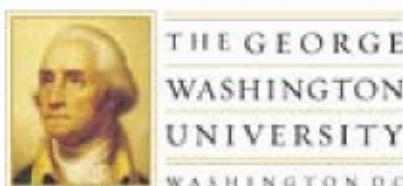


The Burger Court Opinion Writing Database

North Georgia Finishing, Inc. v. Di-Chem, Inc.

419 U.S. 601 (1975)

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

January 17, 1975

Re: No. 73-1121 - North Georgia Finishing, Inc. v. Di-Chem

Dear Harry:

Will you please note at the bottom of your dissent
the following:

"MR. CHIEF JUSTICE BURGER dissents
for the reasons stated in paragraph 5 of the
opinion of MR. JUSTICE BLACKMUN."

Regards,

WB

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

December 19, 1974

Dear Byron:

Please join me in your opinion
in 73-1121, NORTH GEORGIA FINISHING v.
DI-CHEM, INC.

WOD/Sandra

William O. Douglas

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

December 19, 1974

RE: No. 73-1121 North Georgia Finishing v. Di-Chem, Inc.

Dear Byron:

I agree.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 19, 1974

Re: No. 73-1121, No. Georgia Finishing, Inc.
v. Di-Chem, Inc.

Dear Byron,

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

Sincerely yours,

P.S.

Mr. Justice White

Copies to the Conference

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

FILED: Stewart, J.

No. 73-1121

Circulated: JAN 17 1975

Recirculated: _____

North Georgia Finishing,
Inc., Petitioner, } On Writ of Certiorari to the
 v. } Supreme Court of Georgia.
Di-Chem, Inc.

[January —, 1975]

MR. JUSTICE STEWART, concurring in the judgment and opinion of the Court.

It is gratifying to note that my report of the demise of *Fuentes v. Shevin*, 407 U. S. 67, see *Mitchell v. W. T. Grant Co.*, 416 U. S. 600, 629-636, seems to have been greatly exaggerated. Cf. S. Clemens, Cable from Europe to the Associated Press, reprinted in II A. Paine, *Mark Twain: A Biography* 1039 (1912).

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

From: White, J.

1st DRAFT

Circulated: 12-19-74

Rec'd/circulated: _____

No. 73-1121

North Georgia Finishing,
Inc., Petitioner, } On Writ of Certiorari to the
v. } Supreme Court of Georgia.
Di-Chem, Inc.

[December —, 1974]

MR. JUSTICE WHITE delivered the opinion of the Court.

Under the statutes of the State of Georgia, plaintiffs in pending suits "are entitled to the process of garnishment." Ga. Code Ann. § 46-101.¹ To employ the

¹ The relevant provisions of the Georgia Code Annotated are as follows:

§ 46-101

"Right to writ; wages exempt until after final judgment—In cases where suit shall be pending, or where judgment shall have been obtained, the plaintiff shall be entitled to the process of garnishment under the following regulations: Provided, however, no garnishment shall issue against the daily, weekly, or monthly wages of any person residing in this State: Provided, further, that the wages of a share cropper shall also be exempt from garnishment until after final judgment shall have been had against said share cropper: Provided, further, that nothing in this section shall be construed as abridging the right of garnishment in attachment before judgment is obtained. (Act 1882, Cobb, 77. Acts 1855-6, page 36; 1933, page 35; 1952, page 153.)"

§ 46-102

"Affidavit; necessity and contents. Bond—The plaintiff, his agent, or attorney at law shall make affidavit before some officer authorized to issue an attachment, or the clerk of any court of record in which the said garnishment is being filed or in which the main case is filed, stating the amount claimed to be due in such

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 30, 1974

Re: No. 73-1121 -- North Georgia Finishing, Inc. v. Di-Chem, Inc.

Dear Byron:

Please join me.

Sincerely,



T. M.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 20, 1974

Re: No. 73-1121 - North Georgia Finishing, Inc.
v. Di-Chem, Inc.

Dear Byron:

I shall probably prepare a dissent in this case in
due course.

Sincerely,



Mr. Justice White

cc: The Conference

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1121

Circulated: 1/9/75

Recirculated: _____

North Georgia Finishing,
Inc., Petitioner, }
v. Di-Chem, Inc. } On Writ of Certiorari to the
Supreme Court of Georgia,

[January —, 1975]

MR. JUSTICE BLACKMUN, dissenting.

The Court once again—for the third time in less than three years—struggles with what it regards as the due process aspects of a State's old and long-unattacked commercial statutes designed to afford a way for relief to a creditor against a delinquent debtor. On this third occasion, the Court, it seems to me, does little more than make very general and very sparse comparisons of the present case with *Fuentes v. Shevin*, 407 U. S. 67 (1972), on the one hand, and with *Mitchell v. W. T. Grant Co.*, 416 U. S. 600 (1974), on the other; concludes that this case resembles *Fuentes* more than it does *Mitchell*; and then strikes down the Georgia statutory structure as offensive of due process. One gains the impression, particularly from the final paragraph of its opinion, that the Court is endeavoring to say as little as possible in explaining just why the Supreme Court of Georgia is being reversed. And as a result, the corresponding commercial statutes of all other States, similar to but not exactly like those of Florida or Pennsylvania or Louisiana or Georgia, are left in questionable constitutional status, with little or no applicable standard by which to measure and determine their validity under the Fourteenth Amendment. This, it seems to me, is an undesirable state of affairs, and I dissent. I do so for a number of reasons:

pp 14,517
To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1121

From: Blackmun, J.

Circulated: _____

Recirculated: 1/17/75

North Georgia Finishing,
Inc., Petitioner, } On Writ of Certiorari to the
v. } Supreme Court of Georgia.
Di-Chem, Inc.

[January 22, 1975]

MR. JUSTICE BLACKMUN, with whom MR. JUSTICE REHNQUIST joins, dissenting.

The Court once again—for the third time in less than three years—struggles with what it regards as the due process aspects of a State's old and long-unattacked commercial statutes designed to afford a way for relief to a creditor against a delinquent debtor. On this third occasion, the Court, it seems to me, does little more than make very general and very sparse comparisons of the present case with *Fuentes v. Shevin*, 407 U. S. 67 (1972), on the one hand, and with *Mitchell v. W. T. Grant Co.*, 416 U. S. 600 (1974), on the other; concludes that this case resembles *Fuentes* more than it does *Mitchell*; and then strikes down the Georgia statutory structure as offensive of due process. One gains the impression, particularly from the final paragraph of its opinion, that the Court is endeavoring to say as little as possible in explaining just why the Supreme Court of Georgia is being reversed. And, as a result, the corresponding commercial statutes of all other States, similar to but not exactly like those of Florida or Pennsylvania or Louisiana or Georgia, are left in questionable constitutional status, with little or no applicable standard by which to measure and determine their validity under the Fourteenth Amendment. This, it seems to me, is an undesirable state of affairs, and I dissent. I do so for a number of reasons:

✓
Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 27, 1974

No. 73-1121 North Georgia v. Di-Chem

Dear Byron:

I will concur in the reversal, but now plan to write a concurring opinion addressed more narrowly - as I view it - to the infirmity in the Georgia statutes.

Sincerely,

L. E. C. (Signature)

Mr. Justice White

lfp/ss

cc: The Conference

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Powell, J.

No. 73-1121

Circulated: JAN 9 1975

North Georgia Finishing, Inc., Petitioner,
v.
Di-Chem, Inc. } On Writ of Certiorari to the
Supreme Court of Georgia.

Received at: _____

Jan 9 1975

[January —, 1975]

MR. JUSTICE POWELL, concurring in the judgment.

I join in the Court's judgment, but I cannot concur in the opinion as I think it sweeps more broadly than is necessary and appears to resuscitate *Fuentes v. Shevin*, 407 U. S. 67 (1972). Only last term in *Mitchell v. W. T. Grant*, 416 U. S. 600 (1974), the Court significantly narrowed the precedential scope of *Fuentes*. In my concurrence in *Mitchell*, I noted:

"The Court's decision today withdraws significantly from the full reach of [*Fuentes*'] principle, and to this extent I think it fair to say that the *Fuentes* opinion is overruled." 416 U. S., at 623 (POWELL, J., concurring).

Three dissenting Justices, including the author of *Fuentes*, went further in their description of the impact of *Mitchell*:

"[T]he Court today has unmistakably overruled a considered decision of this Court that is barely two years old, without pointing to any change . . . that might justify this total disregard of *stare decisis*." *Id.*, at 629, 635 (STEWART, J., dissenting).

The Court's opinion in this case, relying substantially on *Fuentes*, suggests that that decision will again be read as calling into question much of the previously settled law

N.M. - Dwyer
Oct 74

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 9, 1975

Re: No. 73-1121 - North Georgia Finishing v. Di-Chem

Dear Harry:

Please join me in your dissenting opinion in this case.

Sincerely,

WW

Mr. Justice Blackmun

Copies to the Conference