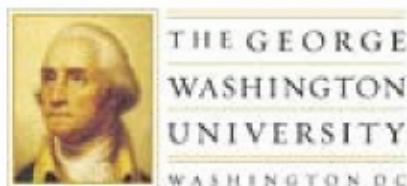


The Burger Court Opinion Writing Database

United States v. Kimbell Foods, Inc.
440 U.S. 715 (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

March 29, 1979

Concurred ↗
RE: 77-1359 - U.S. v. Kimbell Foods, Inc.
77-1644 - U.S. v. Crittenden } ↘

Dear Thurgood:

I join.

Regards,

WRB

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 14, 1979

31

RE: Nos. 77-1359 & 77-1644 United States v. Kimbell
Foods and Crittenden, etc.

Dear Thurgood:

I agree.

Sincerely,

Wm. J. Brennan, Jr.

Mr. Justice Marshall

cc: The Conference

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

4

CHAMBERS OF
JUSTICE POTTER STEWART

March 14, 1979

Re: No. 77-1359, United States v. Kimbell Foods
No. 77-1644, United States v. Crittenden

Dear Thurgood,

I am glad to join your opinion for the
Court.

Sincerely yours,

P.S.
P.

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 14, 1979

(2)

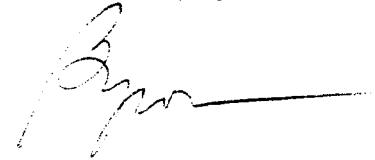
Re: Nos. 77-1359 and 77-1644 --

United States v. Kimball Foods;
United States v. Crittenden.

Dear Thurgood,

Please join me.

Sincerely yours,



Mr. Justice Marshall

Copies to the Conference

cmc

13 MAR 1979

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 77-1359 AND 77-1644

United States, Petitioner,

77-1359 *v.*

Kimbell Foods, Inc., et al.

United States, Petitioner,

77-1644 *v.*

Zac A. Crittenden, Jr., dba

Crittenden Tractor
Company.

On Writs of Certiorari to the
United States Court of Appeals
for the Fifth Circuit.

[March —, 1979]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

We granted certiorari in these cases to determine whether contractual liens arising from certain federal loan programs take precedence over private liens, in the absence of a federal statute setting priorities.¹ To resolve this question, we must decide first whether federal or state law governs the controversies, and second, if federal law applies, whether this Court should fashion a uniform priority rule or incorporate state commercial law. We conclude that the source of law is federal, but that a national rule is unnecessary to protect the federal interests underlying the loan programs. Accordingly, we adopt state law as the appropriate federal rule for establishing the relative priority of these competing federal and private liens.

1

A

No. 77-1359 involves two contractual security interests in

436 U. S. 903 (1978), 439 U. S. ____ (1978).

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 9, 1979

Re: Case Held for Nos. 77-1359, United States v. Kimbell Foods, Inc., and 77-1644, United States v. Crittenden.

MEMORANDUM TO THE CONFERENCE

The only case held for Kimbell and Crittenden is No. 77-1611, Hercoform, Inc. v. Chicago Title Insurance Co. There, the CA 1 applied the first in time and choateness doctrines to assess the relative priority of a private mechanic's lien and a lien arising from a mortgage loan insured by HUD. The court determined that the federal lien was superior, although the mechanic's lien would achieve priority under state law.

In 1971, petitioner contracted with Sherred Corp. to construct housing units for a housing project. In May, 1972, the project's owner, Sherred Village Associates, obtained a \$3.98 million mortgage loan from New England Merchants National Bank, and the bank immediately recorded the mortgage. The loan was insured by HUD pursuant to §236 of the National Housing Act, 12 U.S.C. §1715z-1, which authorizes the agency to insure mortgages on certain rental developments for low income families, elderly, and handicapped persons. After a title search, Chicago Title Insurance Co. (Chicago Title) assured the bank that no liens existed on the property as of the date of the mortgage.

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

(6)

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 15, 1979

Re: No. 77-1359 - United States v. Kimbell Foods, Inc.
No. 77-1644 - United States v. Crittenden

Dear Thurgood:

Please join me.

Sincerely,

Harry

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 29, 1979

No. 77-1359 U. S. v. Kimbell Foods
No. 77-1644 U. S. v. Crittenden, Jr.

Dear Thurgood:

Please join me.

Sincerely,

Lewis

Mr. Justice Marshall

Copies to the Conference

LFP/lab

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

(6)

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 15, 1979

Re: Nos. 77-1359 and 77-1644 - United States v.
Kimbell Foods, et al.

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

(1)

March 14, 1979

Re: 77-1359 and 77-1644 - United States
v. Kimbell Foods, et al.

Dear Thurgood:

Please join me.

Respectfully,



Mr. Justice Marshall

Copies to the Conference