

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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THE WHARF (HOLDINGS) LTD. ET AL. *v.* UNITED
INTERNATIONAL HOLDINGS, INC., ET AL.CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE TENTH CIRCUIT

No. 00–347. Argued March 21, 2001– Decided May 21, 2001

Petitioner The Wharf (Holdings) Limited orally granted respondent United International Holdings, Inc., an option to buy 10% of the stock in Wharf’s Hong Kong cable system if United rendered certain services, but internal Wharf documents suggested that Wharf never intended to carry out its promise. United fulfilled its obligation, but Wharf refused to permit it to exercise the option. United sued in Federal District Court, claiming that Wharf’s conduct violated, *inter alia*, §10(b) of the Securities Exchange Act of 1934, which prohibits using “any manipulative or deceptive device or contrivance” “in connection with the purchase or sale of any security.” 15 U. S. C. §78j(b). A jury found for United, and the Tenth Circuit affirmed.

Held: Wharf’s secret intent not to honor the option it sold United violates §10(b). Pp. 4–9.

(a) The Court must assume that the “security” at issue is not the cable system stock, but the option to purchase that stock, because Wharf conceded this point below. That concession is consistent with the Act’s language defining “security” to include both “any . . . option . . . on any security” and “any . . . right to . . . purchase” stock. §78c(a)(10). P. 5.

(b) Wharf’s claim that §10(b) does not cover oral contracts of sale is rejected. This Court held in *Blue Chip Stamps v. Manor Drug Stores*, 421 U. S. 723, that the Act does not protect a person who did not actually buy securities, but who might have done so had the seller told the truth. But United is not a potential buyer; by providing Wharf with its services, it actually bought the option that Wharf sold. And *Blue Chip Stamps* did not suggest that oral purchases or sales fall outside the Act’s scope. Neither is there any other convincing reason to interpret

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the Act to exclude oral contracts as a class. The Act itself says that it applies to “any contract” for a security’s purchase or sale, §§78c(a)(13), (14), and oral contracts for the sale of securities are sufficiently common that the Uniform Commercial Code and statutes of frauds in every State consider them enforceable. Pp. 5–7.

(c) Also rejected is Wharf’s argument that a secret reservation not to permit the exercise of an option falls outside §10(b) because it does not relate to the value of a security purchase or the consideration paid, and hence does not implicate §10(b)’s full disclosure policy. Even were it the case that the Act covers only misrepresentations likely to affect the value of securities, Wharf’s secret reservation was such a misrepresentation. To sell an option while secretly intending not to permit the option’s exercise is misleading, because a buyer normally presumes good faith. Similarly, the secret reservation misled United about the option’s value, which was, unbeknownst to United, valueless. Pp. 7–8.

(d) Finally, the Court rejects Wharf’s claim that interpreting the Act to allow recovery in a case like this one will permit numerous plaintiffs to bring federal securities claims that are in reality no more than ordinary state breach-of-contract claims lying outside the Act’s basic objectives. United’s claim is not simply that Wharf failed to carry out a promise to sell it securities, but that Wharf sold it a security (the option) while secretly intending from the very beginning not to honor the option. Moreover, Wharf has not shown that its concern has proved serious as a practical matter in the past or that it is likely to prove serious in the future. Pp. 8–9.

210 F. 3d 1207, affirmed.

BREYER, J., delivered the opinion for a unanimous Court.