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In the

Supreme Court of the United States

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NELLIE SWARB, et al.,

Appellants,

v. No. 70-6

WILLIAM M. LENNOX, et al.,

Appellees.

Washington, D. C.
November 9, 1971

Pages 1 thru 53

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Tuesday, November 9, 1971.

The above-entitled matter came on for argument at 11:01 o'clock, a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM O. DOUGLAS, 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:

DAVID A. SCHOLL, ESQ., Community Legal Services, Inc., 313 South Juniper Street, Philadelphia, Penna.19107, for the Appellants.

PHILIP C. PATTERSON, Blank, Rome, Klaus & Comisky, 1100 Four Penn Center Plaza, Philadelphia, Penna. 19103, for the Appellees.

WILLIAM L. MATZ, ESQ., Zoob & Matz, 1400 Western Saving Fund Building, Broad and Chestnut Streets, Philadelphia, Penna. 19107, as amicus curiae.

CONTENTS

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in No. 6, Swarb against Lennox.

You may proceed, Mr. Scholl.

ORAL ARGUMENT OF DAVID A. SCHOLL, ESQ.,

ON BEHALF OF THE APPELLANTS

MR. SCHOLL: Mr. Chief Justice, and may it please the Court:

This is a case instituted by 38 named plaintiffs in behalf of a class of all persons in Pennsylvania who had signed contracts containing confession of judgment clauses. I will refer to the appellants in discussing this case as the consumers, since they are all consumers; and the appellees as the creditors.

I would also like permission to request that five minutes of my time be reserved for rebuttal.

The Pennsylvania State -- we have a law in Pennsylvania that permitted, and in fact did, in the case of these 38 named consumers, the prothonotary, who is merely a court clerk, to ministerially enter judgments against the consumers without their having had any notice nor opportunity to be heard prior to the entry of that judgment.

Now, the reason that -- the only thing that authorized the prothonotary to do this, other than the State law, was a clause which was contained in the contracts that each of the

consumers signed. This clause, of course, is the confession of judgment clause.

And I think that there are two significant characteristics of the confession of judgment clause.

First, it is one of the many clauses that is buried in fine print in contracts. It is a difficult clause to understand; many attorneys do not understand what the effect of the clause is.

And I think a second important aspect is that confession of judgment clauses are contained in almost every contract in Pennsylvania in which credit is extended in any form. That is to say, loan contracts, retail installment sale contracts, in leases, there's a confession of judgment in ejectment, and of course also in mortgage contracts.

Q You have in Footnote 1 on page 12 of your brief what you say is the typical wording of such a clause.

MR. SCHOLL: Yes.

Q Is there anywhere in the Appendix or elsewhere where we can see how it looks in print? You just a moment ago referred to "fine print".

MR. SCHOLL: Yes, there is, Your Honor. There are 80 exhibits -- actually there are 81 exhibits, 80 of the exhibits are contracts, so that's --

Q In the original record?

MR. SCHOLL: Yes. They're the contracts that each

of the named plaintiffs signed --

Q Yes. Is there anything here in the Appendix that shows that?

MR. SCHOLL: Your Honor, there was no Appendix in this case. We -

Q You just have the original record?

MR. SCHOLL: Yes, we moved that --

Q All right.

MR. SCHOLL: -- to proceed on the original record.

Q All right. Thank you.

But this, the wording of a typical one appears -- do I get right -- in note 1 on page 12 of your brief?

MR. SCHOLL: That is right, Your Honor.

Now, the confession of judgment that the prothonotary may enter may be entered immediately after the contract is signed. That is, it can be entered even before there is any allegation of default. It can be entered the same day that the contract is executed.

It cannot immediately serve as the basis for execution and sale of the consumer's property. However, all that the creditor need do at that point, to execute and sell the consumer's property, is to file ex parte an averment that the consumer has defaulted.

Now, what notice does the consumer get of the proceedings that are occurring against him? Well, after the

judgment is entered, he's required to get notice of the entry of the judgment. However, the property of the consumer can be sold as short as 20 days after the notice of the entry of judgment is given.

Also, if there is a sale of the consumer's real estate, he's given notice that the writ of execution has been issued against this real estate, and also he's given notice of the sale of his property. However, this is generally by publication, although there must also be notice by mail, and that may be as -- the notice by mail may be as little as ten days before the property is sold.

Q In the earlier case ahead of you, I asked counsel if he thought it would satisfy due process if the creditor, by informal notice but communicating actual notice, advised the debtor that he intended to exercise the powers granted under the confession of judgment clause; do you agree that that would satisfy due process?

MR. SCHOLL: Well, I think -- if it would be noticed, that the consumer would have an opportunity and a hearing to raise any defense that he might have before execution and sale could proceed on the confessed judgment, then I think that it would comport with due process.

Of course, that is not what is assured by the Pennsylvania confession of judgment statutes and rules.

Q In other words, under your statute, even if he

had notice and came in, he would not be able to put in any defenses; is that true?

MR. SCHOLL: That's right. There is really only one procedure by which the consumer can possibly stop the sale of his property, and that is by petitioning to open or to strike the judgment.

Now, what happens when someone petitions to open or strike the judgment?

Q Mr. Scholl, you mean the consumer gets notice that on Monday of next week "we're going to file confession of judgment against you"?

MR. SCHOLL: No, he doesn't receive that notice. He never receives any notice prior to the entry of the confessed judgment.

Q Well, I'm adding to the hypothetical the Chief Justice gave you.

MR. SCHOLL: Oh, I'm sorry.

Q And he gets that notice, is it your position that he can't do anything about it?

MR. SCHOLL: The only thing that he can do is to petition to open or to strike the judgment.

Q But the judgment hasn't been issued yet.

MR. SCHOLL: Well, the point is that --

Q Will you get my facts straight, please? This Monday he gets a notice which says, "On next Monday, in the

Common Pleas Court in Philadelphia, Common Pleas Court No. 267, we're going to apply for confession of judgment against you." You say that there's nothing he can do.

MR. SCHOLL: Well, he never gets that notice. There's no requirement --

Q But if he did get it, isn't there something he could do? You said he couldn't do anything.

MR. SCHOLL: Well, if it's prior to the entry of judgment, he would be able to go into court and attempt to enjoin the creditor from obtaining the judgment. That's the only thing I can conceive of.

Q Doesn't that fit -- that doesn't fit due process for you?

MR. SCHOLL: Well, the problem is that the Pennsylvania procedures do not provide any entry -- or any notice prior to the entry of judgment. And in fact I know of no instance, and certainly it was not the case in any of the named plaintiffs' cases, in which the notice of -- that the judgment was to be entered was provided to the consumer prior to the entry of judgment.

Q My only point was that you say he didn't have notice. And I'm saying if he was given notice, would that be as much due process as you wanted? That's the only question I asked.

MR. SCHOLL: Well, that would be a different case,

and I think perhaps in that case, depending on what the notice was and what opportunity the consumer would have to come in and present his defenses. What you're suggesting may comport with due process of law.

Q Well, if he did have notice, would he be permitted to present breach of warranty defenses, for example, in Pennsylvania?

MR. SCHOLL: Well, the problem that I have is what he can do, prior to the entry of judgment. I think that what Mr. Justice Marshall was suggesting was that a person would obtain notice prior to the entry of judgment; and I think the only thing that could possibly be done is bringing some kind of injunction action, to prevent the creditor from proceeding.

Q Well, what you're saying is that he couldn't report to the Common Pleas Court on Monday and say, Now, I want to tender evidence in defense of this proposed action. I want to tender evidence of breach of warranty.

You're telling us he could not do that as a matter of procedure?

MR. SCHOLL: That's correct. He could do it but they would go on and enter it anyway.

Q He'd have to start, you're saying, in your view, some original action to get an injunction against there being any proceeding on the judgment note; is that it?

MR. SCHOLL: That's the only procedure I can conceive

of. The prothonotary has no discretion. He must enter the judgment. The State statute says that he must enter the judgment, as long as he is presented with the document that contains a confession of judgment clause in it.

Now, as I have mentioned, there is, of course, the procedure to petition to open or to strike the judgment. However, this is simply a procedure that's provided in Pennsylvania, as in most jurisdictions, to obtain relief from any judgment. It's a petition that is directed to the court's discretion, and the court must be shown -- the consumer must come forward and show that he has a meritorious defense before the judgment will be open, and he even gets an opportunity to come in and have a hearing on his motion.

This of course would deny him the right to any jury trial, to determine whether the defense that he is claiming is a meritorious defense.

Q Well, suppose the judgment is opened, what then happens? Is there any further proceeding?

MR. SCHOLL: Yes. Then there is a hearing on the merits. The judgment is opened --

Q Well, what's the hearing on the merits? Does that involve a jury trial, or what?

MR. SCHOLL: Well, then he could obtain a jury trial. After the judgment is opened.

Q And going back to the hypothetical I suggested,

At that point would he have a jury determination on his defense of breach of warranty?

MR. SCHOLL: Yes, he could have a jury determination after the judgment is opened, but the problem with the Pennsylvania procedure is that he must come forward and show that he has a meritorious defense before a judge, which --

Q And how does he show that?

MR. SCHOLL: Well, he presents whatever evidence he can. Usually he has to proceed by depositions. And that is another aspect of confession of judgment, in that the burden of proof switches, but also that the costs are increased for the consumer who must come forward and present his defenses through a petition to open or strike, rather than proceeding in the normal proceeding of answering a complaint.

Q And he can't support that merely by affidavit, he has to take that position, is that it?

MR. SCHOLL: The new confession rules do provide that he can take testimony.

Q But suppose he wanted to rely only on affidavits, then?

MR. SCHOLL: Well, I suppose he could try it. He could proceed, with only affidavits.

But the problem is, of course, that he would not have a jury trial at that stage, at which it's determined that he actually has a meritorious defense.

Q As I understand, all that he gets is that, whether it's affidavit or depositions, is that the judgment then is open for the purposes of a hearing?

MR. SCHOLL: That's right, Your Honor.

Q And that may be a hearing at which there may be a jury?

MR. SCHOLL: That's right.

Q Yes.

MR. SCHOLL: Now, the court below recognized that in fact the opening and striking procedure did change the burden of proof, and that it did significantly increase the costs that the consumer would ordinarily have in the complaint answer proceeding. And the court below further declared that confession of judgment, at least for the class in whose behalf it held that the action could be maintained, did violate due process of law.

Essentially the court held that since the consumer did not have any notice, nor any opportunity to be heard prior to the entry of judgment, that therefore he was denied due process of law.

However, the court below did make three exceptions from the ruling that the consumers urged below. Below the consumers urged that the Pennsylvania confession statutes and rules be declared unconstitutional on their face. The court below, instead, declared that, yes, it's unconstitutional for

a certain group of people, but it's not unconstitutional regarding three specific classes of persons.

Now, the first class which it excepted was all persons who earn $10,000 or more annually. For a person who earned more than $10,000 a confessed judgment could be entered, executed, and serve as a basis for sale against him.

Secondly, it made an exception for all persons who signed mortgages, or actually signed confession clauses or signed bonds and warrants and notes that contained confession of judgment clauses, which accompanied mortgages. So that in any mortgage transaction, a person could also validly sign a confession of judgment that would serve as execution in sale of his property.

And the third exception that the court made, the court said that, Well, if at a prior hearing -- and although it didn't set down how the procedure would be carried out -- it could be showed that the consumer voluntarily, knowingly, and intelligently waived his due process rights, then in that case, too, the confessed judgment could be entered and serve as a basis for execution and sale of the consumer's property.

Q Now, incidentally, in this instance we don't have the forms before us. But are these all printed forms?

MR. SCHOLL: Which forms are you speaking about?

Q The one that has the clause at the bottom of page 12, the confession of judgment clause. Are they in a

printed form, is what I'm trying to get at, or what?

MR. SCHOLL: It's not in a separate printed form. What it is is a -- usually it's one clause in a contract that contains numerous other clauses. I think probably the best reference point for Your Honor would be the exhibits in this case, they're --

Q Well, we don't have them, that's why I'm asking you about it.

MR. SCHOLL: They should be --

Q They're in the original record, but we don't have them here.

Q The original record is lodged here.

Q But I mean it's not here on the bench!

MR. SCHOLL: I think it's here somewhere.

Q They're not here on the bench, I can't see them before me, that's why I'm asking the question.

MR. SCHOLL: Yes, well, --

Q Well, what is it, some form of a contract that an appliance dealer uses, for example, or something like that?

MR. SCHOLL: Well, it's used in practically every contract. Every contract in Pennsylvania, and where credit is extended in any form, most every contract, retail installment sale contracts, bonds and warrants with mortgages, --

Q Are they printed --

MR. SCHOLL: -- somewhere in there.

Q Are they printed forms?

MR. SCHOLL: Yes, they're printed forms. In fact, they're standardized forms, --

Q That's what I'm trying to find out.

MR. SCHOLL: -- in fact some of the exhibits that we've included are simply forms that we got from the local stationery store. And they all contain confession of judgment clauses in the body.

Q Was there a cross-appeal in this case?

MR. SCHOLL: No, there was no cross-appeal. The only party that has appealed are the consumers. We're appealing from the decision failing to declare confession of judgment unconstitutional on its face. There's been no cross-appeal.

Q Who is Lennox? Is he a State officer?

MR. SCHOLL: Lennox is the -- or he was, he's recently been -- well, I guess he still is officially -- the Sheriff of Philadelphia County. He is the person who has the duty of executing and selling the property of the consumers.

Q And Lennox took no cross-appeal?

MR. SCHOLL: Lennox took no cross-appeal, that is correct, Your Honor.

Now, I think that it's perhaps well to focus on three exceptions that the court made, and how easily these exceptions might be used as a device of circumvention of the entire effect of the decision below.

For instance, the court says that in any case where there's a mortgage and a bond and warrant and note accompanying that mortgage, that if the consumer signs that, well, then you can confess judgment against him.

Now, the court does not restrict, however, the transaction on a money mortgage. A mortgage can in fact be taken by a creditor in any transaction. It can be taken in a loan transaction. The chattel mortgage could be taken in a retail installment sale transaction. And, in fact, there is much evidence that this is exactly what was happened in Philadelphia County prior to the time that Mr. Justice Brennan issued a stay order which stopped all executions and sales on confessed judgments in Philadelphia County.

The $10,000 and over exception has also been circumvented by simply requiring/a borrower file an affidavit that at the time that he takes out a loan or whatever, however he's obtaining credit, that he earns $10,000 and over a year. And it's not surprising that the creditor should have the leverage to get the mortgage or to get the affidavit from the consumer, because, of course, before he was able to get the confession of judgment clause, why not just ask the consumer to sign one more paper, which in fact has the same effect.

I think there is also a problem with the other exception that the court set, the voluntary knowing and intelligent waiver, a hearing which is to be held.

The court below sets up no procedure on how this is to take place. The way they usually were scheduled in Philadelphia County after the decision was by petition and rule to show cause upon the consumer. Of course the consumer gets this petition that says he has to come in and show that he didn't knowingly, voluntarily, intelligently waive his rights. This does not apprize him of actually what the significance of that hearing is going to be. The consumer is never apprized that if it is shown in fact that he knowingly, voluntarily, and intelligently waived his rights, that he's not going to have any hearing on the merits of any defenses that he might have.

Also the court below focuses in its discussion, although it says "knowingly, voluntarily, and intelligently" on an understanding waiver by the creditor at the time that the contract is signed.

Therefore we have the anomalous results of somebody who understands the confession of judgment clause and perhaps went to a lawyer and asked the lawyer to explain the contract that he's signing before he signed it, he's not excepted from the class, because he knows, or he understood what confession of judgment was at the time that he signed it.

The person who doesn't know what it is or perhaps is not prudent enough to go to a lawyer, he doesn't understandingly waive his rights, therefore he is protected by the

court's decision.

Q What's unconstitutional about some fellow who knows what he's doing waiving his rights?

MR. SCHOLL: Excuse me?

Q What's unconstitutional about someone who knows what he's doing waiving his rights?

MR. SCHOLL: Well, I think that there is a practical problem with somebody showing that somebody actually voluntarily, knowingly, and intelligently waived his rights. As I will discuss, I don't think it is possible, but I think one of the problems here is --

Q You mean no one could understand that?

MR. SCHOLL: Well, no; what I'm focusing on, Your Honor, is the notice that the consumer gets. All the consumer gets is notice that he's going to have a hearing --

Q Well, let's assume he got the kind of a notice you wanted, and understood exactly what kind of a hearing was going to be held, namely, that they're going to go into his voluntariness and intelligence of his waiver, and that if he waived, why, he is going to have to -- the judgment against him stands. Let's assume he got all the notice he wants.

MR. SCHOLL: Well, if it can be posited that a person knew exactly what the significance of that hearing was going to be, that would mean he would not be able to raise any defenses that he might have, perhaps this exception might

make some sense.

But the court, as I said, in the opinion when they discussed the waiver hearing, speak only of understanding; whether the person understood what the clause meant at the time. And I think that if you look closer at the court's analysis of waiver, we see that the court did not really focus on the elements of voluntary, knowing, and intelligent in its discussion.

The court below says, as a matter of fact, and I think this is where the court begins to err in its analysis and I think this is what led up to the exceptions, it says --

Q Well, you don't claim, then, as I understand it, that a voluntary -- a knowing and voluntary and intelligent waiver is unacceptable constitutionally to dispense with notice and hearing before a judgment?

MR. SCHOLL: Well, yes, I do, Your Honor. I do object to that assertion, and the reason that I object to that assertion is that in a confession of judgment clause what is in fact being waived is due process itself. What somebody is waiving is any notice or opportunity to be heard prior to a judgment.

Q So you say that nobody should be permitted constitutionally to waive notice of an entry of judgment?

MR. SCHOLL: That's right, Your Honor.

Q All right.

MR. SCHOLL: Although I think that it's well to focus on the elements of voluntary intelligence to see whether in fact there could be a voluntary and intelligent waiver also. It is also our position that even if you could show that there was a voluntary and knowing and intelligent waiver that, nevertheless, such a waiver should not be acceptable to this Court.

Q I understand. I just wanted to get your position.

Q What you really want is to shift the burden of proof, isn't it?

MR. SCHOLL: Well, I -- what we want to do is prevent the burden of proof from being shifted. Ordinarily in an adversary proceeding when one person comes forward and attempts to get the property of another person, he has the burden of showing to the court, by a clear preponderance of the evidence, that he's entitled to the other person's property.

The Pennsylvania due process -- or confession of judgment procedure shifts that burden of proof. The creditor gets the confessed judgment right in the beginning, and the consumer will spend all his time trying to somehow get rid of that judgment that he has against him; it switches around the entire adversary proceeding. And the only way that he can do this is by coming in and showing to the court, in a petition

to open or strike, that in fact he, by a pure preponderance of the evidence, has a meritorious defense.

Q Mr. Scholl, if you prevail here, do you raise any questions as to the validity of closed and past transactions in Pennsylvania? In other words, I'd like a comment from you on the retrospectivity feature, if you should prevail.

MR. SCHOLL: Well, I think that's a very difficult question, Your Honor, and I think it's so difficult that the consumers don't want to urge for anything that is unreasonable. I don't think, for instance, that we would urge that any judgments that have been entered be expunged. We would not urge that, in any case.

I think that what we would urge is that there be no more executions in sales on even the judgments that have been entered in the past. That in the future there be no more entrance of judgments.

Now, the Land Title Association brief of course raises the issue of retroactivity, and I would like to comment on what they say, and I think that we actually concur with the Land Title Association's position, which is that any decision on entry should not in any sense be retroactive, and that regarding executions in sales, that a decision on that be retroactive only since January the 26th, 1970. The reason that I choose that date, it is a date that the Land Title Association indicates that they advised all of their members that they

should be careful in the future about insuring titles on confessed judgments.

And I think that was a point at which the hardship factor that may weigh against a fully retroactive decision sort of changes over, in that it's not at that point so important because at that point the land title associations were on notice that in fact confession of judgment probably or possibly was constitutionally deficient.

I would just like to say a few words about whether the waiver can ever be voluntary in the confession of judgment situation. I think that perhaps the case before this has highlighted several of the -- actually the distinctions here.

What we're concerned with in this case is a clause that is contained in almost every contract in Pennsylvania, and the parties that are negotiating here are not two corporations, they are, in fact, the consumer -- who probably wouldn't even know what confession of judgment was, much less what the effect of it is -- and a company, which uses a standard form, and understands, of course, perfectly what confession of judgment means.

The consumer, in fact, is put in a position where he either has to sign the contract that contains the confession of judgment clause or he has to do without credit. He is put in a situation, almost the classic adhesion contract situation. And it's --

Q Well, you're suggesting that the statute might be all right as between corporations and understanding people, but not with respect to consumers?

MR. SCHOLL: Well, what I'm suggesting is that there is not a voluntary waiver of the due process rights for the consumers. It may be valid. There may be a voluntary waiver for some corporations, although in Pennsylvania --

Q So the statute really isn't -- you aren't suggesting that it's invalid on its face, then?

MR. SCHOLL: Well, I think that we are. Because there is certainly nothing in the statute that distinguishes persons who voluntarily waive their rights or corporations from individuals. I think that the statute, as it's drawn, affects all persons.

And I think the court, the lower court, could only have come to the conclusion, "Well, it's all right for corporations but it's not all right for individuals" if it could have found that the statute was in fact severable, and that the Legislature would have intended to retain a statute that said, "Well, confession of judgment is all right for corporations, but it's not all right for consumers".

Q Well, does the judgment below apply to corporations under $10,000?

MR. SCHOLL: No. In fact, the --

Q Only to individuals, isn't it?

MR. SCHOLL: It just applies to individuals.

Q Everything under ten -- incidentally, does the court suggest -- I've forgotten, it's been so long since I read this -- what was the basis of the $10,000 dividing line?

MR. SCHOLL: I think the basis was that we didn't present to the court any consumers that earned over $10,000.

Q Over 10,000.

MR. SCHOLL: And they felt that we had failed to meet our burden of proof on that issue.

They also suggest another argument. They say that, Well, maybe these poor people could not adequately represent the people that earn over $10,000, because those people might want to retain confession of judgment because, now the confession is gone, it might be harder to get credit.

Q That's right.

MR. SCHOLL: Well, I think that there's a problem with that reasoning, and the problem is that the person that's earning over $10,000 has an income which is security for the credit.

Q Well, there was no suggestion that anyone who earns $10,000 or under is necessarily a poor person?

MR. SCHOLL: Well, that's true, too. There was no determination made as to either --

Q It was just that the only proof you had for the people you represented, were people who earned not more than

$10,000, is that it?

MR. SCHOLL: That's right. I think where the court erred in that discussion is assuming that we had to show, for every group of income people, that in fact they were in the same boat, so to speak, as the --

Q Well, under the judgment below, what is the standing of the Pennsylvania statute on its face?

MR. SCHOLL: Well, they made no decision on the statute on its face. The statute still retained what the court said was just as as applied to this group of people who earn under $10,000 and nonmortgagors. That group of people is now going to be protected from confessed judgments being entered and executed in certain --

Q Then what is your quarrel with what they did?

MR. SCHOLL: Well, --

Q If you don't represent anybody that makes more than $10,000.

MR. SCHOLL: Our quarrel is that we don't feel there is any distinction between persons that earn over $10,000 and those that don't. In fact, had the court --

Q Then that may be another case. Nobody here is in that category, is there?

MR. SCHOLL: Well, one of the named plaintiffs I think does earn over $10,000, that is appealing here.

Q Well, I was referring to your answer to Justice

Brennan.

MR. SCHOLL: No. I believe there is one person that's appealing that earns over $10,000. But I will concede that, you know, perhaps that is another case, but I don't think that what the court should do is built in in its decisions in other cases.

Q Well, in any event, I gather that anyone earning under $10,000 is subject to this waiver business, isn't he?

MR. SCHOLL: Yes, a person can --

Q After hearing.

MR. SCHOLL: Yes, a person can still be --

Q None of the people you represent has any protection unless he can leap that hurdle, is that right?

MR. SCHOLL: That's right. The hearing won't even come up unless the person earns under $10,000 a year.

Q I know, but if -- but, as I get it, a person earning under $10,000 has no protection if in fact it's established that he waived these rights; is that right?

MR. SCHOLL: That's right. That's right, there's a hearing --

Q That he's understanding, intelligent, voluntary, and all the rest of it? Is that right?

MR. SCHOLL: Right. If that hearing takes place, and it's shown --

Q Before whom is the hearing to take place?

MR. SCHOLL: Well, the court doesn't say that, how that hearing is to take place. The way it has been taking place is by petition and rule in Philadelphia County, which I don't think is an adequate substitute.

Q But a creditor who has a -- who wants his judgment, if the person earns less than $10,000, he's the one who has got to initiate it? The creditor doesn't.

MR. SCHOLL: He has to do something to have that hearing.

Q Before he can go forward on his judgment?

MR. SCHOLL: That's right.

Q I thought that satisfied you, from your previous argument.

MR. SCHOLL: No. In fact, in answer to Mr. Justice White, particularly on that point, we would urge that in fact what is in question here is a waiver of the entirety of due process, it's a waiver of any notice and opportunity to be heard prior to the entry of judgment and prior to something which can lead to the taking away of a person's property. And that such a waiver is simply invalid on its face, because it's a waiver of due process, and that is something that this Court simply cannot permit to take place under our form of government.

Q You mean no matter how intelligent and voluntary and whatnot it is?

MR. SCHOLL: That's right.

MR. CHIEF JUSTICE BURGER: Your time is up, Mr. Scholl, but if you'd just answer one question for me: Where did the -- briefly if you will -- where did the Court of Appeals get the $10,000 figure?

MR. SCHOLL: It seems that where they got it was from one piece of evidence that we introduced, a study taken by Dr. David Caplovitz of the Columbia University Bureau of Applied Social Research in New York. David Caplovitz had studied the attitudes of persons who he termed default debtors in a study taken in several cities, one of which was Philadelphia. And one of the findings that Dr. Caplovitz made was a demography of the persons that he had studied. And he found that only four percent of these persons earned over $10,000 annually.

Now, I think initially that the reason that this finding came about was because of the way he conducted his study. I don't think that it indicates anything differently about persons earning under $10,000.

MR. CHIEF JUSTICE BURGER: Thank you, that answers my question, counsel.

Mr. Patterson.

ORAL ARGUMENT OF PHILIP C. PATTERSON, ESQ.,

ON BEHALF OF THE APPELLEES

MR. PATTERSON: Thank Your Honor.

I represent the Middle Atlantic Finance Association

and 15 member companies who were the intervening defendants in this action.

In view of the shortness of my time, because Mr. Matz here will take ten minutes out from me, I will not ask for rebuttal.

Q You don't get rebuttal. [Sotto voce]

MR. PATTERSON: Now, the first question I would like to cover is the question: Whether or not a deferred hearing, following judgment, violates due process when every opportunity is given to the defendant to present every defense he has; and the main contentions that are presented by the plaintiff in that regard are not that there is anything inherently wrongful with having a deferred hearing of this sort, but they are contending that it is permissible only when there is some over-riding governmental interest.

And I'd merely like to point out that the cases decided by this Court on that subject rebut that argument, because, for example, the Coffin case, which is cited in our brief, which was a suit by the liquidator of an insolvent bank against its stockholders, is certainly not a suit on behalf of the government; it's just an ordinary lawsuit between a bank and stockholders. And that case specifically held that even though execution was an assessment which was like a judgment, and also an execution in issue before any hearing had been held, and even though a lien was acquired upon the

stockholders' stock.

Nevertheless, because the stockholder had a procedural opportunity under the Georgia procedure to present all defenses, because he could have a hearing before he was actually deprived of that property, that that complied with due process.

There are many other cases to that effect. For example, there's one case not cited in the brief, Bank of Columbia vs. Oakley, decided in 1819, 17 U. S. 233. Now, that case held likewise, and also there was a lien, and I won't burden Your Honors with a description of it, except to say that there was a statute that provided that any time a note was payable at a bank, the bank could go ahead and issue execution and acquire a lien and that then there would still be a right to a hearing afterwards.

Q There's no cross-appeal here, is there?

MR. PATTERSON: There is no cross-appeal. However, --

Q In the court below, as I understand it, they held that there had not been a legal waiver on the part of any of these people.

MR. PATTERSON: That is correct, Your Honor.

Q Is that right?

MR. PATTERSON: That is correct.

Q Well, where is your case controversy here?

MR. PATTERSON: The controversy is as follows: The court below found, made a finding of unconstitutionality only

as to loans by our clients to consumers with incomes of 10,000 or under.

Q But there's nobody here over $10,000, and there's no cross-appeal.

MR. PATTERSON: The plaintiffs here are appealing and asking the Court to extend this decision to people with incomes over $10,000.

Q Well, I understand that. That doesn't make it necessarily a case of controversy.

MR. PATTERSON: Well, because the plaintiffs are trying to -- claim to represent people with -- consumers with incomes over $10,000, and because we represent lenders who are lending money to people with over $10,000, it is our position that we're entitled to argue all constitutional questions for that reason.

And then there's another point --

Q Including that the court was wrong on people under 10,000?

MR. PATTERSON: Exactly -- well, including that the principles that were laid down by the court with respect to people under $10,000 are wrong as applied to people with incomes over $10,000.

And one other point is, and that is that this question of waiver has been thrown into the case somewhat belatedly by the plaintiffs, if you look at their jurisdictional statement,

they didn't even mention that; they just mentioned the $10,000 matter and the mortgage matter. But we're perfectly willing to accede to that expansion.

Now, the main --

Q I just don't understand this. If you were to prevail on people over 10,000, that issue having been brought here by the other side who prevailed as to people earning under 10,000, are you suggesting that what we have to do is reverse this judgment they won below, even though they're the appellants?

And you didn't cross-appeal?

MR. PATTERSON: That, Your Honor, is a very difficult question. I think the precedent that would be -- the important thing that's going to come out of this case is the precedent that will apply to the future. And in applying --

Q As to which class? The over 10 or under 10?

MR.PATTERSON: The over 10.

Q Then shouldn't we have had some opportunity to have reached that question, better than now?

MR. PATTERSON: Well, we have cited in all of our papers in this Court, and in even our Motion to Dismiss, we made it plain that we were arguing all constitutional matters because of the fact that this appeal had been made as to the people with over $10,000. And the precedent that is laid down on loans to consumers over $10,000 will, as a practical matter, govern all transactions.

Q Even under 10.

Q You want an advisory opinion?

MR. PATTERSON: No, Your Honor. Because there is a case in controversy as to consumers over 10 -- with incomes over $10,000.

Q And who's presenting that point?

MR.PATTERSON: We are presenting that point. The appellants --

Q Well,the appellants bring it up.

MR. PATTERSON: They have brought it up, and we are controverting their argument.

Q But by not taking a cross-appeal, doesn't it follow that you are not quarreling with that part of the -- with the three-judge court decision, that held this Pennsylvania procedure constitutionally invalid --

MR. PATTERSON: Well, actually we do --

Q -- with respect to people under $10,000, except when secured by mortgages or except when it could be shown that they did this knowingly and intelligently?

Q They're not going for that.

MR. PATTERSON: Well, the truth of the matter is what happened, and we quarrel with it rightly, but what happened is the fact that our clients ran out of money and advised us that they couldn't afford to pay for an appeal, so we wrote and asked for --

Q You mean your clients have run out of money?

MR. PATTERSON: We wrote and asked to withdraw -- well, at least they so stated. We wrote and asked to withdraw, but the Court wrote and stated that we couldn't withdraw.

Q Well, couldn't you borrow a little money from the Pennsylvania Savings and Loan League?

[Laughter.]

MR. PATTERSON: Your Honor, if we had been aware that we were going to stay in the case, we would have filed an appeal. And it's very unfortunate that we didn't. But luckily we can still, as I see it, raise all these questions as far as the loans by our clients to consumers with incomes over $10,000. And Mr. Matz here can certainly raise them as far as mortgage loans.

May I continue, Your Honor?

MR. CHIEF JUSTICE BURGER: Yes; go ahead.

MR. PATTERSON: No, the most important controversy that appears between ourselves and the plaintiffs is the plaintiffs' contention that the burden of proof changed, that the expense changed, and that the notice was not sufficient as between proceedings to open a confessed judgment on the one hand, and assumpsit actions brought on summons and complaint.

That is absolutely not correct.

First of all, as far as the burden of proof is concerned, what the plaintiff has done is to quote to the Court

language from the Pennsylvania Supreme Court that applies to cases that do not involve promissory notes. They have nothing to do with this case, because this case involves entirely judgments entered in promissory notes, and mortgage bonds, which Mr. Matz will handle.

Now, the Uniform Commercial Code, which we have cited in our briefs, Section 3-307(1) --

Q It's been adopted in Pennsylvania?

MR. PATTERSON: That's correct, Your Honor. Section 3-307(2), I mean, states that the moment a note is put in evidence, that then, as to all defenses other than that of forgery, both the burden of going forward with the evidence and the burden of proof is on the defendant in an assumpsit action. And then of course it's the same way in a petition to open.

The official comment makes it plain that this isn't just a matter of the burden of going forward with the evidence. The comment makes it plain that this is a matter of the burden of proof.

Then, on top of that, the cases have held the Uniform Commercial Code makes it plain in Section 3-307(1) that as to forgery the burden of proof is on the plaintiff in an assumpsit action. There's a presumption of genuineness, but the moment some evidence is put in as to forgery, then the plaintiff has the burden of proof.

Then there is a defense, Yank vs. Eisenberg, which is cited in the briefs, and that case specifically held that in a confession proceeding the claimant, not the defendant, has the burden of proof as to forgery.

So there is not one difference in burden of proof between a confession case and an assumpsit case. That's the first point.

Now, the second point is that as to the expense factor, there is not one shred of evidence in the record to the effect that the over-all expense of an assumpsit action is any less than the over-all expense of a proceeding to open judgment. There are no studies, no surveys, no over-all -- no comparisons of over-all figures.

I need say no more than that.

MR. CHIEF JUSTICE BURGER: Mr. Patterson, if you're using only ten minutes, I think you're now beginning to impinge on Mr. Matz' time.

Q Between them.

MR. CHIEF JUSTICE BURGER: Are you taking 20 or 10 for yourself?

MR. PATTERSON: I'm taking 20.

MR. CHIEF JUSTICE BURGER: Oh, 20. Excuse me, I thought it was the reverse. You go ahead.

MR. PATTERSON: Oh, I see. Mr. Matz will take 10.

Now, then, on the question of notice, the question of

notice is thoroughly examined in the rules, and I won't -- it's a very technical matter, and there's at least 20 days, and generally many more days, between the notice of entry of judgment and the notice of execution and the time when the sale can be scheduled.

In the case of an assumpsit action, there are 20 days until a default judgment can be entered, and then on the very day, or next day, execution can issue. So there really isn't any difference of burden there. If --

Q Well, let me ask on procedure now: when a judgment is entered by confession, a notice goes to the debtor, does it?

MR. PATTERSON: The Pennsylvania rules says that within 20 days after the notice is entered by confession, a notice of the entry of the judgment and also a notice of execution, when execution is issued, have to be sent to the debtor.

Q Well, what I'm trying to get at is this: The debtor gets that notice how many days before his property may be put up for sale?

MR. PATTERSON: Well, first of all, sale -- the next step is that the notice of execution has to issue.

Q That issues when?

MR. PATTERSON: That can issue any time within 20 days.

Q Well, can it issue simultaneously with the notice

to the debtor?

MR. PATTERSON: It's my understanding that it can. If it doesn't issue within 20 days, then it can still issue; but after that --

Q Well, how soon may his property be put up for sale, from the date of the sending of the notice of the entry of the judgment?

MR. PATTERSON: Well, in no event can it be put up more -- sooner than 20 days after the sending of the notice of execution. The next point is --

Q But if that goes out the day that the judgment is entered, then that's 20 days from the entry of the judgment, approximately.

MR. PATTERSON: Yes. But there are further restrictions. Another restriction is that sales only take place once a month, so it's a very rare case --

Q Does this differ by counties in the State?

MR. PATTERSON: Well, in Philadelphia County, I understand they take place once a month. I don't know about the other counties.

Then the second point is that the Pennsylvania rules say that when it's real estate, there has to be advertising -- weekly advertising, for three successive weeks, and it has, the first ad has to be at least 21 days before the sale. In the case of personal, personalty it's six days.

So with all these --

Q Well, these executions are out of court, they're not judicial foreclosures?

MR. PATTERSON: These are out of court, yes, sir.

Q Once you issue your notice of execution, in the case of personalty, what do you do? Give the -- some writ of execution to a sheriff and he goes and seizes the property, or what?

MR.PATTERSON: That's correct, Your Honor.

Q And then it's sold without any further court order or anything?

MR. PATTERSON: That's correct, Your Honor.

Q And so once you issue the notice of execution with respect to personalty, there's at least 20 days has to elapse before the sale?

MR. PATTERSON: Their handbills have to be posted and the schedule -- the timetable is a little shorter there. The handbills have to be posted and they have to be posted at least six days ahead of time, in several --

Q Yes, but once I send the notice of execution to the debtor, until then you can't seize the property, I take it?

MR. PATTERSON: It can't be seized for 20 more days, but then after that --

Q All right. All right. Once you send him the notice of execution, he has 20 days before the property can be

seized by the sheriff, right?

MR. PATTERSON: Before it can be sold.

Q Well, what about the seizure?

MR. PATTERSON: I am not certain about that, Your Honor. I'll ask Mr. Matz to cover that point.

Q Well, since we're talking about personal property, an unmortgaged personal property, and you simply get a lien on it by having a judgment, is that right?

MR. PATTERSON: You do not get a lien on personal property by having a judgment. There are some very misleading impressions --

Q All right. All right. Well, then, you don't get a lien, but you have a right to sell, do you? To seize it and sell it; is that right?

MR. PATTERSON: Yes. You can't sell it until you seize it.

Q That's right. And how soon can you seize it after he gets notice of execution?

MR. PATTERSON: Well, he cannot sell it until 20 days. I do not know --

Q Twenty days plus six, probably.

MR. PATTERSON: Yes. I do not know whether you can seize it before 20 days or not.

Q Now, if there is a motion meanwhile, within the 20 days, made to strike the judgment, what happens to all these

procedures on execution and sale?

MR. PATTERSON: Well, then, also it's customary to ask for a stay, and the Pennsylvania rules state they authorize the court to grant a stay of execution --

Q But it's not automatically stayed?

MR. PATTERSON: It's not automatically stayed, the court --

Q You have to -- a judge has to rule.

MR. PATTERSON: -- generally does so.

Q Well, I know, but it's not automatically stayed?

MR. PATTERSON: No.

Q It's possible, then, notwithstanding there's a pending motion to strike the judgment, it's possible, I gather, if the court doesn't grant a stay, for whatever reason, denies it, that the property may be sold on execution?

MR. PATTERSON: Well, as possible as it might be, consistently with the fact that the stays are always granted.

Q Yes. Now, one other thing, though. I take it none of -- of course, none of this happens if you proceed in assumpsit, if the creditor proceeds simply in assumpsit, on the debt against the debtor, then there has to be no defense and trial and everything else, and his judgment is never -- or his property is never imperiled until after a judgment following a jury trial or something akin to it, is that right?

MR. PATTERSON: Well, Your Honor, yes, except if --

assuming -- in 99 instances out of 100 on these promissory notes there is no defense; and so if an honest answer is filed, then an immediate judgment would be taken, either that or a default judgment.

Q Well, I appreciate that, but, nevertheless, until he's had notice and opportunity to defend, no judgment is entered upon which there can be execution?

MR. PATTERSON: Oh. Yes, Your Honor.

Q That's the difference between the confession, then, of course, and the confession note and the ordinary note?

MR. PATTERSON: That is correct, Your Honor.

Q Yes.

Q Mr. Patterson, is it the duty of the Attorney General of the Commonwealth of Pennsylvania to defend the constitutionality of the laws enacted by the legislature of that State?

MR. PATTERSON: It was always my understanding that there was, and the Commonwealth of Pennsylvania, through the Attorney General, appeared and did defend the constitutionality of this law in the proceedings below.

Q But here they take a dive, so to speak.

MR. PATTERSON: Then --

[Laughter.]

-- there was a change of administration and --

Q They join the appellants and say that the court

-- the only error in the court's decision was that it didn't go far enough in holding this law unconstitutional.

MR. PATTERSON: Two attorneys, Your Honor, who were actually counsel of record for the plaintiffs, happened to go up to the Attorney General's office and then, immediately after that, pleadings started coming down with their names, correspondence with their names, and since then they have been more discreet, they've used other names, and that is the situation.

Q So we don't have an adversary proceeding here in this Court, do we? There was no cross-appeal, there's nobody here asserting that the district court was wrong in going so far as it did. Is that correct?

MR. PATTERSON: Well, we're asserting that the district court's decision was -- first of all, we're defending the district court's decision insofar as an attack is being made on the proposition that a knowing, intelligent, and understanding waiver is invalid --

Q But that's as far as you can go, though --

MR. PATTERSON: -- assuming the fact that --

Q -- having been no cross-appeal, all you can do is defend the district court's decision, which held pro tanto these laws constitutionally invalid?

MR. PATTERSON: Well, it is our contention that since the plaintiffs are trying to extend the judgment of the court

below to all consumer -- to all loans by our clients to consumers with income over $10,000, that insofar as we are representing our clients as to that aspect of the case, that we can go into all questions of constitutionality.

. . . a point that I would like to make --

MR. CHIEF JUSTICE BURGER: You're covering the microphone, counsel.

MR. PATTERSON: Oh, I'm sorry.

The next point I would like to make is the fact that the plaintiffs contend that the inadequate notice --

MR. CHIEF JUSTICE BURGER: I think that we'll recess for lunch, and your time is up, Mr. Patterson.

[Whereupon, at 12:00 noon, the Court was recessed, to reconvene at 1:00 p.m., the same day.]

AFTERNOON SESSION

[1:00 p.m.]

MR. CHIEF JUSTICE BURGER: Mr. Matz, you may proceed whenever you're ready. You have ten minutes.

ORAL ARGUMENT OF WILLIAM L. MATZ, ESQ.,

ON BEHALF OF AMICUS CURIAE

MR. MATZ: Mr. Chief Justice, may it please the Court:

I appear here on behalf of the Pennsylvania Savings and Loan League, which is an organization of savings and loans in Pennsylvania, all of which are mutual thrift institutions. They lend their money for the purpose of purchasing homes by their members. And they appear in a different guise, as amicus curiae below for the Insured Savings and Loan group of the Philadelphia area; and in that position we presented the position of the mortgagee. And we are appearing here again to present the position of the mortgagee, the person who takes a bonded mortgage to secure a loan for the purchase of real estate.

Q Well, you will, I assume, indicate why the three-judge court excepted out the mortgage holders?

MR. MATZ: I hope to, sir.

Q Yes.

MR. MATZ: Yes.

Q They didn't say anything why, did they?

MR. MATZ: They did, sir.

Q Did they?

MR. MATZ: It's in the opinion.

Q Is that enough?

MR. MATZ: No, I intend to go further, sir.

Q Yes.

MR. MATZ: I hope!

First, I should like to make clear that the matter before this Court is an interpretation of the rules of the Pennsylvania Supreme Court promulgated on the provisions in the Constitution. And that is the issue here; not any statute.

The court below exempted bonds and mortgages in real estate transactions, and I think for the following reasons: First and foremost, the plaintiff offered no evidence whatsoever dealing with bonds and mortgages. There wasn't one bit of evidence in the record by the plaintiff or by anyone which indicated that, in any way, bonds and mortgages were in the same category as the defendants they had named in the action, which were a group of finance companies.

Now, if Your Honors will read the complaint, you will find that the entire direction of the complaint is to the conduct of certain finance companies.

Q What's the difference as a matter of legal doctrine, laying aside the question of Chavis?

MR. MATZ: No. The court below made that distinction,

that there was no evidence, and the court said that in determining the class to be covered by this action, only those persons against whom there was evidence should be included in the class, unless there was some good reason for including them, which was not given. And the court said that the plaintiff had given no evidence with reference to this, and indicated no reason why the mortgage bond class should be included in the class.

Now, in my --

Q Then you were not named --

MR. MATZ: Sorry?

Q You were not named defendants nor any of your class named defendants, were they?

MR. MATZ: No, sir.

Q And you were in as amicus?

MR. MATZ: That's correct, sir.

Q And amicus here?

MR. MATZ: That's correct, sir.

That's correct.

I should like to point out that what the -- [hits microphone] -- I'm sorry -- the differences between a mortgage bond transaction and a financing transaction for a small loan company.

For one, the mortgage bond transaction arises out of the purchase of a home.

Secondly, it has been established below that in almost every case where a farm was purchased, the purchaser was represented by either an attorney or by a licensed realtor. So the purchaser did have representation at the time of closing.

Thirdly, at the time of closing, the purchaser received a statement under Regulation Z under the Truth in Lending Act, which clearly indicates to the purchaser at that time that he has executed a document which has within it a confession of judgment.

Fourthly, the lending institutions that we represent have nothing to do with the sale of real estate or any other product, they have only one purpose, to lend money for the purchase of homes, and that's all; they are not involved in questions of breach of warranty or anything like that. They only lend money to members of the association for the purpose of buying a home.

Now, with reference to the actual foreclosure procedures, which I think was talked about before, when a foreclosure is begun on real estate, the bond is entered of record, that is not really a new lien because that bond is part of the same transaction for which a mortgage was executed, which is already a lien on the property and has been a lien on the property from the moment the loan was made. So that the entry of a bond creates no new obligation by the borrower, it is merely a different procedure for executing against the

real estate. There are no two obligations, there is only one. And it's the same obligation, whether it is the bond or the mortgage, payment of one discharges the other.

When the sheriff --

Q I'd think that you could foreclose without it. You don't need this provision to foreclose, do you?

MR. MATZ: The bond provision?

Q Yes.

MR. MATZ: We could --

Q No, I mean the provision on -- yes, that's it.

MR. MATZ: We could foreclose on the mortgage, but that would be a rem proceeding; it would have several defects in it. For one thing, it is more expensive; for another thing, it takes much longer to do. Thirdly, in today's market, with real estate dropping, a hiatus of several months in foreclosure can be very serious to the position of the lender.

And, as I pointed out, this is purely a procedural question, whether we proceed on the bond or we proceed on the mortgage. We think it is better for the lender to proceed on the bond; we think it is better for the borrower, too, because if we have a market where we can realize on our security more quickly, we can lend a larger margin and at a smaller interest rate.

Now, we pointed out below that the Philadelphia area has the lowest mortgage interest rate in the United States.

And I am not saying here that this is the only reason, but I am certainly saying this is one of the reasons.

Q But on the bond foreclosure, you do it outside court?

MR. MATZ: All foreclosures are done outside court, Your Honor, whether it's on the bond or on the mortgage.

Q On the mortgage?

MR. MATZ: That's correct.

And do not have to appear in court unless an answer is filed.

Q Is that right?

MR. MATZ: That's correct.

Now, I wanted to point out that on a petition to open judgment, our experience has been that the court invariably grants that petition, when it is filed, for even the most flimsy of reasons, and that petition carries with it a stay of proceedings. So that if a defendant who has at least 20 days --

Q That's not on right, I take it?

MR. MATZ: I have never --

Q Is that on proceedings of right?

MR. MATZ: I have never seen one that didn't carry it, sir. I don't think that the right -- that the rules say specifically, but I have never in my practice seen a petition to open judgment allowed without a stay of proceedings. And

I have never seen one refused.

The court --

Q The stay is granted pending determination of whether the judgment will be reopened?

MR. MATZ: That's correct, sir.

Q But the reopening is not a formality?

MR. MATZ: The opening is not automatic, sir. No. But the burden of proof on that is exactly the same as if it would have been in a complaint in assumpsit. There was no difference.

Q I understand.

MR. MATZ: Exactly the same.

The defendant, on an execution on real estate, gets at least 20 days' notice of the sale, and usually considerably more. The minimum time he receives is 20 days, which is exactly the same time that a defendant in a suit on a complaint has to file an answer. He has exactly the same time, 20 days, in which to do something. If he doesn't do it in the 20 or more days he has available, then there may be a sale.

During the period from the date of execution to the date of sale, there is no interference with a debtor's right of possession or the use of the property. He remains in possession, uses it as he did before, with no interference in any way of his rights.

Q And do you know whether that's the same with

personalty?

MR. MATZ: That may or may not be, sir. It depends on the circumstances.

Q All right.

MR. MATZ: That the sheriff merely makes a levy, it is the same. If the sheriff is directed to take the personalty into custody, it may be different. This would depend on the particular levy in that particular case.

In real estate, it is certainly so.

Now, I pointed out before that the matter before this Court was the construction of the rules of our Supreme Court, and I should like to point out that at no time has our Supreme Court been asked to rule on the validity of these same rules which it has promoted, and it might be advisable to refer this back and ask for our courts to rule on these matters, which have presently never been ruled upon.

I think I have tried to point out why the mortgage situation differs in large measure from the finance company situation, and from the other situations, are these matters which I think induced the court below to make an exception of the situations where a savings and loan or other lending institution lends money for the purchase of a home or for improvements to a home. And we think this is an entirely different type of case from that one where lending is made for other purposes. And this wasn't.

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Matz.

I think your time is up, counsel.

The case is submitted.

[Whereupon, at 1:09 p.m., the case was submitted.]