The Burger Court Opinion Writing Database

Dean Witter Reynolds Inc. v. Byrd

470 U.S. 213 (1985)

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

February 22, 1985

Re: No. 83-1708 - Dean Witter Reynolds v. A. Lamar Byrd

Dear Thurgood,

I join.

Regards,

Justice Marshall

Copies to the Conference

P.S. It can come down next week.

look at time of
arrival

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

CHAMBERS OF
THE CHIEF JUSTICE

February 25, 1985

MEMORANDUM TO THE CONFERENCE:

Justice Marshall has requested that the following case not be announced on Tuesday.

83-1708 - Dean Witter Reynolds v. Byrd

Regards,

WEB

xc: Al Stevas
Roland Goldstraw
Henry Lind

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 14, 1985

No. 83-1708

Dean Witter Reynolds, Inc.
v. A. Lamar Byrd

Dear Thurgood,

I agree.

Sincerely,

Bill

Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 16, 1985

83-1708 - Dean Witter Reynolds, Inc. v. Byrd

Dear Thurgood,

I had thought that the conference vote was to indicate not only that the arbitrable issues could be split off and arbitrated but also that normally arbitration should go forward and not be stayed pending trial of the securities claims. In the next to the last paragraph of your circulating draft, you seem to give the trial judge open-ended discretion to stay arbitration, and I'm quite sure that there are those judges who will routinely stay such proceedings. This would frustrate the speedy resolution of issues that the parties have agreed to arbitrate. Of course, it may be that a majority of the Court feels otherwise. If that is the case, I shall write briefly against that view. Otherwise, I join your draft.

In any event, I plan to add a few lines with respect to Wilco v. Swann.

Sincerely yours,

Byron

Justice Marshall

Copies to the Conference

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

From: **Justice White**

Circulated: FEB 14 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1708

DEAN WITTER REYNOLDS INC., PETITIONER *v.*
A. LAMAR BYRD

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

[February ——, 1985]

JUSTICE WHITE, concurring.

I join the Court's opinion. I write separately only to add a few words regarding two issues that it leaves undeveloped.

The premise of the controversy before us is that respondent's claims under the Securities Exchange Act of 1934 are not arbitrable, notwithstanding the contrary agreement of the parties. The Court's opinion rightly concludes that the question whether that is so is not before us. *Ante*, at 1, n. 1. Nonetheless, I note that this is a matter of substantial doubt. In *Wilko* v. *Swann*, 346 U. S. 427 (1953), the Court held arbitration agreements unenforceable with regard to claims under § 12(2) the 1933 Act. It relied on three interconnected statutory provisions: § 14 of the Act, which voids any "stipulation . . . binding any person acquiring any security to waive compliance with any provision" of the Act; § 12(2), which creates "a special right to recover for misrepresentation which differs substantially from the common-law action"; and § 22, which allows suit in any state or federal court of competent jurisdiction and provides nationwide service of process. *Id.*, at 430–431; 15 U. S. C. §§ 77n, 77*l*(2), 77v.

Wilko's reasoning cannot be mechanically transplanted to the 1934 Act. While § 29 of that Act, 15 U. S. C. § 77cc(a), is equivalent to § 14 of the 1933 Act, counterparts of the other two provisions are imperfect or absent altogether. Jurisdiction under the 1934 Act is narrower, being restricted to the

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

From: **Justice Marshall**

Circulated: JAN 1 1 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1708

DEAN WITTER REYNOLDS INC., PETITIONER *v.*
A. LAMAR BYRD

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

[January ——, 1985]

JUSTICE MARSHALL delivered the opinion of the Court.

The question presented is whether, when a complaint raises both federal securities claims and pendent state claims, a federal district court may deny a motion to compel arbitration of the state law claims despite the parties' agreement to arbitrate their disputes. We granted certiorari to resolve a conflict among the federal courts of appeals on this question. —— U. S. —— (1984).

I

In 1981, A. Lamar Byrd sold his dental practice and invested $160,000 in securities through Dean Witter Reynolds, Inc., a securities broker-dealer. The value of the account declined by more than $100,000 between September 1981 and March 1982. Byrd filed a complaint against Dean Witter in the United States District Court for the Southern District of California, alleging a violation of §§ 10(b), 15c and 20 of the Securities Exchange Act of 1934, 15 U. S. C. §§ 78j(b), 78o(c) and 78t, and of various state law provisions. Federal jurisdiction over the state law claims was based on diversity of citizenship and the principle of pendent jurisdiction. In the complaint, Byrd alleged that an agent of Dean Witter had traded in his account without his prior consent, that the number of transactions executed on behalf of the account was excessive, that misrepresentations were made by an agent of

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 14, 1985

Re: No. 83-1708-Dean Witter Reynolds v. Byrd

Dear Sandra:

I have made the changes you suggested.

Sincerely,

T.M.

T.M.

Justice O'Connor

cc: The Conference

pp. 9, 10

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

From: **Justice Marshall**

Circulated: _____

Recirculated: JAN 15 1985

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83–1708

DEAN WITTER REYNOLDS INC., PETITIONER *v.* A. LAMAR BYRD

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

[January ——, 1985]

JUSTICE MARSHALL delivered the opinion of the Court.

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STYLISTIC CHANGES THROUGHOUT

P. 10

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

From: **Justice Marshall**

Circulated: _____

Recirculated: JAN 31 1985

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1708

DEAN WITTER REYNOLDS INC., PETITIONER *v.* A. LAMAR BYRD

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

[January ——, 1985]

JUSTICE MARSHALL delivered the opinion of the Court.

The question presented is whether, when a complaint raises both federal securities claims and pendent state claims, a Federal District Court may deny a motion to compel arbitration of the state-law claims despite the parties' agreement to arbitrate their disputes. We granted certiorari to resolve a conflict among the Federal Courts of Appeals on this question. 467 U. S. —— (1984).

I

In 1981, A. Lamar Byrd sold his dental practice and invested $160,000 in securities through Dean Witter Reynolds, Inc., a securities broker-dealer. The value of the account declined by more than $100,000 between September 1981 and March 1982. Byrd filed a complaint against Dean Witter in the United States District Court for the Southern District of California, alleging a violation of §§ 10(b), 15c, and 20 of the Securities Exchange Act of 1934, 15 U. S. C. §§ 78j(b), 78o(c), and 78t, and of various state-law provisions. Federal jurisdiction over the state-law claims was based on diversity of citizenship and the principle of pendent jurisdiction. In the complaint, Byrd alleged that an agent of Dean Witter had traded in his account without his prior consent, that the number of transactions executed on behalf of the account was excessive, that misrepresentations were made by an agent of

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 25, 1985

Re: No. 83-1708 - Dean Witter Reynolds v. Byrd

Dear Chief:

I am not ready for this case to come down tomorrow.

Sincerely,

T.M.

The Chief Justice

cc: The Conference

HHS

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 19, 1985

MEMORANDUM TO THE CONFERENCE

One case was held for our decision in Dean Witter Reynolds, Inc. v. Byrd, No. 83-1708.

Oppenheimer & Co. Inc. v. Young, No. 84-1082. Respondent Young sued petitioner Oppenheimer & Co. claiming Oppenheimer had violated the Florida Securities Act and had committed various common law offenses. The trial court granted Oppenheimer's motion to compel arbitration on the basis of an arbitration agreement between the parties. The Third District Court of Appeals quashed the trial court's order. It held that claims under the Florida Securities Act are not arbitrable.

The Florida Supreme Court affirmed, reasoning that because state securities law was meant to track federal securities law, this court's decision in Wilko v. Swan, 346 U.S. 427 (1953), applied equally to state securities laws and rendered claims brought under those laws nonarbitrable. The court also was "influenced by the very practical consideration" that to hold otherwise would render the state claim arbitrable and the federal claim nonarbitrable, and would "lead to an uneconomical bifurcation of proceedings." App. to Pet. for Cert. 4a.

Although Dean Witter does not directly address the arbitrability of this state securities claim, it does seriously undermine this basis of the Florida court's decision. In particular, Dean Witter makes clear that the federal interest in arbitration expressed in the Federal Arbitration Act outweighs the concern about inefficient proceedings in separate forums. I shall therefore vote to GVR.

Sincerely,

TM.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 18, 1985

Re: No. 83-1708 - Dean Witter Reynolds, Inv. v. Byrd

Dear Thurgood:

Please join me. I would be content to have you go along with Byron's suggestion.

Sincerely,

Harry

Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 19, 1985

83-1708 Dean Witter Reynolds v. Byrd

Dear Thurgood:

Please join me.

Sincerely,

Lewis

2

Justice Marshall

lfp/ss

cc: The Conference

(1)

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 14, 1985

Re: No. 83-1708 Dean Witter Reynolds, Inc. v. Byrd

Dear Thurgood,

Please join me.

Sincerely,

WHR

Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 16, 1985

Re: No. 83-1708 Dean Witter Reynolds, Inc. v. Byrd

Dear Thurgood and Byron,

Let me tell you before Henry Lind does that "Wilko" is spelled with a "k," not with a "c."

Sincerely,

WHR

Justice Marshall
Justice White

cc: The Conference

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

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

January 11, 1985

RE: 83-1708 - Dean Witter Reynolds, Inc.
v. Byrd

Dear Thurgood:

Please join me.

Respectfully,

JPS

Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 14, 1985

No. 83-1708 Dean Witter Reynolds, Inc. v. Byrd

Dear Thurgood,

I think that your draft opinion does a fine job of resolving this case, and I agree with its analysis and conclusion. However, I have two minor concerns with the draft as currently written. First, the draft opinion on page 9 observes that "it is far from certain that arbitration proceedings will have any preclusive effect on subsequent federal court actions." This statement seems rather broad, because arbitration generally will have preclusive effect with respect to claims that are properly arbitrable. The Arbitration Act provisions for confirmation of an arbitration award absent specified grounds for vacating or amending the award, 9 U.S.C. §§10, 11, suggest this conclusion. Consequently, I think it would be preferable for the sentence to conclude ". . . any preclusive effect on the litigation of nonarbitrable federal claims."

My second concern relates to the second paragraph on page 10, which states that "through the formulation of rules of preclusion and nonpreclusion, courts may directly and effectively protect federal interests." As your draft opinion indicates, page 9, this statement applies in situations where the Full Faith and Credit Statute, 28 U.S.C. §1738, is inapplicable because there are no prior state judicial proceedings. Of course, where §1738 applies, our previous decisions, e.g., Kremer v. Chemical Construction Corp., 456 U.S. 461, 481-482 (1982), indicate that federal courts are not free to employ their own preclusion rules. To avoid any confusion in this regard, and any apparent inconsistency between Byrd and the Court's opinion in Marrese v. American Academy of Orthopaedic Surgeons, No. 83-1452, I am hoping you will change the first sentence in the second paragraph on page 10 to read something along the lines that: "McDonald establishes that courts may effectively protect federal interests by determining the preclusive effect to be given to an arbitration proceeding."

If you could accommodate these two concerns, I would be happy to join your opinion.

Sincerely

Sandra

Justice Marshall

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 15, 1985

No. 83-1708 Dean Witter Reynolds, Inc.
v. Byrd

Dear Thurgood,

Please join me.

Sincerely,

Sandra

P.S. Thank you for taking care of my concerns.

Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 16, 1985

No. 83-1708 Dean Witter Reynolds, Inc. v. Byrd

Dear Thurgood,

I am one of those who expressed the view at Conference that generally the arbitration should go forward pending the trial. I would be pleased to see such a position expressed in the opinion for the Court as Byron suggests.

Sincerely,

Sandra

Justice Marshall

Copies to the Conference