

The Burger Court Opinion Writing Database

Bangor Punta Operations, Inc. v. Bangor & Aroostook Railroad Co.

417 U.S. 703 (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

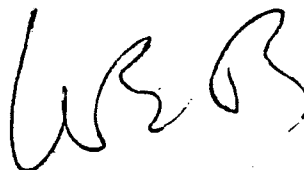
June 6, 1974

Re: No. 73-718 - Bangor Punta Operations v. Bangor &
Aroostook R.R. Co.

Dear Lewis:

Please join me.

Regards,



Mr. Justice Powell

Copies to the Conference

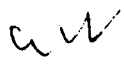
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

June 13, 1974

Dear Thurgood:

Please join me in your dissent in 73-718, Bangor Punta
Operations, Inc., v. Bangor & Aroostook Railroad Co.


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.

June 13, 1974

RE: No. 73-718 Bangor Punta Operations, et al.
v. Bangor & Aroostook Railroad Co, et al.

Dear Thurgood:

Please join me in your dissenting opinion
in the above.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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



CHAMBERS OF
JUSTICE POTTER STEWART

May 29, 1974

73-718, Bangor Punta Operations
v. Bangor & A. R. Co.

Dear Lewis,

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

Sincerely yours,

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 18, 1974

Re: No. 73-718, Bangor Punta v. Bangor
& Aroostook

Dear Lewis,

The footnotes and paragraph of text you have added to this opinion are entirely satisfactory to me, and I would hope that the opinion can be announced tomorrow.

Sincerely yours,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 14, 1974

Re: No. 73-718 - Bangor Punta Operations v.
Bangor & Aroostook Railroad Co.

Dear Thurgood:

You have written a powerful and
persuasive dissenting opinion, and I am happy
to join it.

Sincerely,



Mr. Justice Marshall

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 29, 1974

Re: No. 73-718, Bangor Punta Operations, Inc. v.
Bangor & Aroostook Railroad Company

Dear Bill:

I note that you, Byron White and I are in dissent
in this case. I will be happy to take on the dissent if
it is alright with you.

Sincerely,

T. M.

Mr. Justice Douglas

*Dear Thurgood
This is fine
with me. I have go
about with it
W W*

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 30, 1974

Re: No. 73-718, Bangor Punta Operations, Inc. v.
Bangor & Aroostook Railroad Company

Dear Lewis:

In due course, I shall circulate a dissent
in this case.

Sincerely,


T. M.

Mr. Justice Powell

cc: The Conference

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Handwritten note:
PLEASE REVIEW ME

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.

Circulated: JUN 18 1974

Recirculated: _____

No. 73-718 Bangor Punta Operations, Inc., et al. v. Bangor & Aroostook Railroad Co. et al.

Mr. Justice Marshall, dissenting.

This suit, brought by and in the name of respondent railroad and its wholly-owned subsidiary, seeks to recover damages for the conversion and misappropriation of corporate assets allegedly committed by petitioners, Bangor Punta and its wholly-owned subsidiary, during a period when the latter was the majority shareholder of the railroad. Ordinarily, of course, a corporation may seek legal redress against those who have defrauded it of its assets. And when it does so, "A corporation and its stockholders are generally to be treated as separate entities. Only under exceptional circumstances . . . can the difference be disregarded." Burnet v. Clark, 287 U.S. 410, 415 (1932). See also New Colonial Ice Co. v. Helvering, 292 U.S. 435, 442 (1934).

The Court finds such exceptional circumstances here because, in its view, any recovery had by the corporation will be a windfall to Amoskeag, the present owner of approximately 99% of the corporation's stock, who purchased most of that stock from the petitioners, the alleged wrongdoers. The Court therefore concludes that this suit must be barred under the equitable principles set forth in Home Fire Insurance Co. v. Barber, 67 Neb. 644, 93 N.W. 1024 (1903).

I cannot agree. Having read the precedents relied upon by the majority, I respectfully submit that they not only do

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Marshall, J.

No. 73-718

Circulated: _____

Recirculated: JUN 14 1974

Bangor Punta Operations,
Inc., et al., Petitioners,
v.
Bangor & Aroostook Railroad
Company et al. } On Writ of Certiorari to
the United States Court
of Appeals for the First
Circuit.

[June —, 1974]

MR. JUSTICE MARSHALL, dissenting.

This suit, brought by and in the name of respondent railroad and its wholly owned subsidiary, seeks to recover damages for the conversion and misappropriation of corporate assets allegedly committed by petitioners, Bangor Punta and its wholly owned subsidiary, during a period when the letter was the majority shareholder of the railroad. Ordinarily, of course, a corporation may seek legal redress against those who have defrauded it of its assets. And when it does so, "A corporation and its stockholders are generally to be treated as separate entities. Only under exceptional circumstances . . . can the difference be disregarded." *Burnet v. Clark*, 287 U. S. 410, 415 (1932). See also *New Colonial Ice Co. v. Helvering*, 292 U. S. 435, 442 (1934).

The Court finds such exceptional circumstances here because, in its view, any recovery had by the corporation will be a windfall to Amoskeag, the present owner of approximately 99% of the corporation's stock, who purchased most of that stock from the petitioners, the alleged wrongdoers. The Court therefore concludes that this suit must be barred under the equitable principles set forth in *Home Fire Insurance Co. v. Barber*, 67 Neb. 644, 93 N. W. 1024 (1903).

with whom I
Justice
and Mr. Justice
Brennan

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 18, 1974

MEMORANDUM TO THE CONFERENCE

Re: No. 73-718 -- Bangor Punta v. Bangor
& Aroostook

I have sent to the printer some minor changes in my opinion deleting references to statements omitted from Lewis' most recent draft. In reply to Lewis' memorandum, I have no objection to this case coming down tomorrow. Let's get it over with.

T.M.
T.M.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

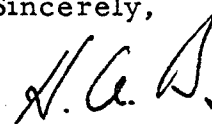
June 10, 1974

Re: No. 73-718 - Bangor Punta Operations v.
Bangor & Aroostook RR

Dear Lewis:

Please join me.

Sincerely,



Mr. Justice Powell

cc: The Conference

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-718

From: Powell, J.

Circulated: 5/28/74

Bangor Punta Operations,
Inc., et al., Petitioners,
v.
Bangor & Aroostook Railroad
Company et al.

On Writ of Certiorari to
the United States Court
of Appeals for the First
Circuit.

Circulated: _____

[May —, 1974]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case involves an action by a Maine railroad corporation seeking damages from its former owners for violations of federal antitrust and securities laws, applicable state statutes, and common-law principles. The complaint alleged that the former owners had engaged in various acts of corporate waste and mismanagement during the period of their control. The shareholder presently in control of the railroad acquired 98.3% of the railroad's shares from the former owners long after the alleged wrongs occurred. We must decide whether equitable principles applicable under federal and state law preclude recovery by the railroad in these circumstances.

I

Respondent Bangor and Aroostook Railroad Company (BAR), a Maine corporation, operates a railroad in the northern part of the State of Maine. Respondent Bangor Investment Company (BIC), also a Maine corporation, is a wholly-owned subsidiary a BAR. Petitioner Bangor Punta Corporation (Bangor Punta), a Delaware corporation, is a diversified investment com-

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

2nd DRAFT

From: Powell, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 73-718

Recirculated: **JUN 18 1974**

Bangor Punta Operations, Inc., et al., Petitioners,
v.
Bangor & Aroostook Railroad Company et al. } On Writ of Certiorari to the United States Court of Appeals for the First Circuit.

[June 19, 1974]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case involves an action by a Maine railroad corporation seeking damages from its former owners for violations of federal antitrust and securities laws, applicable state statutes, and common-law principles. The complaint alleged that the former owners had engaged in various acts of corporate waste and mismanagement during the period of their control. The shareholder presently in control of the railroad acquired 98.3% of the railroad's shares from the former owners long after the alleged wrongs occurred. We must decide whether equitable principles applicable under federal and state law preclude recovery by the railroad in these circumstances.

I

Respondent Bangor and Aroostook Railroad Company (BAR), a Maine corporation, operates a railroad in the northern part of the State of Maine. Respondent Bangor Investment Company (BIC), also a Maine corporation, is a wholly-owned subsidiary a BAR. Petitioner Bangor Punta Corporation (Bangor Punta), a Delaware corporation, is a diversified investment com-

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 18, 1974

No. 73-718 Bangor Punta v. Bangor
& Aroostook

MEMORANDUM TO THE CONFERENCE

I was not able to recirculate the opinion for the Court until this morning. I have added a number of footnotes, and one paragraph to the text (p. 11).

As you will recall, this case was tentatively set to come down tomorrow. It may be that Thurgood will wish time to consider further changes in his opinion. In addition, other members of the Court also may prefer to postpone the case until Monday. Of course, this would be entirely agreeable to me. I will have to give the printer final clearance rather promptly today if the case is to come down tomorrow.

L.F.P.
L.F.P., Jr.

SS

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 6, 1974

Re: No. 73-718 - Bangor Punta v. Bangor & Aroostook RR

Dear Lewis:

Please join me in the opinion for the Court you have prepared in this case.

Sincerely,

WRM

Mr. Justice Powell

Copies to the Conference