

The Burger Court Opinion Writing Database

Mennonite Board of Missions v. Adams

462 U.S. 791 (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

May 13, 1983

Re: No. 82-11 - Mennonite Board of Missions v. Richard
C. Adams

Dear Thurgood:

I will await other writing in this case.

Regards,



Justice Marshall

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

June 8, 1983

Re: No. 82-11, Mennonite Board of Missions v. Adams

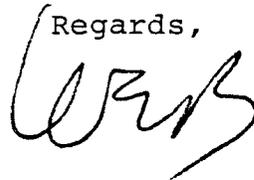
Dear Thurgood:

I think I can join you if you will insert something along these lines:

"If the mortgagee is identified in the mortgage of record, constructive notice by publication must be supplemented by notice mailed to the mortgagor's last known available address, or by personal service. But if the mortgagee is not readily identifiable constructive notice satisfies the requirements of Mullane."

This would replace the two final sentences, first full paragraph p. 6.

Regards,



Justice Marshall

Copies to the Conference

5

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

CHAMBERS OF
THE CHIEF JUSTICE

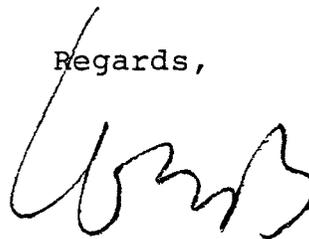
June 15, 1983

Re: No. 82-11, Mennonite Board of Missions v. Adams

Dear Thurgood:

I join.

Regards,



Justice Marshall

Copies to the Conference

ALL REMOVE FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

11

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 16, 1983

Re: No. 82-11

Mennonite Board of Missions
v. Richard C. Adams

Dear Thurgood,

Please join me.

Sincerely,

Justice Marshall

Copies to the Conference



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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 12, 1983

Re: 82-11 -

Mennonite Board of Missions v. Adams

Dear Thurgood,

Please join me.

Sincerely,

Justice Marshall

Copies to the Conference

cpm

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

From: **Justice Marshall**

Circulated: MAY 12 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-11

MENNONITE BOARD OF MISSIONS, APPELLANT *v.*
RICHARD C. ADAMS

ON APPEAL FROM THE COURT OF APPEALS OF INDIANA

[May —, 1983]

JUSTICE MARSHALL, delivered the opinion of the Court.

This appeal raises the question whether notice by publication and posting provides a mortgagee of real property with adequate notice of a proceeding to sell the mortgaged property for nonpayment of taxes.

I

To secure an obligation to pay \$14,000, Alfred Jean Moore executed a mortgage in favor of appellant Mennonite Board of Missions (MBM) on property in Elkhart, Indiana, that Moore had purchased from MBM. The mortgage was recorded in the Elkhart County Recorder's Office on March 1, 1973. Under the terms of the agreement, Moore was responsible for paying all of the property taxes. Without MBM's knowledge, however, she failed to pay taxes on the property.

Indiana law provides for the annual sale of real property on which payments of property taxes have been delinquent for fifteen months or longer. Ind. Code §6-1.1-24-1 *et seq.* Prior to the sale, the county auditor must post notice in the county courthouse and publish notice once each week for three consecutive weeks. §6-1.1-24-3. The owner of the property is entitled to notice by certified mail to his last known address. §6-1.1-24-4.¹ Until 1980, however, Indi-

¹ Because a mortgagee has no title to the mortgaged property under

P.P. 4-7

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

From: **Justice Marshall**

Circulated: _____

Recirculated: JUN 9 1983

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-11

MENNONITE BOARD OF MISSIONS, APPELLANT *v.*
RICHARD C. ADAMS

ON APPEAL FROM THE COURT OF APPEALS OF INDIANA

[June —, 1983]

JUSTICE MARSHALL, delivered the opinion of the Court.

This appeal raises the question whether notice by publication and posting provides a mortgagee of real property with adequate notice of a proceeding to sell the mortgaged property for nonpayment of taxes.

I

To secure an obligation to pay \$14,000, Alfred Jean Moore executed a mortgage in favor of appellant Mennonite Board of Missions (MBM) on property in Elkhart, Indiana, that Moore had purchased from MBM. The mortgage was recorded in the Elkhart County Recorder's Office on March 1, 1973. Under the terms of the agreement, Moore was responsible for paying all of the property taxes. Without MBM's knowledge, however, she failed to pay taxes on the property.

Indiana law provides for the annual sale of real property on which payments of property taxes have been delinquent for fifteen months or longer. Ind. Code §6-1.1-24-1 *et seq.* Prior to the sale, the county auditor must post notice in the county courthouse and publish notice once each week for three consecutive weeks. §6-1.1-24-3. The owner of the property is entitled to notice by certified mail to his last known address. §6-1.1-24-4.¹ Until 1980, however, Indi-

¹ Because a mortgagee has no title to the mortgaged property under

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

PP. 5, 6, 9

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

From: **Justice Marshall**

Circulated: _____

Recirculated: JUN 16 1983

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-11

MENNONITE BOARD OF MISSIONS, APPELLANT *v.*
RICHARD C. ADAMS

ON APPEAL FROM THE COURT OF APPEALS OF INDIANA

[June —, 1983]

JUSTICE MARSHALL, delivered the opinion of the Court.

This appeal raises the question whether notice by publication and posting provides a mortgagee of real property with adequate notice of a proceeding to sell the mortgaged property for nonpayment of taxes.

I

To secure an obligation to pay \$14,000, Alfred Jean Moore executed a mortgage in favor of appellant Mennonite Board of Missions (MBM) on property in Elkhart, Indiana, that Moore had purchased from MBM. The mortgage was recorded in the Elkhart County Recorder's Office on March 1, 1973. Under the terms of the agreement, Moore was responsible for paying all of the property taxes. Without MBM's knowledge, however, she failed to pay taxes on the property.

Indiana law provides for the annual sale of real property on which payments of property taxes have been delinquent for fifteen months or longer. Ind. Code §6-1.1-24-1 *et seq.* Prior to the sale, the county auditor must post notice in the county courthouse and publish notice once each week for three consecutive weeks. §6-1.1-24-3. The owner of the property is entitled to notice by certified mail to his last known address. §6-1.1-24-4.¹ Until 1980, however, Indi-

¹ Because a mortgagee has no title to the mortgaged property under

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 21, 1983

MEMORANDUM TO THE CONFERENCE

Re: Case Held for No. 82-11-Mennonite Board of Missions v. Adams

No. 82-268-First Pennsylvania Bank, N.A. v. Lancaster County Tax Claim Bureau. Appellant is a mortgagee. The mortgaged property, valued at \$185,000, was put up for sale for nonpayment of taxes. Like the statute at issue in Mennonite Board of Missions, Pennsylvania's tax sale statute provided only notice by publication and posting to the mortgagee. As a consequence, petitioner never learned of the pending proceedings. The property was sold at a tax sale for \$854, free and clear of appellant's mortgage.

Under Mennonite Board of Missions, which held that an identifiable mortgagee is entitled at least to mailed notice of a pending tax sale, the Pennsylvania statute is clearly unconstitutional.

I will vote to GVR in light of Mennonite Board of Missions.

JM
T.M.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 21, 1983

MEMORANDUM TO THE CONFERENCE

Re: Case Held for No. 82-11-Mennonite Board of Missions v. Adams

No. 82-853-Russell Creek Land Co. v. Charjuan, Inc.
Petitioner's property was put up for sale at a tax sale proceeding. Pursuant to the West Virginia statute, the county posted and published notice but never made an effort to provide actual notice to petitioner, notwithstanding that petitioner's name and address were in the Secretary of State's possession.

This case is controlled by Mennonite Board of Missions. Petitioner was entitled at least to mailed notice because its property interests would be adversely affected by the pending proceeding and its identity was reasonably ascertainable. The decision provides no basis for requiring less in the way of notice to property owners than to mortgagees.

I will vote to GVR in light of Mennonite Board of Missions.

JM.
T.M.

7418

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 21, 1983

MEMORANDUM TO THE CONFERENCE

Re: Case Held for No. 82-11-Mennonite Board of
Missions v. Adams

No. 82-1365-Continental Ins. Co. v. Moseley. The Nevada Nonclaim Statute provides for summary administration of estates that do not exceed \$60,000 in value. The statute provides for publication of notice to creditors. Any claim not filed within 60 days after the first publication of notice to creditors is barred.

Petitioner was the plaintiff in an action against the decedent at the time of her death. As a result, the estate was aware that petitioner was a creditor. Petitioner argues that notice by publication therefore did not satisfy due process.

This case is controlled by our holding that any party whose property interests will be adversely affected by a proceeding must be provided at least notice by mail if its identity is reasonably ascertainable.

I will vote to GVR in light of Mennonite Board of
Missions.

JM.

T.M.

Reproduced from the Collections of the Manuscript Division, Library of Congress

h

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 13, 1983

Re: No. 82-11 - Mennonite Board of Missions v. Adams

Dear Thurgood:

Please join me.

Sincerely,



Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 13, 1983

82-11 Mennonite Board of Missions v. Adams

Dear Thurgood:

My vote at Conference was tentatively to affirm.

On the facts in this case, I may conclude not to dissent. As presently advised, however, I do not think I could join your opinion. The burden on the county is not limited simply to mailing notice. A county would have to have someone check the records to ascertain with respect to each delinquent taxpayer whether there is a mortgage, perhaps whether it has been paid off, and whether there is a dependable address.

Moreover, most mortgagees are in the business of lending money for investment purposes - as is true of appellant in this case. Such mortgagees are in a position to protect themselves, and usually do so by appropriate provisions in the mortgage instrument by requiring proof annually that taxes and insurance have been paid. In this case, the appellant itself prepared the mortgage.

Also, as Sandra has suggested, the statement on p. 7 that notice by mail is a minimum constitutional precondition to all proceedings goes well beyond my understanding of our prior decisions.

In sum, I will await further writing and possibly may write myself.

Sincerely,

Lewis

Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 6, 1983

82-11 Mennonite Board of Missions v. Adams

Dear Sandra:

Please join me in your dissent.

Sincerely,



Justice O'Connor

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 6, 1983

Re: No. 82-11 Mennonite Board of Missions v. Adams

Dear Sandra:

Please join me in your dissenting opinion.

Sincerely,



Justice O'Connor

cc: The Conference



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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 12, 1983

Re: 82-11 - Mennonite Board of Missions
v. Adams

Dear Thurgood:

Please join me.

Respectfully,

Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 15, 1983

Re: 82-11 - Mennonite Board of Missions
v. Adams

Dear Thurgood:

In order to take some of the force out of the dissent, which I believe reads your opinion much more broadly than it was intended to be written, I wonder if you would consider changing the first sentence at the top of page 9 of your opinion to read this way:

"Notice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the interests of any party to a commercial transaction, whether unlettered or well versed in commercial practice, if its name and address are reasonably ascertainable."

This is just a suggestion.

Respectfully,



Justice Marshall

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

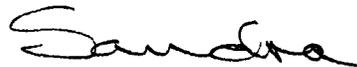
May 12, 1983

No. 82-11 Mennonite Board of Missions v. Adams

Dear Thurgood,

I will either write separately or await other writing. I had thought we should remand to determine whether the plaintiff below was entitled to relief. In addition, I am concerned about your suggestion on p. 7 that notice by mail is a minimum constitutional precondition to all proceedings. Finally, I am also concerned about any opinion which could be applied retroactively.

Sincerely,



Justice Marshall

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: 6

Recirculated:

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-11

**MENNONITE BOARD OF MISSIONS, APPELLANT v.
RICHARD C. ADAMS**

ON APPEAL FROM THE COURT OF APPEALS OF INDIANA

[June —, 1983]

JUSTICE O'CONNOR, dissenting.

Today, the Court departs significantly from its prior decisions and holds that before the State conducts *any* proceeding that will affect the legally protected interests of *any* party, the State must provide notice to that party by means certain to ensure actual notice as long as the party's identity and location are "reasonably ascertainable." *Ante*, p. 7. Applying this novel and unjustified principle to the the present case, the Court decides that the mortgagee involved deserved more than the notice by publication and posting that were provided. I dissent because the Court's approach is unwarranted both as a general rule and as the rule of this case.

I

In *Mullane v. Central Hanover Trust Co.*, 339 U. S. 306, 314 (1950), the Court established that the "elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." We emphasized that notice is constitutionally adequate when "the practicalities and peculiarities of the case . . . are reasonably met," *id.*, at 314-315. See also *Walker v. City of Hutchinson*, 352 U. S. 112, 115

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Stylistic Changes Throughout

PP. 1, 4, 5, 6

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

From: Justice O'Connor

Circulated: _____

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-11

MENNONITE BOARD OF MISSIONS, APPELLANT v.
RICHARD C. ADAMS

ON APPEAL FROM THE COURT OF APPEALS OF INDIANA

[June —, 1983]

JUSTICE O'CONNOR, with whom JUSTICE POWELL and JUSTICE REHNQUIST join, dissenting.

Today, the Court departs significantly from its prior decisions and holds that before the State conducts *any* proceeding that will affect the legally protected interests of *any* party, the State must provide notice to that party by means certain to ensure actual notice as long as the party's identity and location are "reasonably ascertainable." *Ante*, at 9. Applying this novel and unjustified principle to the present case, the Court decides that the mortgagee involved deserved more than the notice by publication and posting that were provided. I dissent because the Court's approach is unwarranted both as a general rule and as the rule of this case.

I

In *Mullane v. Central Hanover Trust Co.*, 339 U. S. 306, 314 (1950), the Court established that "[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." We emphasized that notice is constitutionally adequate when "the practicalities and peculiarities of the case . . . are reasonably met," *id.*, at 314-315.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

PP. 1, 3, 4

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

From: Justice O'Connor

3d Draft
SUPREME COURT OF THE UNITED STATES

No. 82-11

Recirculated: JUN 17

MENNONITE BOARD OF MISSIONS, APPELLANT v.
RICHARD C. ADAMS

ON APPEAL FROM THE COURT OF APPEALS OF INDIANA

[June 22, 1983]

JUSTICE O'CONNOR, with whom JUSTICE POWELL and JUSTICE REHNQUIST join, dissenting.

Today, the Court departs significantly from its prior decisions and holds that before the State conducts *any* proceeding that will affect the legally protected property interests of *any* party, the State must provide notice to that party by means certain to ensure actual notice as long as the party's identity and location are "reasonably ascertainable." *Ante*, at 9. Applying this novel and unjustified principle to the present case, the Court decides that the mortgagee involved deserved more than the notice by publication and posting that were provided. I dissent because the Court's approach is unwarranted both as a general rule and as the rule of this case.

I

In *Mullane v. Central Hanover Trust Co.*, 339 U. S. 306, 314 (1950), the Court established that "[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." We emphasized that notice is constitutionally adequate when "the practicalities and peculiarities of the case . . . are reasonably met," *id.*, at 314-315.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS