

COPY

FEDERAL RESERVE BANK

OF RICHMOND

February 2, 1929.

Federal Reserve Board,
Washington, D. C.

Attention: Mr. Walter Wyatt, General Counsel.

My dear Mr. Wyatt:

I am sending you a copy of a complaint in an action brought by L. R. Gilbert, Trustee of Audrey Spinning Mills, Inc., against the Phoenix Mills and other parties, including the Federal Reserve Bank of Richmond. You will notice the action is for the amount of a check drawn by the Phoenix Mills to the Audrey Spinning Mills on the Commercial National Bank of Statesville, which was sent to the latter by the Federal Reserve Bank of Richmond, which in turn received authority to charge the amount of such check to the reserve account of the Commercial National Bank of Statesville.

The pertinent facts in this case so far as the Federal Reserve Bank of Richmond is concerned are as follows:

On April 16th the Charlotte Branch of the Federal Reserve Bank of Richmond sent to the Commercial National Bank of Statesville checks totaling \$20,561.03 and on the same day checks were sent from the main office to the Commercial National Bank of Statesville totaling \$1,176.12. These checks were apparently received by the Commercial National Bank of Statesville on April 17th and were cancelled and charged to the drawers. On that day the Commercial National Bank of Statesville sent to the Charlotte Branch of the Federal Reserve Bank of Richmond a remittance letter which contained a form directing the Federal Reserve Bank of Richmond to charge these checks to the reserve account of the Commercial National Bank of Statesville. The remittance letter above mentioned was received by the Charlotte Branch of the Federal Reserve Bank of Richmond, at which the reserve account of the Commercial National Bank of Statesville was kept, on the morning of April 18th.

At the close of business on April 17th the reserve account of the Commercial National Bank of Statesville showed a credit balance of \$1,084.62. Various credits were made to the account of the Commercial National Bank of Statesville on the morning of April 18th. These credits apparently consisted of checks formerly deposited and becoming available in the reserve account, a shipment of currency amounting to \$5,000.00, and a transfer of \$4,000.00. The Charlotte Branch also received a draft for \$12,500.00 drawn by the Commercial National Bank of Statesville on the American Trust Company of Charlotte, so that the apparent balance exceeded the amount of the cash letters which were accordingly charged against it. About midday on April 18th, but after the charge of the cash

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letters, the Charlotte Branch was advised that the Commercial National Bank of Statesville had been closed. The American Trust Company received a similar notice and returned the draft for \$12,500.00 which had been presented through the Clearing House. This draft was charged against the account of the Commercial National Bank of Statesville, causing an apparent overdraft. Thereupon the cash letters which had been charged to the account earlier in the day were charged back and credited to the Commercial National Bank of Statesville, leaving an apparent balance of approximately \$13,000.00. On April 19th and 20th the reserve account of the Commercial National Bank of Statesville was credited with the sums of \$1,001.48, \$1,654.27, and \$1,330.71, which were apparently checks deposited prior to April 18th but which became available on the 19th and 20th. The net result of these debits and credits left a balance of \$17,114.20. We were holding this balance in suspense to await the action of the court in the Lake City case.

The present suit, however, may present some additional questions not involved in that case, particularly with respect to the credits made after April 18th.

I remain,

Very truly yours,

(s) M. G. Wallace,
Counsel.

MGW L

COPY

STATE OF NORTH CAROLINA,)
)
COUNTY OF MECKLENBURG.)

IN THE SUPERIOR COURT.

L. R. Gilbert, Trustee in
Bankruptcy of Audrey Spinning
Mills, Inc.,

Plaintiff,

versus

Phoenix Mills, Inc., Weldon
Bank & Trust Co., The Commer-
cial National Bank of Raleigh,
N. C., Federal Reserve Bank of
Richmond, and C. L. Williams,
Receiver of The Commerical
National Bank of Statesville,
N. C.,

Defendants.)

C O M P L A I N T.

The plaintiff, complaining of the defendants, alleges:

I.

That the plaintiff was heretofore duly appointed and qualified, and is now acting as the Trustee in Bankruptcy of Audrey Spinning Mills, Inc., a corporation duly organized and existing under the Laws of the State of North Carolina, which was heretofore, to-wit, on or about the 19th of September, 1928, duly adjudicated a bankrupt by the United States District Court, for the Eastern District of North Carolina.

II.

That as plaintiff is informed and believes the defendant, Phoenix Mills, Inc., is a corporation duly organized and existing under the laws of the State of New York, and is now, and was at the times hereinafter referred to engaged in doing business in this state, and at such times owned and operated, and still owns and operates a cotton mill in the county of Iredell, in this State.

III.

That the defendant, Weldon Bank & Trust Company, is a banking corporation duly organized and existing under the Laws of the State of North Carolina, with its home office and principal place of business in the Town of Weldon, Halifax County, North Carolina, and as such corporation is duly authorized and empowered to receive and handle for collection checks drawn upon other banks.

IV.

That the defendant, Commercial National Bank of Raleigh, N. C., is a banking corporation duly organized and existing under the Acts of Congress, with its home office and principal place of business in the City of Raleigh, Wake County, North Carolina, and as such corporation is duly authorized and empowered to receive and handle for collection checks drawn upon other banks.

V.

That the defendant, Federal Reserve Bank of Richmond, is a banking corporation duly organized and existing under the Acts of Congress, especially under that Act known as the Federal Reserve Act, and is duly authorized and empowered to receive and handle for collection checks drawn upon other banks, and at the times hereinafter referred to was, and still is, engaged in business in this State, with its principal office and place of business in Charlotte, Mecklenburg County, North Carolina, where at all such times it maintained, and still maintains, a branch bank.

VI.

That the defendant, C. L. Williams, was heretofore, to-wit, on or about April 19th, 1928, duly appointed Receiver of The Commercial

National Bank of Statesville, N. C., by the Comptrolber of the Currency of the United States, and immediately qualified as such Receiver, and as such has since been in charge, and is still in charge, of winding up and liquidating the business and affairs of said bank, which was at the times hereinafter referred to a banking corporation duly organized and existing under the Acts of Congress, and duly authorized and empowered to receive deposits of money to pay checks drawn on such deposits when duly presented, and to receive and handle for collection checks, and otherwise engage in the banking business under said Acts of Congress, and at all such times had and maintained its principal office and place of business in this State in Statesville, Iredell County, North Carolina.

VII.

That heretofore, to-wit, on or about April 10th, 1928, the defendant, Phoenix Mills, Inc., being indebted to the Audrey Spinning Mills, Inc. in the sum of \$6,928.94, for cotton yarns theretofore sold and delivered by said Audrey Spinning Mills, Inc. to said Phoenix Mills, Inc., forwarded through the United States mails to said Audrey Spinning Mills, Inc., its check drawn on the Commercial National Bank of Statesville, N. C. in words and figures as follows, to-wit:

"PHOENIX MILLS, INC.

NO. 386.

STATESVILLE, N. C. APRIL 10, 1928.

PAY TO THE
ORDER OF

Audrey Spinning Mills, Inc.

\$6928.94

Six Thousand Nine Hundred Twenty-eight and 94/100 ----- DOLLARS

TO

PHOENIX MILLS, INC.

THE COMMERCIAL NATIONAL BANK
STATESVILLE, N. C.

C. W. MCLAIN
Agent."

which said check was issued by said Phoenix Mills, Inc. to said Audrey Spinning Mills, Inc. in payment of the indebtedness aforesaid.

VIII.

That said check was received by the Audrey Spinning Mills, Inc., at Weldon, N. C., in the U. S. mail on the afternoon of Thursday, April 12, 1928, after the close of banking hours; it was duly endorsed and deposited by said mills with the defendant, Weldon Bank & Trust Company, for collection on the morning of Friday, April 13, 1928, and on the same day was duly endorsed and forwarded by said defendant to the defendant, Commercial National Bank of Raleigh, N. C., for collection; that it was received by the latter on Saturday, April 14, 1928, and on said date was duly endorsed and forwarded by it to the Charlotte Branch of the Federal Reserve Bank of Richmond, for collection; that it was received by the latter on April 16, 1928, and on said date was duly endorsed by it and forwarded to The Commercial National Bank of Statesville, for payment.

IX.

That the Federal Reserve Bank of Richmond, through its Charlotte Branch, forwarded said check to The Commercial National Bank of Statesville in a letter containing other checks drawn upon the latter, and which said Charlotte Branch held for collection, the total amount of the checks thus forwarded to said Commercial National Bank of Statesville in said letter for payment being \$20,561.03.

X.

That said check, together with the other checks contained in said letter, were received by The Commercial

National Bank of Statesville on Tuesday, April 17, 1928; and on said date it wrote to the Federal Reserve Bank of Richmond directing it to pay said check, and the other checks aforesaid, and charge them to its reserve account with said Federal Reserve Bank; that said letter was received by the defendant, Federal Reserve Bank, on the morning of Wednesday, April 18, 1928; that at the close of business on said date the books of said Federal Reserve Bank showed that the balance in the reserve account of said Commercial National Bank of Statesville was \$13,429.19; that inasmuch as the balance in said reserve account as shown by its books was less than the total amount of the checks forwarded to The Commercial National Bank of Statesville for payment as aforesaid the Federal Reserve Bank of Richmond refused to pay the check of the Audrey Spinning Mills, Inc., hereinbefore set forth, and on said 18th day of April, 1928, notified the Commercial National Bank of Raleigh of the non-payment thereof, and charged the amount of said check back against said Commercial Bank of Raleigh; the Commercial National Bank of Raleigh in turn notified the Weldon Bank & Trust Company of the non-payment of said check, and charged the latter's account with the amount thereof; the Weldon Bank & Trust Company thereupon notified the Audrey Spinning Mills, Inc., of the non-payment of said check, and the latter in turn duly notified the defendant, Phoenix Mills, Inc., of the non-payment thereof.

XI.

That notwithstanding the presentment of said check to The Commercial National Bank of Statesville for payment on April 17, 1928, as hereinbefore alleged, the said bank fail-

ed and refused to pay said check, or to cause the same to be paid by the Federal Reserve Bank of Richmond, and that notwithstanding such failure the Cashier of said Commercial National Bank of Statesville wrongfully and unlawfully stamped said check as paid on April 18, 1928.

XII.

That said Commercial National Bank of Statesville suspended business on the 18th of April 1928, and did not re-open on the 19th, and on or about said date the defendant, C. L. Williams, was appointed as Receiver for said bank, as hereinbefore alleged.

XIII.

That after repeated demands by the Audrey Spinning Mills, Inc., upon said Phoenix Mills, Inc., to pay the indebtedness for which said check was issued, the latter on May 16, 1928, declined at that time to pay the same, or at least postponed payment thereof, upon the ground that there was a question as to whether or not the collecting banks who handled the check aforesaid were responsible for the non-payment thereof, and on July 2nd, 1928, declined to pay said indebtedness upon the alleged ground that the Audrey Spinning Mills, Inc., had not received the proceeds of said check through the fault of the defendant banks who had handled same. That a controversy therefore exists between the Phoenix Mills, Inc., and the defendant banks, as to who is liable to the plaintiff for the payment of the amount of said check representing the indebtedness of said Phoenix Mills, Inc., to said Audrey Spinning Mills, Inc.

XIV.

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That the Audrey Spinning Mills, Inc., accepted said check from the defendant, Phoenix Mills, Inc., in payment of the indebtedness aforesaid upon the condition that said check would be paid by said Commercial National Bank of Statesville when duly presented for payment; and that said check was not paid by said bank when presented, as hereinbefore alleged, so that said Phoenix Mills, Inc., remains liable to the plaintiff as the Trustee in Bankruptcy of said Audrey Spinning Mills, Inc. in the sum of \$6,928.94, with interest thereon at the rate of 6% per annum from April 10, 1928, until paid.

XV.

That the Weldon Bank & Trust Company, the Commercial National Bank of Raleigh and the Federal Reserve Bank of Richmond each in receiving and handling said check aforesaid for collection on behalf of said Audrey Spinning Mills, Inc. became its agent for the collection thereof, and each undertook to exercise due diligence in procuring the proceeds of said check from said Commercial National Bank of Statesville, and in remitting the same in due course to said Audrey Spinning Mills, Inc.

XVI.

That as the plaintiff is informed and believes each of said banks consented to, acquiesced and participated in the method and manner in which said check was handled for collection, and failed and neglected to comply with its contract and agreement with said Audrey Spinning Mills, Inc., as hereinbefore alleged.

XVII.

That as the plaintiff is informed and believes the

defendant, C. L. Williams, Receiver of the Commercial National Bank of Statesville, has in hand funds for distribution to those having lawful claims against said bank, and the plaintiff is further informed and believes that after April 18th, 1928, the reserve account of said Commercial National Bank of Statesville with the Federal Reserve Bank of Richmond was further increased and now amounts to the sum of \$17,114.27, and as the plaintiff is advised and believes, inasmuch as the Commercial National Bank of Statesville authorized and directed the Federal Reserve Bank of Richmond to pay said check out of said reserve account, as hereinbefore alleged, such authorization and direction constituted an equitable assignment of said reserve account to the amount of said check.

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XVIII.

That as the plaintiff is advised and believes he is entitled to have the liability of the defendants, and each of them, to him determined, and to recover judgment against the defendants, and each of them, in accordance with such determination, and is further entitled to have the rights of the parties against the defendant, C. L. Williams, Receiver, and their rights in and to the aforesaid reserve account held by the Federal Reserve Bank of Richmond, determined and adjudged, and so far as may be necessary to collect the amount due him from the defendants, or from such of them as may be liable to him, is entitled to be subrogated to the rights of the defendants against said Receiver, and to their interest in and to said reserve account held aforesaid by the Federal Reserve Bank of Richmond.

WHEREFORE, the plaintiff prays that the liability of the defendants, and that of each of them to him be determined, and that he recover judgment against them, and each of them, in accordance with such determination, and for such other or further relief in the premises as the plaintiff is entitled to have, and for the cost of this action to be taxed by the Clerk according to law.

(sgd) W. S. O'B Robinson, Jr.

(sgd) John M. Robinson
Attorneys for the Plaintiff.

STATE OF NORTH CAROLINA,

COUNTY OF HALIFAX.

L. R. Gilbert, being first duly sworn, says that he is the plaintiff in the above entitled action; that he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated to be alledged upon information and belief, and as to such matters he believes it to be true.

(sgd) L. R. Gilbert, Trustee

Sworn to and subscribed before me,
this the 29 day of December, 1928.

(Sgd) Janie Haywood
Notary Public

Com. expires Feb. 16, 1929.