

## MITCHELL v. W. T. GRANT CO.

## CERTIORARI TO THE SUPREME COURT OF LOUISIANA

No. 72-6160. Argued December 4, 1973—Decided May 13, 1974

The Louisiana Code of Civil Procedure makes available to a mortgage or lien holder a writ of sequestration to forestall waste or alienation of the encumbered property. While the writ is obtainable on the creditor's *ex parte* application without notice to the debtor or an opportunity for hearing, the writ will issue only upon a verified affidavit and upon a judge's authority (with respect to the parish involved in this case) after the creditor has filed a sufficient bond. The debtor may immediately seek dissolution of the writ, which must be ordered unless the creditor proves the grounds for issuance (existence of the debt, lien, and delinquency), failing which the court may order return of the property and assess damages, including attorney's fees, in the debtor's favor. Respondent seller filed suit against petitioner in the New Orleans City Court for the overdue balance of the price of certain personal property that petitioner had purchased under an installment sales contract and on which respondent had a vendor's lien. On respondent's application, the trial judge in accordance with the Louisiana procedure ordered sequestration of the property without prior notice or opportunity for a hearing, and denied petitioner's motion to dissolve the writ on the asserted ground, *inter alia*, that the seizure violated the Due Process Clause of the Fourteenth Amendment. The appellate courts affirmed. *Held*: The Louisiana sequestration procedure is not invalid, either on its face or as applied, and, considering the procedure as a whole, it effects a constitutional accommodation of the respective interests of the buyer and seller by providing for judicial control of the process from beginning to end, thus minimizing the risk of the creditor's wrongful interim possession, by protecting the debtor's interest in every way except to allow him initial possession, and by putting the property in the possession of the party who is able to furnish protection against loss or damage pending trial on the merits. *Fuentes v. Shevin*, 407 U. S. 67, distinguished. Pp. 603-620.

263 La. 627, 269 So. 2d 186, affirmed.

WHITE, J., delivered the opinion of the Court, in which BURGER, C. J., and BLACKMUN, POWELL, and REHNQUIST, JJ., joined. POWELL, J., filed a concurring opinion, *post*, p. 623. BRENNAN, J., filed a dissenting statement, *post*, p. 636. STEWART, J., filed a dissenting opinion, in which DOUGLAS and MARSHALL, JJ., joined, and in which BRENNAN, J., joined in part, *post*, p. 629.

*Robert J. Hobbs* argued the cause for petitioner. With him on the briefs was *John W. Reed*.

*Thomas J. O'Sullivan* argued the cause for respondent. With him on the brief was *Marshall J. Favret*.\*

MR. JUSTICE WHITE delivered the opinion of the Court.

In this case, a state trial judge in Louisiana ordered the sequestration of personal property on the application of a creditor who had made an installment sale of the goods to petitioner and whose affidavit asserted delinquency and prayed for sequestration to enforce a vendor's lien under state law. The issue is whether the sequestration violated the Due Process Clause of the Fourteenth Amendment because it was ordered *ex parte*, without prior notice or opportunity for a hearing.

## I

On February 2, 1972, respondent W. T. Grant Co. filed suit in the First City Court of the City of New Orleans, Louisiana, against petitioner, Lawrence Mitchell. The petition alleged the sale by Grant to Mitchell of a refrigerator, range, stereo, and washing machine, and an overdue and unpaid balance of the purchase price for said items in the amount of \$574.17. Judgment for

\**William J. Guste, Jr.*, Attorney General, *Warren E. Mouldoux*, First Assistant Attorney General, and *Louis M. Jones*, Assistant Attorney General, filed a brief for the State of Louisiana as *amicus curiae*.

that sum was demanded. It was further alleged that Grant had a vendor's lien on the goods and that a writ of sequestration should issue to sequester the merchandise pending the outcome of the suit. The accompanying affidavit of Grant's credit manager swore to the truth of the facts alleged in the complaint. It also asserted that Grant had reason to believe petitioner would "encumber, alienate or otherwise dispose of the merchandise described in the foregoing petition during the pendency of these proceedings, and that a writ of sequestration is necessary in the premises." Based on the foregoing petition and affidavit, and without prior notice to Mitchell or affording him opportunity for hearing, the judge of the First City Court, Arthur J. O'Keefe, then signed an order that "a writ of sequestration issue herein" and that "the Constable of this court sequester and take into his possession the articles of merchandise described in the foregoing petition, upon plaintiff furnishing bond in the amount of \$1,125." Bond in that amount having been filed by the respondent, the writ of sequestration issued, along with citation to petitioner Mitchell, citing him to file a pleading or make appearance in the First City Court of the city of New Orleans within five days. The citation recited the filing of the writ of sequestration and the accompanying affidavit, order, and bond. On March 3 Mitchell filed a motion to dissolve the writ of sequestration issued on February 2.<sup>1</sup> The motion asserted that the personal property at issue had been seized under the writ on February 7, 1972, and claimed, first, that the goods were exempt from seizure under state law and, second, that the seizure violated the Due Process Clauses of the State and Federal Constitutions

<sup>1</sup> The motion asked for dissolution of the writ with respect to the refrigerator, stove, and washer. For some reason, unexplained by the parties, the motion was not addressed to the stereo.

in that it had occurred without prior notice and opportunity to defend petitioner's right to possession of the property.<sup>2</sup> The motion came on for hearing on March 14. It was then stipulated that a vendor's lien existed on the items, arguments of counsel were heard, and on March 16 the motion to dissolve was denied. The goods were held not exempt from seizure under state law. The trial court also ruled that "the provisional seizure enforced through sequestration" was not a denial of due process of law. "To the contrary," the trial judge said, "plaintiff insured defendant's right to due process by proceeding in accordance with Louisiana Law as opposed to any type of self-help seizure which would have denied defendant possession of his property without due process." The appellate courts of Louisiana refused to disturb the rulings of the trial court, the Supreme Court of Louisiana expressly rejecting petitioner's due process claims pressed under the Federal Constitution. 263 La. 627, 269 So. 2d 186 (1972). We granted certiorari, 411 U. S. 981 (1973), and now affirm the judgment of the Louisiana Supreme Court.

## II

Petitioner's basic proposition is that because he had possession of and a substantial interest in the sequestered property, the Due Process Clause of the Fourteenth Amendment necessarily forbade the seizure without prior notice and opportunity for a hearing. In the circumstances presented here, we cannot agree.

<sup>2</sup> There is some dispute between the parties as to when the writ was actually executed by the sheriff. The sheriff's return, furnished by petitioner but apparently not in the record below, indicates that execution was on the 18th of February, rather than on the 7th. The Louisiana Supreme Court assumed that the writ was executed on the 7th. Because we see no legal consequence attaching to a choice of dates, we assume for purposes of decision that the writ was executed on the 7th.

Petitioner no doubt "owned" the goods he had purchased under an installment sales contract, but his title was heavily encumbered. The seller, W. T. Grant Co., also had an interest in the property, for state law provided it with a vendor's lien to secure the unpaid balance of the purchase price. Because of the lien, Mitchell's right to possession and his title were subject to defeasance in the event of default in paying the installments due from him. His interest in the property, until the purchase price was paid in full, was no greater than the surplus remaining, if any, after foreclosure and sale of the property in the event of his default and satisfaction of outstanding claims. See La. Code Civ. Proc. Ann., Art. 2373 (1961).<sup>3</sup> The interest of Grant, as seller of the property and holder of a vendor's lien, was measured by the unpaid balance of the purchase price. The monetary value of that interest in the property diminished as payments were made, but the value of the property as security also steadily diminished over time as it was put to its intended use by the purchaser.

Plainly enough, this is not a case where the property sequestered by the court is exclusively the property of the defendant debtor. The question is not whether a debtor's property may be seized by his creditors, *pendente lite*, where they hold no present interest in the property sought to be seized. The reality is that both seller and buyer had current, real interests in the property, and the definition of property rights is a matter of state law. Resolution of the due process question must take account not only of the interests of the buyer of the property but those of the seller as well.

With this duality in mind, we are convinced that the

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<sup>3</sup> Article 2373 and other pertinent provisions of the Code, including those referred to in the text, are set out in the Appendix to this opinion.

