Marine Bank v. Weaver, 455 U.S. 551 (1982)

U.S. Supreme Court

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No. 80-1562

Argued January 11, 1982

Decided March 8, 1982

455 U.S. 551

Syllabus

After respondents purchased a $50,000 certificate of deposit, with a 6-year maturity, from petitioner federally regulated bank, they pledged it to petitioner to guarantee a $65,000 loan made to a company that owed petitioner $33,000 for prior loans and was also overdrawn on its checking account. In consideration for guaranteeing the new loan, the company's owners entered into an agreement with respondents whereby respondents were to receive a share of the company's profits and other compensation. The new loan, rather than being used as working capital by the company as petitioner's officers allegedly told respondents it would, was applied to pay the company's overdue obligations to petitioner. Subsequently, the company became bankrupt, and petitioner disclosed its intention to claim the pledged certificate of deposit. Respondents then brought suit in Federal District Court, claiming that petitioner violated, *inter alia,* the antifraud provisions of § 10(b) of the Securities Exchange Act of 1934 (Act) by

soliciting the loan guarantee while knowing, but not disclosing, the borrowing company's financial plight or petitioner's plans to repay itself from the guaranteed loan. The District Court granted summary judgment in petitioner's favor, holding that, if a wrong occurred, it did not occur "in connection with the purchase or sale of any security" as required for liability under § 10(b). The Court of Appeals reversed, holding that it could reasonably be found that either the certificate of deposit or the agreement between respondents and the company's owners was a security.

Held: Neither the certificate of deposit nor the agreement in question is a security within the meaning of § 10(b). Pp. 455 U. S. 555-561.

(a) While the definition of "security" in the Act is quite broad, Congress, in enacting the securities laws, did not intend to provide a broad federal remedy for all fraud. Pp. 455 U. S. 555-556.

(b) A certificate of deposit is not the functional equivalent of the withdrawable capital shares of a savings and loan association held to be securities in *Tcherepnin v. Knight,* 389 U. S. 332, nor is it similar to any other long-term debt obligation commonly found to be a security. The purchaser of a certificate of deposit is virtually guaranteed payment in full, whereas the holder of an ordinary long-term debt obligation assumes

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the risk of the borrower's insolvency. *Cf. Teamsters v. Daniel,* 439 U. S. 551. Pp. 455 U. S. 556-559.

(c) The agreement in question is not the type of instrument that comes to mind when the term "security" is used, and does not fall within "the ordinary concept of a security." *SEC v. W. J. Howey Co.,* 328 U. S. 293, and *SEC v. C. M. Joiner Leasing Corp.,* 320 U. S. 344, distinguished. The provision of the agreement giving respondents a share of the company's profits is not, in itself, sufficient to make the agreement a security. Pp. 455 U. S. 559-560.

637 F.2d 157, reversed and remanded.

BURGER, C.J., delivered the opinion for a unanimous Court.