

The Burger Court Opinion Writing Database

Frank Lyon Co. v. United States
435 U.S. 561 (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

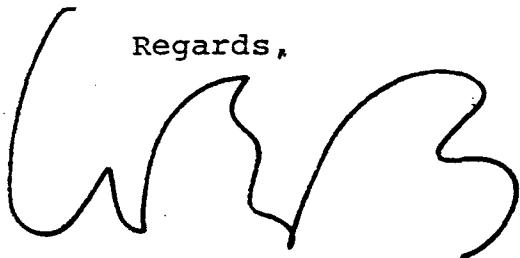
April 7, 1978

RE: 76-624 - Frank Lyon Co. v. U.S.

Dear Harry:

I join.

Regards,

A handwritten signature in black ink, appearing to read "Wm. B. Blackmun". The signature is fluid and cursive, with a large, stylized "B" in the middle.

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 17, 1978

RE: No. 76-624 Frank Lyon Company v. United States

Dear Harry:

I agree.

Sincerely,

Brennan

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 16, 1978

Re: No. 76-624 - Frank Lyon Co. v. U. S.

Dear Harry,

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

Sincerely yours,

P. S.

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 20, 1978

Re: 76-624 - Frank Lyon Company
v. United States

Dear Harry:

Would you please place at the bottom
of your Opinion for the Court in this case
the following:

Mr. Justice White dissents and
would affirm the judgment substan-
tially for the reasons stated in the
opinion in the Court of Appeals for
the Eighth Circuit. 536 F.2d 746
(1976).

Sincerely yours,



Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 22, 1976

Re: No. 76-624 - Frank Lyon Co. v. United States

Dear Harry:

Please join me.

Sincerely,



T.M.

Mr. Justice Blackmun

cc: The Conference

~~HAB
Please forgive me~~

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

3. MAR 16 1978

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 76-624

Frank Lyon Company, Petitioner,
v.
United States. } On Writ of Certiorari to the
United States Court of
Appeals for the Eighth
Circuit.

[March —, 1978]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case concerns the federal income tax consequences of a sale-and-leaseback in which petitioner Frank Lyon Company (Lyon) took title to a building under construction by Worthen Bank & Trust Company (Worthen) of Little Rock, Ark., and simultaneously leased the building back to Worthen for long-term use as its headquarters and principal banking facility.

1

The underlying pertinent facts are undisputed. They are established by stipulations, App. 9, 14, the trial testimony, and the documentary evidence, and are reflected in the District Court's findings:

A

Lyon is a closely held Arkansas corporation engaged in the distribution of home furnishings, primarily Whirlpool and RCA electrical products. Worthen in 1965 was an Arkansas-chartered bank and a member of the Federal Reserve System. Frank Lyon was Lyon's majority shareholder and board chairman; he also served on Worthen's board. Worthen at that time began to plan the construction of a multi-story bank and office building to replace its existing facility in Little Rock. About the same time Worthen's competitor, Union National

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 21, 1978

Re: No. 76-624 - Frank Lyon Co. v. United States

Dear Lewis:

Your two suggestions are good ones and are most acceptable. I shall make them on the next circulation.

Sincerely,



Mr. Justice Powell

pp. 20, 23 and
STYLISTIC CHANGES

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: _____

2nd DRAFT

Recirculated: MAR 22 1978

SUPREME COURT OF THE UNITED STATES

No. 76-624

Frank Lyon Company, Petitioner, } On Writ of Certiorari to the
v. } United States Court of
United States. } Appeals for the Eighth
Circuit.

[March —, 1978]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case concerns the federal income tax consequences of a sale-and-leaseback in which petitioner Frank Lyon Company (Lyon) took title to a building under construction by Worthen Bank & Trust Company (Worthen) of Little Rock, Ark., and simultaneously leased the building back to Worthen for long-term use as its headquarters and principal banking facility.

I

The underlying pertinent facts are undisputed. They are established by stipulations, App. 9, 14, the trial testimony, and the documentary evidence, and are reflected in the District Court's findings:

A

Lyon is a closely held Arkansas corporation engaged in the distribution of home furnishings, primarily Whirlpool and RCA electrical products. Worthen in 1965 was an Arkansas-chartered bank and a member of the Federal Reserve System. Frank Lyon was Lyon's majority shareholder and board chairman; he also served on Worthen's board. Worthen at that time began to plan the construction of a multi-story bank and office building to replace its existing facility in Little Rock. About the same time Worthen's competitor, Union National

March 20, 1978

No. 76-624 Lyon Company v. U.S.

Dear Harry:

I have read with interest and approval your opinion for the Court in the above case.

Although you can count on me as a "join", I do make two suggestions for your consideration on page 20. I would prefer, in the first sentence under Part IV to say that the government's position is "not without superficial appeal", rather than to say it is "not without its force". I think the government's position - for the reasons that you state in your opinion with great force - borders on being frivolous.

I worked personally, in the practice of law, on a number of fairly major "sale and leaseback" projects. One rarely sees such a project as free from the legitimate ground of challenge as the one in this case. The IRS - in my view - harassed the taxpayer by its challenge.

For similar reasons, I hope you will consider some change in the language of the first sentence of the second paragraph under Part IV (page 20). It might read, for example, as follows:

"We, however, as did the District Court, find this theorizing incompatible with the substance and economic realities of this transaction:"

The government's "theorizing" wholly lacks substance for the reasons that you summarize so convincingly in the paragraph in question.

Sincerely,

Mr. Justice Blackmun

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 21, 1978

No. 76-624 Frank Lyon Co. v. United States

Dear Harry:

Please join me.

Sincerely,

Lewis

Mr. Justice Blackmun

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 23, 1978

Re: No. 76-624 - Frank Lyon Co. v. United States

Dear Harry:

Please join me.

Sincerely,
W

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 17, 1978

Re: 76-624 - Frank Lyon Co. v. United States

Dear Harry:

Although I expect to join your opinion, I want to try my hand at a short concurrence emphasizing the factors which seem most important to me.

Respectfully,



Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

Personal

April 4, 1978

Re: 76-624 - Frank Lyon Co. v. United States

Dear Harry:

At the time of our conference, and also about a week ago when I last talked to you about this case, I was firmly convinced that the taxpayer should win. I held the case up for the purpose of writing a short concurrence emphasizing the factors that seemed especially important to me. At that time, I thought the case was controlled by the imponderables associated with the ten-year period between the 65th and 75th years. I am now somewhat embarrassed to acknowledge that further study has convinced me that we should focus on the rights of the respective parties during and at the end of the initial 25-year term. Under that approach, since Worthen has the right to acquire unencumbered ownership of the property by simply paying off the loans (treating Lyon's \$500,000 as a loan), I am persuaded that Worthen should now be regarded as the owner. Worthen's situation is somewhat analogous to that of a settlor of a trust who retains an absolute power of revocation.

In any event, I have written out a first draft of a short dissent which one of my clerks is now editing. I should have it in the printer's hands by the end of the week. I don't think it will require any change in your opinion but I thought I should let you know that I am about to defect.

Respectfully,



Mr. Justice Blackmun

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 10, 1978

MEMORANDUM TO THE CONFERENCE

Re: 76-624 - Frank Lyon Co. v. United States

My original vote was based on my understanding of the risks associated with the expiration of the lease as extended for its full 65-year term. After further study, I became convinced that we should focus on the situation during the original 25-year term. As you will note, this change in approach leads me to vote to affirm even though I was strongly of the other view at conference. My apologies for being so slow.

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

Circulated: APR 10 1978

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 76-624

Frank Lyon Company, Petitioner, } On Writ of Certiorari to the
v. } United States Court of
United States. } Appeals for the Eighth
Circuit.

[April —, 1978]

MR. JUSTICE STEVENS, dissenting.

In my judgment the controlling issue in this case is the economic relationship between Worthen and petitioner, and matters such as the number of parties, their reasons for structuring the transaction in a particular way, and the tax benefits which may result, are largely irrelevant. The question whether a leasehold has been created should be answered by examining the character and value of the purported lessor's reversionary estate.

For a 25-year period Worthen has the power to acquire full ownership of the bank building by simply repaying the amounts, plus interest, advanced by the New York Life Insurance Company and petitioner. During that period, the economic relationship among the parties parallels exactly the normal relationship between an owner and two lenders, one secured by a first mortgage and the other by a second mortgage.¹ If Worthen repays both loans, it will have unencumbered ownership of the property. What the character of this relationship suggests is confirmed by the economic value that

¹ "[W]here a fixed price, as in *Frank Lyon Company*, is designed merely to provide the lessor with a predetermined fixed return, the substantive bargain is more akin to the relationship between a debtor and creditor than between a lessor and lessee." Rosenberg and Weinstein, Sale-leasebacks: An Analysis of These Transactions After the *Lyon* decision, 45 Journal of Taxation 146, 149 (Sept. 1976).

✓ —
Minor Stylistic Changes

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 APR 13 1978

SUPREME COURT OF THE UNITED STATES

No. 76-624

Frank Lyon Company, Petitioner, | On Writ of Certiorari to the
v. | United States Court of
United States. | Appeals for the Eighth
Circuit.

[April —, 1978]

MR. JUSTICE STEVENS, dissenting.

In my judgment the controlling issue in this case is the economic relationship between Worthen and petitioner, and matters such as the number of parties, their reasons for structuring the transaction in a particular way, and the tax benefits which may result, are largely irrelevant. The question whether a leasehold has been created should be answered by examining the character and value of the purported lessor's reversionary estate.

For a 25-year period Worthen has the power to acquire full ownership of the bank building by simply repaying the amounts, plus interest, advanced by the New York Life Insurance Company and petitioner. During that period, the economic relationship among the parties parallels exactly the normal relationship between an owner and two lenders, one secured by a first mortgage and the other by a second mortgage.¹ If Worthen repays both loans, it will have unencumbered ownership of the property. What the character of this relationship suggests is confirmed by the economic value that

¹ "[W]here a fixed price, as in *Frank Lyon Company*, is designed merely to provide the lessor with a predetermined fixed return, the substantive bargain is more akin to the relationship between a debtor and creditor than between a lessor and lessee." Rosenberg and Weinstein, Sale-leasebacks: An Analysis of These Transactions After the *Lyon* decision, 45 Journal of Taxation 146, 149 (Sept. 1976).