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Hatzlachh Supply Co. v. United States

445 U.S. 480 (1980)

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 11, 1980

Re: 78-1175 - Hatzlachh Supply Co., Inc. v. United States

Dear Byron:

I join.

Regards,

Handwritten signature of William Rehnquist, consisting of the letters 'WR' followed by a stylized 'B'.

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 4, 1980

RE: No. 78-1175 Hatzlachh Supply Co. v. United States

Dear Byron:

I agree.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill", written in dark ink.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 4, 1980

Re: 78-1175 - Hatzlachh Supply Co. v. United States

Dear Byron:

I agree with your proposed per curiam.

Sincerely yours,

P.S.
/

Mr. Justice White

Copies to the Conference

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

1st DRAFT

Circulated: 3 JAN 1980

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 78-1175

Hatzlachh Supply Co., Inc.,	}	On Writ of Certiorari to the United States Court of Claims.
Petitioner,		
v.		
United States.		

[January —, 1980]

PER CURIAM.

We granted certiorari in this case to consider whether the United States may be held liable for breach of an implied contract of bailment when goods are lost while held by the United States Customs Service (USCS) following their seizure for customs violations. 44 U. S. — (1979). The Court of Claims granted the Government's motion for summary judgment, finding that petitioner had failed to state a claim upon which the court could grant relief. 579 F. 2d 617 (1978). We vacate the Court of Claims' judgment and remand the case for further proceedings.

excess of
Petitioner imported camera supplies and other items which USCS seized upon their arrival in port and declared forfeited for customs violations. On petitioner's appropriate procedure for relief, USCS agreed to return the forfeited materials upon petitioner's payment of a \$40,000 penalty. When the shipment was returned to petitioner, however, merchandise valued in \$165,000 was missing. Petitioner brought suit under the Tucker Act, 28 U. S. C. § 1491, for the value of the missing merchandise,¹ alleging breach of an implied contract of bailment.²

¹ Petitioner also sought damages, no longer in issue, for loss of "face and good will."

² As a second cause of action, petitioner alleged a capricious and arbi-

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

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 1, 5

From: Mr. Justice White

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8 JAN 1980

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1175

Hatzlachh Supply Co., Inc., Petitioner, v. United States.	}	On Writ of Certiorari to the United States Court of Claims.
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[January —, 1980]

PER CURIAM.

We granted certiorari in this case to consider whether the United States may be held liable for breach of an implied contract of bailment when goods are lost while held by the United States Customs Service (USCS) following their seizure for customs violations. 44 U. S. — (1979). The Court of Claims granted the Government's motion for summary judgment, finding that petitioner had failed to state a claim upon which the court could grant relief. 579 F. 2d 617 (1978). We vacate the Court of Claims' judgment and remand the case for further proceedings.

Petitioner imported camera supplies and other items which USCS seized upon their arrival in port and declared forfeited for customs violations. On petitioner's appropriate procedure for relief, USCS agreed to return the forfeited materials upon petitioner's payment of a \$40,000 penalty. When the shipment was returned to petitioner, however, merchandise valued in excess of \$165,000 was missing. Petitioner brought suit under the Tucker Act, 28 U. S. C. § 1491, for the value of the missing merchandise,¹ alleging breach of an implied contract of bailment.²

¹ Petitioner also sought damages, no longer in issue, for loss of "face and good will."

² As a second cause of action, petitioner alleged a capricious and arbi-

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 17, 1980

Re: No. 78-1175 - Hatzlachh Supply Co. v. U.S.

Dear Byron:

I agree with your Per Curiam.

Sincerely,

J.M.
T.M.

Mr. Justice White

cc: The Conference

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

7 JAN 1980
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No. 78-1175 - Hatzlachh Supply Co. v. United States

MR. JUSTICE BLACKMUN, dissenting.

I do not disagree with the legal principles pronounced by the Court in its per curiam opinion to the effect that 28 U.S.C. § 2680(c) is not an obstacle to the awarding of judgment against the Government on an implied contract, ante, at 2; or that, in exempting from the Tort Claims Act those claims described in § 2680(c), Congress did not also intend to disturb other existing statutory remedies, ante, at 3; or that Stencel Aero Engineering Corp. v. United States, 431 U.S. 666 (1977), does not control this case, ante, at 4-5; or that the absence of governmental tort liability does not bar contractual remedies on implied-in-fact contracts, ante, at 5; or that there is no inconsistency between a contractual remedy against the

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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: _____

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Printed
1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1175

Hatzlachh Supply Co., Inc.,
Petitioner,
v.
United States.

On Writ of Certiorari to the
United States Court of Claims.

[January —, 1980]

MR. JUSTICE BLACKMUN, dissenting.

I do not disagree with the legal principles pronounced by the Court in its *per curiam* opinion to the effect that 28 U. S. C. § 2680 (c) is not an obstacle to the awarding of judgment against the Government on an implied contract, *ante*, at 2; or that, in exempting from the Tort Claims Act those claims described in § 2680 (c), Congress did not also intend to disturb other existing statutory remedies, *ante*, at 3; or that *Stencel Aero Engineering Corp. v. United States*, 431 U. S. 666 (1977), does not control this case, *ante*, at 4-5; or that the absence of governmental tort liability does not bar contractual remedies on implied-in-fact contracts, *ante*, at 5; or that there is no inconsistency between a contractual remedy against the Government and a tort remedy against Customs officers, *ante*, 6. But I dissent from the Court's vacating the judgment of the Court of Claims and its remanding the case to that court for further proceedings.

I dissent because I am persuaded that an implied-in-fact contract is not to be found on the record in this case, and because I believe the remand is, or should be, a useless exercise leading to an inevitable result.

It is clear that jurisdiction of the Court of Claims extends to contracts implied-in-fact but not to those implied-in-law. See *United States v. Minnesota Mutual Investment Co.*, 271 U. S. 212, 217-218 (1926); *Merritt v. United States*, 267 U. S. 338, 341 (1925). Here, the Customs Service seized the goods

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 4, 1980

No. 78-1175 Hatzlachh Supply Co. v. U. S.

Dear Byron:

I agree with your Per Curiam.

Sincerely,

A handwritten signature in cursive script, appearing to read "L. Lewis".

Mr. Justice White

Copies to the Conference

LFP/lab

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 7, 1980

Re: No. 78-1175 Hatzlachh Supply Co., Inc. v. United States

Dear Byron:

Please join me.

Sincerely,

WHR

Mr. Justice White

Copy to the Conference.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 7, 1980

Re: 78-1175 - Hatzlachh Supply Co. v.
United States

Dear Byron:

Please join me.

Respectfully,



Mr. Justice White

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