

The Burger Court Opinion Writing Database

Slodov v. United States

436 U.S. 238 (1978)

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

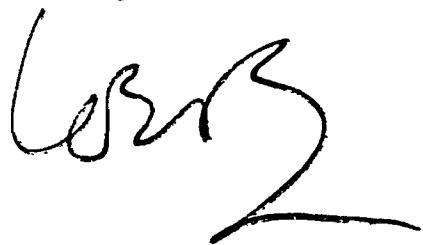
May 8, 1978

RE: 76-1835 - Slodov v. United States

Dear Byron:

I join your dissent of May 8.

Regards,



Mr. Justice White

Copies to the Conference

✓
J.B.
Please give me
7/21

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

From: Mr. Justice Brennan

Circulated: 4/12/78

Recirculated:

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1835

Ike Slodov, Petitioner, | On Writ of Certiorari to the United
v. | States Court of Appeals for the
United States. | Sixth Circuit.

[April —, 1978]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Petitioner, an orthodontist by profession, on January 31, 1969, purchased the stock and assumed the management of three corporations engaged in the food vending business. The corporations were indebted at the time of the purchase for approximately \$250,000 of taxes, including federal wage and Federal Insurance Contribution Act (FICA) taxes withheld from employees wages prior to January 31. The sums withheld had not been paid over when due, however, but had been dissipated by the previous management before petitioner acquired the businesses. The question to be decided is whether petitioner is nevertheless personally liable under § 6672 of the Internal Revenue Code of 1954, 26 U. S. C. § 6672—which imposes personal liability for taxes on “[a]ny person required to collect, truthfully account for, and pay over any tax imposed by this title who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof . . .”—for the unpaid taxes withheld from wages prior to his assumption of control when after he assumed control, the corporation acquired funds sufficient to pay the taxes, but petitioner used the funds to pay employees' wages, rent, suppliers and other creditors, and to meet other day-to-day expenses incurred in operating the businesses. The Court of Appeals for the Sixth Circuit held that petitioner

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 10, 1978

Re: No. 76-1835--Slodov v. United States

My only response to the dissent will be the following new footnote 25 to be added after the sentence ending on the fifth line from the bottom of page 20.

25. The basis for the dissent's contrary construction is that "it is difficult to comprehend why the United States should be precluded from looking to what is probably its best source, the flow of funds coming into business entities, merely because a change of ownership or management has occurred subsequent to the time when the amounts in question were withheld from employees." Post, at 2. We agree that the employer's liability is unaffected by changes in management, and the Government may, under various code provisions, enforce its lien against any employer asset including the flow of incoming cash. But that does not answer the question before us which is whether § 6672 imposes a penalty on a responsible person for failing to pay over withheld taxes when those taxes had been dissipated before he acceded to control.

Sincerely,

WJB, Jr.

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 11, 1978

MEMORANDUM TO THE CONFERENCE

RE: No. 76-1835 Slodov v. United States

In light of Thurgood's withdrawal of No. 76-1800
United States v. Sotelo from the cases coming down on
Monday, I'll have to cancel bringing down my opinion in
the above. The reason is that I have cited Sotelo at
footnote 3 on page 4.

W.J.B.Jr.

*Stylistic changes throughout
and see pp. 1-3, 5-11, 13, 16-18, 20*

The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Brennan

Circulated: _____

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1835

Ike Slodov, Petitioner, | On Writ of Certiorari to the United
v. | States Court of Appeals for the
United States. | Sixth Circuit.

[May —, 1978]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Petitioner, an orthodontist by profession, on January 31, 1969, purchased the stock and assumed the management of three corporations engaged in the food vending business. The corporations were indebted at the time of the purchase for approximately \$250,000 of taxes, including federal wage and Federal Insurance Contribution Act (FICA) taxes withheld from employees wages prior to January 31. The sums withheld had not been paid over when due, however, but had been dissipated by the previous management before petitioner acquired the businesses. After petitioner assumed control, the corporation acquired funds sufficient to pay the taxes, but petitioner used the funds to pay employees' wages, rent, suppliers and other creditors, and to meet other day-to-day expenses incurred in operating the businesses. The question to be decided is whether in these circumstances, petitioner is personally liable under § 6672 of the Internal Revenue Code of 1954, 2 U. S. C. § 6672—which imposes personal liability for taxes on “[a]ny person required to collect, truthfully account for, and pay over any tax imposed by this title who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof . . .”—for the corporations' unpaid taxes withheld from wages prior to his assumption of control. The Court of Appeals for the Sixth

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 17, 1978

No. 76-1835 - Slodov v. U.S.

Dear Bill,

The rationale of your opinion in this case is not quite the same one upon which the majority tentatively agreed at our Conference discussion. No doubt, after further study of the case, you found good and sufficient reason to base the opinion upon its present basis. I shall be glad to acquiesce in your opinion, unless someone else writes a separate concurrence.

Sincerely yours,

C. S.
C. J.

Mr. Justice Brennan

Copies to the Conference

No. 76-1835 — Ike Slodov v. United States

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: 7-6-75

Recirculated: _____

MR. JUSTICE WHITE, dissenting.

The Court recognizes, as even petitioner concedes, that 26 U.S.C. § 6672 makes those individuals who are "required to collect, truthfully account for, and pay over any tax imposed by this title" ("responsible persons") personally liable for the failure to use available corporate funds to pay to IRS amounts equal to sums withheld from employees during those periods in which they were "responsible persons." It also holds, and I agree that the obligations of a "responsible person" under § 6672 are not limited to liabilities incurred during the period during which he occupied such a position but that he "violate[s] the 'pay over' requirement of that statute by willfully failing to pay over trust funds collected prior to his accession to control when at the time he assumed control the corporation has funds impressed with a trust under § 7501. . . ." Ante, at 20. From this conclusion it would seem to automatically follow that one who becomes a "responsible person" subsequent to the collection of withholding tax payments from employees is, for purposes of § 6672, in the

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

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Recirculated: 5/11

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1835

Ike Slodov, Petitioner, | On Writ of Certiorari to the United
v. | States Court of Appeals for the
United States. | Sixth Circuit.

[May —, 1978]

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

The Court recognizes, as even petitioner concedes, that 26 U. S. C. § 6672 makes those individuals who are "required to collect, truthfully account for, and pay over any tax imposed by this title" ("responsible persons") personally liable for the failure to use available corporate funds to pay to IRS amounts equal to sums withheld from employees during those periods in which they were "responsible persons." It also holds, and I agree, that the obligations of a "responsible person" under § 6672 are not limited to liabilities incurred during the period during which he occupied such a position but that he "violate[s] the 'pay over' requirement of that statute by willfully failing to pay over trust funds collected prior to his accession to control when at the time he assumed control the corporation has funds impressed with a trust under § 7501. . ." *Ante*, at 20. From this conclusion it would seem to automatically follow that one who becomes a "responsible person" subsequent to the collection of withholding tax payments from employees is, for purposes of § 6672, in the same shoes as one who was a "responsible person" at the time of collection. After all, as the Court recognizes, the purpose of § 6672 is to assure the collection and payment of taxes, and it is difficult to comprehend why the United States should be precluded from looking to what is probably its best source, the flow of funds coming into business entities, merely because a change in ownership or

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 8, 1978

Re: No. 76-1835 - Slodov v. United States

Dear Bill:

Please join me.

Sincerely,

J.M.

T.M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 24, 1978

Re: No. 76-1835 - Slodov v. United States

Dear Bill:

I shall await Byron's writing in this case.

Sincerely,

Harry

Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20542

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 9, 1978

Re: No. 76-1835 - Slodov v. United States

Dear Byron:

Please join me in your dissent.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 17, 1978

No. 76-1835 Slodov v. United States

Dear Bill:

Please join me.

Sincerely,

Lewis

Mr. Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 27, 1978

Re: No. 76-1835 - Slodov v. United States

Dear Bill:

I join your opinion. I shall also file the attached concurrence.

Sincerely,



Mr. Justice Brennan

Copies to the Conference

Att.

April 27, 1978

No. 76-1835 - Slodov v. United States

MR. JUSTICE REHNQUIST, concurring.

I join the Court's opinion and write separately only to emphasize that part of it which I think is critical to the disposition of this case. Both petitioner and the government have available to them arguments, based upon two different clauses of § 6672, which, if accepted, would enable them to prevail on the literal language of the clause alone without further consideration of other factors. Petitioner argues with considerable cogency that the portion of § 6672 phrased conjunctively, ante, page 5, fails to include him within the class of persons liable for the penalty imposed by that section. If his argument were to be accepted, that would be the end of the case. I agree with the Court that his argument should be rejected, because its appeal based on the literal language of the clause is more than outweighed by the fact that the clause

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

PP 1, 2

From: Mr. Justice Rehnquist

Circulated: MAY 10 1978

Recirculated: _____

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1835

Ike Slodov, Petitioner, | On Writ of Certiorari to the United
v. | States Court of Appeals for the
United States. | Sixth Circuit.

[May —, 1978]

MR. JUSTICE REHNQUIST, concurring.

I join the Court's opinion and write separately only to emphasize that part of it which I think is critical to the disposition of this case. Both petitioner and the government have available to them arguments, based upon two different clauses of § 6672, which, if accepted, would enable them to prevail on the literal language of the clause alone without further consideration of other factors. Petitioner argues with considerable cogency that the portion of § 6672 phrased *conjunctively*, *ante*, p. 5, fails to include him within the class of persons liable for the penalty imposed by that section. If his argument were to be accepted, that would be the end of the case. I agree with the Court that his argument should be rejected, because its appeal based on the literal language of the clause is more than outweighed by the fact that the clause was added in 1954 very probably to narrow the class of persons who might be subject to the predecessor penalty provisions which were phrased in the *disjunctive*.]

Having won this point the government could then rely on the disjunctive literal language of the statute and its predecessors and argue that petitioner, a responsible corporate official at some point in time, is liable for all taxes which he failed to collect or, as is the case here, pay over. But the government does not advance this argument, realizing, no doubt, that it is foreclosed largely for the reasons given by the Court in Part III-B (2) of its opinion. I fully agree with the Court's conclusion in this respect, stressing in addition

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 27, 1978

Re: 76-1835 - Slodov v. United States

Dear Bill:

Please join me.

Respectfully,



Mr. Justice Brennan

Copies to the Conference