The Burger Court Opinion Writing Database

Parklane Hosiery Co. v. Shore

439 U.S. 322 (1979)

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

January 3, 1979

Re: 77-1305 - Park Lane Hosiery Company v. Shore

Dear Potter:

I have meditated to try to capture Bill's appeal to Hughes' "brooding spirit of the law" but it eluded me. I, therefore, join you.

Regards,

WEB

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 4, 1978

RE: No. 77-1305 Parklane Hosiery Co. v. Shore

Dear Potter:

I agree.

Sincerely,

Mr. Justice Stewart

cc: The Conference

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

From: Mr. Justice Stewart

Circulated: 30 NOV 1978

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1305

Parklane Hosiery Company, Inc., et al., Petitioners, v. Leo M. Shore. | On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[December —, 1978]

MR. JUSTICE STEWART delivered the opinion of the Court.

This case presents the question whether a party who has had issues of fact adjudicated adversely to it in an equitable action may be collaterally estopped from relitigating the same issues before a jury in a subsequent legal action with a new party.

The respondent brought this stockholder's class action against the petitioners in a federal district court. The complaint alleged that the petitioners, Parklane Hosiery Company, Inc. (Parklane) and 12 of its officers, directors, and stockholders, had issued a materially false and misleading proxy statement in connection with a merger.[1] The proxy statement, according to the complaint, had violated §§ 14 (a), 10 (b), and 20 (a) of the Securities Exchange Act of 1934, 48 Stat. 895, 891, 899, as amended, 15 U. S. C. §§ 78n (a), 78j (b), and 78t (a), as well as various rules and regulations promulgated by the Securities and Exchange Commission

[1] The amended complaint alleged that the proxy statement that had been issued to the stockholders was false and misleading because it failed to disclose: (1) that the President of Parklane would financially benefit as a result of the company going private; (2) certain ongoing negotiations that could have resulted in financial benefit to Parklane, and (3) that the appraisal of the fair value of Parklane stock was based on insufficient information to be accurate.

1, 2, 3, 5, 9

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

From: Mr. Justice Stewart

Circulated: _____

2nd DRAFT

Recirculated: 07 DEC 1978

SUPREME COURT OF THE UNITED STATES

No. 77-1305

Parklane Hosiery Company, Inc., et al., Petitioners, *v.* Leo M. Shore. | On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[December —, 1978]

MR. JUSTICE STEWART delivered the opinion of the Court.

This case presents the question whether a party who has had issues of fact adjudicated adversely to it in an equitable action may be collaterally estopped from relitigating the same issues before a jury in a subsequent legal action brought against it by a new party.

The respondent brought this stockholder's class action against the petitioners in a federal district court. The complaint alleged that the petitioners, Parklane Hosiery Company, Inc. (Parklane) and 12 of its officers, directors, and stockholders, had issued a materially false and misleading proxy statement in connection with a merger.[1] The proxy statement, according to the complaint, had violated §§ 14 (a), 10 (b), and 20 (a) of the Securities Exchange Act of 1934, 48 Stat. 895, 891, 899, as amended, 15 U. S. C. §§ 78n (a), 78j (b), and 78t (a), as well as various rules and regulations promulgated by the Securities and Exchange Commission

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

From: Mr. Justice Stewart

Circulated: _____

4 JAN 1979

3rd DRAFT Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 77-1305

Parklane Hosiery Company, Inc., et al., Petitioners, v. Leo M. Shore. | On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[December —, 1978]

MR. JUSTICE STEWART delivered the opinion of the Court.

This case presents the question whether a party who has had issues of fact adjudicated adversely to it in an equitable action may be collaterally estopped from relitigating the same issues before a jury in a subsequent legal action brought against it by a new party.

The respondent brought this stockholder's class action against the petitioners in a federal district court. The complaint alleged that the petitioners, Parklane Hosiery Company, Inc. (Parklane) and 12 of its officers, directors, and stockholders, had issued a materially false and misleading proxy statement in connection with a merger.[1] The proxy statement, according to the complaint, had violated §§ 14 (a), 10 (b), and 20 (a) of the Securities Exchange Act of 1934, 48 Stat. 895, 891, 899, as amended, 15 U. S. C. §§ 78n (a), 78j (b), and 78t (a), as well as various rules and regulations promulgated by the Securities and Exchange Commission

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 5, 1978

Re: No. 77-1305 - Parklane Hosiery Co.
v. Shore

Dear Potter,

Please join me.

Sincerely yours,

Byron

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 4, 1978

Re: No. 77-1305 - Parklane Hosiery Co. v. Shore

Dear Potter:

Please join me.

Sincerely,

T.M.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 6, 1978

Re: No. 77-1305 - Parklane Hosiery Co. v. Shore

Dear Potter:

I am glad to join your opinion for this case.

I much prefer that you retain footnote 24. You will recall that I discussed this portion of the Court of Appeals' opinion and expressed the hope that we could negate its questionable implications. Perhaps I was impressed with the fact that the Solicitor General requested that we do this very thing (his brief pages 27-31), the petitioner also attacked the court's suggestion, and the respondent (his brief 33-34) gave no support whatever to it.

Sincerely,

Harry

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 4, 1978

No. 77-1305 Parklane Hosiery v. Shore

Dear Potter:

Please join me in your opinion for the Court.

I would not object to the deletion, as suggested by John, of note 24.

Sincerely,

Lewis

Mr. Justice Stewart

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 7, 1978

MEMORANDUM TO THE CONFERENCE

Re: No. 77-1305 Parklane Hosiery Co. v. Shore; and
No. 77-6067 Duren v. Missouri

I was the only dissenter at Conference in each of these cases, and intend to write a dissent in each. I have so advised both Byron, the author of the Court's opinion in Duren, and Potter, the author of the Court's opinion in Parklane. I had hoped to at least get out the dissent in Duren this week, so as not to prevent it from coming down Monday, and had given Byron oral assurance to that effect. I now find that I will not be able to get out the dissent in either Duren or Parklane this week. Having been so badly outvoted at Conference, the only purpose of my dissents can be, in the words of Charles Evans Hughes, "an appeal to the brooding spirit of the law," and I have found it more than a little

difficult to commune with that spirit during a two-week session of oral argument. I will try to have both dissents around next week.

Sincerely,

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: DEC 2 2 1978

1st DRAFT Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 77-1305

Parklane Hosiery Company, Inc., et al., Petitioners, *v.* Leo M. Shore. | On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[January —, 1979]

MR. JUSTICE REHNQUIST, dissenting.

It is admittedly difficult to be outraged about the treatment accorded by the federal judiciary to petitioners' demand for a jury trial in this lawsuit. Outrage is an emotion all but impossible to generate with respect to a corporate defendant in a securities fraud action, and this case is no exception. But the nagging sense of unfairness as to the way petitioners have been treated, engendered by the *imprimatur* placed by the Court of Appeals on respondent's "heads I win, tails you lose" theory of this litigation, is not dispelled by this Court's antiseptic analysis of the issues in the case. It may be that if this Nation were to adopt a new Constitution today, the Seventh Amendment guaranteeing the right of jury trial in civil cases in federal courts would not be included among its provisions. But any present sentiment to that effect cannot obscure or dilute our obligation to enforce the Seventh Amendment, which *was* included in the Bill of Rights in 1791 and which has not since been repealed in the only manner provided by the Constitution for repeal of its provisions.

The right of trial by jury in civil cases at common law is fundamental to our history and jurisprudence. Today, however, the Court reduces this valued right, which Blackstone praised as "the glory of English law," to a mere "neutral" factor and in the name of procedural reform denies the right of jury trial to defendants in a vast number of cases in which

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 1, 1978

Re: 77-1305 - Parklane Hosiery v. Shore

Dear Potter:

Although I agree with with you say in n. 24 on p. 15, I wonder if the note is really necessary.

Respectfully,

Mr. Justice Stewart