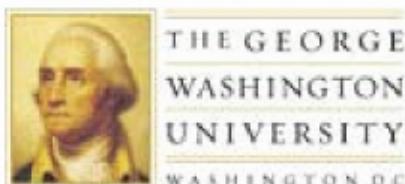


The Burger Court Opinion Writing Database

Pernell v. Southall Realty
416 U.S. 363 (1974)

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

CHAMBERS OF
THE CHIEF JUSTICE

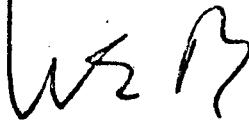
April 18, 1974

Re: 72-6041 - Pernell v. Southall Realty

Dear Thurgood:

Please note that I concur in the result.

Regards,



Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

March 13, 1974

Dear Thurgood:

Please join me in 72-6041, Pernell
v. Southall Realty.

WW
William O. Douglas

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

April 11, 1974

Dear Thurgood:

In 72-6041, Pernell v. Southall.
Realty please note I concur in the
result.

ccc v
William O. Douglas

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 14, 1974

RE: No. 72-6041 Pernell v. Southall Realty

Dear Thurgood:

I cannot agree to a disposition on the statutory basis because I disagree with your conclusion. I think the case should go off on the Seventh Amendment.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 10, 1974

RE: No. 72-6041 Pernell v. Southall Realty

Dear Thurgood:

I agree.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 13, 1974

No. 72-6041, Pernell v. Southall Realty

Dear Thurgood,

I think your circulation of today very neatly and convincingly fineses the necessity of discussing a great deal of ancient and perhaps inconclusive lore, and, if we were dealing with an ordinary federal statute of nationwide application, I should not hesitate to join it. In this case, however, I am given pause by my understanding that one purpose of the Court Reform Act of 1970 was to establish the District of Columbia courts as tantamount to state courts for purposes of our judicial review. Although this Court has always been chary of reviewing decisions of purely local concern in the District of Columbia, I suppose it could be argued that since 1970 we should be even more so.

Specifically, if this were a decision of a state court, we would be bound by the construction given to the statute by that court. The District of Columbia Court of Appeals has construed this statute as not providing for a jury trial. Are we bound by that construction, and, if not, must we not at least give it a great deal of deference?

I raise these questions because I think they will recurringly arise in many future District of Columbia Court of Appeals cases that we shall be asked to review.

Sincerely yours,

P.S.

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 11, 1974

72-6041, Pernell v. Southall Realty

Dear Thurgood,

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

Sincerely yours,

P.S.
P.J.

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 10, 1974

Re: No. 72-6041 - Pernell v. Southall Realty

Dear Thurgood:

I agree with your circulation of April 9
in this case.

Sincerely,



Mr. Justice Marshall

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 13, 1974

MEMORANDUM TO THE CONFERENCE

Re: No. 72-6041 -- Pernell v. Southall Realty

I have drafted the attached opinion in this case relying solely on the legislative intent ground. If a majority of the Court feel that it is necessary instead to reach the Seventh Amendment question, I will be glad to revise the opinion accordingly.

1/11
T.M.

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

From: Marshall, J.

Recirculated: MAR 13 19

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 72-6041

Dave Pernell, Petitioner, | On Writ of Certiorari to the
v. | District of Columbia Court
Southall Realty | of Appeals.

[March —, 1974]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

The question presented in this case is whether Congress, when enacting the District of Columbia Court Reform and Criminal Procedure Act of 1970, Pub. L. No. 90-358, 84 Stat. 473, intended to do away with jury trials in actions brought in the District of Columbia for the recovery of possession of real property.

In May 1971, petitioner Dave Pernell entered into a lease agreement with respondent, Southall Realty, for the rental of a house in the District of Columbia. In July 1971, Southall filed a complaint in the Superior Court for the District of Columbia seeking to oust Pernell from the premises for alleged nonpayment of rent.¹ Pernell timely answered the complaint, filed claims of setoff and counterclaim,² and made a demand

¹ Suit was brought under D. C. Code §§ 16-1501 to 16-1505 (1967 and Supp. V 1972).

² Pernell asserted that a valid notice to quit had not been served, that Southall maintained the premises in an unsafe, unhealthy and unsanitary condition in violation of District of Columbia housing regulations, and that Southall had breached its agreement to credit improvements made by Pernell against his rent. In the District of Columbia, a tenant may defend against eviction proceedings for nonpayment on grounds that housing regulations have not been

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 14, 1974

MEMORANDUM TO THE CONFERENCE

Re: No. 72-6041 -- Pernell v. Southall Realty

Early returns on this opinion's election are so dismal as to require me to shift gears and write another opinion dealing with ancient lore.

T.M.

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

2nd DRAFT

From: Marshall, J.

Circulated:

No. 72-6041

Recirculated: APR 9 197

SUPREME COURT OF THE UNITED STATES

Dave Pernell, Petitioner, | On Writ of Certiorari to the
v. | District of Columbia Court
Southall Realty | of Appeals.

[March —, 1974]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

The question presented in this case is whether the Seventh Amendment guarantees the right to trial by jury in an action brought in the District of Columbia for the recovery of possession of real property. In May 1971, petitioner Dave Pernell entered into a lease agreement with respondent, Southall Realty, for the rental of a house in the District of Columbia. In July 1971, Southall filed a complaint in the Superior Court for the District of Columbia seeking to evict Pernell from the premises for alleged nonpayment of rent. Suit was brought under D. C. Code §§ 16-1501 through 16-1505, which establish a procedure for the recovery of possession of real property. In his answer, Pernell denied that rent was owing, asserted that Southall maintained the premises in an unsafe, unhealthy, and unsanitary condition in violation of the housing regulations of the District of Columbia,¹ and alleged that Southall breached

¹ In the District of Columbia, a tenant may defend against eviction proceedings for nonpayment of rent on the ground that housing regulations have not been complied with and that the premises are not being maintained in a habitable condition by the landlord. See *Javins v. First Nat'l Realty Corp.*, 138 U. S. App. D. C. 369, 428 F. 2d 1071, cert. denied, 400 U. S. 925 (1970).

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

3rd DRAFT

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES

No. 72-6041

Recirculated: APR 16 1974

Dave Pernell, Petitioner, | On Writ of Certiorari to the
v. | District of Columbia Court
Southall Realty | of Appeals.

[March —, 1974]

PP 21-27

MR. JUSTICE MARSHALL delivered the opinion of the Court.

The question presented in this case is whether the Seventh Amendment guarantees the right to trial by jury in an action brought in the District of Columbia for the recovery of possession of real property. In May 1971, petitioner Dave Pernell entered into a lease agreement with respondent, Southall Realty, for the rental of a house in the District of Columbia. In July 1971, Southall filed a complaint in the Superior Court for the District of Columbia seeking to evict Pernell from the premises for alleged nonpayment of rent. Suit was brought under D. C. Code §§ 16-1501 through 16-1505, which establish a procedure for the recovery of possession of real property. In his answer, Pernell denied that rent was owing, asserted that Southall maintained the premises in an unsafe, unhealthy, and unsanitary condition in violation of the housing regulations of the District of Columbia,¹ and alleged that Southall breached

¹ In the District of Columbia, a tenant may defend against eviction proceedings for nonpayment of rent on the ground that housing regulations have not been complied with and that the premises are not being maintained in a habitable condition by the landlord. See *Javins v. First Nat'l Realty Corp.*, 138 U. S. App. D. C. 369, 428 F. 2d 1071, cert. denied, 400 U. S. 925 (1970).

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

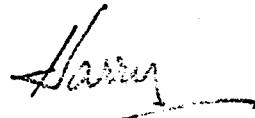
April 16, 1974

Re: No. 72-6041 - Pernell v. Southall Realty

Dear Thurgood:

Please join me in your recirculation of today.

Sincerely,



Mr. Justice Marshall

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20530

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 16, 1974

Re: No. 72-6041 - Pernell v. Southall Realty

Dear Thurgood:

Please join me in your recirculation of today.

Sincerely,

Harry

Mr. Justice Marshall

cc: The Conference

P.S. I appreciate your omitting the material I suggested on pages 21 and 22 of the April 9 draft.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 10, 1974

No. 72-6041 Pernell v. Southall Realty

Dear Thurgood:

Please join me in your fine opinion.

Sincerely,

L. Lewis

Mr. Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 14, 1974

Re: No. 72-6041 - Pernell v. Southall Realty

Dear Thurgood:

I pretty much agree with Potter's comments about your circulation of March 13th in this case. While in the case of a local statute enacted by Congress for the District of Columbia we may not be bound by the construction of the local Court of Appeals to quite the same extent that we are in the case of a state statute, I would want a more manifestly erroneous construction than this one before I undertook to reverse that court on such a statutory issue.

Sincerely,

W

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUDGE WILLIAM H. REHNQUIST

April 15, 1974

Re: No. 72-6041 - Pernell v. Southall Realty

Dear Thurgood:

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

Sincerely,

WW

Mr. Justice Marshall

Copies to the Conference