Reliance Electric Co. v.  
Emerson Electric Co.

Dear Potter:

You have written a good opinion and I am  
happy to join it.

Sincerely,

*H.A.B.*

Mr. Justice Stewart

cc: The Conference