The Burger Court Opinion Writing Database

Vendo Co. v. Lektro-Vend Corp.

433 U.S. 623 (1977)

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 21, 1977

PERSONAL

Re: 76-156 - Vendo Co. v. Lektro-Vend Corp., et al.

Dear Bill:

After our discussion on this case, I proceeded to develop my views in a private memorandum to you.

Before it was typed up today, Harry's concurring opinion came around. It has the same thrust as my ideas on the case.

As of now, I see no reason to add to the "paper chase", and possibly, with some mild suggestions to Harry, I could join him.

Regards,

Mr. Justice Rehnquist

bc: Mr. Justice Blackmun

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

CHAMBERS OF
THE CHIEF JUSTICE

76-156

June 21, 1977

Dear Harry:

My memo of June 20, third line, has a "typo"; the "IX" should have been VIII.

Regards,

WEB

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

June 21, 1977

Re: 76-156 Vendo Co. v. Lektro-Vend Corp.

Dear Bill:

Subject to what emerges in further writing, I will join the judgment.

Regards,

WEB

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

June 27, 1977

RE: 76-156 - Vendo Co. v. Lektro-Vend Corp., et al.

Dear Harry:

For clarification, you may show me as joining in your opinion concurring in the result.

Regards,

WEB

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 2, 1977

RE: No. 76-156 Vendo Co. v. Lektro-Vend Corp. et al.

Dear John:

Please join me in your fine dissent in the above.

Sincerely,

Bill

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 1, 1977

76-156 - Vendo v. Lektro-Vend

Dear Bill,

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

Sincerely yours,

P.S.

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 1, 1977

Re: No. 76-156 - Vendo Co. v. Lektro-Vend Corp.

Dear John:

I would appreciate your adding my name to your dissent in this case.

Sincerely,

Byron

Mr. Justice Stevens

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 2, 1977

Re: No. 76-156 - Vendo Co. v. Lektro-Vend Corp.

Dear John:

Please join me.

Sincerely,

T.M.

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 11, 1977

Re: No. 76-156 - Vendo Co. v. Lektro-Vend Corp.

Dear Bill:

As you know from the vote at the conference, I am on the side to reverse the Seventh Circuit in this case. I am generally with you in your proposed opinion, but there is one aspect which gives me concern.

The critical paragraph is the one beginning on page 9 of the circulation of March 31, particularly the 3rd, 4th, and 5th sentences. My concern centers in the failure of the opinion to discuss the problem of the use of state court proceedings as an anticompetitive device. Two recent cases here focus on this. They are California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508 (1972), and Otter Tail Power Co. v. United States, 410 U.S. 366 (1973). Each seems to recognize that in narrow circumstances the use of state judicial proceedings might well be an anticompetitive device in itself. Perhaps by your reference in the Vendo draft to "not high on the list" you implicitly acknowledge this possibility. A holding, however, that § 16 is never an expressly authorized exception to § 2283 would certainly cut back on the two cases. I think that § 16 is different, in this limited extent, from other federal statutes authorizing injunctive relief (some catalogued in your note 6), because of the California Motor and Otter Tail vexatious litigation theory. Putting it another way, I think those two cases must be faced up to in Vendo.

Having said this, I firmly believe that the Vendo case does not fall within any exception that § 16 may authorize. It certainly does not present the kind of bad faith and harassing use of the state courts that was present in California Motor and that is referred to in Otter Tail.

On the enclosure I set forth six proposed changes in your opinion. I believe these would alleviate my concern. Please let me have your reaction. If the changes are acceptable to you, I, of course, shall join your opinion. If not, I shall probably write separately.

Inasmuch as Potter and Lewis have already joined your opinion, I am taking the liberty of sending them copies of this letter and of the enclosure.

Sincerely,

HAB.

Mr. Justice Rehnquist

cc: Mr. Justice Stewart
Mr. Justice Powell ✓

No. 76-156 - Vendo Company v. Lektro-Vend Corporation

HAB's suggested changes:

second paragraph,

1. On page 8,/second line, is a semicolon. I would replace that semicolon with "in the context of this case; as applied here,".

2. On the 6th line of that paragraph, I would omit the word "wholly."

3. I would replace the last line of the same paragraph with the following: "section does not always meet this aspect of the Mitchum test. But see California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508 (1972); Otter Tail Power Co. v. United States, 410 U.S. 366 (1973)."

4. I would propose a new footnote at that point to read as follows:

> "In a case where vexatious and harassing use of state judicial proceedings is itself being employed as an anticompetitive device, different considerations would apply. See California Motor Transport Co. v. Trucking Unlimited, supra, and Otter Tail Power Power Co. v. United States, supra. In that narrow situation, which is not before us now, § 16 might qualify as an 'expressly authorized' exception to § 2283. We reserve judgment on that issue for another day."

5. In the paragraph beginning on page 9, I would replace the 3rd sentence and the material through the 13th line with the following:

> "As a general proposition, no one suggests that Congress was concerned with the possibility that state court proceedings would be used to violate the Sherman or Clayton Acts. It did intend, however, to provide a broad and flexible remedy for all manner of anticompetitive schemes. See, e.g., Standard Oil Co. v. United States, 221 U.S. 1, 60 (1911). Of the many and varied anticompetitive schemes that § 16 was intended to combat, the Court has recognized that a scheme using litigation in the state courts may constitute, in certain narrow circumstances, a violation of the antitrust laws. See California Motor Transport Co. v. Trucking Unlimited, supra; Otter Tail Power Co. v. United States, supra. This case, in our opinion, does not come within that

exception. In all other contexts, the relevant legislative history of § 16 simply suggests . . . ."

6. On page 13, the concluding sentence of part III would be modified along the following lines:

"Section 16 of the Clayton Act, which generally does not by its very essence contemplate or envision any necessary interaction with state judicial proceedings, is not such an act in a case not involving use of the state courts as an anticompetitive device."

May 25, 1977

Re: No. 75-156 - Vendo Co. v. Lektro-Vend Corp.

Dear Bill:

Despite the passage of time, I have not forgotten about this pending case. I have decided that it would be well for me to wait to see what John comes up with in the dissent he promised in his note to you of April 4.

In the meantime, I take it that we are in agreement that any opinion in this case should at least make reference to, and recognize, California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508 (1972), and Otter Tail Power Co. v. United States, 410 U.S. 366 (1973). As I read your letter of April 12, however, you apparently feel strongly that those cases stand for the proposition that only future state proceedings might be enjoined. I am troubled about this limitation and for the time being, at least, have concluded that I cannot join it.

I'll continue to wait for John and take it from there. I do not understand what the long delay is.

Sincerely,

HAB

Mr. Justice Rehnquist

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 20, 1977

MEMORANDUM TO THE CONFERENCE

Re: No. 76-156 - Vendo Co. v. Lektro-Vend Corp.

I mentioned this morning the possibility of setting this case over for reargument. Perhaps I should expand on my reasons for this suggestion. In my view, the case is an extremely complicated one that should not be decided in the customary heat of the end-of-the-Term pressure. Although I am ready to take a position, I am not comfortable with regard to the issue whether § 16 is ever an "expressly authorized" exception to the Anti-Injunction Act, or, even if it is, whether the injunction in this case should have issued. I agree with Bill Rehnquist's suggestion in his circulation of June 6 that if John's view of § 2283 prevails, then we must reach the issue whether Younger and Huffman bar the injunction. It is this point that argues most strongly for setting the case over, in my opinion.

Up until now, no case has held that Younger principles apply to purely private civil proceedings, to which the State is not a party or otherwise directly involved. That is the issue that would be presented by this case, and, in my view, it should not be resolved without full consideration. The parties gave very little attention to the Younger issue in their briefs, apparently because they believed that the Anti-Injunction Act issue was paramount. (The lower courts did consider the issue, however, which prevents a remand for reconsideration in light of this Term's abstention cases.) The three cases decided this Term that bear on abstention -- Juidice, Trainor, and Hodory -- perhaps have clarified the doctrine significantly. If the parties were asked to brief the question whether the principles of comity and federalism set out in Younger v. Harris, Huffman v. Pursue, Ltd., and succeeding cases, govern purely private civil proceedings, it would be possible to give this issue the attention it deserves.

Since, in my opinion, the Anti-Injunction Act issue is close enough that it may well be necessary to reach the Younger issue, and since the Younger issue may have been affected substantially by this Term's cases, I prefer to set the case for reargument. We have not put any other cases over, and it seems to me that this one merits further consideration.

HAB.

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

From: Mr. Justice Blackmun

Circulated: JUN 21 1977

Recirculated: _____

No. 76-156 - Vendo Co. v. Lektro-Vend Corp.

MR. JUSTICE BLACKMUN, concurring in the result.

Although I agree that the decision of the Court of Appeals should be reversed, I do so for reasons that differ significantly from those expressed by the plurality. According to the plurality's analysis, § 16 of the Clayton Act, 15 U.S.C. § 26, is not an expressly authorized exception to the Anti-Injunction Act, 28 U.S.C. § 2283, because it is not "an 'Act of Congress [which] could be given its intended scope only by the stay of a state court proceeding,' [Mitchum v. Foster, 407 U.S. 225, 238 (1972)]." Ante, at 9. I do not agree that this is invariably the case; since I am of the opinion, however, that the state court proceeding in this case should not have been enjoined by the federal court, I concur in the result.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 22, 1977

MEMORANDUM TO THE CONFERENCE

Re: No. 76-156 - Vendo Co. v. Lektro-Vend Corp.

I am adding the following footnote in my brief concurring opinion, to appear following the citation to California Motor Transport Co. on the sixth line of page 2 of the typed version.

*/ I cannot agree with MR. JUSTICE STEVENS that the examples given in the quoted portion of California Motor Transport Co. v. Trucking Unlimited, post, necessarily involve the use of the adjudicatory process in the same way that the state courts were being used in this case. For example, there is no reason to believe that the Court's reference to the use of a patent obtained by fraud to exclude a competitor contemplated only one lawsuit. The case cited in connection with that reference, Walker Process Equipment, Inc. v. Food Machinery & Chemical Corp., 382 U.S. 172 (1965), held only that the enforcement of a patent procured by fraud on the Patent Office could state a claim under § 2 of the Sherman Act, where the monopolistic acts alleged included use of the fraudulent patent through a course of action involving both threats of suit and prosecution of an infringement suit.

MR. JUSTICE STEVENS' quote from California Motor Transport stops just short of the language that I consider critical to the instant case: The Court's opinion continues:

> . . . Misrepresentations, condoned in the political arena, are not immunized when used in the adjudicatory process. Opponents before agencies or courts often think poorly of the other's tactics, motions, or defenses and may readily call them baseless. One claim, which a court or agency may think baseless, may go unnoticed; but a pattern of baseless, repetitive claims may emerge which leads the factfinder to conclude that the administrative and judicial processes have been abused. That may be a difficult line to discern and draw. 404 U.S., at 513.

Since I believe that federal courts should be hesitant indeed to enjoin on-going state court proceedings, I am of the opinion that a pattern of baseless, repetitive claims or some equivalent showing of grave abuse of the state courts must exist before an injunction would be proper. No such finding was made by the district court in this case.

WES.

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

From: Mr. Justice Blackmun

Circulated: _____

Recirculated: JUN 23 1977

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76–156

Vendo Company, Petitioner, *v.* Lektro-Vend Corporation et al. } On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[June —, 1977]

MR. JUSTICE BLACKMUN, concurring in the result.

Although I agree that the decision of the Court of Appeals should be reversed, I do so for reasons that differ significantly from those expressed by the plurality. According to the plurality's analysis, § 16 of the Clayton Act, 15 U. S. C. § 26, is not an expressly authorized exception to the Anti-Injunction Act, 28 U. S. C. § 2283, because it is not "an 'Act of Congress [which] could be given its intended scope only by the stay of a state court proceeding,' [*Mitchum* v. *Foster*, 407 U. S. 225, 238 (1972)]." *Ante*, at 9. I do not agree that this is invariably the case; since I am of the opinion, however, that the state-court proceeding in this case should not have been enjoined by the federal court, I concur in the result.

In my opinion, application of the *Mitchum* test for deciding whether a statute is an "expressly authorized" exception to the Anti-Injunction Act shows that § 16 is such an exception under narrowly limited circumstances. Nevertheless, consistently with the decision in *California Motor Transport Co.* v. *Trucking Unlimited*, 404 U. S. 508 (1972),* I would hold

*I cannot agree with MR. JUSTICE STEVENS that the examples given in the quoted portion of *California Motor Transport Co.* v. *Trucking Unlimited*, *post*, necessarily involve the use of the adjudicatory process in the same way that the state courts were being used in this case. For example, there is no reason to believe that the Court's reference to the use of a patent obtained by fraud to exclude a competitor contemplated only one lawsuit. The case cited in connection with that reference,

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 1, 1977

No. 76-156 Vendo v. Lektro-Vend

Dear Bill:

Please join me.

Sincerely,

L. Lewis

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 21, 1977

No. 76-156 Vendo Co. v. Lektro Vend Corp.

MEMORANDUM TO THE CONFERENCE:

As I will not be here for the Conference on Thursday, I write to comment on Harry's suggestion that it might be advisable to carry the above case over for reargument.

Although the rebuttals and surrebuttals in this case may establish a record for this Term, I am still with Bill Rehnquist. I foresee no likelihood that my view as to the applicability of § 2283 will change. I thought Mitchum stretched the law a bit to create an exception to § 2283. If we were now to except antitrust cases, it could be quite difficult to draw the line anywhere.

Having this view of the case, I do not reach the Younger and Huffman issue. In short, if Bill Rehnquist holds his Court (according to my Conference notes) I would prefer to dispose of this case. If there is no Court for a § 2283 resolution, that would present a different situation that probably would require reargument.

L.F.P.

L.F.P., Jr.

ss

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice [illegible]

From: Mr. Justice [illegible]

Circulated: [illegible] 1977

Recirculated: [illegible]

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-156

Vendo Company, Petitioner, *v.* Lektro-Vend Corporation et al. | On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[April —, 1977]

Wait for [illegible]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

I

After nine years of litigation in the Illinois state courts, the Supreme Court of Illinois affirmed a judgment in favor of petitioner and against respondent in the amount of $7,363,500. Shortly afterwards the United States District Court for the Northern District of Illinois enjoined, at the behest of respondent, state proceedings to collect the judgment. The order of the United States District Court was affirmed by the Court of Appeals of the Seventh Circuit, and we granted certiorari to consider the important question of the relationship between state and federal courts which such an injunction raises. We hold that the injunction violates the Anti-Injunction Act, 28 U. S. C. § 2283, and therefore we reverse the judgment of the Court of Appeals.

II

The Illinois state court litigation arose out of commercial dealings between petitioner and respondents. In 1959 petitioner Vendo Company, a vending machine manufacturer located in Kansas City, Mo., acquired most of the assets of Stoner Manufacturing, which was thereupon reorganized as respondent Stoner Investment, Inc. Respondent Harry H. Stoner and members of his family owned all of the stock of

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 12, 1977

Re: No. 76-156 - Vendo Co. v. Lektro-Vend Corp.

Dear Harry:

Thank you for your letter of April 11th, proposing changes in my circulating opinion in Vendo. Since you took the trouble to write out your thoughts and suggest specific changes, I thought I would give you a written reply before talking with you about your suggestions. My overall reaction is that you are undoubtedly correct in faulting us for not discussing California Motor Transport Co. and Otter Tail, and I will be happy to remedy that defect by explicitly reaffirming their holdings. If I were to incorporate several of your other proposed changes

in the presently circulating opinion, however, I think that they would be difficult to reconcile with its present structure.

As I read California Motor Transport, no issue was raised in this Court as to the availability of an injunction against pending state court proceedings; the issue was whether, after what the Court had said about the First Amendment in Noerr and Pennington, the use of litigation could ever constitute an antitrust violation. Actually, as you indicate in your letter, the Court in that case held that state court proceedings could be a part of an anti-competitive scheme or conspiracy. I see nothing in the Vendo opinion that cuts back on that holding that improper use of state court litigation may violate the antitrust laws.

The question which my circulating opinion attempts to resolve is the "tension" between the general language in the Clayton Act authorizing injunctive relief for private antitrust plaintiffs, and the language of 28 U.S.C. § 2283

which bars a federal court from issuing an injunction against "proceedings in a state court" unless the injunction is "expressly authorized". The result I reach, and for which I thought the Conference voted, is that § 16 of the Clayton Act was not an "expressly authorized" exception. I believe that this result is quite consistent with Otter Tail, although I also cheerfully acknowledge that Otter Tail deserves more exposition than it received in the present opinion.

Otter Tail, as you know, involved asserted use of state court litigation (as opposed to the administrative forums discussed in CMT) as an anti-competitive device. In that case the District Court (one of your Minnesota friends) enjoined Otter Tail from "instituting, supporting, or engaging in litigation, directly or indirectly, against cities and towns, and officials thereof, which have noted to establish municipal electric power systems . . . ." See Appendix E to J.S. at A-115. I do not read this rather general language to mean that the latter court had enjoined Otter Tail from participating in then pending state proceedings, but only

that the injunction was to prohibit such conduct in the future. The briefs and District Court opinion support this view. For example, the Solicitor General's discussion of the litigation brought by Otter Tail indicates that the litigation had ended:

> "In summary, Otter Tail instituted or supported seven suits in four towns, of which five were carried to the highest state courts. All of the suits were unsuccessful on the merits (with the partial exception of the trial court's ruling in the Aurora suit that the town could not buy its own bonds); all of the suits resulted in substantial delays in the establishment of municipal power systems." Brief for United States, at 27. See also pp. 21-27.

On this point, Otter Tail appealed to this Court, and Bill's opinion, 410 U.S. 379-380, vacated and remanded for reconsideration in the light of California Motor Transport.

Looking at the proceedings in the District Court and here as objectively as possible, I do not think that Otter Tail can be said to militate against the analysis in my circulating opinion since the issue was there, as it was in California Motor Transport, the existence vel non of an antitrust claim, rather than whether on-going state litigation could be enjoined.

By the same token, the Vendo opinion is not meant to suggest that respondents have not stated an antitrust claim or that the District Court could not enjoin petitioner from filing or commencing any additional litigation in furtherance of its alleged anti-competitive scheme. It seems to me that this is the line that § 2283 was intended to draw unless § 16 was within the "expressly authorized" exception.

Having said this, however, I can nonetheless see the force of the intimation in the second paragraph of your letter that my comment that anti-competitive schemes involving state judicial proceedings were not "high on the list" could be thought to case some doubt on California Motor Transport and Otter Tail. I would be more than willing to rephrase that language, or to put in the text an express recognition of the fact that this Court has held that state judicial proceedings can be part of such anti-competitive schemes.

But I think this proposition is in no way inconsistent with my view that § 2283 prohibits a federal court from enjoining pending proceedings of that nature because § 16 is not an "expressly authorized" exception. In addition

to the fact that the "other" exceptions to § 2283 all directly focus upon state court litigation, either by their language or legislative history, see opinion at 12-13, the basis for my reasoning along this line is contained in pages 10-12 of the circulating opinion.

I will be frank to say that Mike Eagan, my law clerk who worked with me on this case, and I must have drafted and redrafted this part of the opinion five or six times, and we were not entirely satisfied with it when we finished. I think its purport is easily stated: If one is to say that § 2283 does not bar relief against pending state court proceedings where those proceedings themselves are being used to "frustrate" the federal policy underlying the injunctive statute, then § 2283 adds absolutely nothing to the law already on the books. For a federal court presumably would not, entirely apart from § 2283, enjoin a state court proceeding unless the proceeding were tied in with the violation. The only way I can see out of this dilemma is to

say that § 16 is an "expressly authorized" exception for a particularly egregious use of state court proceedings in an anti-competitive scheme, but not in a run of the mill actionable situation: but I think that such a case by case balancing approach would be a judicial improvisation on the legislative scheme of § 2283 to which I would have difficulty subscribing.

To summarize what has already been too long a response, I will gladly put in the opinion anything you want to reaffirm the continuing validity of California Motor Transport and Otter Tail Power, and also to make it crystal clear that those who have in the past participated in vexatious litigation as part of an anti-competitive scheme may be enjoined from commencing any such proceedings in the future. I think to go further than this, and to say that § 16 permits the enjoining of pending proceedings if they are sufficiently vexatious, would be to rewrite § 2283 almost beyond recognition.

Having said this, I hasten to add that since you are the fifth vote to reverse, and since I would like to come out with a Court opinion, I would very much like to talk

with you about any remaining points of difference, and see if we could not iron them out in a manner satisfactory to both of us.

Sincerely,

Mr. Justice Blackmun

Copies to: Mr. Justice Stewart

Mr. Justice Powell

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 3, 1977

MEMORANDUM TO THE CONFERENCE

Re: No. 75-156 - Vendo Co. v. Lektro-Vend Corp.

Enclosed are a series of footnotes and a couple of textual changes which I have sent to the printer by way of replying to John Stevens' dissent from my presently circulating opinion in this case.

Sincerely,

WHR

Enclosures

12
Page 9 plus footnotes 5, 6, 7, 8, 10, 11, 13

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

From: Mr. Justice Rehnquist

Circulated: JUN 6 1977

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-156

Vendo Company, Petitioner, *v.* Lektro-Vend Corporation et al. } On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[June —, 1977]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

I

After nine years of litigation in the Illinois state courts, the Supreme Court of Illinois affirmed a judgment in favor of petitioner and against respondent in the amount of $7,363,500. Shortly afterwards the United States District Court for the Northern District of Illinois enjoined, at the behest of respondent, state proceedings to collect the judgment. The order of the United States District Court was affirmed by the Court of Appeals of the Seventh Circuit, and we granted certiorari to consider the important question of the relationship between state and federal courts which such an injunction raises. We hold that the injunction violates the Anti-Injunction Act, 28 U. S. C. § 2283, and therefore we reverse the judgment of the Court of Appeals.

II

The Illinois state court litigation arose out of commercial dealings between petitioner and respondents. In 1959 petitioner Vendo Company, a vending machine manufacturer located in Kansas City, Mo., acquired most of the assets of Stoner Manufacturing, which was thereupon reorganized as respondent Stoner Investment, Inc. Respondent Harry H. Stoner and members of his family owned all of the stock of

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 14, 1977

Re: No. 76-156 - Vendo Co. v. Lektro-Vend Corp.

Dear John:

In view of the extensive rewriting of your dissent, I will have to make changes in my circulating opinion. I will hope to have them sent around in Xerox form by the end of the week.

Sincerely,

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 17, 1977

MEMORANDUM TO THE CONFERENCE

Re: No. 76-156 Vendo Company v. Lektro-Vend Corporation

In response to the changes John has made to his dissent, I have sent to the printer the attached revisions of footnotes 10, 12, and 13. Footnotes 5, 6, 7, and 8 are deleted.

Sincerely,

WHR

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 21, 1977

Re: No. 76-156 - Vendo Co. v. Lektro-Vend

Dear John:

I anticipate making no substantive response either to the second draft of your dissenting opinion, circulated June 20th, or to Harry's separate opinion, concurring in the result, circulated June 21st. I anticipate circulating a final printed copy of my present draft by tomorrow at the latest.

Sincerely,

Mr. Justice Stevens

Copies to the Conference

P. 1, 18
Footnotes renumbered
Footnotes 6, 8 and 9 are revised
"old" Footnotes 5, 6, 7, and 8 are deleted

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

From: Mr. Justice Rehnquist

Circulated: _____

3rd DRAFT

Recirculated: JUN 2 9 1977

SUPREME COURT OF THE UNITED STATES

No. 76-156

Vendo Company, Petitioner, v. Lektro-Vend Corporation et al. } On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[June __, 1977]

MR. JUSTICE REHNQUIST announced the judgment of the Court and delivered an opinion in which MR. JUSTICE STEWART and MR. JUSTICE POWELL join.

I

After nine years of litigation in the Illinois state courts, the Supreme Court of Illinois affirmed a judgment in favor of petitioner and against respondent in the amount of $7,363,500. Shortly afterwards the United States District Court for the Northern District of Illinois enjoined, at the behest of respondent, state proceedings to collect the judgment. The order of the United States District Court was affirmed by the Court of Appeals for the Seventh Circuit, and we granted certiorari to consider the important question of the relationship between state and federal courts which such an injunction raises.

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

From: Mr Justice Rehnquist

Circulated: _____

Recirculated: JUN 21 1977

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-156

Vendo Company, Petitioner, *v.* Lektro-Vend Corporation et al. } On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[June —, 1977]

MR. JUSTICE REHNQUIST announced the judgment of the Court and delivered an opinion in which MR. JUSTICE STEWART and MR. JUSTICE POWELL join.

I

After nine years of litigation in the Illinois state courts, the Supreme Court of Illinois affirmed a judgment in favor of petitioner and against respondent in the amount of $7,363,500. Shortly afterwards the United States District Court for the Northern District of Illinois enjoined, at the behest of respondent, state proceedings to collect the judgment. The order of the United States District Court was affirmed by the Court of Appeals for the Seventh Circuit, and we granted certiorari to consider the important question of the relationship between state and federal courts which such an injunction raises.

II

The Illinois state court litigation arose out of commercial dealings between petitioner and respondents. In 1959 petitioner Vendo Company, a vending machine manufacturer located in Kansas City, Mo., acquired most of the assets of Stoner Manufacturing, which was thereupon reorganized as respondent Stoner Investment, Inc. Respondent Harry H. Stoner and members of his family owned all of the stock of

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 4, 1977

Re: 76-156 - Vendo v. Lektro-Vend

Dear Bill:

In due course I shall circulate a dissent.

Respectfully,

John

Mr. Justice Rehnquist

Copies to the Conference

Draft # 3

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

From: Mr. Justice Stevens

Circulated: JUN 1 1977

Recirculated: _____

76-156 - Vendo Co. v. Lektro-Vend Corp. et al.

MR. JUSTICE STEVENS, dissenting.

Quite properly, the Court does not question the merits of the preliminary injunction entered by the United States District Court for the Northern District of Illinois staying proceedings in the Illinous courts. It was predicated on appropriate findings of fact,[1] it was entered by a district judge whose understanding of the federal antitrust laws was unique,[2] and its entry was affirmed unanimously by the Court of Appeals.

Judge McLaren found substantial evidence that petitioner intended to monopolize the relevant market; that one of the overt acts performed in furtherance thereof was the use of litigation as a method of harassing and eliminating competition; that two of the corporate plaintiffs in the case, respondents here, would be eliminated by collection of the Illinois judgment; and that the state litigation had already severely hampered, and collection would prevent, the marketing of a promising, newly-developed machine which would compete with petitioner's products. 403 F. Supp. 527, 534-535, 538 (ND Ill. 1975).[3] The Court of Appeals implicitly endorsed these findings when it noted that "[h]ere Vendo seeks to thwart a federal antitrust suit by the enforcement of state court judgments which are alleged to be the

1/ Specific findings of likelihood of ultimate success on the merits, likelihood of irreparable harm, a balance of the equities in favor of respondent-movant, and of protection of the the public

SUBSTANTIAL CHANGES THROUGHOUT.

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

printed

1st DRAFT

From: Mr. Justice Stevens

Circulated: _____

Recirculated: JUN 13 '77

SUPREME COURT OF THE UNITED STATES

No. 76-156

Vendo Company, Petitioner, *v.* Lektro-Vend Corporation et al. | On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[June —, 1977]

MR. JUSTICE STEVENS, with whom MR. JUSTICE BRENNAN, MR. JUSTICE WHITE, and MR. JUSTICE MARSHALL join, dissenting.

Quite properly, the Court does not question the merits of the preliminary injunction entered by the United States District Court for the Northern District of Illinois staying proceedings in the Illinois courts. It was predicated on appropriate findings of fact,[1] it was entered by a district judge whose understanding of the federal antitrust laws was unique,[2] and its entry was affirmed unanimously by the Court of Appeals.

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[1] Specific findings of likelihood of ultimate success on the merits, likelihood of irreparable harm, a balance of the equities in favor of respondent-movant, and of protection of the public interest by issuance of the injunction are recited and substantiated in the District Court opinion. 403 F. Supp. 527, 532-538 (ND Ill. 1975). The Court of Appeals affirmed, specifically rejecting petitioner's attack on the finding of a likelihood of ultimate success on the merits. 545 F. 2d 1050, 1058-1059 (CA7 1976).

[2] The late Richard W. McLaren served as Assistant Attorney General in charge of the Antitrust Division of the Department of Justice from 1969 until his appointment to the bench in 1972. In private practice he had acted as Chairman of the Antitrust Section of the American Bar Association.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 20, 1977

Re: 76-156 - Vendo v. Lektro-Vend Corp.

Dear Bill:

We may have to coordinate some of our cross references to footnotes and the like, but I think this will be the last substantive revision. The principal change since your circulation on Friday is the addition of a new n. 23 discussing Amalgamated Clothing Workers and Atlantic Coast Line R. Co.

Respectfully,

Mr. Justice Rehnquist

Copies to the Conference

Pp. 3, 6, 9, 11-13, 15-19.

FOOTNOTES RENUMBERED.

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

From: Mr. Justice Stevens

Circulated: _____

Recirculated: JUN 20 1977

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-156

Vendo Company, Petitioner, *v.* Lektro-Vend Corporation et al. | On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[June —, 1977]

MR. JUSTICE STEVENS, with whom MR. JUSTICE BRENNAN, MR. JUSTICE WHITE, and MR. JUSTICE MARSHALL join, dissenting.

Quite properly, the Court does not question the merits of the preliminary injunction entered by the United States District Court for the Northern District of Illinois staying proceedings in the Illinois courts. It was predicated on appropriate findings of fact,[1] it was entered by a district judge whose understanding of the federal antitrust laws was unique,[2] and its entry was affirmed unanimously by the Court of Appeals.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 21, 1977

Re: 76-156 - Vendo v. Lektro-Vend

Dear Bill:

In view of Harry's circulation, I am drafting an additional section for my opinion. I hope to have it ready tomorrow morning.

Respectfully,

JPS

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 21, 1977

Re: 76-156 - Vendo v. Lektro-Vend

Dear Bill:

Enclosed please find a new Part IV to be inserted at page 15 of my opinion. Former Part IV will become Part V, and I will delete the last paragraph. Also, I will make changes necessary to refer to your opinion as the plurality rather than the Court, and perhaps a few other style changes.

Respectfully,

John

Mr. Justice Rehnquist

Copies to the Conference

16
pp. 2, 8-9, 21

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

From: Mr. Justice Stevens

Circulated: _____

3rd DRAFT

Recirculated: JUN 27 1977

SUPREME COURT OF THE UNITED STATES

No. 76-156

Vendo Company, Petitioner, *v.* Lektro-Vend Corporation et al. | On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[June —, 1977]

MR. JUSTICE STEVENS, with whom MR. JUSTICE BRENNAN, MR. JUSTICE WHITE, and MR. JUSTICE MARSHALL join, dissenting.

Quite properly, the plurality does not question the merits of the preliminary injunction entered by the United States District Court for the Northern District of Illinois staying proceedings in the Illinois courts. It was predicated on appropriate findings of fact,[1] it was entered by a district judge whose understanding of the federal antitrust laws was unique,[2] and its entry was affirmed unanimously by the Court of Appeals.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 29, 1977

Re: 76-156 - Vendo v. Lektro-Vend

Dear Bill:

In order to keep the art form alive, as Potter likes to say, I think I will announce my dissent from the bench.

Respectfully,

John

Mr. Justice Rehnquist

cc: The Chief Justice
Mr. Justice Blackmun