

The Burger Court Opinion Writing Database

Alfred Dunhill of London, Inc. v. Republic of Cuba

425 U.S. 682 (1976)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

May 7, 1974

Dear Byron:

Please join me in your dissenting opinion
in 73-1288, Dunhill v. Cuba.

WW
William O. Douglas

Mr. Justice White

cc: The Conference

✓
—
To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
~~Mr. Justice Marshall~~
Mr. Justice Black
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

From: White, J.

Circulated: 5-4-74

SUPREME COURT OF THE UNITED STATES

Recirculated: _____

ALFRED DUNHILL OF LONDON, INC. v. THE
REPUBLIC OF CUBA ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 73-1288. Decided May —, 1974

MR. JUSTICE WHITE, dissenting.

This petition for review arises out of the Castro government's seizure, without compensation, of the businesses and assets of five leading manufacturers of Havana cigars. This seizure created a three-cornered dispute between owners, three importers, including petitioner Dunhill, and Cuba over rights to payments for pre-nationalization and post-nationalization shipments of cigars. After nationalization, the owners were ousted and the government designated persons called "intervenors" as its agents to manage the businesses. The importers made several payments covering amounts still owing for pre-intervention shipments. They also accepted cigars shipped after intervention, but did not pay for most of them. This litigation involving claims, cross-claims, and counterclaims concerned the respective rights of the parties to the money paid to Cuba for the pre-intervention shipments and the money owing by the importers for the post-intervention shipments.

The District Court held that the three importers were liable to the owners, not to Cuba, for the pre-intervention shipment of cigars. Petitioner Dunhill's post-intervention payments for pre-intervention shipments totaled \$148,000, plus interest. The court further held that the importers were liable to Cuba for the value of cigars shipped after intervention on which Dunhill still owed \$92,949, plus interest. Since Cuba had mistakenly

Supreme Court of the United States

Washington, D. C. 20543

80

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 9, 1974

MEMORANDUM FOR THE CONFERENCE

Re: No. 73-1288 - Alfred Dunhill of London, Inc. v.
The Republic of Cuba

If this case is to be granted, I suggest that we specify the following questions for briefing and argument:

1. Can statements by counsel for the Republic of Cuba, that petitioner's unjust enrichment counterclaim would not be honored, constitute an act of state?

2. If so, is an exception to the act of state doctrine created, under First National City Bank v. Banco Nacional de Cuba, 406 U.S. 759 (1972), where petitioner's counterclaim does not exceed the net balance owed to Cuba on its claims by petitioner's co-defendants, and where all claims and counterclaims arise out of the subject matter in litigation in this case?


B.R.W.

Aff: CJ, WJB, PS, TM, HAB

Rev: WOD, BW, LFP, WHR

Mr. Daykin, 0-74

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 8, 1974

Dear Byron:

Re: No. 73-1288 - Dunhill v. Cuba

Will you please add, at the conclusion of your
dissent, the following:

"Mr. Justice Blackmun also dissents.

He would grant certiorari in this case
and hear argument."

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.

May 7, 1974

No. 73-1288 Dunhill v. The Republic
of Cuba

Dear Byron:

Please join me in your dissent.

Sincerely,



Mr. Justice White

lfp/ss

cc: The Conference