

The Burger Court Opinion Writing Database

Carey v. Sugar

425 U.S. 73 (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
THE CHIEF JUSTICE

March 18, 1976

Re: 74-858 - Carey v. Sugar
74-859 - Curtis Circulation v. Sugar

Dear Byron:

I join your Per Curiam dated March 3.

Regards,

LOB B

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 8, 1976

RE: Nos. 74-858 and 74-859 Carey and Curtis Circulation
et al. v. Bert Randolph Sugar and Wrestling Revue, Inc.

Dear Byron:

I agree with the Per Curiam you have prepared in the
above.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 4, 1976

Nos. 74-858 and 74-859
Carey v. Sugar

Dear Byron,

I am glad to join your proposed
Per Curiam and see no reason why it
should not be a signed opinion.

Sincerely yours,

P.S.
✓

Mr. Justice White

Copies to the Conference

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 ✓ Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice Stevens

From: Mr. Justice White

Circulated: 3-3-76

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 74-858 AND 74-859

Hugh L. Carey, Governor of
 the State of New York,
 et al., Appellants,
 74-858 v.

Bert Randolph Sugar and
 Wrestling Revue, Inc.

Curtis Circulation Company
 and Continental Casualty
 Company, Appellants,
 74-859 v.

Bert Randolph Sugar and
 Wrestling Revue, Inc.

On Appeals from the United
 States District Court for
 the Southern District of
 New York.

[March —, 1976]

PER CURIAM.

This is an appeal from the judgment of a three-judge federal court declaring unconstitutional and enjoining the enforcement of certain statutes of the State of New York which provide for prejudgment attachment of a defendant's assets. On April 13, 1973, appellant Curtis Circulation Co. (Curtis) filed a suit against appellees Sugar, Wrestling Revue, Inc. (Wrestling), and Champion Sports Publications, Inc. (Champion), in a New York state court. The complaint alleged that Curtis had advanced over \$100,000—of which \$28,588.08 remained unpaid—to Champion under a contract with Champion pursuant to which Champion had agreed to permit Curtis to market certain identified sports magazines. It fur-

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 ✓ Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice Stevens

From: Mr. Justice White

Circulated: _____

Recirculated: 3-14-76

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 74-858 AND 74-859

Hugh L. Carey, Governor of
 the State of New York,
 et al., Appellants,
 74-858 v.

Bert Randolph Sugar and
 Wrestling Revue, Inc.

Curtis Circulation Company
 and Continental Casualty
 Company, Appellants,
 74-859 v.

Bert Randolph Sugar and
 Wrestling Revue, Inc.

On Appeals from the United
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 the Southern District of
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[March —, 1976]

PER CURIAM.

This is an appeal from the judgment of a three-judge federal court declaring unconstitutional and enjoining the enforcement of certain statutes of the State of New York which provide for prejudgment attachment of a defendant's assets. On April 13, 1973, appellant Curtis Circulation Co. (Curtis) filed a suit against appellees Sugar, Wrestling Revue, Inc. (Wrestling), and Champion Sports Publications, Inc. (Champion), in a New York state court. The complaint alleged that Curtis had advanced over \$100,000—of which \$28,588.08 remained unpaid—to Champion under a contract with Champion pursuant to which Champion had agreed to permit Curtis to market certain identified sports magazines. It fur-

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 13, 1976

MEMORANDUM TO THE CONFERENCE

Re: Case held for Carey v. Sugar -- No. 74-858
and Curtis v. Sugar -- No. 74-859

Maxwell v. Hixson -- No. 74-5887

This is an appeal from a three-judge court decision sustaining the constitutionality of a Tennessee pre-judgment wage-garnishment statute against a claim that it failed to provide for notice and a hearing prior to the garnishment. The statute permits wage garnishments, as a means of obtaining in rem jurisdiction where efforts to obtain in personam jurisdiction over a defendant fail. Garnishment is permitted for this purpose whenever the sheriff has made a return on the summons indicating that the defendant is "not to be found" in the county. The garnishment may be vacated only if (1) the defendant can show that the "not to be found" return was false; or (2) the defendant posts a bond. It may be that the garnishment is vacated if the defendant makes a general appearance in the lawsuit. Tenn. Code Ann. § 23-648 provides that if the defendant makes a general appearance the case proceeds as though begun by personal service. Perhaps the garnishment would thus disappear, since its only purpose was to secure jurisdiction. Neither state cases nor the opinion below shed any light on this question, however.

This case arose out of the garnishment of appellants' wages by plaintiffs with small claims against them after the sheriff attempted several times without success to serve process on appellants at their places of employment.

The attack on the statutes was cast, and is cast here, entirely in terms of their failure to provide for pre-garnishment notice and a hearing; and appellants relied on Fuentes v. Shevin, 407 U.S. 67, and Sniadach v. Family Finance Corp.,

395 U.S. 337. In upholding the statute against this attack, the court below relied on Ownbey v. Morgan, 256 U.S. 94, which sustained pre-judgment attachment for purposes of obtaining jurisdiction, and whose continuing authority was approved in Fuentes v. Shevin, supra. It also relied on Mitchell v. Grant, 416 U.S. 600. The decision seems inconsistent with that of another three-judge federal court in Reeves v. Motor Contract Company of Georgia, 324 F. Supp. 1011 (N.D. Ga. 1971), requiring pre-attachment notice and hearing.

Since our decision in Carey v. Sugar went off on abstention grounds, it sheds no light on the issues presented in this case. It seems to me, however, that it is difficult to give notice and a hearing to one who cannot be found in the county. Moreover, Mitchell v. Grant and Ownbey v. Morgan read together would seem to permit a state to dispense with a pre-garnishment hearing so long as a prompt opportunity to vacate it is afforded afterwards. Thus the only claim made below or here -- that a pre-garnishment notice and hearing were required -- was properly rejected. I will vote to affirm.

Sincerely,

Byrne

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 8, 1976

Re: Nos. 74-858 and 74-859, Carey v. Sugar

Dear Byron:

I agree with your Per Curiam in this case.

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

March 4, 1976

Re: No. 74-858 - Carey v. Bert Randolph Sugar and
Wrestling Revue, Inc.
No. 74-859 - Curtis Circulation Co. v. Bert Randolph
Sugar & Wrestling Revue, Inc.

Dear Byron:

Please join me in your proposed per curiam.

Sincerely,



Mr. Justice White

cc: The Conference

April 1, 1976

Re: No. 74-858 - Carey v. Sugar
No. 74-859 - Curtis Circulation Co. v. Sugar

Dear Byron:

Bill Gunter seems mildly disgruntled. Shall we take
him on?

Sincerely,

HAB

Mr. Justice White

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 5, 1976

No. 74-858 Carey v. Bert Randolph Sugar
No. 74-859 Curtis v. Bert Randolph Sugar

Dear Byron:

Please join me in your Per Curiam.

Sincerely,

Lewis

Mr. Justice White

lfp/ss

cc: The Conference_____

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 8, 1976

Re: Nos. 74-858 and 74-859 - Cary and Curtis
Circulation v. Randolph Sugar and Wrestling Revue

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 4, 1976

Re: 74-858 - Carey v. Bert Randolph Sugar
and Wrestling Revue, Inc.

74-859 - Curtis Circulation Co. v. Bert
Randolph Sugar & Wrestling Revue, Inc.

Dear Byron:

Please join me.

Respectfully,



Mr. Justice White

Copies to the Conference