

The Burger Court Opinion Writing Database

Baker v. Gold Seal Liquors, Inc.

417 U.S. 467 (1974)

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
THE CHIEF JUSTICE

June 5, 1974

Re: 73-804 - Baker v. Gold Seal Liquors

Dear Bill:

Please join me.

Regards,

WCB

Mr. Justice Douglas

Copies to the Conference

To the Clerk of the Supreme Court

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-804

Exhibit 5-8

George P. Baker et al., Petitioners,
v.
Gold Seal Liquors, Inc. } On Writ of Certiorari to the
United States Court of
Appeals for the Seventh
Circuit.

[May 1, 1974]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

The Penn-Central Transportation Company is in bankruptcy reorganization under § 77, 11 U. S. C. § 205. Petitioners are its trustees authorized to collect its assets, one of which is a claim for freight charges against respondent over the bankrupt debtor. The claim on which this suit was brought was \$8,256.61 and the amount is undisputed. Respondent filed a counter claim for \$19,319.42 for loss and damage to shipments over the debtor's lines. Its amount is also not disputed.

The trustees filed a motion for summary judgment asking the District Court to enter one judgment covering the amount of freight charges admittedly due and another for the amount claimed by respondent.

Previously the Reorganization Court, in the Third Circuit, had prohibited the various bank creditors from offsetting their claims against Trustees for the debtor, 315 F. Supp. 1281. Prior to the decision of the instant case that *Bank Setoff Case* was affirmed by the Court of Appeals, 453 F. 2d 520. Also prior to the ruling of the Court of Appeals in the instant case the Reorganization Court prohibited some shippers from setting off freight loss and damage claims against amounts owed for trans-

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

May 29, 1974

MEMORANDUM TO THE CONFERENCE:

In No. 73-804, Baker v. Gold Seal Liquors, I am adding at the end of the present opinion on page 7 the following paragraph.

W.W
William O. Douglas

Attached-WOD 5-29-1974
73-804

73-804

Rider 7

Lowden v. Northwestern National Bank and Trust Co., 298 US 160 is not to the contrary. The Court there refused to answer the cert. question because it did not know the factual setting in which the question had been raised. Much law has been fashioned in the reorganization field since 1936 the date of that decision. The contours of plans have emerged which have given new meaning and insight into the statutory words "fair and equitable". The preference sought here shows no exceptional circumstances which in equity justify the discrimination.

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ON WAR, REVOLUTION AND PEACE



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To : The Chief Justice
Mr. Justice Brennan
Mr. Justice Black
Mr. Justice Blackmun
Mr. Justice Burger
Mr. Justice Harlan
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-804

George P. Baker et al., Petitioners, v. Gold Seal Liquors, Inc. } On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[May —, 1974]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

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To : The Chief Justice
John J. Harlan
William H. Rehnquist
William J. Black
John Paul Stevens
Thurgood Marshall
Potter Stewart
William O. Douglas
William H. O'Dwyer
John M. Harlan II
Sandra Day O'Connor

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-804

6-3

Rec'd/Att'd:

George P. Baker et al., Petitioners,
v.
Gold Seal Liquors, Inc. } On Writ of Certiorari to the
United States Court of Appeals for the Seventh Circuit.

[May —, 1974]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

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To: ~~Mr. Justice Justice~~
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

5th DRAFT

From: Douglas, J.

SUPREME COURT OF THE UNITED STATES

dated: _____
No. 73-804

Recirculated: 6-10-74

George P. Baker et al., Petitioners, v. Gold Seal Liquors, Inc. } On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[May —, 1974]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

The Penn-Central Transportation Company is in bankruptcy reorganization under § 77, 11 U. S. C. § 205. Petitioners are its trustees authorized to collect its assets, one of which is a claim for freight charges against respondent over the bankrupt debtor. The claim on which this suit was brought was \$8,256.61 and the amount is undisputed. Respondent filed a counter claim for \$19,319.42 for loss and damage to shipments over the debtor's lines. Its amount is also not disputed.

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

CHAMBER OF
JUSTICE WM. J. BRENNAN, JR.

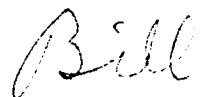
May 8, 1974

RE: No. 73-804 Baker v. Gold Seal Liquors

Dear Bill:

I agree.

Sincerely,



Mr. Justice Douglas

cc: The Conference

To: The Chief Justice,
Mr. Justice Douglas
~~Mr. Justice Brennan~~
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Black
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Stewart, J.

Circulated:

5/31

No 73-804

Recirculated:

George P. Baker et al., On Writ of Certiorari to the
Petitioners, } United States Court of
v. } Appeals for the Seventh
Gold Seal Liquors, Inc. } Circuit.

[June —, 1974]

MR. JUSTICE STEWART, concurring in the result.

The Court concludes that since the allowance of a setoff in a § 77 reorganization would grant "a preference to the claim of one creditor over the others by the happenstance that it owes freight charges that the others do not," such setoffs should be disallowed "[a]s a general rule of administration." *Ante*, pp. 6-7. While I agree that the District Court should not have permitted a set-off in this case, I think that the broad rule adopted by the Court is unnecessary to reach this result, and I prefer to rest my conclusion on a narrower ground.

While judicial setoffs are specifically authorized in straight bankruptcy cases, § 68, 11 U. S. C. § 108, no express approval of them appears in the statute governing § 77 reorganizations. In *Lowden v. Northwestern National Bank & Trust Co.*, 298 U. S. 160 (1936), this Court stated that the approval of setoffs in § 68 did not control in railroad reorganizations but "governs, if at all, by indirection and analogy according to the circumstances. The rule to be accepted for the purpose of such a suit is that enforced by courts of equity, which differs from the rule in bankruptcy chiefly in its greater flexibility, the rule in bankruptcy being framed in adaptation to standardized conditions, and that in equity varying with the needs of the occasion, though remaining con-

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

From: Stewart,

Circulated:

No. 73-804

Recirculated:

412

George P. Baker et al., Petitioners, v. Gold Seal Liquors, Inc. } On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[June —, 1974]

MR. JUSTICE STEWART, with whom MR. JUSTICE POWELL joins, concurring in the result.

The Court concludes that since the allowance of a setoff in a § 77 reorganization would grant "a preference to the claim of one creditor over the others by the happenstance that it owes freight charges that the others do not," such setoffs should be disallowed "[a]s a general rule of administration." *Ante*, pp. 6-7. While I agree that the District Court should not have permitted a set-off in this case, I think that the broad rule adopted by the Court is unnecessary to reach this result, and I prefer to rest my conclusion on a narrower ground.

While judicial setoffs are specifically authorized in straight bankruptcy cases, § 68, 11 U. S. C. § 108, no express approval of them appears in the statute governing § 77 reorganizations.¹ In *Lowden v. Northwestern*

¹ I am unable to conlude, as does the dissent, *post*, at 2-3, that subsection *l* of § 77 mandates allowance in § 77 reorganizations of all setoffs allowed by § 68 in straight bankruptcies. While the dissent's ingenious reading of the statute would provide an easy semantic solution to the problem presented in this case, I am impressed with the fact that neither this Court in *Lowden v. Northwestern National Bank & Trust Co.*, 298 U. S. 160 (1936), nor, apparently, any other federal trial or appellate court has considered subsection *l* to have any bearing whatsoever on the setoff problem. In the absence of any showing based on legislative history that

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 10, 1974

Re: No. 73-804 - Baker v. Gold Seal Liquors

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Douglas

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 9, 1974

Re: No. 73-804 -- Baker v. Gold Seal Liquors, Inc.

Dear Bill:

Please join me.

Sincerely,


T. M.

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 10, 1974

Re: No. 73-804 - Baker v. Gold Seal Liquors, Inc.

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 2, 1974

No. 73-804 Baker v. Gold Seal Liquors

Dear Potter:

Please join me in your concurrence.

Sincerely,

L Lewis

Mr. Justice Stewart

lfp/ss

cc: The Conference

1st DRAFT

SUPREME COURT OF THE UNITED STATES

5-28-

No. 73-804

George P. Baker et al.,
Petitioners,
v.
Gold Seal Liquors, Inc. } On Writ of Certiorari to the
United States Court of
Appeals for the Seventh
Circuit.

[June —, 1974]

MR. JUSTICE REHNQUIST, dissenting.

The question in this case is whether the United States District Court for the Northern District of Illinois, wherein petitioners filed their claim for money damages against respondent, and the Court of Appeals for the Seventh Circuit, which affirmed the District Court's order setting off respondent's claim against petitioners, acted within the permissible limits of their discretion. The statute most closely in point is § 68 of the Bankruptcy Act, 11 U. S. C. § 108, which provides:

"(a) In all cases of mutual debts or mutual credits between the estate of a bankrupt and a creditor the account shall be stated and one debt shall be set off against the other, and the balance only shall be allowed or paid."

In the only case of this Court dealing with the applicability of § 68 to railroad reorganizations, the Court said:

"... [T]he trustees must have the power to gather in the assets and keep the business going. To exercise that power, they may find it necessary to sue, and the suit may turn upon the right of set-off, as it does in the case at hand. In a suit for such a purpose, a suit collateral to the main proceeding and

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-804

5/28
6/10

George P. Baker et al., On Writ of Certiorari to the
Petitioners, United States Court of
v. Appeals for the Seventh
Gold Seal Liquors, Inc. Circuit.

[June —, 1974]

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