The Burger Court Opinion Writing Database

Commissioner v. Tufts

461 U.S. 300 (1983)

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 28, 1983

Re: No. 81-1536, Commissioner of Internal Revenue v. John F. Tufts

Dear Harry:

I join.

Regards,

WEB

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 18, 1983

Re: No. 81-1536, CIR v. Tufts

Dear Harry,

I agree.

Sincerely,

Bill

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 15, 1983

Re: 81-1536 - CIR v. Tufts

Dear Harry,

I agree.

Sincerely,

Byron

Justice Blackmun

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 12, 1983

Re: No. 81-1536 - Commissioner of Internal Revenue v. John F. Tufts

Dear Harry:

Please join me.

Sincerely,

T.M.

T.M.

Justice Blackmun

cc: The Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Blackmun**

Circulated: APR 12 1983

Recirculated: _____

HAB

Please join me

TM

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1536

COMMISSIONER OF INTERNAL REVENUE, PETITIONER *v.* JOHN F. TUFTS ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[April ——, 1983]

JUSTICE BLACKMUN delivered the opinion of the Court.

Over 35 years ago, in *Crane* v. *Commissioner*, 331 U. S. 1 (1947), this Court ruled that a taxpayer, who sold property encumbered by a nonrecourse mortgage (the amount of the mortgage being less than the property's value), must include the unpaid balance of the mortgage in the computation of the amount the taxpayer realized on the sale. The case now before us presents the question whether the same rule applies when the unpaid amount of the nonrecourse mortgage exceeds the fair market value of the property sold.

I

On August 1, 1970, respondent Clark Pelt, a builder, and his wholly owned corporation, respondent Clark, Inc., formed a general partnership. The purpose of the partnership was to construct a 120-unit apartment complex in Duncanville, Tex., a Dallas suburb. Neither Pelt nor Clark, Inc., made any capital contribution to the partnership. Six days later, the partnership entered into a mortgage loan agreement with the Farm & Home Savings Association (F&H). Under the agreement, F&H was committed for a $1,851,500 loan for the complex. In return, the partnership executed a note and a deed of trust in favor of F&H. The partnership obtained the loan on a nonrecourse basis: neither

STYLISTIC CHANGES
+ pp. 10-11

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Blackmun**

Circulated: _____

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81–1536

COMMISSIONER OF INTERNAL REVENUE, PETITIONER *v.* JOHN F. TUFTS ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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I

On August 1, 1970, respondent Clark Pelt, a builder, and his wholly owned corporation, respondent Clark, Inc., formed a general partnership. The purpose of the partnership was to construct a 120-unit apartment complex in Duncanville, Tex., a Dallas suburb. Neither Pelt nor Clark, Inc., made any capital contribution to the partnership. Six days later, the partnership entered into a mortgage loan agreement with the Farm & Home Savings Association (F&H). Under the agreement, F&H was committed for a $1,851,500 loan for the complex. In return, the partnership executed a note and a deed of trust in favor of F&H. The partnership obtained the loan on a nonrecourse basis: neither

April 25, 1983

Re: No. 81-1536 - Commissioner v. Tufts

Dear Sandra:

Thank you for your letter of April 25. I would not want you to feel uncomfortable. I shall add the following sentence at the end of the paragraph on page 9 of the opinion:

"The Commissioner's interpretation of §1001(b) in this fashion cannot be said to be unreasonable."

Sincerely,

HAB

Justice O'Connor

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Blackmun**

Circulated: _____

Recirculated: APR 26 1983

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1536

COMMISSIONER OF INTERNAL REVENUE, PETITIONER *v.* JOHN F. TUFTS ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[April ——, 1983]

JUSTICE BLACKMUN delivered the opinion of the Court.

Over 35 years ago, in *Crane* v. *Commissioner*, 331 U. S. 1 (1947), this Court ruled that a taxpayer, who sold property encumbered by a nonrecourse mortgage (the amount of the mortgage being less than the property's value), must include the unpaid balance of the mortgage in the computation of the amount the taxpayer realized on the sale. The case now before us presents the question whether the same rule applies when the unpaid amount of the nonrecourse mortgage exceeds the fair market value of the property sold.

I

On August 1, 1970, respondent Clark Pelt, a builder, and his wholly owned corporation, respondent Clark, Inc., formed a general partnership. The purpose of the partnership was to construct a 120-unit apartment complex in Duncanville, Tex., a Dallas suburb. Neither Pelt nor Clark, Inc., made any capital contribution to the partnership. Six days later, the partnership entered into a mortgage loan agreement with the Farm & Home Savings Association (F&H). Under the agreement, F&H was committed for a $1,851,500 loan for the complex. In return, the partnership executed a note and a deed of trust in favor of F&H. The partnership obtained the loan on a nonrecourse basis: neither

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 23, 1983

MEMORANDUM TO THE CONFERENCE:

Re: No. 81-1536 - Commissioner v. Tufts

I would like to change one word in the opinion that was filed for this case. At the end of the second line in Part II on page 3 of the slip opinion appears the word "incurred." I think it would be better if the word were changed to "involved." I am advising Mr. Lind of this and, if none of you object, I hope that this change may be made.

Harry

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 20, 1983

81-1536 Commissioner v. Tufts

Dear Harry:

Please join me.

Sincerely,

Lewis

Justice Blackmun

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 13, 1983

Re: No. 81-1536 Commissioner of Internal Revenue v. Tufts

Dear Harry:

Please join me.

Sincerely,

WHR

Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 14, 1983

Re: 81-1536 - CIR v. Tufts

Dear Harry:

Your opinion seems solid to me and I am prepared to join it with only one concern. I think I may have been a little more persuaded by Professor Barnett than other Members of the Court were. In reading your footnote 11 on pages 10-11, I have an uneasy feeling about the manner in which you answer him. I am not sure I would like to press the freeing-of-assets interpretation of cancellation of indebtedness income too far. The suggestions that cancellation of nonrecourse indebtedness can only yield a reduction in basis, and that where the basis would turn negative the cancellation of indebtedness has no effect at all, leave me feeling a little nervous. I have the sense that the Commissioner may not want to be bound into that characterization of his positions. Although you are right that such a distinction between "pure" cancellations of nonrecourse indebtedness on the one hand and extinguishment of indebtedness in a sale on the other parallels the Lakeland Grocery rule, I have a vague recollection that Lakeland Grocery received a fair amount of criticism.

Be that as it may, I wonder if you might consider eliminating everything from footnote 11 after the second paragraph. I by no means insist on this as a condition of joining your opinion, for I am actually in this posture: If you do eliminate those paragraphs, I will join you forthwith. If you don't, I will need a little more time to think through what you say in the balance of the footnote.

I recognize that the more complete footnote has the advantage of demonstrating that we thought a good

deal about Barnett's submission, but I have a lingering fear of putting our own "footnote 37" into this case.

Respectfully,

Justice Blackmun

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 19, 1983

Re: 81-1536 - CIR v. Tufts

Dear Harry:

Please join me.

Respectfully,

John

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

April 25, 1983

No. 81-1536 Commissioner v. Tufts

Dear Harry,

I have spent some time considering your draft in this case, because I found Professor Barnett's submission quite persuasive. I have decided that I shall write a brief statement explaining that view and explaining I agree with the disposition of this case, because the Court should defer to the Commissioner, whose interpretation is rational. I will be circulating that shortly. At the same time, I would like to join your opinion. As it now stands, though, the opinion seems to me not only to defer to the Commissioner, but affirmatively to endorse his view. While I am ready to accept the Commissioner's position as defensible, I am not ready to defend it. Would you consider an addition on line 3 of p.9 along the following lines?

> Further, the Commissioner's reading of section 1001(b), defining the "amount realized from the sale or other disposition of property," to permit the treatment of the extinguishment of the liability as an amount arising from the sale of the property is not unreasonable.

Of course, I am not attached to this particular language; any modification that would clarify that deference to the Commissioner leads us to permit him to lump together the transaction in the property and the transaction in the liability would enable me to join your opinion.

Sincerely,

Sandra

Justice Blackmun

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

April 25, 1983

No. 81-1536 Commissioner v. Tufts

Dear Harry,

Please join me in your opinion. I will circulate a brief concurrence expressing my thoughts on the theory proposed by Professor Barnett. It will not be long in forthcoming.

Sincerely,

Sandra

Justice Blackmun

Copies to the Conference

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

From: **Justice O'Connor**

Circulated: APR 28 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1536

COMMISSIONER OF INTERNAL REVENUE, PETITIONER *v.* JOHN F. TUFTS ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[May ——, 1983]

JUSTICE O'CONNOR, concurring.

I concur in the opinion of the Court, accepting the view of the Commissioner. I do not, however, endorse the Commissioner's view. Indeed, were we writing on a slate clean except for the *Crane* decision, I would take quite a different approach—that urged upon us by Professor Barnett as *amicus*.

Crane established that a taxpayer could treat property as entirely his own, in spite of the "coinvestment" provided by his mortgagee in the form of a nonrecourse loan. That is, the full basis of the property, with all its tax consequences, belongs to the mortgagor. That rule alone, though, does not in any way tie nonrecourse debt to the cost of property or to the proceeds upon disposition. I see no reason to treat the purchase, ownership, and eventual disposition of property differently because the taxpayer also takes out a mortgage, an independent transaction. In this case, the taxpayer purchased property, using nonrecourse financing, and sold it after it declined in value to a buyer who assumed the mortgage. There is no economic difference between the events in this case and a case in which the taxpayer buys property with cash; later obtains a nonrecourse loan by pledging the property as security; still later, using cash on hand, buys off the mortgage for the market value of the devalued property; and finally sells the property to a third party for its market value.

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 23, 1983

No. 81-1536 Commissioner v. Tufts

Dear Harry,

I have no objection to the change.

Sincerely,

Sandra

Justice Blackmun

Copies to the Conference