

The Burger Court Opinion Writing Database

Butner v. United States

440 U.S. 48 (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

February 1, 1979

Re: 77-1410 - Butner v. United States

Dear John:

I join.

Regards,

WSB

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 19, 1979

RE: No. 77-1410 Butner v. United States

Dear John:

I agree:

Sincerely,



Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 18, 1979

Re: 77-1410 - Butner v. United States

Dear John:

I am glad to join your opinion for the
Court.

Sincerely,

P.S.
P.

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 17, 1979

Re: 77-1410 - Butner v. U.S.

Dear John,

I join.

Sincerely yours,



Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 1, 1979

Re: No. 77-1410 - Butner v. United States

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

January 18, 1979

Re: No. 77-1410 - Butner v. United States

Dear John:

If you could see your way clear to omit the next to the last sentence of the body of your opinion (that is, the one beginning with "Accordingly" on page 9), you have my joinder. I suggest this because I am not yet ready to say, as the opinion implies, that we would never review a Court of Appeals' decision on a state law question. I may eventually reach that point, but, for now, I would like to reserve decision. I doubt that Potter in his writings in The Tungus and Halecki, cited in your footnote 12, went quite that far.

I also have one other minor suggestion. Because many States have more than one federal judicial district, I would not like to imply that "the applicable law" could vary "from district to district" within the same State. I suspect that the words "from district to district" could be omitted without loss to the meaning and significance of the sentence at the very top of page 5.

We have one other thought which my clerk will express to your clerk.

Sincerely,



Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 18, 1979

77-1410 Butner v. United States

Dear John:

Please join me.

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

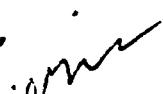
January 18, 1979

Re: No. 77-1410 Butner v. United States

Dear John:

Please join me.

Sincerely,



Mr. Justice Stevens

Copies to the Conference

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
JAN 17 1979

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

77-1410

William E. Butner, Petitioner, | On Writ of Certiorari to the
v. | United States Court of Ap-
United States et al. | peals for the Fourth Circuit.

[January —, 1979]

MR. JUSTICE STEVENS delivered the opinion of the Court.

A dispute between a bankruptcy trustee and a second mortgagor over the right to the rents collected during the period between the mortgagor's bankruptcy and the foreclosure sale of the mortgaged property gave rise to the question we granted certiorari to decide. That question is whether the right to such rents is determined by a federal rule of equity or by the law of the State where the property is located.

On May 14, 1973, Golden Enterprises, Inc. (Golden) filed a petition for an arrangement under Chapter XI of the Bankruptcy Act. 11 U. S. C. §§ 701-799. In those proceedings, the bankruptcy judge approved a plan consolidating various liens on North Carolina real estate owned by Golden. As a result, petitioner acquired a second mortgage ~~on the real estate~~ securing an indebtedness of \$360,000.¹ Petitioner did not, however, receive any express security interest in the rents earned by the property.

On April 18, 1974, the bankruptcy judge granted Golden's motion to appoint an agent to collect the rents and to apply them as directed by the court. The order of appointment

¹ Originally, the second mortgage was held by petitioner along with Robert L. McKaughn, Jr. and Jack Sipe Construction Co. Subsequently, McKaughn and the Sipe Construction Co. assigned all of their rights in the indebtedness and deeds of trust to petitioner, thus making him the sole second mortgagor.

pp. 3, 5, 9

~~JPS~~
~~Please return me~~
~~Plane from you~~

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:

JAN 19 1979

Recirculated:

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

77-1410

William E. Butner, Petitioner, | On Writ of Certiorari to the
v.
United States et al. | United States Court of Appeals for the Fourth Circuit.

[January —, 1979]

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A dispute between a bankruptcy trustee and a second mortgagee over the right to the rents collected during the period between the mortgagor's bankruptcy and the foreclosure sale of the mortgaged property gave rise to the question we granted certiorari to decide. That question is whether the right to such rents is determined by a federal rule of equity or by the law of the State where the property is located.

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