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United States v. Security Industrial Bank

459 U.S. 70 (1982)

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

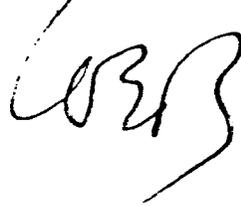
October 26, 1982

Re: 81-184 - U.S. v. Security Industrial Bank

Dear Bill:

I join.

Regards,

A handwritten signature in black ink, appearing to be 'WR', is written below the typed word 'Regards,'.

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 22, 1982

RE: No. 81-184 United States v. Security Industrial Bank

Dear Harry:

Please join me.

Sincerely,

Bill
7

Justice Blackmun

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

October 27, 1982

Re: 81-184 - United States
v. Security Industrial Bank

Dear Bill,

I shall await the dissent in this case.

Sincerely yours,



Justice Rehnquist

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 18, 1982

Re: 81-184 - United States
v. Security Industrial Bank

Dear Bill,

I now join your proposed opinion for the
Court in this case.

Sincerely yours,



Justice Rehnquist

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

October 21, 1982

Re: No. 81-184 - U.S. v. Security Industrial Bank

Dear Bill:

I await the dissent.

Sincerely,


T.M.

Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 23, 1982

Re: No. 81-184- U.S. v. Security Industrial Bank

Dear Harry:

Please join me in your concurring opinion.

Sincerely,



T.M.

Justice Blackmun

cc: The Conference

7/11
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

October 12, 1982

Re: No. 81-184, United States v. Security Industrial Bank

Dear Bill:

This is in response to your inquiry of today. I shall be glad to undertake the dissent in this case.

Sincerely,



Justice Brennan

cc: Justice Marshall
Justice Stevens

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

October 21, 1982

W

Re: No. 81-184 - United States v. Security Industrial Bank

Dear Bill:

I shall be writing a dissent in this case in due course.

Sincerely,

H.A.B.
By usm

RECORDED
INDEXED
OCT 21 1982
10:48
Justice Rehnquist
cc: The Conference

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

From: **Justice Blackmun**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-184

**UNITED STATES, APPELLANT *v.* SECURITY
INDUSTRIAL BANK ET AL.**

**ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
-FOR THE TENTH CIRCUIT**

[November —, 1982]

JUSTICE BLACKMUN, concurring in the judgment.

This case concerns the Bankruptcy Act of 1978, 11 U. S. C. § 101 *et seq.* (1976 ed., Supp. V), and, in particular, the exemption provisions of § 522 of that Act. Specifically at issue is the effect of certain of these exemption provisions upon nonpossessory, nonpurchase-money obligations given by debtors to small loan companies before the enactment of the Act. The purported liens apply generally, not specifically, to property of the kind described and, as a practicable matter, there is nothing to prevent the debtor's selling the property and replacing it or not replacing it, just as he chooses.

Section 522, for the first time, established a set of federal exemptions for individual debtors. Concededly, the section, as all similar statutes, was enacted to protect the debtor's essential needs and to enable him to have a fresh start economically. Section 522(f)(2) permits the debtor to "avoid the fixing" of a nonpossessory, nonpurchase-money security interest in certain property, but the subsection does not extend to all property otherwise exempt under § 522(d). It is limited to certain personal items, such as household furnishings, wearing apparel, jewelry, tools of the debtor's trade, and professionally prescribed health aids.

The Court naturally struggles with the question of the application of the new exemption provisions to obligations

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 18, 1982

Re: No. 81-184, United States v. Security Industrial Bank

Dear Bill, Thurgood, and John:

I have put a good bit of time in on this one and have finally ended up concurring in the judgment. This may be disappointing to you, but you can see the route I have followed.

Sincerely,



Justice Brennan
Justice Marshall
Justice Stevens

82 NOV 18 AM 11:42

RECEIVED
SUPREME COURT
JUSTICE HARRY A. BLACKMUN

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 22, 1982

Re: No. 81-184 - United States v. Security Industrial Bank

Dear Bill and Thurgood:

For your information, I enclose a copy of a letter John has just sent to me.

Sincerely,

Justice Brennan

Justice Marshall,

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

October 22, 1982

81-184 U.S. v. Security Industrial Bank

Dear Bill:

Please join me.

Sincerely,



Justice Rehnquist

lfp/ss

cc: The Conference

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

From: **Justice Rehnquist**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-184

UNITED STATES, APPELLANT *v.* SECURITY
INDUSTRIAL BANK ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

[October —, 1982]

JUSTICE REHNQUIST delivered the opinion of the Court.

This case concerns the effect of 11 U. S. C. § 522(f)(2), which permits individual debtors in bankruptcy proceedings to avoid liens on certain property. The Court of Appeals consolidated seven appeals from the Bankruptcy Courts for the Districts of Kansas and Colorado. In each case the debtor was an individual who instituted bankruptcy proceedings after the Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 ("the Act"), became effective on October 1, 1979. In each case one of the appellees had loaned the debtor money and obtained and perfected a lien on the debtor's household furnishings and appliances before the Act was enacted on November 6, 1978. None of these liens were possessory, and none secured purchase-money obligations.

Included within the personal property subject to the appellees' liens were household items which are exempt from the property included within the debtors' estates by virtue of subsections (b) and (d) of § 522.¹ The debtors claimed these

¹The exemptions were designed to permit individual debtors to retain exempt property so that they will be able to enjoy a "fresh start" after bankruptcy.

Subsections (b) and (d) of § 522 provide in pertinent part:

(b) [A]n individual debtor may exempt from the property of the estate

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

October 22, 1982

MEMORANDUM TO THE CONFERENCE

Re: No. 81-184, United States v. Security Industrial Bank

Justice O'Connor has suggested that the opinion in this case be revised to deal explicitly with the issue of the jurisdiction of the bankruptcy courts. I agree and suggest rewriting the last sentence of footnote 4 to read as follows:

Because our decision in Northern Pipeline is prospective only, id., at ____, and because we have stayed the issuance of our mandate in that case to December 24, 1982, ____, U.S. ____, that decision does not affect the judgment in this case.

As I recall, the issue was not addressed in our conference discussion of the case. I am circulating this memo to the entire conference, not just to those who voted to affirm, because it seems to me that one's views on this issue would not depend on one's views on the merits. I propose to incorporate the above revision unless I am advised that it will not command the support of a majority of the conference.

Sincerely,



STYLISTIC CHANGES THROUGHOUT

99 3,649

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

From: **Justice Rehnquist**

Circulated: _____

Recirculated: _____

OCT 26 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-184

UNITED STATES, APPELLANT *v.* SECURITY
INDUSTRIAL BANK ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

[October —, 1982]

JUSTICE REHNQUIST delivered the opinion of the Court.

This case concerns the effect of 11 U. S. C. § 522(f)(2), which permits individual debtors in bankruptcy proceedings to avoid liens on certain property. The Court of Appeals consolidated seven appeals from the Bankruptcy Courts for the Districts of Kansas and Colorado. In each case the debtor was an individual who instituted bankruptcy proceedings after the Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 ("the 1978 Act"), became effective on October 1, 1979. In each case one of the appellees had loaned the debtor money and obtained and perfected a lien on the debtor's household furnishings and appliances before the 1978 Act was enacted on November 6, 1978. None of these liens was possessory, and none secured purchase-money obligations.

Included within the personal property subject to the appellees' liens were household items that are exempt from the property included within the debtors' estates by virtue of subsections (b) and (d) of § 522.¹ The debtors claimed these

¹The exemptions were designed to permit individual debtors to retain exempt property so that they will be able to enjoy a "fresh start" after bankruptcy.

Subsections (b) and (d) of § 522 provide in pertinent part:

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STYLISTIC CHANGES INTRODUCED

BP 8, 10-11

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

From: **Justice Rehnquist**

Circulated: _____

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-184

**UNITED STATES, APPELLANT v. SECURITY
INDUSTRIAL BANK ET AL.**

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

[October —, 1982]

JUSTICE REHNQUIST delivered the opinion of the Court.

This case concerns the effect of 11 U. S. C. § 522(f)(2), which permits individual debtors in bankruptcy proceedings to avoid liens on certain property. The Court of Appeals consolidated seven appeals from the Bankruptcy Courts for the Districts of Kansas and Colorado. In each case the debtor was an individual who instituted bankruptcy proceedings after the Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 ("the 1978 Act"), became effective on October 1, 1979. In each case one of the appellees had loaned the debtor money and obtained and perfected a lien on the debtor's household furnishings and appliances before the 1978 Act was enacted on November 6, 1978. None of these liens was possessory, and none secured purchase-money obligations.

Included within the personal property subject to the appellees' liens were household items that are exempt from the property included within the debtors' estates by virtue of subsections (b) and (d) of § 522.¹ The debtors claimed these

¹The exemptions were designed to permit individual debtors to retain exempt property so that they will be able to enjoy a "fresh start" after bankruptcy.

Subsections (b) and (d) of § 522 provide in pertinent part:

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FAL

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 6, 1982

MEMORANDUM TO THE CONFERENCE

Re: Cases Held for No. 81-184, United States v. Security Industrial Bank

81-583 Beneficial Finance v. United States

This CA10 case is a cross appeal in the Security Industrial case. Cross-appt contends that Bankruptcy Judges cannot constitutionally exercise any of the powers vested in them by the 1978 Bankruptcy Act because they are not Article III judges. This Court has appeal jurisdiction under 28 U.S.C. §1252. I don't see any way to avoid noting, unless Congress acts to reconstitute the Bankruptcy Courts before this Court's stay from Northern Pipeline expires. See Security Industrial Bank, slip op. at 4 n.5. I recommend relisting this case for the January 7 conference. If by then the stay has expired without action by Congress, I recommend noting probable jurisdiction.

81-1866 Commonwealth National Bank v. Ashe

The CA3 held that petr's cognovit note is a judicial lien that can be avoided by individual debtors under 11 U.S.C. §522(f)(1). It also held that §522(f)(1) is constitutional, and noted a conflict with the CA10 decision in Security Industrial. This Court's construction of §522(f)(2) almost certainly applies to §522(f)(1) as well. I recommend GVR in light of Security Industrial.

82-155 Creditthrift of America, Inc. v. United States

This CA9 case presents the question reserved in Security Industrial, slip op. at 12 n.11. Petr obtained its lien between the date the 1978 Bankruptcy Act was enacted

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#1

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 9, 1982

MEMORANDUM TO THE CONFERENCE

Re: No. 81-583 Beneficial Finance v. United States, 81-184
Held for United States v. Security Industrial Bank

Upon closer examination and fairly extensive research, I now find that cross appellant has already won whatever he could win in the Security Industrial opinion. The cross appeal is therefore moot and should be dismissed.

Sincerely,



The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

October 22, 1982

Re: 81-184 - United States v. Security
Industrial Bank

Dear Bill:

As you may recall from the Conference discussion, I have flip-flopped on this case more than once. I ended up with a vote to reverse, but I find your opinion especially persuasive, particularly your reliance on Justice Holmes' opinion in Holt v. Henley, 232 U.S. 637, a case that seems to be squarely in point. I am therefore inclined to join your opinion, but since I did vote the other way I believe I should withhold a final commitment until I have the benefit of whatever other writing may circulate.

Respectfully,



Justice Rehnquist

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

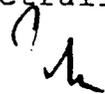
November 18, 1982

Re: 81-184 - United States v. Security
Industrial Bank

Dear Bill:

Please join me.

Respectfully,



Justice Rehnquist

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 18, 1982

Re: 81-184 - United States v. Security
Industrial Bank

Dear Harry:

It is really interesting that the Holt case, which now appears to be controlling to several of us, was not even cited by the supposedly fine lawyers who argued this case. I actually agree with your views on the constitutional issue but after reflection I have concluded that I will not join an expression of those views since Bill's opinion does actually rest solely on the statutory ground. Moreover, there is some virtue in trying to have Court opinions as unanimous as possible. For those reasons, even though I really share your analysis, I have decided to join him.

Respectfully,



Justice Blackmun

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

October 26, 1982

No. 81-184 United States v. Security
Industrial Bank

Dear Bill,

Please join me in the second draft of
your opinion in the referenced case.

Sincerely,



Justice Rehnquist

Copies to the Conference