300.011 - Reconstruction Finance Corp et al
vs Birmingham Cotton Mills Inc
Suits against FRBanks - FRBANKS

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NOV 29 1941

Mr. Pollard Turman, Counsel,
Federal Reserve Bank of Atlanta,
Atlanta, Georgia.

Dear Mr. Turman:

This will acknowledge receipt of your letter of November 26, 1941 advising that, under the terms of a settlement recently agreed upon in connection with the foreclosure proceedings arising out of a default in the repayment of a loan made to the Birmingham Cotton Mills, Birmingham, Alabama, by the Federal Reserve Bank of Atlanta, Reconstruction Finance Corporation and the First National Bank of Birmingham, Alabama, the fee of Mr. D. K. McKamy, of the firm of Benner, Burr, McKamy & Forman, who had been retained to represent the Federal Reserve Bank as special counsel in this matter, will be paid by the Birmingham Cotton Mills.

Inasmuch as this fee will not be paid by the Federal Reserve Bank of Atlanta, it is not necessary for it to be approved by the Board of Governors of the Federal Reserve System; but we are glad to have your advice as to the disposition of the matter in order to complete the Board's records on the subject.

It is noted that you have sent the Board's General Counsel an outline of the terms of settlement.

Very truly yours,

(Signed) Chester Morrill

Chester Morrill,
Secretary.

Approved
PHB
NOV 29 1941

FOR APPROVAL
OF MR. Draper
ON BEHALF OF THE BOARD
Approved: ESD
(Initials)

WW:mft

GENERAL COUNSEL'S OFFICE
Dictated by.....
Approved by.....
Revised by.....

Copy filed
300.011-RFC.
Mr. Birmingham
Cotton Mills

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P. H. Bernstein

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REC'D IN FILES SECTION
NOV 28 1941
300 011

RFC et al re:
Birmingham Cotton
Mills Inc.

November 28, 1941.

Mr. Pollard Turman, Counsel,
Federal Reserve Bank of Atlanta,
Atlanta, Georgia.

Dear Mr. Turman:

I have received your letter of November 26, 1941 and I am delighted to know that you have succeeded in arranging a satisfactory settlement of the foreclosure proceedings against the Birmingham Cotton Mills, Inc., Birmingham, Alabama. Please accept my hearty congratulations.

With kind personal regards and all best wishes,

Cordially yours,

Walter Wyatt,
General Counsel.

WW:mft

GENERAL COUNSEL'S OFFICE
Dictated by.....
Approved by.....
Revised by.....

FILE COPY

For ... O. M. Crogman

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~~Mr. Carpenter~~

Counsel

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FEDERAL RESERVE BANK

OF ATLANTA

OFFICE OF
COUNSEL

November 26, 1941.

Ref.

Board of Governors of the
Federal Reserve System,
Washington, D. C.

Dear Sirs:

In a letter dated July 7, 1941, Mr. W. S. McLarin, Jr., President of this Bank, advised you of the employment by this bank of Mr. D. K. McKamy, of the firm of Benner, Burr, McKamy & Forman, Birmingham, Alabama, to act as special counsel to this bank in a foreclosure proceeding arising out of a default in the repayment of a loan made to the Birmingham Cotton Mills, Birmingham, Alabama, by the Federal Reserve Bank of Atlanta, Reconstruction Finance Corporation and the First National Bank of Birmingham, Alabama.

Mr. McLarin stated that at the time of the employment of Mr. McKamy it was not thought that his fees would be in excess of $1,000, although no agreement was made as to the exact amount of the fee to be paid. Nevertheless, it was understood that the fee would be subject to the approval of the Board of Governors.

Recently a settlement of the litigation has been agreed upon between the parties involved, one of the provisions of that agreement being that the Birmingham Cotton Mills will pay to Mr. McKamy a fee of $1,000. Even though the fee is to be paid by the Birmingham Cotton Mills and is not in excess of $1,000, it was thought that you should be advised of this provision in the agreement of settlement in order that your files might be complete. Any views you may have and care to express on this subject will, of course, be greatly appreciated.

Although the settlement has not been finally concluded, due to the fact that certain of the documents are being revised, I have sent to the office of the General Counsel to the Board of Governors an outline of the terms of the settlement.

Very truly yours,

Pollard Turman

Pollard Turman,
Counsel.

PT/w.

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300.011-RFC vs
Birmingham Cotton Mills
see letter 11/29/41

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P. H. Berntson

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FEDERAL RESERVE BANK
OF ATLANTA

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NOV 28 1941
300 011

RFC et al vs. Birmingham Cotton Mills Inc.

OFFICE OF
COUNSEL

November 26, 1941.

Ref.

Mr. Walter Wyatt, General Counsel,
Board of Governors of the
Federal Reserve System,
Washington, D. C.

Dear Mr. Wyatt:

On June 9, 1941, I sent you copies of the documents filed by the Federal Reserve Bank of Atlanta, Reconstruction Finance Corporation and the First National Bank of Birmingham in connection with the foreclosure proceedings against the Birmingham Cotton Mills, Inc., Birmingham, Alabama.

You will recall that the foreclosure arose out of a default on the part of the Birmingham Cotton Mills in the repayment of a loan in the amount of $250,000, made to it in January, 1940, by the three lending institutions.

Recently a proposal of settlement was made by the Birmingham Cotton Mills, which proposal has been accepted by the lending institutions.

Briefly stated, the terms of the proposal of settlement provide that the Mills will place the loan in a current position and that the terms of repayment will be revised in a manner more favorable to this bank than originally provided in the note and mortgage. In addition, the Mills will pay the attorneys' fees incurred by the lending institutions in connection with the foreclosure. Our attorney, Mr. D. K. McKamy, is to receive a fee of $1,000. Despite the fact that the fee is to be provided by the Birmingham Cotton Mills, I have written the Board of Governors, advising them of this feature of the transaction.

You will recall that this case has been a source of some concern to me, and I am very happy to be able to make this report.

With highest regards, I am

Sincerely yours,

Pollard Turman

Pollard Turman,
Counsel.

see letter 11/28/41

PT/w.

For files
O. M. Croghan

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REC'D IN FILES SECTION
JUN 19 1941
300 011
RFC vs Birmingham Cotton Mills, Inc

June 19, 1941

Mr. Pollard Turman, Counsel,
Federal Reserve Bank of Atlanta,
Atlanta, Georgia.

Dear Mr. Turman:

Please accept my thanks for your letter of June 9, 1941 enclosing for my information copies of the petition of foreclosure and of the answer and cross bill in the case of Reconstruction Finance Corporation, et al. v. Birmingham Cotton Mills, Inc.

I have read these papers with much interest and I am very glad to have them for the files of this office. I shall appreciate it if you will kindly keep me advised of any important developments in this case.

With kindest personal regards and all best wishes, I am

Cordially yours,

Walter Wyatt,
General Counsel.

WWLoba

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RFC vs. Birmingham Cotton Mills, Inc

FEDERAL RESERVE BANK

OF ATLANTA

OFFICE OF
COUNSEL

June 9, 1941.

Mr. Walter Wyatt, General Counsel,
Board of Governors of the
Federal Reserve System,
Washington, D. C.

Dear Mr. Wyatt:

You will recall that on your visit to Atlanta the latter part of March I discussed with you briefly the loan made by the Federal Reserve Bank of Atlanta, Reconstruction Finance Corporation and the First National Bank of Birmingham, Alabama, to the Birmingham Cotton Mills, Inc., of Birmingham, in the amount of $250,000.00.

The loan was made in January, 1940, and during the 12 months following that time the Mills lost money at such an alarming rate that the lending institutions were forced to take action to protect themselves. After a number of unsuccessful conferences with the officers of the Mills, foreclosure proceedings were filed in the Circuit Court of the Tenth Judicial Circuit of Alabama. Recently the respondents filed an answer and cross bill. I am enclosing in duplicate copies of the petition of foreclosure and of the answer and cross bill.

I will advise you from time to time as to the progress made in this litigation.

Sincerely yours,

Pollard Turman

Pollard Turman,
Counsel.

PT/w.

Enclosures

For Files
A. M. Crogban

See letter 11/26/41

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REC'D IN FILES SECTION
JUN 19 1941

IN THE CIRCUIT COURT OF THE TENTH
JUDICIAL CIRCUIT OF ALABAMA

RECONSTRUCTION FINANCE CORPORATION, a corporation, THE FEDERAL RESERVE BANK OF ATLANTA, a corporation, and THE FIRST NATIONAL BANK OF BIRMINGHAM, a corporation	)	
Complainants	)	IN EQUITY
vs	)	No. 51356
BIRMINGHAM COTTON MILLS, INCORPORATED, a corporation,	)	
Respondent	)	

Now comes Birmingham Cotton Mills, Incorporated, respondent in the above cause, and for answer to the original bill of complaint filed herein says:

1) Respondent admits the averments of Section 1 of the bill of complaint.

2) Respondent admits the averments of Section 2 of the bill of complaint.

3) Respondent admits the averments of Section 3 of the bill of complaint.

4) There is no dispute but that all after-acquired property acquired by Respondent constituting part of the plant, machinery and equipment of Respondence, and not constituting inventories for manufacture or sale or stock in process or items exchangeable or consumable in the usual course of business, became subject to the mortgage. It is not necessary that such items be ascertained by the process of this court since respondent stands

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ready and willing to check all such items with complainants at any time and execute a supplemental indenture describing same; nor has respondent at any time refused to execute such instrument; nor is any person asserting or proposing to assert claim prior to said mortgage to any such item on said mortgaged premises to which title has vested in respondent.

5) Respondent admits the averments of Section 5 of the bill of complaint.

6) The averments of Section 6 do not constitute an accurate quotation of the obligations assumed by the mortgagee.

7) Respondent denies the averments of Section 7 of the bill of complaint, as therein stated, and denies that there was any representation or warranty to the effect that $86,000 should be expended for machinery. On the contrary the resolution of the Board of Directors of RFC authorizing the loan provided that no exceeding $86,000 of the proceeds should be used for such purposes. Respondent had no reason to assume that RFC meant or intended not less than $86,000. As a condition to the loan, RFC required that respondent enter into a management agreement with R. D. Sanders conferring upon the latter full authority of management and operations and whatever was expended from the proceeds of said loan was expended byor under the direction of Sanders and pursuant to the management agreement required and approved by RFC as a condition to the loan.

8) Respondent denies the averments of Section 8 of the bill of complaint and avers that there was no default with respect to said note or mortgage, when on April 5, 1941, notice of purported acceleration dated April 4, 1941, was received by respondent. On the contrary, for some time

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prior to January 12, 1941, RFC by threats of proceedings based on complaint as to the disbursements by Sanders for operating expenses from the proceeds of the loan, had obtained from respondent, pursuant to the latter's desire to conform to the desires of the holder or holders of the note and mortgage, whether legally so obligated or not, consent to allow, subject to revocation, $30,000 in cash to remain on deposit with respondent's depository, First National Bank of Birmingham, Except as withdrawn by check countersigned by or on behalf of RFC. When the first installment of $2500 on the loan fell due on January 12, 1941, there was under negotiation and conference between respondent, the holders of said note and mortgage and Sanders, the matter, of a working arrangement looking to the agreed deferring of the time for the installment payments to begin and other matters. The conference continued, the mill having inthe meantime been closed down due in part to the impounding of funds as aforesaid, until shortly before the resumption of operations in April.

These conferences held out to respondent the reasonable understanding and assurance that the mortgagee and respondent could and would agree on a basis for deferring the beginning of installments, and fairly implied that pending the negotiations to that end acceleration would not be declared since respondent was prepared to make payment out of working funds at any time. Counsel for RFC having arrived at a tentative basis for agreement with respondent to that end, subject to approval by RFC, undertook to present the matter to the latter, and respondent, not hearing the result and conceiving that RFC might desire to put respondent in the attitude of tech-

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nical default, on April 4, 1941, and before the alleged purported acceleration of maturity referred to in the bill of complaint was posted to or received by respondent, made tender of all installments due by respondent to that date, and prior to the filing of this answer has made like tender of the installments due April 12 and May 12, 1941. RFC has in each case declined to permit adequate cash balances on deposit to the credit of respondent to be withdrawn and applied and has induced the depository to take like action. By that means RFC has in effect assumed charge and control of respondent's business and has itself brought about the alleged default of which it seeks to take advantage and is and should be declared to be estopped from asserting default with respect to the payment of such installments.

Respondent has likewise tendered payment of any amount due on or under the note or mortgage and compliance with any obligation incident thereto, express or implied, but complainant has stood upon its premature and inapt acceleration of full maturity and has declined to accept anything short of payment of the loan in full, with interest.

Respondent further renews said tenders and offers to do equity in the premises.

The so-called acceleration notice referred to as Exhibit C was not in fact posted or delivered to respondent until after tender as aforesaid.

9) Respondent denies the averments of Section 9 of the bill of complaint, except as to the execution of the document referred to as Exhibit "D". Respondent denies that respondent's net current assets were below $75,000 and avers that if, as a result of jactitation of acceleration and

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default and assertion of control over respondent's funds and affairs, RFC makes it impractical to operate its mill and maintain its current position, RFC would be and should be declared to be estopped from alleging default by reason thereof; and respondent denies that there was at the time of filing said bill or now is default with respect to said note or mortgage under or because of said agreement. (Exhibit D)

10) Respondent denies the averments of Section 10 of the bill of complaint and denies that there has been any default by respondent with respect to the matters alleged.

11) Respondent denies the averments of Section 11 and denies that there has been any default by respondent with respect to the matters alleged, and offers and is willing to execute any and all documents or instruments contemplated by the mortgage or in fact necessary to further any interest or equity of complainants thereunder whether required or not. As to after acquired property there is none except such as has been installed in the mill or on the mortgaged property; no one is adversely claiming same; and no possible interest of complainants has been prejudiced with respect thereto.

12) Respondent is not advised except by hearsay of the facts averred in Section 12 of the bill of complaint and denies the same.

13) Respondent denies that there has been any default, justifying the incurring of liability for attorney's fees and denies liability with respect thereto.

Further answering said bill of complaint, respondent avers that

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respondent is operating its mill property subject to said mortgage profitably and is conserving the assets, value and proceeds thereof with a view to the payment in full of said note and mortgage but that respondent has been and is being subjected to unlawful and inequitable handicaps and interferences by RFC, in the following respects:

1 1. RFC has demanded of First National Bank that it sequester and apply in payment upon the note and mortgage all balances on deposit to the credit of respondent with said Bank.

2. As a condition to forbearance from threatened acceleration and foreclosure, RFC exacted of respondent a terminable agreement that funds should not be withdrawn except on a countersignature by an agent or representative of RFC. This procedure has in effect amounted to a substantial assumption of control over respondent's funds, necessary to the payment of its current obligations and is now currently interfering with the profitable operation of the mill property.

3. RFC has advised parties negotiating with respondent with a view to managing and increasing output that the mortgage was in default, has intimated that the property could be bought by such parties on foreclosure, and by jactitating default and foreclosure has prejudiced sales and has prevented the orderly and most efficient and profitable operation of the business.

4. RFC has moreover insisted that any agreement looking to continued operations must be conditioned upon the stationing in the plant of a representative of RFC and that as a condition to refraining from further

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proceedings or effort to sequestrate the funds on deposit, all checks be countersigned by RFC.

Under these conditions respondent is directly and materially hampered in the profitable operation of the mortgaged property. Respondent has no desire or intent to impair the security of the mortgage or to take any action that would in any respect jeopardize payment in full of that obligation, as a prior and recognized lien. Respondent avers that it is informed and believes and upon such information and belief avers that the mill can be operated under existing and prospective markets and conditions most profitably, and that by increasing output and the number of shifts can be made to earn a return substantially greater than the results even now being realized, but that respondent cannot take advantage of existing markets and opportunities if subjected to the public jactitation of default and interferences, referred to herein, or the threat of such action except upon condition that respondent subject the use of its working funds to employees of RFC who know nothing of mill operations or otherwise comply with conditions laid down by RFC.

PREMISES CONSIDERED, this respondent prays that this answer be received and entertained as a cross-bill against complainant Reconstruction Finance Corporation, and, to the extent that they may have any equity or interest in the note and mortgage referred to herein, The First National Bank of Birmingham and the Federal Reserve Bank of Atlanta; that said complainants be made parties hereto by the issue of appropriate process commanding them to appear herein and answer this bill of complaint within the time required by law.

And respondent prays that on final hearing this Court, by appropriate

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decree herein

(1) decree, determine and declare that there was not at the time of the filing of the bill of complaint outstanding any event of default authorizing the acceleration of the maturity of respondent's note referred to in the bill of complaint;

(2) that so-called acceleration notice (Exhibit C to the bill of complaint) was premature and in operative;

(3) that if, technically or otherwise, notwithstanding respondent's bona fide advice and understanding to the contrary, default was or is outstanding in any respect, the nature thereof be defined and respondent be given a reasonable opportunity to remedy the same;

(4) that Reconstruction Finance Corporation be enjoined and restrained from jactitation of default and from threats of interference, based on such alleged default, except upon compliance by respondent with managerial or other conditions or the impounding of cash on deposit;

(5) That RFC be enjoined and restrained from asserting any claim or right to or lien upon any funds on deposit to the credit of this respondent;

(6) that this Court determine and decree in favor of this respondent and against Reconstruction Finance Corporation the damages resulting proximately to this respondent from the jactitations of default and interference based thereon and from a continuation of the insistence of managerial control, including the right to countersign checks, imposed upon respondent as a condition to forebearance by Reconstruction Finance Corporation from

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public default proceedings, and direct the manner of off-setting the amount of such money decree against any part of the payments due or to become due on said note and mortgage and payable to Reconstruction Finance Corporation;

(7) that the bill of complaint be dismissed.

And respondent prays for such other, further or different relief as may seem meet and proper.

Respectfully submitted.

BIRMINGHAM COTTON MILLS, INCORPORATED

By (signed) Chas. A. Jones
President

Respondent and Cross-Complainant

CABANISS & JOHNSTON

Solicitors for Respondent and
Cross-Complainant

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JUN 19 1941

RECONSTRUCTION FINANCE CORPORATION, A corporation, THE FEDERAL RESERVE BANK OF ATLANTA, a corporation, and THE FIRST NATIONAL BANK OF BIRMINGHAM, a corporation, Complainants vs BIRMINGHAM COTTON MILLS, INCORPORATED, a corporation, Respondent	IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA. IN EQUITY. No. _____

TO THE HONORABLE JUDGES OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA, IN EQUITY SITTING:

Now come the complainants and show unto your Honors as a basis for the relief hereinafter prayed, the following, to-wit:

1. Reconstruction Finance Corporation, a body corporate, organized and existing under the laws of the United States of America with an office in Birmingham, Alabama, and the Federal Reserve Bank of Atlanta, a body corporate organized and existing under the laws of the United States of America, with an office in Birmingham, Alabama, and the First National Bank of Birmingham, a national banking association under the laws of the United States of America with its principal place of business in Birmingham, Alabama, bring this their bill of complaint against Birmingham Cotton Mills, Incorporated, a corporation duly organized and existing under the laws of the State of Alabama and having its principal place of business in the City of Birmingham, State of Alabama.

2. That heretofore on, to-wit: the 12th day of January, 1940, the said Birmingham Cotton Mills, Incorporated, executed and delivered to

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the Reconstruction Finance Corporation a real estate and chattel mortgage to secure an indebtedness evidenced by a promissory note in the principal sum of $250,000.00, dated January 12, 1940, with interest thereon at the rate of five per cent (5%) per annum on the unpaid principal, payable as follows: $2,500.00 monthly commencing twelve months from the date of said note and the balance on or before five years from the date thereof, and additional annual payments on account of the principal of the note to become due and payable on or before a date two months after the close of the first complete fiscal year after the date of said note, and annually thereafter until the payment in full of the indebtedness evidenced by said note, each in an amount if any, by which an amount equal to fifty per cent (50%) of the net earnings of the Birmingham Cotton Mills, Incorporated, earned in accordance with good accounting practice as determined by the Auditing Division of the Reconstruction Finance Corporation, before depreciation for the preceding fiscal year excees the aggregate fixed amounts payable under the terms of said note during such preceding fiscal year.

3. Birmingham Cotton Mills, Incorporated, in and by the terms of said mortgage, granted, bargained, sold and conveyed unto the said Reconstruction Finance Corporation the following described real estate situated in Jefferson County, Alabama, to-wit:

(1) That particular parcel of land located in the NW¼ of the NW¼ of Section 19, Township 17 South, of Range 2 West, more particularly described as follows: Beginningat a point on the east line of said NW¼ of NW¼ which is 1303.62 feet south of the northeast corner of said quarter-quarter section and run thence west at right angles to said east line 30 feet to the corner of an iron fense in the west line of Vanderbilt Road, the beginning point of the description of the property conveyed herein, run

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thence west at right angles to said east line of said quarter-quarter section 620 feet; thence north and parallel with the east line of said quarter-quarter section 338.7 feet, thence 90 degrees 07' to the right end in an easterly direction 99.9 feet, run thence 89 degress 50' to the left and in a northerly direction 165.05 feet to the south line of a street, thence 89 degrees 47' to the right and in an easterly direction along said street line 519.6 feet to an iron fence in the west line of Vanderbilt Road; thence South and along the west line of said Vanderbilt Road 504.3 feet to the point of beginning; excepting, however, any and all rights and easements which may have attached for a public street (sometimes described of record as Preston Boulevard but never in fact used by the public) along the south boundary of the above described tract, not exceeding 30.87 feet in width.

(2) Also an easement and right of way across the property of Birmingham Textile Company (1939) adjoining on the west the above described tract, for the use, jointly with other served by same, and the maintenance and operation of the railroad switch or spur track or tracks connecting the above described premises with the present right of way of Birmingham Belt Railroad.

(3) Also all of the buildings, improvements, fixtures, and structures of every kind and character located upon said premises first above described and all easements and appurtenances thereto belonging or in anywise appertaining.

and by the terms of said mortgage there was bargained, sold, granted and conveyed to the Reconstruction Finance Corporation certain personal property described in said mortgage, a copy of said note is hereto attached, marked Exhibit "A", and a copy of said mortgage is hereto attached and marked Exhibit "B" and made as fully a part hereof as if herein fully set forth, personal property conveyed by said mortgage is fully described therein.

4. Your complainants further show that by the terms of said mortgage it was provided that all personal property of a like nature to the personal property specifically described in the mortgage which should be thereafter acquired by the mortgagor at any time before the cancellation and surrender of said mortgage and which may be located upon the real estate described in said mortgage or which may be used or suitable for use

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in connection with the business then or thereafter conducted by mortgagor, wheresoever located, and specifically including all additions, replacements, attachments, and improvements of or upon any of such personal property, should become additional security for the said indebtedness and by the terms thereof the mortgagor, Birmingham Cotton Mills, Incorporated, did agree and covenant by paragraph ten of said mortgage as follows:

> "Mortgagor agrees, from time to time, forthwith, upon the request of Mortgage to execute to Mortgagee, in form satisfactory to Mortgagee, any additional or supplemental mortgages or other instrument which Mortgagee may deem necessary to specifically describe and convey any after acquired property intended to be covered by this Mortgage or to correct any error or omission in description of property intended to be conveyed hereby or offered by Mortgagor as a part of the security for said loan."

Your complainants aver that it is necessary that this Court ascertain what property not specifically described in said mortgage was acquired by Birmingham Cotton Mills, Incorporated, subsequent to the execution of said mortgage, upon which by the terms thereof, said mortgage is a lien for the security of the indebtedness described therein.

5. Your complainants further show that under the terms of said mortgage it was agreed that if mortgagor should fail to keep any of the covenants stipulated and the agreements entered into in connection with said indebtedness, or should fail to pay said note or any principal installment thereon or any part thereof or any interest which might become due thereon, or any other debtesecured by the said mortgage as and when the same matured, the entire indebtedness should immediately become due and payable at the option of the mortgagee and the mortgage would forthwith be-

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come subject to foreclosure in accordance with the terms thereof.

6. Complainants further aver that by the terms of said mortgage the Birmingham Cotton Mills, Incorporated, agreed to pay the principal and interest evidenced by said note as the same became due, according to the tenor of said note, to complete and perform all other agreements and obligations contained in said note or in the application for said loan made by the Birmingham Cotton Mills, Incorporated, to the Reconstruction Finance Corporation, as well as all agreements and obligations provided or imposed as a condition in connection with the making of said loan.

7. Your complainants aver that at the time application was made for the loan secured by said mortgage it was stated that Birmingham Cotton Mills, Incorporated, intended to use from the proceeds of said loan the sum of $86,000.00 for the purchase of additional machinery to be installed in the mill of the said Birmingham Cotton Mills, Incorporated, and it was agreed between the Reconstruction Finance Corporation and the said Birmingham Cotton Mills, Incorporated, at the time said loan was made and as a condition thereof, that the Birmingham Cotton Mills, Incorporated, should purchase and install additional machinery and use for such purposes not more than $86,000.00 of the proceeds of said loan, and that such amount of said proceeds should be deposited in a separate account and used for said purpose.

8. Your complainants further show that default was made by the said respondent in the payments due upon the note secured by said mortgage by failing to pay on January 12, 1941, on February 12, 1941, and on March 12, 1941, the payments due to be made on said debts in accordance with the terms of said note and mortgage, and the respondent has failed and neglected to

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make the said payments on said indebtedness and your complainants, heretofore, on, to-wit, April 4, 1941, elected to declare the entire indebtedness evidenced and secured by said mortgage, due and payable and did on said date, give the said respondent a notice of acceleration of all of the indebtedness and made demand for immediate payment thereof, and the said indebtedness is now wholly in default. A copy of said acceleration notice is attached hereto and marked Exhibit "C" and made fully a part hereof.

9. Your complainants further show that default was made by the said respondent in that the said respondent had agreed, as a condition imposed in connection with the making ofsaid loan, that the total amount of the mortgagor's current assets should, at all times prior to payment in full of the indebtedness evidenced by the note, exceed the total amount of borrower's current liabilities (other than borrower's indebtedness on account of the loan) be not less than $75,000.00; all current assets and/or current liabilities to be determined in accordance with good accounting practice as determined by the Auditing Division of the Reconstruction Finance Corporation; and your complainants aver that the mortgagor allowed its net current assets to drop below the sum of $75,000.00, which complainants aver was a breach of the covenants of mortgagor to at all times maintain said current assets at more than $75,000.00 as provided in its agreement. A copy of said agreement is hereto attached and marked Exhibit "D" and made fully a part hereof.

10. Complainants further aver that default was made by the said respondent in that, it was one of the conditions imposed in connection with

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the making of said loan that the borrower would deposit all proceeds of said loan and of all advances on account thereof, in a special account with a bank or trust company, and would use the proceeds thereof only for the purposes agreed upon; and complainants aver that one of said conditions was that an amount should be used for the purchase of additional machinery and equipment, which should become a part of the security under the terms of said mortgage, and that of said proceeds of said loan $86,000.00 should be used for such purposes; and complainants aver that in violation of such agreement by the mortgagor, the proceeds of said loan were not deposited in a special account and the $86,000.00 of said proceeds was not used for the purpose of purchasing and acquiring additional machinery and equipment but was used by the mortgagor for otherpurposes, which complainants aver was in violation of the terms of the agreement between the mortgagor and complainants and constituted a default in said mortgage.

11. Your complainants further show that default was made by said respondent in that by the terms of paragraph ten of said mortgage the mortgagor agreed from time to time forthwith upon the request of the mortgagee, to execute to mortgagee in form satisfactory to mortgagee, any additional or supplemental mortgage or other instrument which mortgagee might deem necessary to specifically describe and convey any after-acquired property intended to be covered by the mortgage, and complainants aver that the mortgagor did acquire additional property after the date of the execution of said mortgage which was intended to be covered by said mortgage and that complainants did request the mortgagor to execute an additional or supplemental mortgage

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or other instrument in form furnished to the mortgagor; and complainants aver that such request was made on, to-wit, June 27, 1940, and that mortgagor has failed or refused to execute and furnish same to complainants although repeatedly requested so to do, all of which complainants aver was a breach of the covenants contained in said mortgage and constitutes a default thereon.

12. Your complainants further aver that after the execution and delivery of the aforesaid note and mortgage to the Reconstruction Finance Corporation, that the Reconstruction Finance Corporation sold and transferred said note and mortgage, the debt evidenced and secured thereby and all security therefor, and all documents and agreements in connection therewith to the First National Bank of Birmingham, Alabama, which bank did thereafter and prior to the filing of this bill, sell to the Federal Reserve Bank of Atlanta, a forty per cent (40) interest and participation in said indebtedness, the note evidending the same and all security therefor, and also did sell to the Reconstruction Finance Corporation a fifty per cent (50%) interest and participation in said indebtedness, the note evidencing the same and all security therefor, and the First National Bank of Birmingham did retain a ten per cent (10%)interest in said indebtedness, the note evidencing the same and all security therefor, so that the ownership of said indebtedness, the note evidencing the same and all security thereof, has at all times since, to-wit, November 19, 1940, been as follows:

Federal Reserve Bank of Atlanta	40%
First National Bank of Birmingham	10%
Reconstruction Finance Corporation	50%

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13. Complainants further aver that by the terms of said note the respondent did agree to pay all of the expenses, including a reasonable attorney's fee, in connection with attempts to collect the indebtedness secured by said mortgage or the foreclosure thereof, and that by the terms of said mortgage it is provided that if an attorney is employed to foreclose the mortgage or to collect any indebtedness thereby secured, or to enforce any of the provisions of this mortgage, then in such event, the mortgagor agrees to pay such reasonable attorney's fee as may be incurred by mortgagee for any such services and that the amount of such attorney's fee shall become a part of the indebtedness secured by said mortgage and that these provisions shall apply to any proceeding in a Court of Equity or Bankruptcy, or any other Court, as well as under power of sale contained in said mortgage; and complainants aver that it has become necessary and that attorneys have been employed for the purpose of enforcing the collection of said indebtedness and for the purpose of foreclosing said mortgage, and expenses have been incurred in connection therewith.

WHEREFORE, THE PREMISES CONSIDERED, the complainants pray that summons in due form may issue out of this Honorable Court to the respondent, Birmingham Cotton Mills, Incorporated, requiring it, within the time prescribed by law, to plead, answer or demur to this bill of complaint, that an account may be taken of all property of the respondent hereto subject to the lien of this indenture, including the personal property acquired after the execution of said mortgage, and intended to beincluded as a part of the security thereof; and that such mortgage may be decreed to be a valid first

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lien upon all and singular thereof. That an account be taken by and under the direction of this Honorable Court of what is due and owing to each of your said complainants for principal and interest on the indebtedness secured by said mortgage and that the amount of said indebtedness be ascertained after allowing all proper set-offs thereto, and that this Court determine what is a proper amount to be allowed to the complainants for its expenditures in connection with this foreclosure and the proper amount to be paid to complainants' solicitors as reasonable attorney's fees, and that the said respondent be ordered and decreed to pay to your complainants, within such reasonable time as shall be fixed by this Court, what may be found due them on the taking of said account as aforesaid, together with the costs of this suit and the reasonable attorney's fees ascertained by this Court or in default thereof, that said real estate and personal property conveyed by said mortgage and other property pledged as additional security for said indebtedness and all property ascertained by this Court to be subject to the lien of said mortgage may by the Register of this Court be offered for sale and sold for cash at public outcry to the highest bidder after due notice of the time and place and terms of said sale have been given and published in accordance with the decree of this Court, and that it be decreed that the complainants, or either of them, may become the purchaser of said property if the highest bidder therefor at said sale, and that if said complainants, or either of them, should become such purchaser that they be permitted as a credit on such purchase price the amount ascertained to be due to the complainants or the particular complainant which may become the purchaser thereof.

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Your complainants further pray that in the event of the sale of said property in accordance with the terms of the decree of this court, such property should not bring the amount decreed to be owing to complainants, that then a judgment be entered against the respondence for any deficiency and that execution may be issued against the said respondent for the satisfaction of the remainer, if any, due to complainants, together with the costs which remain unsatisfied after the application of the proceeds of the sale thereon.

Complainants pray for such other, further, and different relief as in equity they may be entitled.

RECONSTRUCTION FINANCE CORPORATION

BY _____

FEDERAL RESERVE BANK OF ATLANTA,

By _____

_____

THE FIRST NATIONAL BANK OF BIRMINGHAM,

By _____

Benners, Burr, McKamy & Forman

Harris & Brown

Of Counsel

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