

The Burger Court Opinion Writing Database

Third National Bank in Nashville v. Impac Limited, Inc.

432 U.S. 312 (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

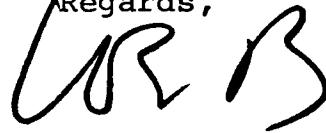
June 13, 1977

Re: 76-674 - Third National Bank in
Nashville v. Impac Ltd.

Dear Harry:

Please show me joining your
dissent.

Regards,



Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 26, 1977

RE: No. 76-674 Third National Bank in Nashville v.
Impact Limited, Inc., et al.

Dear John:

I was the other way but you completely convince
me. I'm happy to join.

Sincerely,

Bill

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 25, 1977

No. 76-674, 3rd Natl Bank v. Impac Ltd.

Dear John,

I agree with your memorandum.

Sincerely yours,

P.S.

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 10, 1977

Re: No. 76-674 - Third National Bank v. Impac

Dear Harry:

Please join me in your dissenting opinion
in this case.

Sincerely,



Mr. Justice Blackmun

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 27, 1977

Re: No. 76-674, Third National Bank in Nashville v. Impact
Limited, Inc., et al.

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

May 27, 1977

Re: No. 76-674 - Third National Bank v.
Impac, Ltd.

Dear John:

For the moment, at least, I am still on the other side. I shall try my hand at a dissent, and shall get it to you as soon as possible.

Sincerely,
H. A. B.

Mr. Justice Stevens

cc: The Conference

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

cc: Mr. Justice Blackmun

Recirculated: JUN 7 1977

Recirculated:

No. 76-674 - Third National Bank in Nashville v. Impact, Ltd., Inc.

MR. JUSTICE BLACKMUN, dissenting.

I fear that the Court in this case is driven by considerations of expediency or what it perceives to be a "just result." In so doing, however, it invades the domain of Congress.

The statute provides in unambiguous terms that "no injunction, attachment, injunction, or execution, shall be issued against such association or its property before final judgment in any suit, action, or proceeding in any State, county, or municipal court." 12 U.S.C. § 91. The Court today holds that the statute does not mean what it says: debtors of a national bank may now obtain injunctions in a state court before final

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: _____

1st DRAFT

Recirculated: JUN 13 1977

SUPREME COURT OF THE UNITED STATES

No. 76-674

Third National Bank in
 Nashville, Petitioner,
 v.
 Impac Limited, Inc., et al. } On Writ of Certiorari to the
 Supreme Court of Tennessee,
 Middle Division.

[June —, 1977]

MR. JUSTICE BLACKMUN, dissenting.

I fear that the Court in this case is driven by sentimentality to reach for what it perceives to be a "just result." In so doing, in my view, it invades the domain of Congress.

The statute provides in unambiguous terms that "no attachment, injunction, or execution, shall be issued against such association or its property before final judgment in any suit, action, or proceeding, in any State, county, or municipal court." 12 U. S. C. § 91. The Court today holds that the statute does not mean what it says: debtors of a national bank may now obtain injunctions in a state court before final judgment. Perhaps the Court holds, as well, that the statute should apply only to protect banks that are insolvent or nearly so. See *ante*, —, — (Slip op. 5, 10). But see *ante*, —, — (Slip op. 4, 8). Since the Court rides roughshod over the language of the statute, the legislative history, and a century of consistent interpretation by this Court and others, I cannot join either the Court's opinion or its judgment.

I

At its core, the opinion for the Court rests on a postulated connection between the provision barring prejudgment state writs and certain preceding language of § 91 relating to preferential transfers and acts in contemplation of bankruptcy. From the supposed connection, the Court justifies its

pp

To: The Chief Justice
Mr. Justice ~~Rehnquist~~
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice ~~R. B. Taney~~
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: _____

2nd DRAFT

Recirculated: JUN 14 1977

SUPREME COURT OF THE UNITED STATES

No. 76-674

Third National Bank in
Nashville, Petitioner,
v.
Impac Limited, Inc., et al. } On Writ of Certiorari to the
Supreme Court of Tennessee,
Middle Division.

[June —, 1977]

MR. JUSTICE BLACKMUN, with whom THE CHIEF JUSTICE
and MR. JUSTICE WHITE join, dissenting.

I fear that the Court in this case is driven by sentimentality to reach for what it perceives to be a "just result." In so doing, in my view, it invades the domain of Congress.

The statute provides in unambiguous terms that "no attachment, injunction, or execution, shall be issued against such association or its property before final judgment in any suit, action, or proceeding, in any State, county, or municipal court." 12 U. S. C. § 91. The Court today holds that the statute does not mean what it says: debtors of a national bank may now obtain injunctions in a state court before final judgment. Perhaps the Court holds, as well, that the statute should apply only to protect banks that are insolvent or nearly so. See *ante*, —, — (Slip op. 5, 10). But see *ante*, —, — (Slip op. 4, 8). Since the Court rides roughshod over the language of the statute, the legislative history, and a century of consistent interpretation by this Court and others, I cannot join either the Court's opinion or its judgment.

I

At its core, the opinion for the Court rests on a postulated connection between the provision barring prejudgment state writs and certain preceding language of § 91 relating to preferential transfers and acts in contemplation of bankruptcy. From the supposed connection, the Court justifies its

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 26, 1977

No. 76-674 Third National Bank v. Impact

Dear John:

I concur in your memorandum.

Sincerely,



Mr. Justice Stevens

lfp/ss

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 25, 1977

Re: No. 76-674 - Third National Bank v. Impac Ltd.

Dear John:

Please join me.

Sincerely,

WR

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

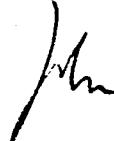
May 25, 1977

MEMORANDUM TO THE CONFERENCE

RE: 76-674 Third National Bank in Nashville v.
Impac Ltd., Inc.

As you will note, this is a second draft. Bill Rehnquist was kind enough to review the first draft and to make some valuable suggestions that I have included. He has also authorized me to say that he will join this draft.

Respectfully,



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

MAY 25 1977
Circulated: _____

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-674

Third National Bank in
Nashville, Petitioner,
v.
Impact Limited, Inc., et al. } On Writ of Certiorari to the
Supreme Court of Tennessee,
Middle Division.

[May —, 1977]

Memorandum of MR. JUSTICE STEVENS.

A federal statute enacted in 1873 provides that certain prejudgment writs shall not be issued against national banks.¹ The question presented by this case is whether that prohibition applies to a preliminary injunction restraining a national bank from consummating a private foreclosure sale until after a court has decided the merits of the mortgagor's claim that the loan is not in default.

I

Only the essentials of the rather complex three-party transaction giving rise to this dispute need be stated. Respondents

¹ Title 12 U. S. C. § 91, entitled "Transfers by Bank and Other Acts in Contemplation of Insolvency" now reads as follows:

"All transfers of the notes, bonds, bills of exchange, or other evidences of debt owing to any national banking associations, or of mortgages, sureties on real estate, or of judgments or decrees in its favor; all deposits for its use, or for the use of any of its shareholders or creditors; and all payments of money to either, made after the commission of an act of insolvency, or in contemplation thereof, made with a view to prevent the application of its assets in the manner prescribed by this chapter, or with a view to the preference of one creditor to another, except in payment of its circulating notes, shall be utterly null and void; *and no attachment, injunction, or execution, shall be issued against such association or its property before final judgment in any suit, action, or proceeding, in any State, county, or municipal court.*" (Emphasis added.)

Footnotes renumbered

STYLISTIC 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

From: Mr. Justice Stevens

Circulated: _____

Recirculated: May 31 '77

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-674

Third National Bank in
Nashville, Petitioner,
v.
Impac Limited, Inc., et al. } On Writ of Certiorari to the
Supreme Court of Tennessee,
Middle Division.

[June —, 1977]

MR. JUSTICE STEVENS delivered the opinion of the Court.

A federal statute enacted in 1873 provides that certain prejudgment writs shall not be issued against national banks by state courts.¹ The question presented by this case is whether that prohibition applies to a preliminary injunction restraining a national bank from holding a private foreclosure sale, pending adjudication of the mortgagor's claim that the loan is not in default. We conclude that the prohibition does not apply.

I

Only the essentials of the rather complex three-party transaction giving rise to this dispute need be stated. Respondents

¹ 12 U. S. C. § 91, entitled "Transfers by Bank and Other Acts in Contemplation of Insolvency," now reads as follows:

"All transfers of the notes, bonds, bills of exchange, or other evidences of debt owing to any national banking associations, or of mortgages, sureties on real estate, or of judgments or decrees in its favor; all deposits for its use, or for the use of any of its shareholders or creditors; and all payments of money to either, made after the commission of an act of insolvency, or in contemplation thereof, made with a view to prevent the application of its assets in the manner prescribed by this chapter, or with a view to the preference of one creditor to another, except in payment of its circulating notes, shall be utterly null and void; and no attachment, injunction, or execution, shall be issued against such association or its property before final judgment in any suit, action, or proceeding, in any State, county, or municipal court." (Emphasis added.)

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 8, 1977

Re: 76-674 - Third National Bank v. Impac
Limited, Inc.

Dear Harry:

In response to your dissent, I propose to make
the revisions on page 10 as indicated by the en-
closure.

Respectfully,



Mr. Justice Blackmun

Copies to the Conference

pp. 1, 10

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 16 1977

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-674

Third National Bank in
 Nashville, Petitioner,
 v.
 Impac Limited, Inc., et al. } On Writ of Certiorari to the
 Supreme Court of Tennessee,
 Middle Division.

[June —, 1977]

MR. JUSTICE STEVENS delivered the opinion of the Court.
 A federal statute enacted in 1873 provides that certain prejudgment writs shall not be issued against national banks by state courts.¹ The question presented by this case is whether that prohibition applies to a preliminary injunction restraining a national bank from holding a private foreclosure sale, pending adjudication of the mortgagor's claim that the loan is not in default. We conclude that the prohibition does not apply.

I

Only the essentials of the rather complex three-party transaction giving rise to this dispute need be stated. Respondents

¹ 12 U. S. C. § 91, entitled "Transfers by bank and other acts in contemplation of insolvency," now reads as follows:

"All transfers of the notes, bonds, bills of exchange, or other evidences of debt owing to any national banking association, or of deposits to its credit; all assignments of mortgages, sureties on real estate, or of judgments or decrees in its favor; all deposits of money, bullion, or other valuable thing for its use, or for the use of any of its shareholders or creditors; and all payments of money to either, made after the commission of an act of insolvency, or in contemplation thereof, made with a view to prevent the application of its assets in the manner prescribed by this chapter, or with a view to the preference of one creditor to another, except in payment of its circulating notes, shall be utterly null and void; and no attachment, injunction, or execution, shall be issued against such association or its property before final