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Matsushita Electric Industrial Co. v. Zenith Radio Corp.

475 U.S. 574 (1986)

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

June 25, 1985

Re: 83-2004 - Matsushita Electric Industrial Co., Ltd., et al.,
v. Zenith Radio Corporation, et al.

MEMORANDUM TO THE CONFERENCE:

With four others, I voted to deny cert.

Now that four wish to be shown on the public record that they wish to hear the case, the explanation for this phenomenon will never be understood.

I resolve it by voting now to DENY the motion to vacate the grant of certiorari.

Regards,

LFP/lab

83-2004

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 31, 1985

Dear Chief,

We held Carr v. Hutto, on page 6 of the conference list, for Thomas v. Arn. Arn's number, as John Stevens suggested, is 84-5630, rather than 84-1630*.

Also, after talking to Al Stevas, I have asked Al to relist the ~~Mitsubishi~~ Matsushita record-printing matter for next week.

Sincerely,

The Chief Justice

Copies to the Conference

* 84-1630 was a Thomas case, decided last Term

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

9 cc of Record
OK

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 3, 1985

MEMORANDUM TO THE CONFERENCE

Re: 83-2004 - Matsushita v. Zenith

This case is here on petitioner's motion to dispense with printing of the record and to hear the case on briefs and a single copy of the record in the Court of Appeals. We voted last week to hear the case on that record but would have required the usual number of copies. After talking with Al Stevas, I asked that the matter be relisted.

The record in the Court of Appeals consisted of 44 volumes of photocopied materials. Petitioner asserts that each volume contained about 500 pages. Respondent claims that there were 18,780 pages in the entire record. The Court of Appeals permitted 600 pages of briefs and heard argument for two days. The case was and is heavily factbound; the evidence will be argued at length.

Petitioner, who claims the Court of Appeals erred, designated only 154 pages in this Court, Respondent some 5700 (although Petitioner asserts the designation was far larger). Whatever the total designated, the record here would be voluminous and fill 15 or so volumes if printing were dispensed with. If that is so, to the extent that in deciding the case we would be required to resort to the record, we would in any event be going from one of many volumes to another, and I'm not sure that there would be much advantage in cutting the volume number from 44 to 15. Hence, my vote to hear the case on the Court of Appeals' record. Al tells me that the parties have 9 copies of the Court of Appeals' Appendix on hand and, if that were enough, there would be no need to reproduce anything. Except for the concern indicated below, that would be my course.

What was not altogether clear to me, however, is the fact that a sizable number of the pages in the Court of Appeals' appendix are illegible or at least difficult to read. The scope of this problem, particularly as it might relate to the 5700 pages designated by respondents, is not at all clear. Whatever its scope, if we allowed the filing of an unprinted version of the designated portions of the Court of Appeals' record, this problem would be solved since we would not accept illegible

Justice White's suggestion of requiring only nine copies of the CA3 record seems sensible.
— Dan

materials and the parties would have to retype and duplicate the unreadable pages. But it is not suggested that the Court of Appeals had problems with illegibility, and it may well be that the designated portions would not pose an insuperable problem in this respect. If a party actually intends to refer in brief to an illegible part of the record, that party should attach to its brief a legible copy of the material referred to. It also seems to me that the dispute will not be about what the record says but what inferences of fact and conclusions of law may properly be drawn from it.

As presently advised, I would adhere to the vote last week, except that I would require only 9 copies to the record below. But if the foregoing considerations suggest that we should not hear the case on 9 copies of the 44-volume record made up of photocopied materials, there remain other choices. We could refuse to waive printing of the designated record. Both sides would like to avoid that expense, although these parties are no less able to pay than parties in prior antitrust cases who filed very large printed records. The very problem of illegibility that is urged against hearing the case on the Court of Appeals' record suggests that we should insist on printing. Short of that, of course, we could dispense with printing and certain other requirements and permit the filing of photocopies of the designated record. Third, we could dispense with designations now and permit each party, as it files its brief, to file in unprinted but legible form what it deems to be the necessary part of the record. This is the way the Court of Appeals proceeded.*

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* There is a 4th option: reconsider the grant.

June 22, 1985

83-2004 Matsushita Electric v. Zenith Radio Corp.

MEMORANDUM TO THE CONFERENCE:

My understanding is that at the Conference on June 13 - when I was absent - Bill Brennan moved that we vacate our grant of certiorari or DIG this case.

In view of my absence, the case was relisted for me at the June 20 Conference, but I did not understand that the purpose of the relisting was to have me present when Bill's motion was discussed. Again, the case was relisted and will come up at our Conference on the 27th.

I have taken another look at this case. It is certainly true that Question 1 is extremely factbound, and would require us to consider a long and complex record. Any decision we made would have little or no applicability to future cases in which the facts were different. To the extent it is argued that there is a conflict, I doubt that we could resolve it on the basis of the factual record.

At least, I would join Bill's motion to vacate or DIG our grant of cert on this question.

Question 2 (the foreign "state action" issue) involves interpretation of the MITI statement. This statement was prepared - as I understand it - in response to this litigation and is not a model of clarity. Accordingly, if I had been as familiar with the case as perhaps I should have been, I would not have voted to grant it.

My only concern now is an institutional one: that is, whether the Court itself would suffer if we now decided that the grant was a mistake. I would like to hear the discussion of this question before I commit myself.

DIG	not to DIG	
CJ	T.M.	} at Conference on 6/25
WJB	HAB	
BRW	WHR	
		L.F.P., Jr.
ss LFP	SOC	
JPS		

But CJ carried case over. Chief changed his mind. The Court is ...

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 24, 1985

Re: 83-2004 - Matsushita Electric v.
Zenith Radio Corp.

Dear Chief:

If a vote is taken at the Conference tomorrow morning on Bill Brennan's motion to DIG our grant of cert in this case, I vote in favor of the motion.

If some intermediate action, other than a straight DIG or a straight refusal to DIG--such as perhaps a limitation on the grant--Lewis has my proxy.

In my judgment the institutional concern that Lewis mentioned in the last paragraph of his memorandum of June 22, 1985, is outweighed by the interest in not expending the Court's scarce resources on this particular case.

Finally, if there is any sentiment for a brief explanation of an order, I would submit the following as a possible draft:

"The parties' recent filings with this Court have brought home the exceedingly fact-dependent nature of this controversy. After careful reexamination of the petition for certiorari, as well as the additional filings, we have concluded that plenary review is premature at this stage of the proceedings, that the writ was improvidently granted, and that it should be dismissed.

It is so ordered."

Respectfully,

John

The Chief Justice

Copies to the Conference