

Supreme Court of the United States

OCTOBER TERM, 1970

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Supreme Court, U. S.

DEC 1 1970

In the Matter of:

Docket No. 28

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LELIA MAE SANKS, et al., :
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Appellants, :
:
vs. :
:
STATE OF GEORGIA, et al., :
:
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM

LELIA MAE SANKS, ET AL.,

Appellants,

vs

STATE OF GEORGIA, ET AL.,

Appellees

No. 28

The above-entitled matter came on for reargument
at 2:40 o'clock p.m. on Tuesday, November 17, 1970.

BEFORE:

WARREN E. BURGER, Chief Justice
HUGO L. BLACK, Associate Justice
WILLIAM O. DOUGLAS, Associate Justice
JOHN M. HARLAN, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice

APPEARANCES:

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments as far as we can in Number 28, Sanks against the State of Georgia.

ORAL ARGUMENT BY MICHAEL D. PADNOS, ESQ.

ON BEHALF OF THE APPELLANTS

MR. CHIEF JUSTICE BURGER: Mr. Padnos, you may proceed whenever you are ready.

MR. PADNOS: Mr. Chief Justice and may it please the Court: The Appellants in this case, Your Honors, presented to the Court over a year ago what we thought was a narrow question of due process, involving the right to a hearing.

When we presented the case to you last time we argued on the basis of the Sniadach case that the deprivation of the property, the rental property of our clients was unconstitutional. Since the Sniadach case and since we last made that argument, this Court has given further encouragement to our clients and to us on the same issue, with the case of Goldberg v. Kelly, which is again a hearing case involving due process.

Our position is very simple, that really we don't ask the Court to go any further than the Court went in those cases. Indeed, we take the position that the case before you is much easier to deal with than the cases you dealt with -- the two cases you dealt with there.

1 Q Mr. Padnos, I hesitate to bring the question
2 up, but I think there is a question of mootness in this case;
3 certainly the suggestion of mootness has been filed in this
4 case prior to argument and my recollection is that the Court
5 deferred consideration of that motion to reargument on the
6 merits and I would expect that you will be dealing with that;
7 will you, before the --

8 A I'd be happy to begin with that, sir; it might
9 be easier, Your Honor.

10 The Appellees have suggested to you that there is a
11 possibility of mootness and they have raised two points: first
12 of all, they point out that they believe that our clients may
13 have moved out and indeed, that's right; our clients have moved
14 out.

15 And secondly, they present the existence of a new
16 statute enacted in Georgia earlier this year. As we indicated
17 in our response to the question, that I think there are several
18 reasons why this case is not moot.

19 First of all, the fact was that as to our clients,
20 the specific clients in this case: Mrs. SAnks and Mrs. Morman, (?)
21 even though they have moved out they are still subject to double
22 rent provisions of 61305. So there is no way that this Court
23 -- if this Court should hold this case moot, we would not be
24 within the Brockington case and Hall v. Dios (?) that this Court
25 decided last year.

1 In one of those cases the Court said that it was
2 impossible to grant the relief that the plaintiffs sought.
3 That was in Brockington(?) I believe, where there was a man
4 running for Congress and in the other case: Harvey v. Dios(?)
5 the Court just talked about the 1968 election and said, "That's
6 history; it's all over with."

7 Well, it isn't history what's happening to Mrs.
8 Sanks. Mrs. Sanks, as a matter of the same proceeding which is
9 before you right now, would be held, if the landlord does not
10 more than walk into court in the same judicial proceeding and
11 ask for double damages, will be held liable for double damages
12 for the total amount of rent that he claims to be due.

13 So, Mrs. Sanks is --

14 Q Well, isn't that entirely clear on the new
15 Georgia legislation?

16 A Yes, sir.

17 Q Because in the chronological history of this
18 case, as I recollect it, the intermediate appellate court agreed
19 with you, did they not; and then it went up to the Supreme
20 Court of Georgia and was remanded so that you've never had a
21 hearing --

22 A No; we --

23 Q And up until the Supreme Court, the courts
24 were deciding in your favor; isn't that correct?

25 A Well, sir, we have been in three courts. We

1 began in the Civil Court of Fulton County where there was a
2 judicial opinion and that was in favor of our clients. It then
3 went directly to the Georgia Supreme Court. That was an adverse
4 decision and now we're here.

5 Q It really wasn't a final judgment; was it?

6 A No, sir; it wasn't at all. Indeed --

7 Q And that may be another thing -- fact that we
8 ought to consider.

9 A Well, I'll be happy to address myself to that.

10 Q A remand to the trial court; wasn't it?

11 A Well, sir, under Georgia procedure when a
12 trial judge feels that the question is of such importance that it
13 -- that the rest of the case can't continue until a decision is
14 had on the earlier issue, he may put the case forward to appeal
15 right at that moment, and that's what happened in this case.

16 And, in Judge Williams' opinion, which you will
17 find in the Appendix, Judge Williams specifically found that the
18 matter was of such importance that immediate appeal should be
19 had.

20 So, we went as far as the procedures of that court
21 would permit us to go and we couldn't file the bond and that's
22 why we couldn't go any further in the case.

23 Q The question you are presenting to us has been
24 finally decided by the Georgia Supreme Court?

25 A By the Georgia Supreme Court.

1 Q You mean that question isn't open in the trial
2 court any more; is it?

3 A No, that question is not open -- all of the
4 issues involving the personal bond have been closed.

5 The substantive issues have not been litigated.
6 Namely: Mrs. Morman's defense to eviction and Mrs. Sank's
7 defense, but the issues of the bond have now been -- we have
8 gone as far as we can go on those.

9 Q And that's the only Federal question?

10 A That's the only Federal question; yes, sir.
11 Of course, if the case were to continue there might be Federal
12 questions arising out of the substantive matters and indeed, I
13 suspect there might. But that's apparently not going to happen.

14 Q My preliminary question was that since this was
15 remanded for hearing is it entirely clear as a matter of Georgia
16 State Law that under this Act that became effective on July 1st
17 of this year, that there -- that any constitutional infirmities
18 would attend any new proceedings in this case?

19 A Well, sir, I might have misunderstood you, but
20 I think that the problem is that the new statute became effective
21 as of July 1st and we are asserting no claims and indeed, that
22 statute, we contend, and I think the Court may really have to find
23 that, was utterly irrelevant to these proceedings. The dis-
24 possession warrant that we're dealing with was taken out prior
25 to July 1, 1970. It was under the old act, and our contention

1 is that although there is now a new act, and I'm happy to
2 admit to the Court, as is perfectly obvious, that there are
3 not anywhere near as many people going to be affected by the
4 act which we are talking about today than would be affected by
5 the new act. And so we are talking about a relatively small
6 group of people, but we are -- under the old act.

7 Now, I certainly submit to the Court and I think I
8 am being, I'm accurate in it, it is particularly clear that our
9 clients and potentially other clients, indeed, the clients in
10 the two cases that are now pending before the Federal District
11 Court in the Northern District of Georgia, at least those two
12 groups of people are potentially subject to double damages.

13 And in this piece of litigation I think that's
14 important; indeed, in the -- of the argument last time I found
15 that I may really have misled the Court because I suggested
16 that a second lawsuit might have to be filed in order to
17 collect these damages. I have done a little more research and
18 I'm not sure actually that that isn't true. All that needs to
19 be done is if you should hold this case moot, for example, or
20 if you should decide for the Appellee, all that needs to happen
21 in this case is that the landlord in both of these cases goes
22 into court and says, "I now want a judgment amounting to
23 double the amount of the rent that has been paid during the
24 period of this litigation."

25 Q Well, does the new statute specifically

1 save the right to enter these under the old law?

2 A No, sir; it's silent on the subject.

3 Q Well, how do you know then that the Georgia
4 Court will not say that: "Now, since the landlords can no
5 longer have double damages, we will not give him double dam-
6 ages. That remedy just is not available in the Georgia courts
7 any more."

8 A Well, because, sir, I would presume that the
9 remedy derives out of the action as it was filed and not out
10 of subsequent changes of law.

11 Q Are you sure that's true in cases of remedy
12 in procedure?

13 A No, sir; I am not.

14 Q As a matter of fact, isn't it contrary to
15 the general rule, that remedial matters are affected by sub-
16 sequent legislation?

17 A It's a matter, Your Honor, that I am not
18 familiar with.

19 Q Well, didn't you file some answer to the
20 suggestion of mootness here?

21 A Yes, sir.

22 Q I thought you suggested that the new law was
23 specifically not applicable to the pending action.

24 A Well, it certainly isn't applicable to pending
25 action insofar as that now, for example, there is no question

1 of having to post a bond any more.

2 Q Well, does Georgia -- do you know whether
3 Georgia has a general savings statute which saves rights and
4 remedies under repealed laws?

5 A I do not. I'm sorry.

6 Q Do you have any limitations problems at all
7 with this case? What is your statute of limitations, for --

8 A For civil actions in general it's two years.

9 Q The double rent provision?

10 A There is no statute of limitations as a part
11 of the eviction law, the dispossessory law.

12 I take it that the Court is suggesting that, ob-
13 viously, that they -- that a lower court might not grant the
14 double damages which the initial lawsuit permitted. I don't
15 know how we can know that, in fact.

16 Q Was your client living in the house?

17 A Well, sir --

18 Q How long since she left?

19 A Mrs. Morman moved out about a month ago, but
20 she was there until that time.

21 Q What about the other lady?

22 A The other lady is rather hard to keep track
23 of. She may have been out for some time. I'm not sure how long
24 she's been out. She doesn't have a telephone and doesn't res-
25 pond to our communications so I'm not too sure about that.

1 Q Well, if the new statute is silent on the
2 matter, on its applicability to the pending action and if
3 Georgia has a general savings provision, saving rights and
4 remedies under prior laws, under repealed laws, why you have
5 one answer, but if it doesn't have one of those statutes then
6 you have, certainly the common-law rule which looks in the
7 other direction.

8 A I just didn't look that up, and I guess I
9 should have, but I didn't.

10 As a general rule, though, in these eviction cases,
11 I can say that the courts have held that the fact, for example,
12 that the tenant moved out is not enough to free him of the
13 double damages provision and that's what happened here and I
14 would suspect that the courts would bring that into play if
15 faced with the question that you have raised; that is: the
16 real action that may have made this case moot is the fact that
17 the tenant moved out and that, the courts have clearly said, is
18 not enough to prevent double damages.

19 Q Let's assume that, for the moment, that there
20 was no possibility of the landlord getting double damages
21 against your client; let's just assume that.

22 A Yes, sir.

23 Q Even though you think it's contrary to fact.
24 If you assume that is the case moot?

25 A Yes. I think the case is moot in this sense:

1 let me just give you this reservation. The case is moot in
2 this sense, the very technical narrow sense that Mrs. Sanks
3 and Mrs. Morman had nothing to stand to gain or lost nothing by
4 this litigation. In a narrow reading of the concept of the
5 mootness, I think the case would be moot.

6 In a broader reading of the concept of mootness, I
7 might point out, as we have in our brief, that you have the
8 Meltzer case on the Clerk's docket right now, which raises the
9 identical issue; you have Wise and Williams, which are the two
10 cases in the Northern District --

11 Q Well, it seems to me that if you, since there
12 is some doubt the double damages matter, this might be in some
13 case, an appropriate case in which there really isn't a final
14 judgment for purposes of action in this Court, since our
15 jurisdiction would depend on the double damages matter.

16 A Well, sir, in recovering from my surprise at
17 having this issue raised --

18 Q Well, the issue, you raised it in the -- the
19 state raised the mootness matter and you replied and said this
20 statute doesn't apply to these actions. And I am just quiz-
21 zing you about it.

22 A Mr. Justice White, you have thought of an
23 aspect of this case that I never thought of and that's -- that
24 is what my surprise stems from.

25 Q We've all been caught in your posture at some

1 time, so don't let it worry you.

2 Q I would suggest to you that Georgia does have
3 a general savings section.

4 A Meaning that the remedies continue on, I take
5 it.

6 Q I suggest it probably does.

7 Q Wasn't it in this case the provision in the
8 bond for double damages? There is a bondsman in this case;
9 isn't there?

10 A No; there isn't a bondsman, because we never
11 put up the bond in this case, so that's how we got here was by
12 refusing to put up the bond.

13 Well, I'll just go on because I'm -- let me just
14 finish why I think it is -- aside from your point, Mr. Justice
15 White, assuming that we're out of -- on that point, let me
16 just continue through the other arguments.

17 There seem to be three reasons why we still are in
18 court, unless there is no savings statute: one is that those
19 ladies are subject to double damages; the second is that the
20 question of the whole statutory scheme involved in here, both
21 303 and 305, even if there is a problem about 303 and I think
22 in being honest with the Court, I must say that there is a
23 problem with that; mootness in this case about 303. That is the
24 the posting of the bond -- that is the provision that relates
25 to the posting of the bond and there is no way that I can

1 figure out that 303 has direct consequences on our clients.
2 I think there is a serious problem with mootness, narrowly
3 seen in this case on 303.

4 The final point I think should be made on mootness,
5 as this Court has often expressed the view that when there is
6 a case that is capable of repetition, yet evading review,
7 mootness should not be read narrowly, but should be read in the
8 larger sense. And I think in this case that would be the
9 problem, because of the many other cases you have that would
10 deal with the same issue; indeed, there is another case in
11 Oregon that's going to come up. As you well know, there's a
12 Maine case which I believe is recorded in our brief, a Maine
13 case on a very similar issue.

14 This really is a case that the Court, I suspect
15 would be asked to deal with on a number of other occasions.

16 Unless the Court has any further questions, I'll
17 close on the mootness right there. I see the Court is very
18 troubled by this and by tomorrow when we finish this argument,
19 I certainly will have an answer for you about the saving
20 statute.

21 With the Court's permission I'll just take a few
22 minutes and talk about the substantive issue.

23 We, in our brief, talk a lot about equal protection.
24 One of the good thing about the fact of coming to the Supreme
25 Court is that you have a long time to think about your cases

1 and chew them up for a long time. The more I think about the
2 equal protection argument, the less excited I am by it and the
3 more I think about the due process argument the more excited
4 I am by it.

5 I come here today, not asking you to decide this
6 case on equal protection grounds. I think in many dissents
7 before this Court and in many majority opinions of this Court,
8 misgivings have been expressed about equal protection, which
9 suggest that equal protection is a doctrine that ought to be
10 carefully dealt with, I think, and I don't think we need to ask
11 the Court to go as far as equal protection with its notions
12 of compelling state interest and its notions of more complicated
13 adjudication of constitutional issues.

14 We're talking about a very narrow little question,
15 and that is the right to get into court and we're, it seems to
16 me, right within Sniadach, and we're right within Goldberg.

17 Let me finish today's presentation by suggesting
18 just two ways in which I think we're even and narrow; we
19 present a narrower issue to you than was presented in Sniadach
20 and Goldberg.

21 In the Sniadach case, for example, there's no finding
22 of indigency; indeed, there's a specific question raised as
23 to whether Mrs. Sniadach is indigent. We're indigent. It's
24 clear in the record that we have a finding of indigency, so
25 you are dealing with an easier problem, from that sense.

1 Finally -- secondly in both Sniadach and Goldberg
2 the deprivation it is talking about is only a temporary
3 deprivation of the use of property and that was pointed out, I
4 believe, in a dissent in that case, very clearly that the use
5 of the property is what was involved.

6 In our case, one they're out, they're out; that's
7 it. That's a final deprivation of the property. In that
8 case, too, and for that reason -- excuse me, sir.

9 Q I thought you said she left it voluntarily.

10 A Yes, sir.

11 What I'm talking about is the general statutory
12 scheme and comparing it to Sniadach where somebody is only
13 deprived of the use of his wages, but where an eviction is
14 carried out in Georgia it is a final eviction; there is no way
15 to get back, I'm suggesting that this is a more severe punish-
16 ment than the Court faced in Sniadach.

17 Q Well, are you suggesting that she has been
18 subjected to punishment?

19 A No, sir; not in this case.

20 Q What was she subjected to? She lived there;
21 paid her mortgage?

22 A She did.

23 Q And left?

24 A She did.

25 There is a very interesting discussion in the

1 Goldberg case: the consequences of welfare and why welfare is
2 a right and one of the points the Court makes in that case is
3 that welfare guards against societal malaise and it really is
4 a useful thing. It helps the pursuit of happiness to have
5 welfare.

6 Let's say that, it seems to me, again, we are an
7 easier case here, because does not only staying in the house
8 guard against this sort of malaise, but the kind of evictions
9 which are carried forth really provoke societal malaise.

10 One of the things --

11 Q You said that phrase three times and I never
12 understood it.

13 A Well, sir, I take it that it means --

14 Q Not what it means; I didn't even hear it.

15 A Societal malaise is a phrase that the Court
16 uses in the Goldberg case and it says we want to guard against
17 that.

18 What I think happens in eviction cases is that
19 people get put out on the street. Instead of, as in welfare
20 cases, a sort of administrative determination being made from
21 in some downtown office. In eviction cases people are put
22 right out on the street in poor neighborhoods. That, I think,
23 is the major creator of societal malaise.

24 Those are the distinctions that I think exist or the
25 reasons that I think that this case is easier than the

1 Goldberg and the Sniadach cases and I will rest.

2 Q If our laceration of your argument troubled
3 you, you have been very helpful with your candor and I am sure
4 you will be more helpful tomorrow, Mr. Padnos.

5 A Thank you very much.

6 (Whereupon, the argument in the above-entitled
7 matter was recessed to resume at 10:00 o'clock a.m. on
8 Wednesday, November 18, 1970.)
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