

The Burger Court Opinion Writing Database

Philko Aviation, Inc. v. Shacket

462 U.S. 406 (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

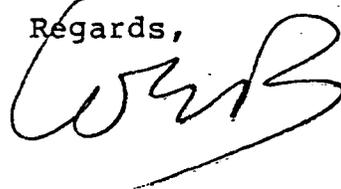
June 9, 1983

RE: 82-342 - Philko Aviation, Inc. v. Maurice Shacket,
et ux.

Dear Byron:

I join.

Regards,

A handwritten signature in dark ink, appearing to be 'W. White', written in a cursive style.

Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 3, 1983

Re: No. 82-342 -- Philco Aviation
v. Shacket

Dear Harry, Lewis and John:

We four are in dissent in the
above. Would you, John, be willing to
take on the dissent?

Sincerely,



Justice Blackmun

Justice Powell

Justice Stevens

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 25, 1983

Re: No. 82-342

Philko Aviation, Inc.
v. Maurice Shacket, et ux.

Dear Byron,

I could join an opinion along the
lines of your memorandum in the above.

Sincerely,

Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 1, 1983

No. 82-342

Philko Aviation, Inc. v. Shacket

Dear Byron,

I agree.

Sincerely,



Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 25, 1983

Memorandum to the Conference

Re: 82-342 - Philko Aviation, Inc. v. Shacket

The federal statute in this case can be read as not requiring the recording of any document evidencing a transfer of an aircraft that is valid under state law without such a document. The first transfer in this case, the sale to Shacket, was such a transfer. My vote to affirm was cast on this basis, which is somewhat different from that of the Court of Appeals. The position reflects a literal and defensible reading of the statute, but in the course of drafting a proposed opinion on that basis, I have had second thoughts.

The difficulty with this approach, which leads me not to circulate the draft, at least at this time, is that it is at odds with what Congress must have intended to accomplish by the statute. To say that there is no need to record a document evidencing a transfer that is valid between the parties under state law without the delivery of an instrument, makes the system largely ineffective and a purposeless effort. Of course, it is bad drafting by Congress itself that brings this case here, and we could leave the drafters to stew in their own juice. I am now inclined, however, to think it the better course to attempt to carry out the evident purpose of the statute if there is a reasonable basis for doing so. The enclosed memorandum is an effort along these lines, and if there are four others to reverse, I would be content to do so.

B.R.W.

Chief Justice
Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice White**

Circulated: 5/25/83

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-342

**PHILKO AVIATION, INC., PETITIONER v.
MAURICE SHACKET ET UX.**

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

[May —, 1983]

Memorandum of JUSTICE WHITE.

This case presents the question whether the Federal Aviation Act of 1958 (Act), 49 U. S. C. §§ 1301 *et seq.*, prohibits all transfers of title to aircraft from having validity against innocent third parties unless the transfer has been evidenced by a written instrument, and the instrument has been recorded with the Federal Aviation Administration (FAA). I conclude that the Act does have such effect.

On April 19, 1978, at an airport in Illinois, a corporation operated by Roger Smith sold a new airplane to respondents. Respondents, the Shackets, paid the sale price in full and took possession of the aircraft, and they have been in possession ever since. Smith, however, did not give respondents the original bills of sale reflecting the chain of title to the plane. He instead gave them only photocopies and his assurance that he would "take care of the paperwork," which the Shackets understood to include the recordation of the original bills of sale with the FAA. Insofar as the present record reveals, the Shackets never attempted to record their title with the FAA.

Unfortunately for all, Smith did not keep his word but instead commenced a fraudulent scheme. Shortly after the sale to the Shackets, Smith purported to sell the same airplane to petitioner, Philko Aviation. According to Philko,

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

From: Justice White

Circulated: MAY 31 1983

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Substantive changes from
memorandum: pp. 1, 4, 5, 8

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-342

**PHILKO AVIATION, INC., PETITIONER v.
MAURICE SHACKET ET UX.**

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

[June —, 1983]

JUSTICE WHITE delivered the opinion of the Court.

This case presents the question whether the Federal Aviation Act of 1958 (Act), 49 U. S. C. §§ 1301 *et seq.*, prohibits all transfers of title to aircraft from having validity against innocent third parties unless the transfer has been evidenced by a written instrument, and the instrument has been recorded with the Federal Aviation Administration (FAA). We conclude that the Act does have such effect.

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Unfortunately for all, Smith did not keep his word but instead commenced a fraudulent scheme. Shortly after the sale to the Shackets, Smith purported to sell the same airplane to petitioner, Philko Aviation. According to Philko,

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 31, 1983

Re: 82-342 - Philko Aviation v. Shacket

Dear Sandra,

Thank you for your May 26 comments about this case. I hope I have satisfied your first concern on page 7. As for your second suggestion, I would prefer to retain the observation about the reasonably diligent effort to record. The opinion draft now circulating does so.

Sincerely,



Justice O'Connor

Copies to the Conference

cpm

HA

82-342

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 13, 1983

MEMORANDUM TO THE CONFERENCE

Case held for No. 82-~~743~~ - Philko Aviation v. Shacket

No. 82-777 - General Dynamics Corp. v. Gary Aircraft Corp.

As set forth in footnote 6 of the Philko Aviation opinion, this case involves a title dispute between petitioner General Dynamics, which holds a security interest in two airplanes, and respondent Gary Aircraft, which purchased the two planes after petitioner had acquired its security interest. Although petitioner recorded its interest with the FAA before respondent did so, CA5 held for respondent, based on the conclusion that Texas law governed priorities, and, under Texas law, respondent was a purchaser in the ordinary course of business who took free of the security interest. Petitioner argued that Texas law was preempted by §503(d) of the Federal Aviation Act, 49 U.S.C. §1403(d), which states that all instruments recorded with the FAA shall be "valid" without further recordation, but CA5 found that "validity" did not mean "priority." It only meant such "validity" as granted by state law.

This case thus deals with the effect of recording, unlike Philko Aviation, which concerns the effect of nonrecording. CA5's holding is in accord with the vast majority of lower court decisions on this issue, although a few courts have gone the other way. See, e.g., Dowell v. Beech Acceptance Corp., 3 Cal. 3d 544, 476 P. 2d 401, cert. denied, 404 U.S. 823 (1971). The Philko Aviation opinion states at p. 6 that we are "inclined to agree" with CA5's rationale, and hopefully this will be enough to bring the minority into line. In light of Philko Aviation's express approval of CA5's decision in the present case, I will vote to deny cert.

Choo-s
BW

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 27, 1983

Re: No. 82-342-Philko Aviation v. Shacket

Dear Byron:

I agree with your memorandum.

Sincerely,

JM.
T.M.

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 1, 1983

Re: No. 82-342-Philko Aviation v. Shacket

Dear Byron:

Please join me.

Sincerely,

Jm.
T.M.

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 26, 1983

Re: No. 82-342 - Philko Aviation, Inc. v. Shacket

Dear Byron:

I, of course, shall go along with an opinion based upon your memorandum of May 25.

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 6, 1983

Re: No. 82-342 - Philko Aviation, Inc. v. Shacket

Dear Byron:

Please join me.

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 25, 1983

82-342 Philko Aviation v. Shacket

Dear Byron:

If you convert your memorandum into an opinion, I
will join it.

Sincerely,

Lewis

Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 1, 1983

82-342 Philko Aviation v. Shacket

Dear Byron:

Please join me.

Sincerely,

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

Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 8, 1983

Re: No. 82-342 Philko Aviation, Inc. v. Shacket

Dear Byron:

Please join me.

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

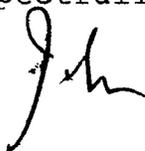
May 4, 1983

Re: 82-342 - Philco Aviation v.
Shacket

Dear Bill:

I shall be happy to undertake the dissent in
this case.

Respectfully,



Justice Brennan

cc: Justice Blackmun
Justice Powell

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 25, 1983

Re: 82-342 - Philco Aviation v.
Shacket

Dear Bryon:

If you convert your memorandum into an opinion,
I will join it.

Respectfully,



Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 31, 1983

Re: 82-342 - Philco Aviation v.
Shacket

Dear Bryon:

Please join me.

Respectfully,



Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 26, 1983

Re: No. 82-342 Philko Aviation v. Shacket

Dear Byron,

I voted the other way at Conference. Your different approach is persuasive, however, and on a question of statutory construction I can and will join if that is the majority view even though I still think the contrary position can be put forward convincingly.

If your memo becomes a draft, there are two points I would like to see modified. On page 7, the draft states that "if, as a technical matter under state law, Philko failed to acquire or perfect the interest that it purports to assert, the Shackets would prevail." It is true that, in that case, the Shackets would keep the aircraft: Philko would not have an interest enforceable against them, and they would have possession, so they would keep the plane. In this action, though, they seek a declaratory judgment that they have title to the aircraft as against Philko, and a statement that they "prevail" suggests that they have a title enforceable against this third party. But the whole thrust of the opinion has been that, because of their failure to record, they do not have an interest enforceable against third parties without notice. Consequently, I think that the quoted language should be changed to read:

"if, as a technical matter under state law, Philko failed to acquire or perfect the interest that it purports to assert, it would be unable to enforce that interest, and the Shackets would retain possession of the aircraft."

Second, the memo suggests on pp. 7-8 that if a party has good reasons for not recording, his failure will be excused and he will prevail over a third party without notice. There is no citation of authority for this, and I would prefer to eliminate it and limit the Court of Appeals on remand to determining whether Philko had a valid interest under state law and whether it had notice.

Sincerely,

Sandra

Justice White

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: JUN 8 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-342

**PHILKO AVIATION, INC., PETITIONER v.
MAURICE SHACKET ET UX.**

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

[June —, 1983]

JUSTICE O'CONNOR, concurring in part and concurring in the judgment.

I join the opinion of the Court except to the extent that it might be read to suggest this Court's endorsement of the view that one who makes a reasonably diligent effort to record will obtain the protections ordinarily reserved for recorded interests. I would express no opinion on that question, for it is not before us and has not been addressed in brief or in argument or, indeed, in the statute.

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