

Syllabus

FUENTES v. SHEVIN, ATTORNEY GENERAL OF
FLORIDA, ET AL.APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

No. 70-5039. Argued November 9, 1971—Decided June 12, 1972*

Appellants, most of whom were purchasers of household goods under conditional sales contracts, challenge the constitutionality of pre-judgment replevin provisions of Florida law (in No. 70-5039) and Pennsylvania law (in No. 70-5138). These provisions permit a private party, without a hearing or prior notice to the other party, to obtain a pre-judgment writ of replevin through a summary process of *ex parte* application to a court clerk, upon the posting of a bond for double the value of the property to be seized. The sheriff is then required to execute the writ by seizing the property. Under the Florida statute the officer seizing the property must keep it for three days. During that period the defendant may reclaim possession by posting his own security bond for double the property's value, in default of which the property is transferred to the applicant for the writ, pending a final judgment in the underlying repossession action. In Pennsylvania the applicant need not initiate a repossession action or allege (as Florida requires) legal entitlement to the property, it being sufficient that he file an "affidavit of the value of the property"; and to secure a post-seizure hearing the party losing the property through replevin must himself initiate a suit to recover the property. He may also post his own counterbond within three days of the seizure to regain possession. Included in the printed-form sales contracts that appellants signed were provisions for the sellers' repossession of the merchandise on the buyers' default. Three-judge District Courts in both cases upheld the constitutionality of the challenged replevin provisions. *Held*:

1. The Florida and Pennsylvania replevin provisions are invalid under the Fourteenth Amendment since they work a deprivation of property without due process of law by denying the right to a

*Together with No. 70-5138, *Parham et al. v. Cortese et al.*, on appeal from the United States District Court for the Eastern District of Pennsylvania.

prior opportunity to be heard before chattels are taken from the possessor. Pp. 80-93.

(a) Procedural due process in the context of these cases requires an opportunity for a hearing *before* the State authorizes its agents to seize property in the possession of a person upon the application of another, and the minimal deterrent effect of the bond requirement against unfounded applications for a writ constitutes no substitute for a pre-seizure hearing. Pp. 80-84.

(b) From the standpoint of the application of the Due Process Clause it is immaterial that the deprivation may be temporary and nonfinal during the three-day post-seizure period. Pp. 84-86.

(c) The possessory interest of appellants, who had made substantial installment payments, was sufficient for them to invoke procedural due process safeguards notwithstanding their lack of full title to the replevied goods. Pp. 86-87.

(d) The District Courts erred in rejecting appellants' constitutional claim on the ground that the household goods seized were not items of "necessity" and therefore did not require due process protection, as the Fourteenth Amendment imposes no such limitation. Pp. 88-90.

(e) The broadly drawn provisions here involved serve no such important a state interest as might justify summary seizure. Pp. 90-93.

2. The contract provisions for repossession by the seller on the buyer's default did not amount to a waiver of the appellants' procedural due process rights, those provisions neither dispensing with a prior hearing nor indicating the procedure by which repossession was to be achieved. *D. H. Overmyer Co. v. Frick Co.*, 405 U. S. 174, distinguished. Pp. 94-96.

No. 70-5039, 317 F. Supp. 954, and No. 70-5138, 326 F. Supp. 127, vacated and remanded.

STEWART, J., delivered the opinion of the Court, in which DOUGLAS, BRENNAN, and MARSHALL, JJ., joined. WHITE, J., filed a dissenting opinion, in which BURGER, C. J., and BLACKMUN, J., joined, *post*, p. 97. POWELL and REHNQUIST, JJ., took no part in the consideration or decision of the cases.

C. Michael Abbott argued the cause *pro hac vice* for appellant in No. 70-5039. With him on the brief was *Bruce S. Rogow*. *David A. School* argued the cause

pro hac vice for appellants in No. 70-5138. With him on the brief was *Harvey N. Schmidt*.

Herbert T. Schwartz, Deputy Attorney General of Florida, argued the cause for appellee Shevin in No. 70-5039. On the brief was *Robert L. Shevin*, Attorney General of Florida, *pro se*. *George W. Wright, Jr.*, argued the cause for appellee Firestone Tire & Rubber Co. in No. 70-5039. With him on the brief was *Karl B. Block, Jr.* *Robert F. Maxwell* argued the cause for appellees in No. 70-5138 and was on the brief for appellee Sears, Roebuck & Co. *J. Shane Creamer*, Attorney General, and *Peter W. Brown*, Deputy Attorney General, filed a brief for appellee the Commonwealth of Pennsylvania in No. 70-5138.

Briefs of *amici curiae* urging reversal in No. 70-5039 were filed by *Allan Ashman* for the National Legal Aid and Defender Association and by *Blair C. Shick*, *Jean Camper Cahn*, and *Barbara B. Gregg* for the National Consumer Law Center of Boston College Law School et al.

Harry N. Boureau, *Ross L. Malone*, *Robert L. Clare, Jr.*, and *George J. Wade* filed a brief for General Motors Acceptance Corp. et al. as *amici curiae* urging affirmance in No. 70-5039.

MR. JUSTICE STEWART delivered the opinion of the Court.

We here review the decisions of two three-judge federal District Courts that upheld the constitutionality of Florida and Pennsylvania laws authorizing the summary seizure of goods or chattels in a person's possession under a writ of replevin. Both statutes provide for the issuance of writs ordering state agents to seize a person's possessions, simply upon the *ex parte* application of any other person who claims a right to them and posts a

security bond. Neither statute provides for notice to be given to the possessor of the property, and neither statute gives the possessor an opportunity to challenge the seizure at any kind of prior hearing. The question is whether these statutory procedures violate the Fourteenth Amendment's guarantee that no State shall deprive any person of property without due process of law.

I

The appellant in No. 5039, Margarita Fuentes, is a resident of Florida. She purchased a gas stove and service policy from the Firestone Tire and Rubber Co. (Firestone) under a conditional sales contract calling for monthly payments over a period of time. A few months later, she purchased a stereophonic phonograph from the same company under the same sort of contract. The total cost of the stove and stereo was about \$500, plus an additional financing charge of over \$100. Under the contracts, Firestone retained title to the merchandise, but Mrs. Fuentes was entitled to possession unless and until she should default on her installment payments.

For more than a year, Mrs. Fuentes made her installment payments. But then, with only about \$200 remaining to be paid, a dispute developed between her and Firestone over the servicing of the stove. Firestone instituted an action in a small-claims court for repossession of both the stove and the stereo, claiming that Mrs. Fuentes had refused to make her remaining payments. Simultaneously with the filing of that action and before Mrs. Fuentes had even received a summons to answer its complaint, Firestone obtained a writ of replevin ordering a sheriff to seize the disputed goods at once.

In conformance with Florida procedure,¹ Firestone

¹ See *infra*, at 73-75.

had only to fill in the blanks on the appropriate form documents and submit them to the clerk of the small-claims court. The clerk signed and stamped the documents and issued a writ of replevin. Later the same day, a local deputy sheriff and an agent of Firestone went to Mrs. Fuentes' home and seized the stove and stereo.

Shortly thereafter, Mrs. Fuentes instituted the present action in a federal district court, challenging the constitutionality of the Florida prejudgment replevin procedures under the Due Process Clause of the Fourteenth Amendment.² She sought declaratory and injunctive relief against continued enforcement of the procedural provisions of the state statutes that authorize prejudgment replevin.³

The appellants in No. 5138 filed a very similar action in a federal district court in Pennsylvania, challenging the constitutionality of that State's prejudgment replevin process. Like Mrs. Fuentes, they had had possessions seized under writs of replevin. Three of the appellants had purchased personal property—a bed, a table, and other household goods—under installment sales contracts like the one signed by Mrs. Fuentes; and the sellers of the property had obtained and executed summary writs of replevin, claiming that the appellants had fallen behind in their installment payments.

² Both Mrs. Fuentes and the appellants in No. 5138 also challenged the prejudgment replevin procedures under the Fourth Amendment, made applicable to the States by the Fourteenth. We do not, however, reach that issue. See n. 32, *infra*.

³ Neither Mrs. Fuentes nor the appellants in No. 5138 sought an injunction against any pending or future court proceedings as such. Compare *Younger v. Harris*, 401 U. S. 37. Rather, they challenged only the summary extra-judicial process of prejudgment seizure of property to which they had already been subjected. They invoked the jurisdiction of the federal district courts under 42 U. S. C. § 1983 and 28 U. S. C. § 1343 (3).

The experience of the fourth appellant, Rosa Washington, had been more bizarre. She had been divorced from a local deputy sheriff and was engaged in a dispute with him over the custody of their son. Her former husband, being familiar with the routine forms used in the replevin process, had obtained a writ that ordered the seizure of the boy's clothes, furniture, and toys.⁴

In both No. 5039 and No. 5138, three-judge District Courts were convened to consider the appellants' challenges to the constitutional validity of the Florida and Pennsylvania statutes. The courts in both cases upheld the constitutionality of the statutes. *Fuentes v. Faircloth*, 317 F. Supp. 954 (SD Fla.); *Epps v. Cortese*, 326 F. Supp. 127 (ED Pa.).⁵ We noted probable jurisdiction of both appeals. 401 U. S. 906; 402 U. S. 994.

⁴ Unlike Mrs. Fuentes in No. 5039, none of the appellants in No. 5138 was ever sued in any court by the party who initiated seizure of the property. See *infra*, at 77-78.

⁵ Since the announcement of this Court's decision in *Sniadach v. Family Finance Corp.*, 395 U. S. 337, summary prejudgment remedies have come under constitutional challenge throughout the country. The summary deprivation of property under statutes very similar to the Florida and Pennsylvania statutes at issue here has been held unconstitutional by at least two courts. *Laprease v. Raymours Furniture Co.*, 315 F. Supp. 716 (NDNY); *Blair v. Pitchess*, 5 Cal. 3d 258, 486 P. 2d 1242. But see *Brunswick Corp. v. J. & P., Inc.*, 424 F. 2d 100 (CA10); *Wheeler v. Adams Co.*, 322 F. Supp. 645 (Md.); *Almor Furniture & Appliances, Inc. v. MacMillan*, 116 N. J. Super. 65, 280 A. 2d 862. Applying *Sniadach* to other closely related forms of summary prejudgment remedies, some courts have construed that decision as setting forth general principles of procedural due process and have struck down such remedies. *E. g.*, *Adams v. Egley*, 338 F. Supp. 614 (SD Cal.); *Collins v. The Viceroy Hotel Corp.*, 338 F. Supp. 390 (ND Ill.); *Santiago v. McElroy*, 319 F. Supp. 284 (ED Pa.); *Klim v. Jones*, 315 F. Supp. 109 (ND Cal.); *Randone v. Appellate Dept.*, 5 Cal. 3d 536, 488 P. 2d 13; *Larson v. Fetherston*, 44 Wis. 2d 712, 172 N. W. 2d 20; *Jones Press Inc. v. Motor Travel Services Inc.*, 286 Minn. 205, 176 N. W. 2d 87. See *Lebowitz v. Forbes Leasing & Finance Corp.*, 326 F. Supp. 1335, 1341-1348 (ED Pa.). Other courts, however, have con-

