

# The Burger Court Opinion Writing Database

*Mitchell v. W.T. Grant Co.*

416 U.S. 600 (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 9, 1974

Re: No. 72-6160 - Mitchell v. W. T. Grant Company

Dear Byron:

Please join me.

Regards,

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

March 14, 1974

Dear Potter:

Please join me in your dissent  
in 72-6160, Mitchell v. W.T. Grant Co.

W W  
William O. Douglas

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

March 15, 1974

RE: No. 72-6160 - Mitchell v. W.T. Grant Co.

Dear Potter:

Would you please add the following at the  
foot of your dissent in the above.

"Mr. Justice Brennan, dissenting.

I am in agreement with my Brother Stewart  
that Fuentes v. Shevin, 407 U.S. 67 (1972) re-  
quires reversal of the judgment of the Supreme  
Court of Louisiana."

Sincerely,

*Bill*

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

February 13, 1974

MEMORANDUM TO THE CONFERENCE

Re: No. 72-6160, Mitchell v. W. T. Grant Co.

In due course I shall circulate a dissenting opinion  
in this case.

*P.S.*  
P. S.

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-6160

Argued, J.  
Circulated MAR 14 1974

Lawrence Mitchell,  
Petitioner,  
v.  
W. T. Grant Company. } On Writ of Certiorari to the  
Supreme Court of Louisiana.

[March —, 1974]

MR. JUSTICE STEWART, dissenting.

The Louisiana sequestration procedure now before us is remarkably similar to the statutory provisions at issue in *Fuentes v. Shevin*, 407 U. S. 67 (1972). In both cases the purchaser-in-possession of the property is not afforded any prior notice of the seizure or any opportunity to rebut the allegations of the vendor before the property is summarily taken from him by agents of the State. In both cases all that is required to support the issuance of the writ and seizure of the goods is the filing of a complaint and an affidavit containing *pro forma* allegations in support of the seller's purported entitlement to the goods in question. Since the procedure in both cases is completely *ex parte*, the state official charged with issuing the writ can do little more than determine the formal sufficiency of the plaintiff's allegations before ordering the state agents to take the goods from the defendant's possession.<sup>1</sup>

<sup>1</sup> The Louisiana Supreme Court held that *Fuentes* did not govern the present case. Essentially, that court held that because the Louisiana vendor's privilege is defeated if the vendee alienates the property over which the vendor has the privilege, this case falls within the language in *Fuentes* that "[t]here may be cases in which a creditor could make a showing of immediate danger that a debtor will destroy or conceal disputed goods." 407 U. S. 67, 93. The Court today quite correctly does not embrace this rationale. In

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

## 2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 72-6160

Circulated:

Recirculated: APR 3 0 1974

Lawrence Mitchell,  
 Petitioner,  
 v.  
 W. T. Grant Company.

[March —, 1974]

MR. JUSTICE STEWART, with whom MR. JUSTICE DOUGLAS and MR. JUSTICE MARSHALL concur, dissenting.

The Louisiana sequestration procedure now before us is remarkably similar to the statutory provisions at issue in *Fuentes v. Shevin*, 407 U. S. 67 (1972). In both cases the purchaser-in-possession of the property is not afforded any prior notice of the seizure or any opportunity to rebut the allegations of the vendor before the property is summarily taken from him by agents of the State. In both cases all that is required to support the issuance of the writ and seizure of the goods is the filing of a complaint and an affidavit containing *pro forma* allegations in support of the seller's purported entitlement to the goods in question. Since the procedure in both cases is completely *ex parte*, the state official charged with issuing the writ can do little more than determine the formal sufficiency of the plaintiff's allegations before ordering the state agents to take the goods from the defendant's possession.<sup>1</sup>

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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

## 1st DRAFT

From: White, J.

Circulated: 2-12-79

Recirculated:

No. 72-6160

Lawrence Mitchell,  
Petitioner,  
v.  
W. T. Grant Company. } On Writ of Certiorari to the  
Supreme Court of Louisiana.

[February —, 1974]

MR. JUSTICE WHITE delivered the opinion of the Court.

In this case, a state trial judge in Louisiana ordered the sequestration of personal property on the application of a creditor who had made an installment sale of goods to petitioner and whose affidavit asserted delinquency and prayed for sequestration to enforce a vendor's lien under state law. The issue is whether the sequestration violated the Due Process Clause of the Fourteenth Amendment because it was ordered *ex parte*, without prior notice or opportunity for a hearing.

三

On February 2, 1972, respondent W. T. Grant filed suit in the First City Court for the City of New Orleans, State of Louisiana, against petitioner, Lawrence Mitchell. The petition alleged the sale by Grant to Mitchell of a refrigerator, range, stereo, and washing machine and an overdue and unpaid balance of the purchase price for said items in the amount of \$574.17. Judgment for that sum was demanded. It was further alleged that Grant had a vendor's lien on the goods and that a writ of sequestration should issue to sequester the merchandise pending the outcome of the suit. The accompanying

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES: 7, 18

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

2nd DRAFT

From: White, J.

Circulated:

5/11/74

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 72-6160

Lawrence Mitchell,  
Petitioner,  
v.  
W. T. Grant Company. } On Writ of Certiorari to the  
Supreme Court of Louisiana.

[February —, 1974]

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 23, 1974

MEMORANDUM FOR THE CONFERENCE

Re: Cases held for Mitchell v. Grant, No. 72-6160

1. Carmack v. Buckner, No. 72-1369; Appeal from Louisiana Supreme Court

In 1965, appellant Carmack, and her husband, executed a promissory note for approximately \$2900 to be paid off in consecutive monthly installments of \$15.00 each. The note was secured by a mortgage simultaneously executed covering a parcel of real property in Caddo Parish. The mortgage contained a confession of judgment clause which waived the right of the mortgagor to notice and opportunity to pay amounts in arrears before foreclosure could be had on the property.

On October 20, 1972, appellee-mortgagee initiated an executory process to foreclose on the property by filing in a local trial court a petition, accompanied by a verification of the contractual relationship, and an allegation that the debtor was delinquent. Appellant, apparently before the petition was acted upon, filed a

between filing and resolution of the validity of the  
lien, may be insignificant. I would prefer to affirm,  
but would not object to vacating and remanding the case  
under Mitchell.



B.R.W.

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 19, 1974

Re: No. 72-6160 -- Mitchell v. W. T. Grant Company

Dear Potter:

Please join me.

Sincerely,

*T.M.*  
T.M.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

March 5, 1974

Dear Byron:

Re: No. 72-6160 - Mitchell v. W. T. Grant Co.

Please join me.

So long as we do not overrule Fuentes, I suspect that we shall have cases coming here from nearly every State attempting to draw the distinction between Fuentes and this case. You have done everything possible to distinguish the two. I, personally, would overrule Fuentes, but I assume the votes to do that are not now present.

Sincerely,



Mr. Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

March 6, 1974

No. 72-6160 Mitchell v. W.T. Grant Co.

Dear Byron:

Harry's join note of March 5, reminds me that I have not kept you properly advised as to the above case.

Although I am awaiting the dissenting opinion before I come to rest, my tentative view remains - as it was at the Conference - to affirm the judgment below. I may possibly end up writing a brief concurring opinion.

Sincerely,

Mr. Justice White

CC: The Conference

*Lewis*

APR 25 1974

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TO FILE

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-6160

Lawrence Mitchell,  
Petitioner,  
v.  
W. T. Grant Company. } On Writ of Certiorari to the  
Supreme Court of Louisiana.

[April --, 1974]

MR. JUSTICE POWELL, concurring.

In sweeping language, *Fuentes v. Shevin*, 407 U. S. 67 (1972), enunciated the principle that the constitutional guarantee of procedural due process requires an adversary hearing before an individual may be temporarily deprived of any possessory interest in tangible personal property, however brief the dispossessing and however slight his monetary interest in the property. The Court's decision today withdraws significantly from the full reach of that principle, and to this extent I think it fair to say that the *Fuentes* opinion is overruled.

I could have agreed that the Florida and Pennsylvania statutes in *Fuentes* were violative of due process because of their arbitrary and unreasonable provisions. It seems to me, however, that it was unnecessary for the *Fuentes* opinion to have adopted so broad and inflexible a rule, especially one that considerably altered settled law with respect to commercial transactions and basic creditor-debtor understandings. Narrower grounds existed for invalidating the replevin statutes in that case.

I

The constitutional guarantee of procedural due process applies to governmental deprivation of a legitimate "property" or "liberty" interest within the meaning of the

May 3, 1973

No. 72-6160 Mitchell v. W. T. Grant

Dear Potter:

Please join me in your Per Curiam.

I would appreciate, however, your adding the brief concurring statement which I am circulating herewith.

Sincerely,

LFP

Mr. Justice Stewart

cc: The Conference

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

1st DRAFT

From: Powell, J.

SUPREME COURT OF THE UNITED STATES

Circulated: MAY 3 1973

LAWRENCE MITCHELL *v.* W. T. GRANT COMPANY Recirculated: \_\_\_\_\_

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME  
COURT OF LOUISIANA

No. 72-6160. Decided \_\_\_\_\_, 1973

MR. JUSTICE POWELL, concurring.

On the authority of *Fuentes v. Shevin*, 407 U. S. 67 (1972), in which I did not participate, I concur in the Court's *per curiam* opinion. I do so subject to my understanding that the opinion is not to be construed as preventing legislative authorization of reasonable safeguards to protect legitimate rights of vendors against the possibility of fraudulent concealment or transfer of tangible personal property sold under conditional sales or other types of installment sales contracts. There have been abuses on both sides of the equation in the vast and relatively uncharted area of deferred purchase contracts. In light of *Fuentes*, legislatures may now wish to devise fair and balanced enforcement provisions which will protect the buyer against overreaching and the seller against dishonesty. I do not construe *Fuentes* or this case as foreclosing such legislation.

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

### 3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-6160

From: Powell, J.

APR 26 1974

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

Lawrence Mitchell, Recirc  
Petitioner, } On Writ of Certiorari to the  
v. } Supreme Court of Louisiana.  
W. T. Grant Company.

[April —, 1974]

MR. JUSTICE POWELL, concurring.

In sweeping language, *Fuentes* v. *Shevin*, 407 U. S. 67 (1972), enunciated the principle that the constitutional guarantee of procedural due process requires an adversary hearing before an individual may be temporarily deprived of any possessory interest in tangible personal property, however brief the dispossession and however slight his monetary interest in the property. The Court's decision today withdraws significantly from the full reach of that principle, and to this extent I think it fair to say that the *Fuentes* opinion is overruled.

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Mr. Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice

36  
From: Powell, J.

SUPREME COURT OF THE UNITED STATES

Recirculated: 5/11

No. 72-6160

Recirculated: 5/11

Lawrence Mitchell,  
Petitioner,  
v.  
W. T. Grant Company. } On Writ of Certiorari to the  
Supreme Court of Louisiana.

[May 13, 1974]

MR. JUSTICE POWELL, concurring.

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The constitutional guarantee of procedural due process applies to governmental deprivation of a legitimate "property" or "liberty" interest within the meaning of the

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

February 28, 1974

Re: No. 72-6160 - Mitchell v. W. T. Grant Co.

Dear Byron:

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

Sincerely,

WW

Mr. Justice White

Copies to the Conference



P.S. Dear Byron:

Bartow Farr, one of my law clerks, has talked to Hal Scott in your office about a possible additional sentence in the opinion which I agree would be desirable, although my joining is not conditional in any sense upon your inserting it. I think it is conceivable that your concluding sentence in the first full paragraph on page 7, beginning "Petitioner's claim . . ." could, taken by itself, give the impression that if petitioner had requested something less than a full adversary hearing, but more than the Louisiana statute gave him, the result of the case might somehow have been different. While the holding is certainly clear from



- 2 -

the entire opinion, the impression which I think is created by the sentence on page 7 could be scotched by adding after it a sentence of the following import:

"At the very least, petitioner's claim must be that the opportunity to be heard on these issues granted by the Louisiana statutes is constitutionally insufficient under the Due Process Clause."

W.H.R.

*W.H.R.*