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FEDERAL RESERVE BANK

OF SAN FRANCISCO X-4283

February 19, 1925.

In re: Federal Reserve Bank of San Francisco v. Receiver, Bank of Phoenix.

Walter Wyatt, Esq.,
General Counsel,
Federal Reserve Board,
Washington, D. C.

Dear Mr. Wyatt:

I hand you herewith copy of memorandum opinion recently rendered by the Superior Court of Maricopa County, Arizona, in the matter of a claim filed by us for preference against the Receiver of the Bank of Pheonix.

The facts upon which our claim was predicated are briefly these:

About March 14, 1921, the Federal Reserve Bank of San Francisco forwarded for collection to the Central Bank of Wickenburg, Arizona, a cash letter containing various checks drawn on that bank, including items totaling $2,599.81. The cash letter was received on March 16 by the Bank of Wickenburg which issued to the Federal Reserve Bank its drafts in payment. These payments were received by our Los Angeles Branch on March 17, 1921. At the time the drafts were issued, the Central Bank of Wickenburg had on deposit with the Central Bank of Phoenix, predecessor of the Bank of Phoenix, sufficient funds with which to pay said drafts. Upon receipt of the drafts, they were indorsed and forwarded to the Central Bank of Phoenix for collection and return. They were received by the Central Bank of Phoenix about March 19, 1921, stamped "paid," and charged to the account of the Central Bank of Wickenburg. The Central Bank of Phoenix thereupon issued in purported payment of the drafts drawn upon it by the Central Bank of Wickenburg two other drafts in favor of the Reserve Bank, one drawn on the First National Bank of El Paso, Texas, and the other, upon the Commonwealth National Bank of Kansas City, Mo. Upon presentation the substituted drafts issued by the Central Bank of Phoenix were dishonored, the Central Bank of Phoenix having in the meantime failed.

Subsequent to this time, the Central Bank of Phoenix was reorganized and the Bank of Phoenix assumed the payment of all outstanding liabilities. We attempted to settle the matter with the Receiver of the Bank of Phoenix out of court but failing to receive any satisfaction, filed suit, claiming preference.

You will note from the memorandum opinion that Judge Windes had to do some legal acrobatics in order to place himself in a position to allow the claim. I must admit that I am a little ashamed of our successin this matter. We relied chiefly upon the following cases.

Goodyear Tire & Rubber Co. v. Hanover State Bank,
204 Pac. 992,
Hawaiian Pineapple Co. v. Browne, 220 Pac. 1114,
Federal Reserve Bank v. Peters, 123 S. E. 379.

I thought this case might be of interest to you.

Yours very truly,

(signed) A. C. AGNEW

Counsel.

IN THE SUPERIOR COURT OF MARICOPA COUNTY,

STATE OF ARIZONA.

* * *

THE STATE OF ARIZONA ex rel W. J. Galbraith, Attorney General,

Plaintiff,

vs.

CENTRAL BANK OF PHOENIX, a corporation; CENTRAL BANK OF PHOENIX, doing business as the Bank of Phoenix, a corporation; BANK OF PHOENIX, a corporation; D. N. STAFFORD, B. C. STAFFORD, GEORGE W. MICKLE, DONALD DUNBAR, ED. C. BRADFORD, O. F. ALFORD, E. A. TOVREA, R. E. SLOAN and E. T. COLLINGS, as Officers and Directors of said Corporation,

Defendants.

No. 15797.

MEMORANDUM OF OPINION

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The matter of the application of the Federal Reserve Bank of San Francisco for the establishment of its claim as a preference against the Bank of Phoenix, insolvent, having come before the court on an agreed statement of facts and the court feeling that its ruling thereon is in a measure contrary, or apparently contrary, to its former ruling in a similar case, the court feels it should state its reasons for such ruling.

Formerly, in a somewhat similar set of facts in the matter of the application of S. O. Lewis for a preferred claim, wherein a Montana Bank sent to the Bank of Phoenix a check, presumably for payment, and the Bank of Phoenix in payment thereof issued its draft on a correspondent bank, which draft was not paid, this court held that the relation

of debtor and creditor existed between the Montana Bank and the Bank of Phoenix and that therefore no ground for preference existed.

In the present case a great deal of additional, enlightening and convincing authority has been submitted to the court to the effect that where one bank transmits checks or drafts for collection to another bank, there being no reciprocal accounts between the two banks, and the receiving bank collects said draft or check and in remitting the collection thereof issues a draft on a correspondent of the receiving bank and transmits it through the mail to the sending bank, there is thereby created the relation of principal and agent between the sending and receiving bank. And, of course, when such a relationship is created, under the law a preference under all of the authorities is allowed. The vital question in all of these cases is merely the question of whether the relation of debtor and creditor or principal and agent has been created.

The only difference that I can see between the facts in this case and the Lewis case is that in the Lewis case a check was sent to the Phoenix bank, presumably for payment, and payment was made by the issuance of a draft and its transmission to the Montana Bank, whereas, in the present case, a draft upon the Phoenix bank was sent by the Federal Reserve Bank to the Phoenix bank for collection and return, and the Phoenix bank, in accordance with a custom which had heretofore existed between the two banks, made collection by transmitting to the Federal Reserve Bank its draft on its correspondent bank. Counsel for petitioner has attempted to distinguish the two cases upon the theory that in the Lewis case it was a question of the purchase of a draft, whereas in this case it was merely the question of transmitting for

collection. I fail to see that there is really any material difference in the two sets of facts, but I do feel that in the light of the case of Federal Reserve Bank of Richmond vs. Peters, 123 S. E. 379, decided last June, and the many authorities therein cited and discussed, this court could not do otherwise than allow the preference.

The Lewis case was decided upon the theory that a draft was purchased, and I think it is undoubtedly the law that when one purchases a draft from a bank, whether he pays therefor in checks or money, and before the draft is cashed the bank issuing the same becomes insolvent, the relation of debtor and creditor exists between the purchaser of the draft and the insolvent bank. If the court committed error in the Lewis case, I feel it did so not in an enunciation of the law, but in the assumption that a fact existed which may possibly not have existed, that is to say, that the Montana bank purchased the draft from the Bank of Phoenix. I am not sure but that the court possibly erred in its assumption in view of the fact that the Montana bank simply sent the check for payment, and the Bank of Phoenix without any solicitation on the part of the Montana bank simply issued its draft in liew of transmitting the funds. In any event, I feel that the correct and reasonable rule of law and the better authority as has been submitted in this case demands that a preference be allowed.

For the reasons above set forth the petition will be allowed and the receiver ordered to pay the claim therein presented as a preference claim in due course of administration. In view of the present condition of the bank, however, no preference claim should be paid at this time until the funds are available for that specific purpose.

F. R. Windes

J U D G E.